Hold the Phone: OIG Issues a Telemedicine Special Fraud Alert

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Practice Area: Health Law & Regulatory Compliance and Fraud and Abuse

In 2020, as part of its broader National Health Care Fraud Takedown, the Office of the Inspector General (OIG) charged 345 individuals, including over 100 licensed medical professionals, for their role in "schemes" and "scams" that "leverage aggressive marketing and so-called telehealth services to commit fraud."[1] Now the OIG is urging providers not to get caught up in such schemes in the first place. A recently issued Special Fraud Alert[2], identifies seven "suspect characteristics" that do not necessarily mean an arrangement is illegal, but may suggest heightened risk. Here's what the OIG suggests you watch out for:

- The purported patients for whom the Practitioner orders or prescribes items or services were identified or recruited by the Telemedicine Company, telemarketing company, sales agent, recruiter, call center, health fair, and/or through internet, television, or social media advertising for free or low out-of-pocket cost items or services.
- The Practitioner does not have sufficient contact with or information from the purported patient to meaningfully assess the medical necessity of the items or services ordered or prescribed.
- The Telemedicine Company compensates the Practitioner based on the volume of items or services ordered or prescribed, which may be characterized to the Practitioner as compensation based on the number of purported medical records that the Practitioner reviewed.
- The Telemedicine Company only furnishes items and services to Federal health care program beneficiaries and does not accept insurance from any other payor.
- The Telemedicine Company claims to only furnish items and services to individuals who are not Federal health care program beneficiaries but may in fact bill Federal health care programs.
- The Telemedicine Company only furnishes one product or a single class of products (e.g., durable medical equipment, genetic testing, diabetic supplies, or various prescription creams), potentially restricting a Practitioner's treating options to a predetermined course of treatment.

Even as it urges caution, the OIG's Special Fraud Alert acknowledges the "growing acceptance and use" of telemedicine and telehealth. The OIG has on other occasions noted the "long-term potential of telehealth to increase access to health care for beneficiaries" and lauded its critical role during the pandemic.[3] This Special Fraud Alert is not reason to shy away from telehealth. However, it serves as a reminder to be cautious of scams and to consider how your organization can guard against risk.

In addition to keeping an eye out for the seven characteristics in the Special Fraud Alert, consider whether your compliance plans, policies and procedures are keeping pace with the growing ways in which telehealth is being deployed. Before the public health emergency eventually comes to an end, providers and telehealth companies will need to consider other compliance topics as well, such as more traditional applications of the HIPAA Rules[4] and prohibitions on routine waivers of patient cost-share amounts[5], both of which have not been subject to regular enforcement after special statements recognizing the need for flexibility during the pandemic.

[1] https://oig.hhs.gov/documents/root/230/2020HealthCareTakedown_FactSheet_9dtIhW4.pdf

[2] https://oig.hhs.gov/documents/root/1045/sfa-telefraud.pdf

[3] https://oig.hhs.gov/oei/reports/OEI-02-20-00520.asp

[4] https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html#:~:text=OCR%20is%20exercising%20its%20enforcement,19%20nationwide%20public%20health%20emergency

[5] https://oig.hhs.gov/documents/special-advisory-bulletins/959/factsheet-telehealth-2020.pdf

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