

## Part B Insider (Multispecialty) Coding Alert

### Compliance: See the COVID-19 Impact on Stark

#### Plan your post-pandemic compliance accordingly.

If your Part B practice is struggling under the yoke of COVID-19, there's good news. The feds have eased up on some Stark Law requirements with 18 blanket waivers that address remuneration and self-referrals.

#### Review These Temporary Stark Law Changes

On March 30, the Centers for Medicare & Medicaid Services (CMS) issued 1135 blanket waivers to assist providers during the COVID-19 crisis and in response to the public health emergency (PHE). According to CMS, 18 of the blanket waivers relate specifically to the Physician Self-Referral Law - or Stark Law for short - and are applied retroactively to March 1 and in effect through the end of the pandemic.

**Reminder:** The Stark Law concerns Section 1877 of the Social Security Act (SSA), which prohibits physicians from referring Medicare patients to an entity that provides designated health services (DHS) if the physician or an immediate family member has a financial relationship with that entity (unless an exception applies).

The 18 Stark Law blanket waivers offer Medicare, Medicaid, and CHIP providers and suppliers some relief, but there are some parameters within the flexibilities. For example, the Stark waivers apply only to financial relationships and referrals related specifically to the COVID-19 outbreak and subsequent national emergency in the United States; plus, they are only in effect for the duration of the pandemic.

"Any remuneration described in the blanket waivers must be directly between the entity and the physician or the physician organization in whose shoes the physician stands under 42 CFR 411.354(c) or the immediate family member of the physician," noted CMS in its March 30 guidance.

"Specifically, remuneration and referrals described in the blanket waivers must be 'solely related' to COVID-19 purposes," caution Memphis-based attorneys **Kendra A. Lyons** and **Scott B. Shanker** with **Butler Snow LLP** in online analysis. "Parties seeking to utilize a Stark Law blanket waiver should carefully assess whether a particular arrangement is sufficiently related to the COVID-19 public health emergency," they warn.

Take a look at this condensed breakdown of the 18 Stark law blanket waivers:

**Remuneration:** Waivers 1 to 11 deal specifically with payment or repayment arrangements between a physician or an immediate family member of the physician and an entity. Topics covered in the waivers include service and item remuneration at fair market value, office and equipment leasing, staff benefits, nonmonetary compensation, purchases, and loans.

"The blanket waivers do not apply to indirect compensation arrangements as defined at 42 CFR 411.354(c)(2)," explains CMS in April 21 guidance. "Parties may request an individual waiver of the sanctions under section 1877(g) of the Act related to remuneration that constitutes an indirect compensation arrangement under section 42 CFR 411.354(c)(2)."

**Referrals:** The rest of the waivers focus on the following referrals:

- Waivers 12 through 14 "relate to requirements in exceptions for ownership or investment interests" in hospitals and are covered at 42 CFR 411.356, the explanatory guidance says.
- "Blanket waivers 15 through 17 waive the sanctions of section 1877(g) of the Act when the specified requirements of the 'services' exceptions at 42 CFR 411.355 are not satisfied," CMS advises.
- Blanket waiver 18 covers compensation arrangements not outlined in writing or signed by the involved parties

and also concerns section 1877(g) of the SSA.

**Bottom line:** "Although the [HHS Office of Inspector General] OIG gives a wink and a nod to the Stark Law blanket waivers, it is important to note that not every item protected by the blanket waiver will necessarily receive favorable treatment when the OIG is exercising its prosecutorial discretion," cautions attorney **John H. Fisher II** with **Ruder Ware LLSC** in Wausau, Wisconsin, in online analysis.

That's why it is critical for Part B practices to have protocols in place to readjust to life after COVID-19. Experts advise providers to revisit compliance standards and hammer out a post-pandemic plan before the PHE ends to avoid any unnecessary blanket waiver-related issues.

"There does not appear to be a grace period, however, to unwind temporary arrangements after the COVID-19 pandemic subsides," Lyons and Shanker counsel. "Accordingly, entities and physicians should consider practical implications of using the blanket waivers, such as an automatic termination or reversion to prior contract terms."

**Resources:** Review the Stark Law blanket waivers' announcement from March 30 at [www.cms.gov/files/document/covid-19-blanket-waivers-section-1877g.pdf](http://www.cms.gov/files/document/covid-19-blanket-waivers-section-1877g.pdf).

See CMS' April 21 explanatory guidance on Stark waivers at [www.cms.gov/files/document/explanatory-guidance-march-30-2020-blanket-waivers-section-1877g-social-security-act.pdf](http://www.cms.gov/files/document/explanatory-guidance-march-30-2020-blanket-waivers-section-1877g-social-security-act.pdf).