

How to Manage Stark Law Waivers

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Introduction

Due to the federally declared state of emergency and public health emergency, the Department of Health and Human Services granted new blanket waivers in an effort to provide necessary health care services during the COVID-19 emergency. The waivers, granted on March 30, 2020 were effective March 1, 2020.

Although these waivers relax some Stark Law requirements applicable to arrangements, they are only applicable during the declared states of emergency. It's very important that arrangements are following the same approval and documentation processes to mitigate risk of Stark Law noncompliance. Ntracts recommends the following for contract management during the national emergency.

Process and Documentation Recommendations

The blanket waivers only apply to arrangements that are applicable to COVID-19 purposes and will have to be remediated to be compliant with all Stark Law rules once the national emergency is over. The Department of Health and Human Services may perform audits of the applicable arrangements to ensure that the waivers were appropriately applied.

Ntracts provides multiple ways to document waivers applied to new or amended contracts so that providers can easily identify and remediate these contracts upon the finality of the national emergency or upon DHHS request. A few to start implementing now.

Best Practices

- **Tag COVID-19 on Contract Records.** This can be accomplished by adjusting contract type names or simply by adding the tag in the Contract Name or Description field. By tagging COVID-19,



providers will easily be able to locate all of the contracts that utilized blanket waivers or were applicable to the national emergency.

- **Utilize the report writing feature.** Our advanced reporting writing tool can be used to quickly identify all contracts added or amended during the national emergency. Ntracts can assist in running reports.

- **Sufficiently document the arrangement purpose applicable to COVID-19.** This can be done during the arrangement approval process in the Ntracts Workflow solution or it can be documented in Contract Record descriptions. DHHS defines “purpose,” as one of the following:
 - a. Diagnosis or medically necessary treatment of COVID-19;
 - b. Securing the services of physicians and other health care professionals to furnish medically necessary patient care services;
 - c. Ensuring the ability of health care providers to address patient and community needs during COVID-19;
 - d. Expanding the capacity of health care providers to address patient and community needs during COVID-19;
 - e. Shifting the diagnosis and care of patients to alternative settings due to COVID-19;
 - f. Addressing medical practice or business interruption due to COVID-19 in order to maintain available of medical care and related services.

- **Document the waiver applied.** For example, if providing free childcare to medical staff, document that the non-monetary compensation exception waiver is being applied. This can be stored in custom or standard Ntracts fields.

- **Document fair market value.** Although the blanket waivers allow for payment for professional services and for office space or equipment rentals to be under or over fair market value, it is still important to document where the payment lies so it can be appropriately adjusted following the national emergency.

- **Be consistent with document naming.** Require that all documents applicable to the blanket waivers are named the same way. This will be helpful for ease of searching and reporting when necessary. For example, if amending a contract due to the national emergency, include “due to COVID-19,” in the document title.



Summary

The most important contract process Ntracts recommends during this national emergency is consistency and we are here to help. For more information on the new blanket Stark Law waivers, go to <https://www.hallrender.com/coronavirus/>. To learn more about ways that Ntracts can be maximized during the COVID-19 national emergency, contact us at www.ntracts.com or at info@ntracts.com.

About Us

Ntracts delivers a comprehensive contract management solution through a unique combination of healthcare, technical, and legal expertise matched with a user-driven online contract management solution that mitigates compliance risk, achieves cost savings, improves efficiency, and ensures healthcare organizations stay in front of changing regulations. Our experts certified in healthcare compliance can help you.