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By Nina Youngstrom

When hospitalists and primary care physicians are tapped to work in emergency departments (EDs) as demand intensifies during the coronavirus crisis, hospitals may have to pay them more. To obtain necessary services, compensation may be required to match ED physicians, which is raising questions about fair market value and how far hospitals can push the Stark Law envelope in the pandemic, an attorney said. Other specialists, such as orthopedic surgeons, who help in the emergency room (ER) may expect to continue to collect their big paychecks while providing emergency services. The atypical wages may not be fair market value in normal times, but these are anything but normal times, and there's room to maneuver under the Stark Law.

"Hospitals can't print money" and give it to physicians, but there are ways to meet the emergency demand and comply with the Stark Law requirement for fair market value compensation, said attorney Bob Wade, with Barnes & Thornburg in South Bend, Indiana. Hospitals must have clinical and business reasons for paying physicians above the percentile on compensation surveys for their specialty and productivity level, he said, and "I don't think you can throw fair market value out the window."

Meanwhile, some hospitals are individually requesting waivers from certain Stark Law requirements during the pandemic, said attorney Jacob Harper, with Morgan Lewis in Washington, D.C. For example, because of the disruption to many physician practices, hospitals might seek CMS's permission to forgo office lease payments from physicians without putting Medicare reimbursement for services ordered by the physicians at risk. Harper said some hospitals also want the green light to exceed the cap on nonmonetary compensation, which is now \$423 per physician annually. One reason is hospitals may want the freedom to feed physicians round the clock or donate equipment, masks and other resources to community physicians to help them as they battle COVID-19.

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