



COVID-19 Update: OIG extends Kickback Statute protection to arrangements covered by blanket COVID-19 Stark law waivers

April 7, 2020

In what will be welcome news to the provider community, the Office of Inspector General (OIG) issued a [policy statement](#) on April 3, 2020, announcing that it will not impose administrative sanctions relating to the commission of acts described in the federal Anti-Kickback Statute, with respect to remuneration that is covered in the first 11 [Stark law blanket waivers](#). (The 11 blanket waivers are listed below.)

Through the policy statement, OIG stated its intention to avoid the need for parties to undertake a separate legal review under the Kickback Statute for arrangements protected by the blanket waivers. When an arrangement is covered by a blanket waiver, the policy statement extends to remuneration that relates to referrals for services furnished to all federal health care program beneficiaries (e.g., Medicare/Medicaid) pursuant to the covered arrangement.

Stark law blanket waivers that could also be used for Kickback Statute protection

Waiver	Description of waiver
Services performed by a physician	Remuneration from an entity to a physician that is above or below FMV for services personally performed by the physician to the entity.
Office rental (DHS entity is lessee)	Rental charges paid by an entity to a physician that are below FMV for the entity's lease of office space from the physician.
Equipment rental (DHS	Rental charges paid by an entity to a physician that are below FMV for the entity's

Waiver	Description of waiver
entity is lessee)	lease of equipment from the physician.
Items/services purchased from a physician	Remuneration from an entity to a physician that is below FMV for items or services purchased by the entity from the physician.
Office rental (physician is lessee)	Rental charges paid by a physician to an entity that are below FMV for the physician's lease of office space from the entity.
Equipment rental (physician is lessee)	Rental charges paid by a physician to an entity that are below FMV for the physician's lease of equipment from the entity.
Use of a DHS entity's premises or purchase of items/services from entity	Remuneration from a physician to an entity that is below FMV for the use of the entity's premises or for items or services purchased by the physician from the entity.
Medical staff incidental benefits	Remuneration from a hospital to a physician in the form of medical staff incidental benefits that exceeds the limit set forth in 42 CFR 411.357(m)(5) [currently \$36 per occurrence for the year 2020].
Nonmonetary compensation	Remuneration from an entity to a physician in the form of nonmonetary compensation that exceeds the limit set forth in 42 CFR 411.357(k)(1)[currently \$423 for the year 2020].
Loan to a physician	Remuneration from an entity to a physician resulting from a loan to the physician: (1) with an interest rate below FMV or (2) on terms that are unavailable from a lender that is not a recipient of the physician's referrals or business generated by the physician.
Loan to DHS entity	Remuneration from a physician to an entity resulting from a loan to the entity: (1) with an interest rate below FMV or (2) on terms that are unavailable from a lender that is not in a position to generate business for the physician.

A few important takeaways from this recent OIG guidance:

- The policy statement applies to conduct occurring **on or after April 3, 2020**. By contrast, the Stark blank waivers applied to arrangements effective March 1, 2020.
- The policy statement will terminate on the same date as the date that the Stark blanket waivers terminate.
- OIG emphasized that the policy statement has no bearing on arrangements that implicate the Kickback Statute that are not covered by the Stark blanket waivers (e.g., the policy statement would not apply to direct financial relationships between pharmaceutical or device manufacturers and physicians or between providers in which there is no physician involved).
- OIG reserves the right to modify or terminate the policy statement at any time.

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