

HHS OIG Issues Policy Statement Regarding Temporary Federal Anti-Kickback Statute Waivers in Wake of COVID-19

The U.S. Department of Health and Human Services Office of Inspector General (OIG) has issued a Policy Statement declaring that it will not impose administrative sanctions under the Federal Anti-Kickback Statute for certain remuneration related to COVID-19 covered by *certain* of the same blanket waivers of the Stark Law previously issued by CMS [[insert hyperlink to our April 2 Alert](#)] (Policy Statement), but not all of those waivers.

Keep in mind that the remuneration and referrals described in the Stark Law blanket waivers must be solely related to COVID-19 Purposes and thus, the OIG will take the same position with respect to the Policy Statement.

CMS previously defined "COVID-19 Purposes" to mean:

The certain waivers that are covered by the OIG's Policy Statement are as follows:

As the Stark Law only applies to self-referrals made by practitioners, and therefore, the blanket waivers of the Stark Law only apply to certain relationships that involve physicians, the Policy Statement for the Federal Anti-Kickback Statute will only waive conduct relating to certain relationships that involve physicians despite the broader scope of the Federal Anti-Kickback Statute.

Somewhat curiously, the Policy Statement only applies to conduct occurring on or after April 3, 2020 even though the Stark Law blanket waivers were effective as to conduct commencing on March 1, 2020.

The OIG also states that the Policy Statement will terminate on the same date as the date that the Stark Law blanket waivers terminate. As a reminder, that date will be the date that the declaration of the national emergency as a result of the COVID-19 pandemic is no longer in effect.

It is important to remember that the Policy Statement does not waive the provisions of any applicable state anti-kickback laws as the OIG does not have the authority to waive state laws. Care should also be taken to ensure that any arrangements that are entered into utilizing any of the Stark Law blanket waivers (and, as a result of the Policy Statement, Federal Anti-Kickback Statute waivers) should clearly sunset or terminate when the national emergency declaration is terminated.