



BLANKET WAIVERS OF PHYSICIAN SELF-REFERRAL (STARK LAW) PROHIBITIONS

April 1, 2020

On March 30, 2020, the Secretary of the Department of Health and Human Services (DHHS) issued blanket waivers related to the prohibitions on physician self-referrals under Section 1877(g) of the Social Security Act (the “Stark Law”), with an effective date of March 1, 2020. The waivers were issued in response to the state of emergency caused by the COVID-19 outbreak in order to ensure the availability of sufficient health care items and services to meet the needs of Medicare, Medicaid, and CHIP beneficiaries, and to ensure that healthcare providers who furnish those items and services in good faith may be reimbursed, even if the arrangement does not comply with the law’s technical requirements.

Notably, these waivers DO NOT require providers to submit a request or notification to DHHS or CMS. However, providers must keep written records of transactions entered in reliance on these waivers and be able to produce these records upon DHHS’s request. For a waiver to apply, the remuneration and referrals described in the waivers must be solely related to “COVID-19 Purposes,” which is defined as: (i) the diagnosis or medically necessary treatment of COVID-19 for any patient or individual, whether or not the patient or individual is diagnosed with a confirmed case; (ii) securing the services of physicians and other health care practitioners and professionals to furnish medically necessary patient care, including services not related to the diagnosis and treatment of COVID-19, in response to the COVID-19 outbreak; (iii) ensuring the availability of healthcare providers to address patient and community needs due to the COVID-19 outbreak; (iv) expanding the capacity of healthcare providers to address patient and community needs due to the COVID-19 outbreak; (v) shifting the diagnosis and care of patients to appropriate alternative settings due to the COVID-19 outbreak; or (vi) addressing medical practice or business interruption due the COVID-19 outbreak in order to maintain the availability of medical care and related services for patients and the community.

The blanket waivers shield numerous types of remunerative and referral arrangements involving physicians and entities to which they refer designated health services, including arrangements involving office or equipment rentals, personal services, purchased items or services, and debt interest, that may not involve fair market value remuneration. Furthermore, Stark standards that would ordinarily prevent physicians from referring to entities with which they have a financial arrangement (either ownership or compensation) are waived in certain circumstances to promote access to hospitals, home health agencies, assisted living facilities, independent living facilities, and other care settings.

DHHS highlights several examples of circumstances for which the blanket waiver might apply. These include:

- A hospital pays physicians above their previously-contracted rate for furnishing professional services for COVID-19 patients in particularly hazardous or challenging environments.
- To accommodate patient surge, a hospital rents office space or equipment from an independent physician practice at below fair market value or at no charge.
- A hospital's employed physicians use the medical office space and supplies of independent physicians in order to treat patients who are not suspected of exposure to COVID-19 away from their usual medical office space on the campus of the hospital in order to isolate patients suspected of COVID-19 exposure.
- A hospital or home health agency purchases items or supplies from a physician practice at below fair market value or receives such items or supplies at no charge.
- A hospital provides free use of medical office space on its campus to allow physicians to provide timely and convenient services to patients who come to the hospital but do not need inpatient care.
- An entity sells personal protective equipment to a physician, or permits the physician to use space in a tent or other makeshift location, at below fair market value (or provides the items or permits the use of the premises at no charge).

WHAT THIS MEANS FOR PROVIDERS

Providers are reminded that circumstances for which a waiver might apply must be documented in writing. This includes ensuring that any applicable agreements or arrangements between referring physicians and entities are properly recorded in a document or agreement that outlines all applicable terms. Providers may wish to review the list of waivers and examples of situations in which a waiver might apply by reviewing DHHS's announcement [here](#).

If you have any questions or need further guidance regarding the blanket waivers above, please contact a member of Hancock Daniel's [Fraud & Abuse](#) team.

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