

Comparison of CMS Blanket Waivers and OIG Enforcement Discretion Policy

|  | Center for Medicare and Medicaid Services – Stark Law Blanket Waivers | Office of Inspector General – Anti-Kickback Statute Enforcement Discretion Policy |
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| Publication Date | March 30, 2020 | April 3, 2020 |
| Effective Date | March 1, 2020 | April 3, 2020 |
| End Date | Through the end of the public health emergency declaration. | Through the end of the public health emergency declaration. |
| Scenarios Included | <ul style="list-style-type: none"> • Remuneration from an entity to a physician that is above or below the fair market value for services personally performed by the physician to the entity; • Rental charges paid by an entity to a physician that are below fair market value for the entity’s lease of equipment or office space from the physician; • Remuneration from an entity to a physician that is below fair market value for items or services purchased by the entity from the physician; • Rental charges paid by a physician to an entity that are below fair market value for the physician’s lease of equipment or office space from the entity; • Remuneration from a physician to an entity that is below fair market value for the use of the entity’s premises or for items or services purchased by the physician from the entity; • 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); • 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); • Remuneration from an entity to a physician resulting from a loan to the physician: (i) with an interest rate below fair market value; or (ii) on terms that are unavailable from a lender that is not a recipient of the physician’s referrals or business generated by the physician; | <ul style="list-style-type: none"> • Remuneration from an entity to a physician that is above or below the fair market value for services personally performed by the physician to the entity; • Rental charges paid by an entity to a physician that are below fair market value for the entity’s lease of equipment or office space from the physician; • Remuneration from an entity to a physician that is below fair market value for items or services purchased by the entity from the physician; • Rental charges paid by a physician to an entity that are below fair market value for the physician’s lease of equipment or office space from the entity; • Remuneration from a physician to an entity that is below fair market value for the use of the entity’s premises or for items or services purchased by the physician from the entity; • 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); • 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); • Remuneration from an entity to a physician resulting from a loan to the physician: (i) with an interest rate below fair market value; or (ii) on terms that are unavailable from a lender that is not a recipient of the physician’s referrals or business generated by the physician; and |

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| | <ul style="list-style-type: none"> • Remuneration from a physician to an entity resulting from a loan to the entity: (i) with an interest rate below fair market value; or (ii) on terms that are unavailable from a lender that is not in a position to generate business for the physician; • Certain referrals by a physician owner of a hospital that temporarily expands its capacity in excess of that for which the hospital was licensed on March 23, 2020; • Certain referrals by a physician owner of a hospital that converted from a physician-owned ambulatory surgical center to a hospital on or after March 1, 2020; • Certain referrals by a physician of a Medicare beneficiary for the provision of DHS to a home health agency; • Certain referrals by a physician in a group practice for medically necessary DHS furnished by the group practice in a location that does not qualify as a “same building” or “centralized building” for purposes of 42 CFR 411.355(b)(2); • Certain referrals by a physician in a group practice for medically necessary DHS furnished by the group practice to a patient in his or her private home, an assisted living facility, or independent living facility; • Certain referrals by a physician to an entity with which the physician’s immediate family member has a financial relationship if the patient who is referred resides in a rural area; and • Certain referrals by a physician to an entity with whom the physician has a compensation arrangement that does not satisfy the writing or signature requirement(s) of an applicable exception but satisfies each other requirement of the applicable exception. | <ul style="list-style-type: none"> • Remuneration from a physician to an entity resulting from a loan to the entity: (i) with an interest rate below fair market value; or (ii) on terms that are unavailable from a lender that is not in a position to generate business for the physician. |
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