

Healthcare Alert



“Suspect Characteristics” of Telemedicine Arrangements

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Telemedicine utilization is on the rise, bringing with it new opportunities for fraud and abuse and also, necessarily, a wave of government enforcement action. The Office of Inspector General of the Department of Health and Human Services (the “OIG”) has been monitoring the increased utilization and has identified the existence of enough fraud schemes in the telemedicine sphere to justify a [special fraud alert to the public](#) on July 20, 2022. The typical facts of the most basic such fraud schemes involve a telemedicine company engaging a provider “to order or prescribe unnecessary items and services” for patients that the company identified to the provider in exchange for compensation from the company. The OIG’s alert was issued to help providers identify and avoid what the OIG recognized as some of the most common signs (though not an exhaustive list) of the existence of an unlawful telemedicine fraud scheme. The OIG indicates that they do not intend “to discourage legitimate telehealth arrangements,” but want providers to “exercise caution and use heightened scrutiny when entering into [telehealth] arrangements.”

The OIG flags the following as “suspect characteristics” of a telehealth arrangement that should give a provider pause before engaging:

- (a) The patients are identified by the telemedicine company (or through advertising schemes, sometimes offering free or low-cost services) rather than seeking treatment on their own;
- (b) The provider has insufficient or restricted contact with, or information about, the patient, which prevents them from “meaningfully assess[ing] the medical necessity” of what they are ordering;
- (c) The provider is paid in a manner that takes into account the volume of orders or prescriptions, e.g., on a per chart reviewed basis;
- (d) The telemedicine company only bills Federal healthcare programs, accepting no other insurance;
- (e) The telemedicine company claims to intentionally exclude (or “carve out”) Federal healthcare program patients; or
- (f) The telemedicine company has limited product offerings, restricting the provider’s treatment options.

GableGotwals’ [Healthcare Practice Group](#) helps providers navigate telemedicine compliance issues.

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