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Checklist: Documenting Compliant Use of the Stark Waiver During the COVID-19 Pandemic

PYA developed this checklist to help hospitals and other entities that provide designated health services document eligibility for CMS’s blanket waiver of the Stark Law.^[1] Contact Lyle Oelrich, a principal in PYA, at loelrich@pyapc.com.

Stark Law Blanket Waiver Documentation Checklist

If your organization answers “Yes” to most of these questions, there may be a sufficient record to help meet the documentation requirements under the Stark Law blanket waivers published March 30, 2020—although effective back to March 1—with the express goal of maintaining appropriate physician resources for coverage and care provision in all specialties. Further, depending on a healthcare organization’s specific facts and circumstances, other documentation may be required, and some of the documentation suggested in the checklist may not be applicable. Ultimately, an organization should perform a thorough professional analysis (including appropriate legal review) before making any changes to a physician’s compensation.

	Yes	No	NA
1. Is a physician (or physician specialty) impacted by the deferral of elective/nonessential procedures?			
2. Are the physician’s services essential to the treatment of COVID-19 patients?			
3. Does an organization expect a sizeable number of elective/non-essential procedures to be canceled because of COVID-19?			
4. Is a physician (or physician specialty) impacted by a “stay at home” order?			
5. Is physician compensation projected to be impacted by more than 15%?			
6. Is it difficult to mitigate the change in the physician’s compensation by providing telemedicine consults?			

7. Is it unreasonable to redeploy the physician to another service line to mitigate any potential change in compensation?			
8. If a physician resigned over any change in compensation, would there be few, if any, other business alternatives for his/her replacement?			
9. Will the loss of the physician create any defaults (e.g., on lease arrangements)?			
10. Is there no ability to change the physician's hours/shifts/coverage schedules to mitigate any potential lost physician compensation?			
11. Is it infeasible to redeploy a clinical physician's services to meet a legitimate administrative business need associated with COVID-19?			
12. Would it be impossible to lease an employed physician to another entity who may have supplemental physician need and thus mitigate any potential change to physician compensation?			
13. Is it impractical to change the cost structure of the practice to maintain physician compensation?			
14. Does the physician lack any alternative payment structures (e.g., shared savings) that may serve as supplemental compensation for the physician during the COVID-19 pandemic?			
15. Are commercial payers unwilling to create temporary payment streams that might be applied to physician compensation in a logical way?			
16. According to your physician supply-and-demand analysis, is the physician's specialty essential to meet community need?			
17. Will the lack of the physician's service substantively disrupt the day-to-day operations of an entity?			
18. Are there no ways to expand the credentials of the physician to mitigate the loss of his/her compensation?			

19. Will there be significant relocation/recruitment costs associated with replacing the physician if he/she were to leave after the ban on elective/non-essential procedures is lifted?			
20. Are you in a financial position to make physician loans that may require repayment over a certain time period?			
21. Would a financial supplement afford the physician a reasonable compensation level for his/her training, accessibility, call coverage, etc.?			
22. Would the intended economic support for the physician be the only payment for the physician's work effort (e.g., there is only one payment for a re-scheduled elective procedure, either now or in the future) during the COVID-19 pandemic?			
23. Is it feasible for the physician to be able to leave and replace his/her desired income in the present situation?			
24. Does the physician perform a key leadership role for the organization?			
25. Did the organization make a substantial investment in the specialty service line?			
26. Will the arrangement, or any portion of the compensation or remuneration affiliated with the arrangement, be covered under the "blanket waivers" to the Stark Law issued March 30, 2020?			

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