

Healthcare Legal Alert: Update: OIG Will Not Impose Administrative Sanctions for Certain Arrangements Falling Under CMS's Stark Blanket Waivers

On April 3, 2020, the Department of Health and Human Services Office of the Inspector General (“OIG”) released an updated policy stating that OIG will not impose administrative sanctions under the federal anti-kickback statute (“AKS”) for arrangements that fully comply with CMS’s COVID-19 Stark Blanket Waivers, which were issued on March 30, 2020 (see [Healthcare Legal Alert: CMS Medicare Waiver Updates](#)). The updated OIG policy aligns enforcement of the AKS with CMS’s Stark Blanket Waivers.

In a March 30 statement, OIG had said that it would seek to minimize burdens on providers, but stopped short of saying that it would refrain from taking AKS enforcement action in financial relationships which complied with the Stark Blanket Waivers. The updated OIG policy means that healthcare entities do not have to undertake separate Stark and AKS compliance analyses of certain financial transactions or relationships with referring physicians or their immediate family members while the COVID-19 public health emergency remains in effect. However, the OIG’s new policy only applies to financial relationships with referring physicians or their family members that completely satisfy the Stark Blanket Waivers. The new policy does not mean that the OIG will refrain from enforcing the AKS more generally during the public health emergency. For example, the OIG’s new policy does not apply to direct financial relationships between pharmaceutical or device manufacturers and physicians, or between providers where there is no physician or physician’s family member involved.

Parties looking to take advantage of OIG’s policy for certain Stark Blanket Waivers (Sections II.(B).(12)–(17) <https://www.cms.gov/files/document/covid-19-blanket-waivers-section-1877g.pdf>) should contact OIG at OIGComplianceSuggestions@oig.hhs.gov

OIG’s policy statement applies to conduct occurring on or after April 3, 2020 and is effective for the same period as the CMS Blanket Waivers. The OIG has reserved the right, however, to reconsider this policy statement and to modify or terminate it. Therefore, providers should continually monitor the effect of the policy statement for any transactions qualifying under the Stark Blanket Waiver. The April 3, 2020 policy statement is available here: <https://oig.hhs.gov/coronavirus/>

Please contact one of our Firm’s health law attorneys if you would like more information.