False Claims Act liability: When do claims for health care reimbursement 'result from' Anti-Kickback Statute violations?

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Participants in the health care and life sciences industry continue to face robust False Claims Act ("FCA") enforcement scrutiny and litigation risk. Indeed, on July 2, 2025, the Department of Justice ("DOJ") and Department of Health and Human Services ("HHS") announced the renewal of the DOJ–HHS False Claims Act Working Group, a partnership aimed at strengthening use of the FCA in combatting health care fraud.

Among the "priority enforcement areas" that the announcement identifies, the most important is likely the Anti-Kickback Statute ("AKS") — historically the largest driver of FCA liability for the industry. But what is the standard for connecting AKS violations to FCA liability? Congress provided that reimbursement claims "resulting from" AKS violations are "false" for purposes of the FCA. Yet a circuit split has emerged on the critical question of what those two words — "resulting from" — require.

Background

The AKS broadly criminalizes, among other things, paying kickbacks to induce referrals and recommendations for items and services reimbursable by federal health care programs. 42 U.S.C. § 1320a-7b(b). Simply put, the law forbids bribes designed to extract health care payments from the federal government. Alleged AKS violations are a longstanding focus of FCA suits, both from relators and DOJ.

Via the Affordable Care Act ("ACA"), Congress in 2010 amended the AKS to provide that "a claim that includes items or services resulting from a violation of [the AKS] constitutes a false or fraudulent claim for purposes of [the FCA]." 42 U.S.C. § 1320a-7b(g). This amendment codified what federal courts had long accepted — that in at least some circumstances, AKS violations can undergird FCA liability.

Yet the ACA says nothing about what "resulting from" means. That has engendered a circuit split. Three circuits demand a stringent "but-for" connection between kickback and claim. Yet the 3rd U.S. Circuit Court of Appeals employs a looser "link" test.

The 'but-for' test

The 1st, 6th, and 8th Circuits apply the "but-for" standard to the "resulting from" language. *U.S. v. Regeneron Pharms., Inc.*, 128 F.4th 324, 328 (1st Cir. 2025); *U.S. ex rel. Martin v. Hathaway*, 63 F.4th 1043, 1052–53 (6th Cir. 2023); *U.S. ex rel. Cairns v. D.S. Med. LLC*, 42 F.4th 828, 835 (8th Cir. 2022). Under that approach, for the AKS violation to render a claim false, the AKS violation must have been the but-for cause of the claim. In other words, DOJ or the relator must establish that but-for the AKS violation, the claim would not exist.

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Arriving at this interpretation, these circuits have noted that the Supreme Court has already determined — though in a different context — that the phrase "resulting from" demands but-for causation. *Regeneron*, 128 F.4th at 329; *Martin*, 63 F.4th at 1052; *Cairns*, 42 F.4th at 834. Indeed, it "is one of the traditional background principles against which Congress legislates that a phrase such as 'resulting from' imposes a requirement of but-for causation." *Regeneron*, 128 F.4th at 329 (cleaned up).

The 'link' test

On the other side of the split, the 3rd Circuit in *Greenfield* interpreted "resulting from" to require only a "link" between the AKS violation and the submitted claim. *U.S. ex rel. Greenfield v.*

Medco Health Sols., Inc., 880 F.3d 89, 100 (3d Cir. 2018). The *Greenfield* court acknowledged that the Supreme Court had found that "resulting from" entails but-for causation. *Id.* at 96.

But the 3rd Circuit determined that here, that test would be "inconsistent with the drafters' intentions." *Id.* After all, the 3rd Circuit explained, the ACA amendment aimed to facilitate the Government's prosecution of health care fraud. *Id.* at 97. Yet a stringent but-for standard would make it *harder* to establish FCA liability premised on AKS violations. *Id.*

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So the 3rd Circuit interpreted "resulting from" to require a mere "link" between the kickback scheme and the submitted claim. *Id.* at 100. The link standard has two prongs: (1) the federally insured patient must have been "exposed to" the "referral or recommendation . . . in violation of" the AKS, and (2) a claim must have been submitted "pertaining to that patient." *Id.*

In *Sayeed*, the 7th U.S. Circuit Court of Appeals acknowledged but declined to take a side in the link v. but-for split. *Stop Illinois Health Care Fraud, LLC v. Sayeed*, 100 F.4th 899, 909 (7th Cir. 2024). Still, the 7th Circuit in dicta advised that "resulting from" demands a "causal nexus between allegedly false claims and the underlying kickback violation. . . . This means that, at a minimum, every claim that forms the basis of FCA liability must be false *by virtue of* the fact that the claims are for services that were referred in violation" of the AKS. *Id.* at 908 (emphasis in original).

The false certification alternative

As more courts have rejected the 3ird Circuit's loose "linkage" standard in favor of the higher "but-for" standard to determine when claims "result from" kickbacks, DOJ and relators are pursuing claims based on allegedly false certifications of compliance with the AKS as an alternative way to satisfy the falsity element.

Under *express* false certification theories, the entity submitting the claim expressly promises compliance with a requirement where that compliance is a prerequisite of payment. The defendant's noncompliance renders that promise — and therefore the claim — false. Under *implied* false certification theories, on the other hand, the claim makes specific representations about the items or services provided to the government, and the defendant's legal noncompliance renders those representations "misleading half-truths." *Universal Health Servs., Inc. v. U.S.*, 579 U.S. 176, 190 (2016).

The false certification approach is common and nothing new — including vis-à-vis falsity premised on AKS violations. After all, some types of claim forms require the submitter expressly to certify compliance with the AKS. And even the circuits adopting the but-for standard for "resulting from" recognize that the ACA amendment did not disturb the viability of the false certification approach. *See Regeneron*, 128 F.4th at 333.

Indeed, following the 1st Circuit's *Regeneron* ruling adopting the but-for standard, the district court granted the government's request to file a second partial summary judgment motion under a false-certification theory and reopen discovery on a limited basis. *See United States v. Regeneron Pharms., Inc.*, 2025 WL 2207299, at *6 (D. Mass. Aug. 4, 2025). In its request, DOJ noted the 1st Circuit held that "under the false-certification theory, FCA liability lies when a defendant falsely represents AKS compliance on a federal agency form." *Regeneron*, 128 F.4th 324, 334 (1st Cir. 2025).

DOJ successfully argued it should be allowed to proceed on a false-certification theory because its complaint alleged facts consistent with the false-certification theory and the 1st Circuit's but-for causation ruling "reflect[ed] a material change in the litigation" such that it was appropriate for DOJ to file a second summary judgment motion. *Regeneron*, 2025 WL 2207299, at *3.

On the other side of the split, the 3rd Circuit in Greenfield *interpreted "resulting from" to require only a "link" between the AKS violation and the submitted claim.*

Yet false certification theories present their own challenges for plaintiffs in FCA cases. Even at the pleading stage, DOJ and relators must point to claims' express false certifications or "misleading" specific representations — that the defendant *knew* rendered claims false. DOJ and relators must also adequately allege the FCA's separate materiality element — *i.e.*, that the falsity created by AKS violations was *material* to government payment decisions.

Proceeding instead on the theory that false claims "resulted from" AKS violations requires no allegations or proof of express or implied certifications, and some courts have held that AKS violations are "*per se*" material where claims result from the violations. *See, e.g., U.S. v. Berkeley Heartlab, Inc.*, 2017 WL 6015574, at *2 (D.S.C. Dec. 4, 2017).

Conclusion

The trend is clear. Since the 3rd Circuit adopted the link standard, three circuits have unequivocally rejected it in favor of but-for causation. As more courts, and perhaps the Department of Justice, accept that more stringent standard is the correct one, we expect relators and the government

increasingly to bring and to pursue AKS violations instead as false certification cases.

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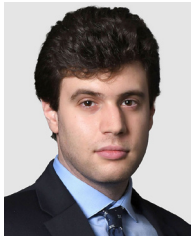
About the authors





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