

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

The Centers for Medicare & Medicaid Services, (“CMS”) announced this week that it will pay claims for designated health services related to COVID-19 that would ordinarily violate the Stark Law. On March 30, 2020, the Secretary of the Department of Health and Human Services (the “Secretary”), issued blanket waivers of the Stark Law retroactive to March 1, 2020.

Requirements

The blanket waivers apply only to financial relationships and referrals that are related to the COVID-19 national emergency, however, what is related to the COVID-19 national emergency is **much** broader than just treating patients with COVID-19. It includes necessary patient care services provided by health care practitioners “not related to the diagnostics and treatment of COVID-19, in response to the COVID-19 outbreak.” It also includes shifting the diagnosis and care of patients to appropriate alternative settings due to the COVID-19 outbreak, as well as addressing medical practice or business interruption due to the emergency to maintain the availability of medical care and related services for patients and the community. In other words, it is very broad.

If you are relying on blanket waivers, you must make records relating to use of the waivers available to the Secretary upon request. You should develop and maintain records in a timely manner as a best practice, but there is currently no requirement to submit specific documentation or any notice to the Secretary or CMS to use the blanket waivers.

Blanket Waivers

The Secretary’s action allows conduct that would normally violate the Stark Law such as above or below fair market value payments for loans, services, equipment use, facilities, and other items provided or used. It also waives the maximum limits on medical staff incidental benefits and nonmonetary compensation, allows referrals to physician owned entities, and allows care to be provided in settings where the Stark Law would normally not permit it.

Examples of Application of the Blanket Waivers

Examples of what is allowed under the Stark Law waivers include:

- A hospital paying physicians above their previously-contracted rate for furnishing professional services for COVID-19 patients in particularly hazardous or challenging environments.
- An entity providing free telehealth equipment to a physician practice to facilitate telehealth visits for patients who are observing social distancing or in isolation or quarantine.

- A physician starting a call coverage arrangement before it is in writing and signed or opening an office in a hospital owned building before a lease is in writing and signed so long as all other requirements of the applicable Stark Law exception are met.

A link to the entire CMS notice regarding the blanket waivers is below:

<https://www.cms.gov/files/document/covid-19-blanket-waivers-section-1877g.pdf>

If you would like to discuss various options and the potential applicability of the waivers to specific situations, please feel free to contact the Buchalter Healthcare attorney identified below.

James Andrew Caprile

Shareholder

916-945-5244

jacaprile@buchalter.com

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