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Telemedicine arrangements: OIG Special Fraud Alert

by Gabriel L. Imperato and Raynna A. Nkwanyuo

In recent years, telemedicine has emerged, given the increased access to care and the efficiency it provides practitioners, especially during a public health emergency. However, the arrangements that practitioners, particularly physicians, make with telemedicine entities vary in design and operation and may implicate federal laws, such as the federal Anti-Kickback Statute (AKS).

The U.S. Department of Health & Human Services, Office of Inspector General (OIG) has investigated numerous fraud schemes involving companies that claimed to provide telehealth, telemedicine, or telemarketing services. These “telemedicine companies” allegedly engaged in kickback and substandard medical practices to generate orders and/or prescriptions for medically unnecessary durable medical equipment, genetic testing, wound care items, or prescription medications.

Considering the findings of these investigations, on July 20, 2022, OIG issued a Special Fraud Alert (the Alert) forewarning physicians and other practitioners to exercise caution when entering telemedicine arrangements.^[1] OIG made clear that the Alert is not intended to discourage legitimate telemedicine arrangements; however, OIG encourages practitioners to exercise caution and use heightened scrutiny when entering into arrangements with telemedicine companies. The identified schemes raise concern due to the potential harm to federal healthcare programs and their beneficiaries. OIG notes that said harm may include “(1) an inappropriate increase in costs to Federal health care programs for medically unnecessary items and services and, in some instances, items and services a beneficiary never receives; (2) potential to harm beneficiaries by, for example, providing medically unnecessary care, items that could harm a patient, or improperly delaying needed care; and (3) corruption of medical decision-making.”^[2]

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