



# Health Care Client Alert



## Blanket Stark Law Waivers Authorized for COVID-19 Purposes

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*April 3, 2020*

On March 30, 2020, the Secretary of Health and Human Services (HHS) issued nationwide [blanket waivers of Section 1877 of the Social Security Act](#) (42 U.S.C. § 1395nn), otherwise known as the physician self-referral law or Stark Law, for certain “COVID-19 Purposes,” as further defined in the waivers and discussed below. These blanket waivers are retroactive to March 1, 2020, and shall remain in effect while President Trump’s national emergency and HHS’s public health emergency declarations remain in place.

### **COVID-19 Purposes**

The blanket waivers are applicable to financial relationships and referrals related to the COVID-19 outbreak and, specifically, direct remuneration between an entity and a physician, a physician organization in whose shoes the physician stands (see 45 C.F.R. § 411.354(c)), or the immediate family member of a physician “solely related to COVID-19 Purposes.”

The “COVID-19 Purposes” covered by the waivers include: (i) diagnosis and medically necessary treatment of the disease whether or not the patient has a confirmed case; (ii) obtaining healthcare professionals to provide patient care services; (iii) assurance and expansion of healthcare professionals’ ability to meet patient and community needs; (iv) flexibility for alternative settings for diagnosis and treatment of patients; and (v) mitigation of medical practice and business interruption to safeguard availability of medical care.

### **Blanket Stark Law Waivers**

While the waivers are effective, CMS will pay claims for designated health services that would otherwise violate the Stark Law, absent any governmental determination of fraud or abuse.

The waivers apply to the following financial relationships: (i) above or below market remuneration to a physician for personal services; (ii) below market rates for rental of office space or equipment; (iii) below market rates for purchase of items of services; (iv) below market value for use of entity’s premises; (v) medical staff incidental benefits to physicians in excess of \$25.00 (see 42 C.F.R. § 411.357(m)(5)); (vi) nonmonetary compensation to physicians in excess of \$300.00 (see 42 C.F.R. § 411.357(k)(1)); or (vii) loans at below market rates or on terms unavailable from a lender. The waivers also apply to, among other arrangements, certain referrals by a physician-owned hospital that temporarily expands facility capacity or converted from an ambulatory surgical center on or after March 1, 2020, and loosen the restrictions on locations where a physician in a group practice may furnish designated health services.

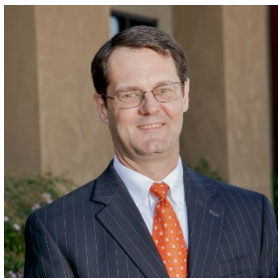
HHS has provided approximately two dozen examples of arrangements that fall within the scope of the blanket waivers. The examples are for purposes of illustration of waiver application only and do not constitute an exhaustive list of compliant arrangements.

## Steps to Take

- Determine whether the blanket waivers are necessary for your practice or facility. Many arrangements related to the COVID-19 outbreak may satisfy a previously existing exception to the Stark Law.
- If your practice or facility elects to use the blanket waivers for COVID-19 Purposes, maintain all records related to use of the waivers, because HHS may request to review such records to determine whether you have satisfied conditions for the waivers or for other regulatory purposes.
- Engage counsel to determine whether the waivers are needed for your practice or facility and, if so, to assist in formulating and implementing a waiver-complaint arrangement.

GableGotwals has a team of [experienced health care lawyers](#) who are ready to assist.

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