CLIENT ALERTS & INSIGHTS

OIG Provides Insight as to Risky Billing Practices for Medicare Telehealth Services

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Authors: W. Clifford Mull

The Department of Health and Human Services, Office of Inspector General ("OIG") recently released a draft report (the "Draft Report") on Medicare Telehealth Services During the First Year of the Pandemic: Program Integrity Risks. The Draft Report alerts telehealth providers about potential areas of focus for their own compliance efforts, and potential enforcement by CMS, the OIG, managed care and other third-party payors.

As part of the Federal government's response to the COVID-19 pandemic, the coverage of telehealth services by Medicare was greatly expanded by CMS through the COVID-19 telehealth waivers. Further expansion of telehealth services was included in the Consolidated Appropriation Act (CAA) signed into effect on March 2022. As a result of these efforts, telehealth use in the United States has increased by over 6,000%, with Medicare telehealth visits alone increasing by 63-fold, from 840,000 in 2019, to 52.7 million in 2020.[1]

The CAA requires the OIG to analyze telehealth use and issue a report by June 2023 on Medicare program integrity risks associated with Medicare telehealth services.[2]

In September 2022, OIG released its Draft Report highlighting risk areas associated with providers billing for telehealth services during the pandemic and ways to safeguard Medicare from fraud, waste, and abuse related to telehealth services.[3]

The OIG used the following seven (7) measures to identify providers that may be of high risk of Medicare fraud, waste or abuse:

1. Billing both a telehealth service and a facility fee for most visits;
2. Billing telehealth services at the highest, most expensive level every time;
3. Billing telehealth services for a high number of days in a year;
4. Billing both Medicare fee-for-service and a Medicare Advantage plan for the same service for a high proportion of services;
5. Billing a high average number of hours of telehealth services per visit;
6. Billing telehealth services for a high number of beneficiaries; and
7. Billing for a telehealth services and ordering medical equipment for a high proportion of beneficiaries.

The Draft Report analyzed Medicare fee-for-service and Medicare Advantage encounters and claims data for one (1) year, March 2020 through February 2021 using these 7 measures. Of the 742,000 providers included in the Draft Report, the OIG only identified 1,714 providers whose billing for telehealth services triggered potential high risk to Medicare.

Although these "high risk" providers represented a small percentage of the total number of providers included in the Draft Report, these "high risk" providers submitted claims for approximately 500,000 Medicare beneficiaries accounting for $127.7 million in Medicare fee-for-service payments. Further, many of these "high risk" providers are part of the same medical practice with at least one other "high risk" provider. A small number of providers appeared to be affiliated with telehealth companies, but the OIG noted that it was not possible to clearly identify such associations from Medicare data.

The OIG provided the below recommendations to Centers for Medicare & Medicaid Services ("CMS") as the Medicare regulatory oversight agency:

- Strengthen monitoring and targeted provider oversight of telehealth services;
- Provide additional education to providers on appropriate billing for telehealth services;
- Improve the transparency of "incident to" services when clinical staff primarily deliver the telehealth services;
- Identify telehealth companies that bill Medicare; and
- Follow-up on the "high risk" providers identified in the Draft Report.

CMS issued a written response to the OIG recommendations which discussed implementing certain action steps and the need for more study and analysis related to the telehealth service delivery and billing practices.

The significant and rapid growth in the telehealth services has provided benefits to many patients, but also has triggered rapid growth of providers entering the telehealth space. With significant dollars being spent in the telehealth space across the country, the heightened scrutiny for telehealth billing will be a focus for future regulation and enforcement.

The increased regulatory and enforcement focus is further evidenced by the OIG's recent Special Fraud Alert on Relationships between Practitioners and Telemedicine Companies and the Department of Justice's recent enforcement actions focused on Telemedicine, Clinical Laboratory, and Durable Medical Equipment Fraud. Prudent providers will carefully monitor services to assure compliance with appropriate delivery requirements and billing of quality telehealth services.

Please reach out to Benesch's Healthcare+ Practice Group for more information.

Clifford Mull at 216.363.4198 or cmull@beneschlaw.com.

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[1] HHS, *New HHS Study Shows 63-Fold Increase in Medicare Telehealth Utilization During the Pandemic*, Dec. 3, 2021 HHS 63-Fold Increase in Medicare Telehealth Utilization (last visited Sept. 8, 2022).

[2] The Consolidated Appropriation Act

[3] OIG, OEI-02-20-00720, Sept. 2022 Telehealth Services: Program Integrity Risks (last visited Sept. 8, 2022).