



COVID-19 Update

April 2020

CMS Issues Blanket Waivers of the Stark Law During the COVID-19 Public Health Emergency

The Centers for Medicare and Medicaid Services (CMS) has issued blanket waivers of the Stark Law during the COVID-19 public health emergency, retroactive to March 1, 2020, to ensure that health care providers and facilities can meet the challenges of caring for patients, and will not impose sanctions for good faith violations as long as CMS does not determine that there was fraud and abuse. The [blanket waivers](#) apply only to financial relationships and referrals that are related to the COVID-19 national emergency. The remuneration and referrals must be solely related to COVID-19 purposes, defined as:

- 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 of COVID-19
- Securing the services of physicians and other health care practitioners to furnish medically necessary patient care services, including services not related to the diagnosis and treatment of COVID-19, in response to the COVID-19 outbreak
- Ensuring the ability of health care providers to address patient and community needs due to COVID-19
- Expanding the capacity of health care providers to address patient and community needs due to COVID-19
- Shifting the diagnosis and care of patients to appropriate alternative settings due to COVID-19
- Addressing medical practice or business interruption due to COVID-19 in order to maintain the availability of medical care and related services for patients and the community

The CMS guidance lists 18 different waivers and examples of how the waivers can be applied (starting on page 3). These lists (see the link above) can be consulted for contemplated arrangements that might not otherwise meet a Stark exception during the COVID-19 emergency. CMS advises that parties utilizing blanket waivers maintain records relating to the use of the blanket waivers.

The Office of Inspector General (OIG) has not published waivers of the Anti-Kickback Statute, but the OIG issued a message on March 30 acknowledging the challenges faced by the health care industry during the emergency and that for any conduct during the emergency that may be subject to OIG administrative enforcement, OIG will carefully consider the context and intent of the parties when assessing whether to proceed with any enforcement action.

Please let us know if you have any questions or would like to apply any of the waivers to a specific arrangement.

FOR MORE INFORMATION

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Additional Resources

We have assembled a firmwide multidisciplinary task force to address clients' business and legal concerns and needs related to the COVID-19 pandemic. Please see our [COVID-19 Task Force](#) page for additional information and resources.

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