

# COVID-19 Update

April 10, 2020



## CMS Issues Stark Law Blanket Waivers During COVID-19

The Center for Medicare & Medicaid Services (CMS) on Monday, March 30, 2020 issued [Stark Law Blanket Waivers](#) of sanctions under the Stark Law, also known as the federal physician self-referral law. These waivers are retroactive to March 1, 2020 and provide some protection only for remuneration and referrals which are strictly **related to a broad set of “COVID-19 Purposes.”**

In summary, the [Stark Law](#) prohibits: (1) a physician from making referrals for certain “designated health services” (DHS) payable by Medicare to an entity with which they (or an immediate family member) has a financial relationship; and (2) the entity from filing Medicare claims for DHS furnished pursuant to a prohibited referral. The Stark Law is a strict liability statute whereby the intent of the parties is irrelevant, which can pose barriers to DHS referrals necessary or appropriate in a public health emergency (PHE).

Below are highlights of the Stark Law Blanket Waivers:

- Diagnosis or medically necessary treatment of COVID-19 patients, whether or not there is a confirmed case of COVID-19.
- Securing the services of physicians and other healthcare 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 PHE.
- Ensuring the ability and expanding capacity of healthcare providers to address patient and community needs due to the COVID-19 PHE.
- Shifting the diagnosis and care of patients to appropriate alternate settings.
- Assessing medical practice or business interruption due to the COVID-19 PHE in order to maintain availability of medical care and related services to patients.

Some specific examples that would be permissible under the Stark Blanket Waivers include, but are not limited to:

- Remuneration from an entity to a physician that is above or below fair market value (FMV) for services performed by the physician to the entity.
- Rental charges paid by an entity to a physician that are below FMV for the entity’s lease of office space or equipment from the physician.
- Remuneration from an entity to a physician that is below FMV for items or services purchased by the entity from the physician.
- Rental charges paid by a physician to an entity that are below FMV for the physician’s lease of office space or equipment from the entity.
- Remuneration from a hospital to a physician for medical staff incidental benefits not to exceed \$36/occurrence (e.g. meals, clothing, on-site child-care, parking and other items or incidental services that are used on the hospital’s campus).
- Remuneration from an entity to a physician in the form of non-monetary compensation that exceeds the limits of \$423 per calendar year. (e.g. CME related to COVID-19, supplies, food or other grocery items, and isolation related needs such as hotel rooms, meals, child-care, transportation, etc.).
- Remuneration from an entity to a physician resulting from a loan to a physician with an interest rate below FMV or on terms that are unavailable from a lender that is not a recipient of the physician’s referrals or business generated by the physician.

- Remuneration from a physician to an entity resulting from a loan to the entity with an interest rate below FMV or on terms that are unavailable from a lender that is not in a position to generate business for the physician.
- The referral by a physician in a group practice for medically necessary DHS furnished by the group practice in a location that does not qualify as “same building” or “centralized building.” This will allow group practices to furnish medically necessary DHS, such as MRIs and laboratory tests, from mobile locations.
- The referral by a physician to an entity where the physician’s immediate family member(s) has a financial relationship if the patient resides in a rural area.

Documentation regarding use of the Stark blanket waivers is not required to be submitted to CMS. However, it is recommended that providers maintain contemporaneous records to ensure compliance. These records are required to be made available to the Secretary of the Department of Health & Human Services (DHHS) upon request. In addition, it should be noted that a provider who volunteers at a hospital may not be eligible for the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act limited liability immunity with the acceptance of medical staff incidental benefits or other non-monetary compensation as described above, unless their principle residence is  $\geq 75$  miles away. However, NJ Executive Order #112 does provide immunity from civil liability for damages resulting from acts or omissions in the delivery of healthcare services in good faith and “in support of the COVID-19 response.”

CMS has provided a list of scenarios that might potentially qualify for waiver use for COVID-19 purposes. Examples include a hospital paying for a physician above the previously contracted rate for furnishing professional services for COVID-19 patients in particularly hazardous or challenging environments, and loans to an anesthesia group with an exclusive hospital contract that is suffering a loss of revenue due to elective surgery cancellations.

If a specific scenario is not covered by the Blanket Waivers, providers may email the CMS waiver inbox at [1135waiver@cms.hhs.gov](mailto:1135waiver@cms.hhs.gov) or [1877CallCenter@cms.hhs.gov](mailto:1877CallCenter@cms.hhs.gov) and request a specific individual waiver. However, it is strongly suggested that you should contact your legal counsel before embarking on any arrangements that could implicate the Stark Law or the Stark Law Blanket Waivers to ensure compliance and appropriate documentation.

For a full text of the Stark Blanket Waivers, click [here](#).

As always, Conventus members can contact the Practice Resource Department with any questions at: (877) 444-0484 ext.7466.