

Report on Medicare Compliance Volume 29, Number 37. October 19, 2020

Hospitals Modify Some Arrangements Without Stark Waiver; Exceptions Are 'Preferable'

By Nina Youngstrom

Some hospitals are giving free or discounted telehealth equipment to physician practices to promote telehealth visits with patients, protected by the blanket waivers of the Stark Law during the COVID-19 public health emergency.^[1] While telehealth equipment is a good candidate for the waivers, hospitals might want to anticipate the aftermath, when the public health emergency ends and the waivers expire, because they probably won't be able to provide the equipment at no charge, an attorney said.

"Once the telehealth platform is rolled out, doctors will get used to it," said attorney Victoria Sheridan, with Epstein Becker & Green in Newark, New Jersey, at an Oct. 14 webinar sponsored by the Health Care Compliance Association.^[2] When the waivers end, will hospitals offer the equipment to them at fair market value? That option could be written into the arrangement up front to avoid having to reinvent the wheel if hospitals agree to provide the equipment at modified terms after the pandemic. "Think about what your file needs to look like so if I'm using a waiver, I can potentially avoid compliance concerns down the road," Sheridan advised.

Telehealth equipment is one way to capitalize on the blanket waivers of the Stark Law that were announced by HHS Sec. Alex Azar March 30 and are retroactive to March 1. The waivers free hospitals and other entities that provide designated health services from many of the Stark ties that bind them,^[3] except indirect financial relationships. But hospitals may be able to skip the waivers and modify or enter into new physician arrangements under existing Stark Law exceptions, which is preferable, she said.

The Stark waivers are available to protect financial relationships that are normally subject to the Stark Law if (1) remuneration and underlying referrals are solely related to COVID-19 and (2) referrals and claims are related to six purposes that were defined in the blanket waiver, Sheridan said. They are:

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