

AMERICA'S HOSPITALS AND HEALTH SYSTEMS

May 1, 2020

The Honorable William J. Barr
Attorney General
U. S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Dear Attorney General Barr:

On behalf of organizations representing hospitals and health systems from across the country, we are writing to echo the American Hospital Association's March 20 request for relief from the technical requirements of the Federal fraud and abuse laws and the unnecessary risk they pose to hospitals during a declared public health crisis. Specifically, we request that the Department of Justice join with the Department of Health and Human Services' Centers for Medicare and Medicaid Services and its Office of the Inspector General and relieve hospitals, health care systems and front-line health care professionals of the peril of prosecution when those agencies have determined remuneration related to COVID-19 will be covered by blanket waivers or have decided to exercise enforcement discretion for the duration of the COVID-19 public health emergency.

On March 19, the AHA [called](#) on Secretary Azar, CMS Administrator Verma and OIG-HHS Acting Inspector General Chiedi to provide hospitals and health care professionals the flexibility they need to redeploy resources, expand capacity and confront the COVID-19 pandemic head on. A March 20 companion [letter](#) to you urged similar action by the Department of Justice through the exercise of its prosecutorial discretion related to the Medicare and Medicaid Anti-Kickback Statute and the Physician Self-Referral Prohibition.

On March 30, CMS issued blanket waivers of section 1877(g) of the Social Security Act (the Stark Physician Self-Referral Prohibition) waiving statutory sanctions and providing reimbursement for items and services otherwise deemed non-reimbursable, if certain conditions were met. See CMS's [blanket waivers](#).

OIG-HHS followed suit on April 3 issuing a [policy statement](#) declaring that it would exercise its enforcement discretion and not impose administrative sanctions under the Anti-Kickback Statute for remuneration falling within and covered by the majority of the CMS blanket waivers.

It is imperative that the Department of Justice join its agency and law enforcement partners and confirm that such forms of remuneration deemed permissible will not be subject to prosecution under the Anti-Kickback Statute's criminal provisions, civil monetary penalty provisions or the civil False Claim Act. We call on you to direct Department attorneys to decline as a matter of prosecutorial

The Honorable William J. Barr

May1, 2020

Page 2

discretion to pursue or prosecute alleged violations of the Medicare and Medicaid Anti-Kickback Statute, 42 U.S.C. 1320a-7b(b), and the Physician Self-Referral Prohibition, 42 U.S.C 1395nn, for remuneration in cash or in kind falling under the OIG-HHS policy statement (CMS blanket waivers 1 – 11).

We would greatly appreciate your prompt attention to this urgent matter.

Sincerely,

America's Essential Hospitals
American Hospital Association
Association of American Medical Colleges
Catholic Health Association of the United States
Children's Hospital Association
Federation of American Hospitals