

# Report on Medicare Compliance Volume 29, Number 13. April 06, 2020

## Examples From CMS COVID-19 Blanket Waiver of Stark Law

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CMS's waiver of the Stark Law during the pandemic,<sup>[1]</sup> which was issued March 30, includes specific examples.

### III. Examples of Application of the Blanket Waivers

The following are examples of remuneration, referrals, or conduct that may fall within the scope of the blanket waivers set forth in section II of this blanket waiver document. These examples are for illustrative purposes only and do not represent an exhaustive list of remuneration, referrals, and claims that would qualify for the waiver of sanctions under section 1877(g) of the Act under the blanket waivers. Unless the blanket waiver expressly applies only to a specific type of entity, the examples that include a hospital would apply to any entity that furnishes designated health services.

- A hospital pays physicians above their previously-contracted rate for furnishing professional services for COVID-19 patients in particularly hazardous or challenging environments.
- To accommodate patient surge, a hospital rents office space or equipment from an independent physician practice at below fair market value or at no charge.
- A hospital's employed physicians use the medical office space and supplies of independent physicians in order to treat patients who are not suspected of exposure to COVID-19 away from their usual medical office space on the campus of the hospital in order to isolate patients suspected of COVID-19 exposure.
- A hospital or home health agency purchases items or supplies from a physician practice at below fair market value or receives such items or supplies at no charge.
- A hospital provides free use of medical office space on its campus to allow physicians to provide timely and convenient services to patients who come to the hospital but do not need inpatient care.
- An entity provides free telehealth equipment to a physician practice to facilitate telehealth visits for patients who are observing social distancing or in isolation or quarantine.
- An entity sells personal protective equipment to a physician, or permits the physician to use space in a tent or other makeshift location, at below fair market value (or provides the items or permits the use of the premises at no charge).
- A hospital sends a hospital employee to an independent physician practice to assist with staff training on COVID-19, intake and treatment of patients most appropriately seen in a physician office, and care coordination between the hospital and the practice.
- A hospital provides meals, comfort items (for example, a change of clothing), or onsite child care with a value greater than \$36 per instance to medical staff physicians who spend long hours at the hospital during the COVID-19 outbreak in the United States.
- An entity provides nonmonetary compensation to a physician or an immediate family member of a

physician in excess of the \$423 per year limit (per physician or immediate family member), such as continuing medical education related to the COVID-19 outbreak in the United States, supplies, food, or other grocery items, isolation-related needs (for example, hotel rooms and meals), child care, or transportation.

- A hospital lends money to a physician practice that provides exclusive anesthesia services at the hospital to offset lost income resulting from the cancellation of elective surgeries to ensure capacity for COVID-19 needs or covers a physician's 15 percent contribution for electronic health records (EHR) items and services in order to continue the physician's access to patient records and ongoing EHR technology support services.
- A physician owner of a hospital lends money to the hospital to assist with operating expenses of the hospital, including staff overtime compensation, related to the COVID-19 outbreak in the United States.
- With state approval (if required), a physician-owned hospital temporarily converts observation beds to inpatient beds or otherwise increases its inpatient bed count to accommodate patient surge during the COVID-19 outbreak in the United States.
- Consistent with its State's Emergency Preparedness or Pandemic Plan, a physician-owned ambulatory surgical center enrolls as a Medicare-participating hospital, even if it is unable to satisfy the requirements of section 1877(i)(1) of the Act, in order to provide medically necessary care to patients during the COVID-19 outbreak in the United States.
- A physician refers a Medicare beneficiary to a home health agency owned by the immediate family member of the physician because there are no other home health agencies with capacity to provide medically necessary home health services to the beneficiary during the COVID-19 outbreak in the United States.
- A group practice that meets the requirements of 42 C.F.R. §411.352 furnishes medically necessary magnetic resonance imaging (MRI) or computed tomography (CT) services in a mobile vehicle, van, or trailer in the parking lot of the group practice's office to Medicare beneficiaries who would normally receive such services at a hospital, but should not go to the hospital due to concerns about the spread of the COVID-19 outbreak in the United States.
- A physician in a group practice whose principal medical practice is office-based orders radiology services that are furnished by the group practice to a Medicare beneficiary who is isolated or observing social distancing in the beneficiary's home, provided that the group practice satisfies all of the requirements of 42 C.F.R. §411.352 .
- A physician refers a Medicare beneficiary who resides in a rural area for physical therapy furnished by the medical practice that is owned by the physician's spouse and located within one mile of the beneficiary's residence.
- A compensation arrangement that commences prior to the required documentation of the arrangement in writing and the signatures of the parties, but that satisfies all other requirements of the applicable exception, for example—
  - A physician provides call coverage services to a hospital before the arrangement is documented and signed by the parties;
  - A physician with in-office surgical capability delivers masks and gloves to the hospital before the purchase arrangement is documented and signed by the parties;

- A physician establishes an office in a medical office building owned by the hospital and begins treating patients who present at the hospital for health care services but do not need hospital-level care before the lease arrangement is documented and signed by the parties; or
- The daughter of a physician begins working as the hospital's paid COVID-19 outbreak coordinator before the arrangement is documented and signed by the parties.

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