

Report on Medicare Compliance Volume 31, Number 26. July 25, 2022 In Fraud Alert, OIG Cites 'Suspect' Telehealth Characteristics

By Nina Youngstrom

In a special fraud alert posted July 20, the HHS Office of Inspector General (OIG) warns physicians and nonphysician practitioners (NPPs) to tread carefully “and use heightened scrutiny” when entering into arrangements with telemedicine companies.^[1] Practitioners could run afoul of the Anti-Kickback Statute (AKS) and other federal laws if they accept fees for ordering medically unnecessary services, for example, that are reimbursed by federal health care programs. The alert, which is based on several years of enforcement in the telemedicine space, describes “suspect characteristics” that should help practitioners identify questionable arrangements.

OIG emphasized it’s not trying to dampen legitimate telehealth arrangements. “OIG is aware that many Practitioners have appropriately used telehealth services during the current public health emergency to provide medically necessary care to their patients,” the alert said.

The alert is a different spin on individual accountability, said attorney Kyle Gotchy, with King & Spalding. It addresses the accountability of physicians and NPPs who are in a position to order or prescribe items, such as genetic testing, durable medical equipment and wound care items, that are the focus of telemedicine schemes, he said. “With this special fraud alert, there will be less room for practitioners to say ‘I didn’t know. I am using it as a side hustle so I didn’t do any due diligence,’” Gotchy said. “That will have less weight with enforcers.”

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