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Blanket Waiver Says Bye to Stark Law for COVID-19 Reasons, Except Indirect Financial Arrangements

By Nina Youngstrom

Pretty much anything goes now with physician financial relationships during the coronavirus pandemic, because CMS issued a blanket waiver^[1] of the Stark Law March 30. There's no cap on nonmonetary compensation for physicians, and hospitals can accept below-market payments for leases and equipment or forego them altogether. CMS also temporarily freed hospitals of the writing and signature requirements and said they can pay above fair market value compensation, although that could implicate the Anti-Kickback Statute.

"Now we can say to take a deep breath. For the most part, we can do almost anything we need to because of the crisis, and we won't trip up because of Stark," said attorney Bob Wade, with Barnes & Thornburg in South Bend, Indiana. "CMS has made it really clear." It's practically like the Stark Law never existed; "Let's do the time warp again," he said. Keep in mind, however, the CMS-approved noncompliance only lasts as long as the national COVID-19 nightmare.

There's one caveat: CMS intentionally excluded indirect financial arrangements from the waiver, said attorney Larry Vernaglia, with Foley & Lardner in Boston, Massachusetts. He confirmed with CMS the omission was on purpose. "Consequently, unless you can be confident that your indirect financial arrangements with physicians are compliant, either by not triggering the definition or by meeting the exception, your options are (1) making a direct financial arrangement between the hospital and physician and not through an intermediary that is not a physician organization or (2) voluntarily having the physicians stand in the shoes of a physician organization."

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