

WILENTZ

—ATTORNEYS AT LAW—

WILENTZ, GOLDMAN & SPITZER, P.A.

CMS Issues 18 Blanket Waivers To Physician Self-Referral Law During COVID-19 Pandemic

04/02/20

In response to the COVID-19 pandemic, on March 30, 2020, Centers for Medicare & Medicaid Services (CMS) issued 18 blanket waivers of sanctions under the Stark Law, with a retroactive effective date of March 1, 2020. Generally, the Stark Law prohibits a physician from making referrals for certain designated health services (DHS) payable by Medicare to an entity with which he/she has a financial relationship, unless all of the requirements of an exception are met. The blanket waivers apply only to financial relationships and referrals that are related to six specified “COVID-19 Purposes.” While physicians may use the blanket waivers without first notifying CMS, they are encouraged to establish and maintain records in a timely manner. Waivers include:

- Remuneration to a physician that is above or below fair market value (FMV) for services personally performed by the physician
- Rental charges paid that are below FMV for space, equipment or purchased items or services
- Excess medical staff incidental benefits
- Excess non-monetary compensation
- Loans with below FMV interest or terms unavailable from a lender
- Self-referrals to home health agencies
- DHS referrals furnished by a group practice in a location that is not the “same building” or “centralized building”
- DHS referrals furnished by a group practice to a patient in his/her home, assisted living facility or independent living facility
- Self-referrals if the patient resides in a rural area
- Failure to satisfy the writing or signature requirement of an applicable exception

CMS’ guidance also provides a non-exhaustive list of examples of the application of the blanket waivers, including:

- Payment to a physician above their previously-contracted rate for services to COVID-19 patients
- Rental of office space or equipment at below FMV or at no charge
- Provision of free telehealth equipment to facilitate telehealth visits
- Sale of personal protective equipment at below FMV or at no charge
- Loan of money to offset lost income resulting from the cancellation of elective surgeries
- Provision of call coverage services before the arrangement is documented and signed by the parties

If you are a physician or health practitioner with a regulatory concern about your practice with respect to COVID-19 or any other reason, please contact [Alyson Leone](#) or any member of the [Health Law Team](#).

Attorney

- Grace D. Mack

Practice

- Health Law