

HOLD THE PHONE: OIG WARNS PHYSICIAN AND NON-PHYSICIAN PRACTITIONERS OF TELEHEALTH FRAUD SCHEMES

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On July 20, 2022, the Department of Health and Human Services Office of the Inspector General (“OIG”) released a [Special Fraud Alert](#) (the “Alert”) regarding companies purported to provide telemedicine services (“Telemedicine Companies”) paying physician and non-physician practitioners (“Practitioners”) kickbacks in relation to fraudulent telehealth schemes. The Alert outlines scenarios in which purported Telemedicine Companies recruit Practitioners to prescribe items or services via telehealth for patients with whom such Practitioners have limited or no direct contact, without regard for medical necessity. Payment is often arranged on a per review, audit, consult, or assessment basis. The OIG highlights provision of durable medical equipment, genetic testing, wound care items, and prescription medications as examples of areas in which such schemes have been investigated. As the OIG further elaborates, such schemes can implicate a number of federal laws, including the federal Anti-Kickback Statute, Civil Monetary Penalties Law, Criminal Healthcare Fraud Statute, False Claims Act, and/or other federal civil and criminal laws. Penalties for violations may include fines, jail time, and exclusion from participation in federal healthcare programs (e.g., Medicare, Medicaid).

To aid Practitioners in recognizing potentially fraudulent arrangements, the OIG released the following list of suspect characteristics:

1. 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.
2. 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.
NOTE: The Telemedicine Company may require a Practitioner to use audio-only technology to interact with purported patients. The company may also provide Practitioners with “medical records” that appear to be a template but lack the clinical information necessary to inform the provider’s decision-making.
3. 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.
4. The Telemedicine Company only furnishes items and services to federal health care program beneficiaries and does not accept insurance from any other payor.

5. 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.
6. 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.

OIG notes that the above list is not exhaustive of suspect characteristics and it is intended only to inform Practitioners of potentially suspect arrangements. OIG also emphasizes that the Alert “is not intended to discourage legitimate telehealth arrangements,” but that providers should nonetheless exercise caution in exploring telehealth opportunities.

WHAT THIS MEANS FOR PROVIDERS

Physician and non-physician Practitioners should be on alert for purported telehealth providers who contact them to propose opportunities which include one or more of the suspect characteristics outlined above. Special caution should also be paid to telehealth arrangements involving referrals/prescriptions for items and services that are reimbursed on a per-referral/prescription basis and may be easily dispensed remotely without significant additional treatment or services (for example, individual medical record reviews and/or prescriptions of durable medical equipment, genetic testing, wound care items, medications, etc.). Practitioners should note that they may be at risk for civil or even criminal liability even if they do not have direct knowledge that a telehealth arrangement is fraudulent. If you have any questions or need further guidance regarding this Special Fraud Alert, please contact a member of Hancock Daniel's [Compliance](#), [Fraud & Abuse](#), or [Telemedicine](#) teams.

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