

# CMS Issues Blanket Waivers From the Stark Law

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On March 30, 2020, in response to the public health emergency resulting from the COVID-19 pandemic, the Centers for Medicare and Medicaid Services (CMS) issued blanket waivers from section 1877 of the Social Security Act (the Stark Law) governing physician self-referral. The Stark Law (1) prohibits a physician from making referrals of certain designated health services to an entity with which the physician or his or her immediate family member has a financial relationship, unless an exception applies; and (2) prohibits an entity from billing Medicare for designated health services furnished pursuant to a prohibited referral.

The blanket waivers apply retroactively to March 1, 2020, and will remain in effect until the declared public health emergency associated with the COVID-19 pandemic ends.

To be protected by the blanket waivers, the remuneration resulting in the financial relationship, which otherwise would be prohibited by the Stark Law, must be solely related to defined “COVID-19 purposes,” which include:

- 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 and professionals 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 pandemic.
- Ensuring the ability of health care providers to address patient and community needs due to the COVID-19 pandemic.
- Expanding the capacity of health care providers to address patient and community needs due to the COVID-19 pandemic.
- Shifting the diagnosis and care of patients to appropriate alternative settings due to the COVID-19 pandemic.
- Addressing medical practice or business interruption due to the COVID-19 pandemic in order to maintain the availability of medical care and related services for patients and the community.

Absent a determination by the government of fraud or abuse, the following common types of remuneration are protected by the blanket waivers if solely related to COVID-19 purposes:

- Payments by an entity to a physician that are above or below fair market value for services personally furnished by the physician.
- Rental charges for space or equipment, or payments for items or services, that are below fair market value, regardless of whether such payments are made by the entity to the referring physician, or vice versa.
- Loans at interest rates that are below fair market value, or on terms that are unavailable from another lender, regardless of whether such loans are made by the entity to the referring physician, or vice versa.
- Non-monetary remuneration by a hospital to its medical staff for incidental benefits above the usual cap of \$36 per occurrence.
- Non-monetary remuneration to any physician above the usual cap of \$423 per year.
- Remuneration paid to a physician by any home health agency of which the physician is an investor (the usual requirement is that such remuneration may be paid only if the home health agency qualifies as a “rural provider”).
- Remuneration paid to a physician in a group practice for designated health services furnished at any location (the usual requirement is that such services must be furnished in the “same building” as the group practice or in a “centralized building”).

- Remuneration paid to any physician in a group practice who provides services in the patient's home (the usual requirement is that such services must be furnished by a physician whose principal practice is in-home care).
- Remuneration paid to an immediate family member of the referring physician if the patient resides in a rural area (the usual requirement is that such services must be unavailable to the patient from another provider within 25 miles or 45 minutes).
- Remuneration pursuant to an arrangement that would meet an exception to the Stark Law, except that it is not reduced to writing or is not signed.

CMS also provided specific, illustrative examples of remuneration protected by the blanket waivers, which may be found at the link provided above. CMS encourages entities and physicians to document their reliance on the blanket waivers in contemporaneous records. Further, we recommend that such records state expressly that the remuneration protected by the blanket waivers will end when the blanket waivers end and that the parties will revert to remuneration that is compliant with the Stark Law at that time.

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