



Telemedicine Facing Increased Government Scrutiny

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- *Telemedicine is booming, accounting for \$17.6 million in Medicare spending in 2015*
- *Increased telemedicine spending is creating fraud, waste, and abuse vulnerabilities*

Telemedicine services are facing enhanced scrutiny from government enforcement agencies as questions multiply over fraud, waste, and abuse vulnerabilities.

Complex Medicare billing requirements for telemedicine services are creating confusion among doctors and leading to billing mistakes and undeserved reimbursement payments.

Telemedicine spending is expected to continue to grow, making it a potential target for fraud schemes and increasing the risk of improper Medicare spending.

Government enforcement entities are often suspicious of new technology because they worry that health-care providers could be coming up with new ways to game the system, Jeremy Sherer, a health-care attorney with Hooper, Lundy & Bookman PC in Boston, told Bloomberg Law.

Medicare spending on telemedicine has grown from \$61,000 in 2001 to \$17.6 million in 2015, and a recent government [report](#) said the bulk of telemedicine claims it reviewed didn't meet Medicare requirements. Telemedicine involves using technology to allow a doctor to interact with patients remotely.

The OIG report uncovered numerous improper telemedicine claims, including 24 claims that were improper because the Medicare patients received the service at ineligible locations and seven that were billed by ineligible providers.

The findings of the Department of Health and Human Services Office of Inspector General report are unlikely to be isolated incidents, as it specifically calls on the Centers for Medicare & Medicaid Services to continue conducting post-payment claims reviews looking for errors involving telemedicine, Sherer said.

"As telehealth usage continues to grow, government scrutiny will likely follow, and state Medicaid Fraud Control Units may increase their own investigations," Sherer said.

The OIG last summer added analyzing paid telemedicine claims at distant sites without corresponding claims from originating sites to its 2017 work plan. The recent OIG report

focused on those issues, including whether patients received treatment from an eligible originating site, such as a doctor's office or a medical facility, Sherer said.

An originating site refers to the location of the Medicare beneficiary who's receiving telemedicine services, and can include a doctor's office, a hospital, or a rural health clinic. Distant sites are where the physician providing the telemedicine service is physically located.

The growth of telemedicine might also run afoul of the anti-kickback statute, William Chang, a health-care attorney with Crowell & Moring LLP in Washington, told Bloomberg Law. Expanding telemedicine requires connecting patients in rural or otherwise underserved areas with qualified providers and qualified originating sites, and it's not hard to imagine how marketing and financial arrangements could arise that might trip the anti-kickback statute, Chang said.

Enforcement could also blossom if telemedicine fraud gets tied up with opioid diversion, Chang said. Opioid diversion refers to legitimate prescription drugs that are diverted to illegal uses. The 12 federal districts that the Department of Justice has identified as areas with high levels of opioid abuse have significant overlaps with rural areas that qualify for telemedicine, Chang said.

The American Telemedicine Association didn't respond to a request for comment on the OIG report's finding. The Arlington, Va.-based ATA represents telemedicine vendors and health-care professionals.

Rules in Flux

Fast-growing health-care sectors like telemedicine are often particularly vulnerable to abuse, but they're also likely to be prone to honest mistakes and errors as education and oversight lag behind utilization, Eric Fader, a health-care attorney with Day Pitney LLP in New York, told Bloomberg Law.

"Telehealth is a classic example because the rules have been in flux, education and training of practitioners has been lacking, and CMS apparently hasn't yet put telehealth claims on its radar screen for oversight," Fader said.

The biggest problem for telemedicine is that the different arms of the HHS aren't coordinating with one another, Fader said. Most of the claims deemed improper in the OIG report were due to the patient not being treated at an originating site that was eligible for reimbursement, Fader said.

The HHS's Health Resources and Services Administration's Medicare Telehealth Payment Eligibility Analyzer lets providers check if an originating site is eligible for Medicare

reimbursement, but since claims forms don't require that information, the CMS must take the provider's word that treatment was provided at such a site.

"I'm sure some practitioners are simply confused, while others are taking advantage of the lack of oversight and submitting claims they know shouldn't be reimbursed," Fader said.

The volume of telemedicine claims will only be increasing, Fader said, and if the CMS doesn't get a handle on the problem the dollars lost to fraud will increase as well.

Compliance

Education is critical to compliance with Medicare telemedicine regulations, Crowell & Moring's Chang said. Physicians need to learn the requirements, incorporate them into their compliance programs, and make sure their employees and business partners are up to speed, Chang said.

Physicians should be especially careful about anti-kickback statute compliance when doing business with originating sites and marketing telehealth services, Chang said. Regular audits can also help, and many of the claims errors identified in the OIG report could have been caught through an internal audit, Chang said.

Limited Enforcement

The growth in telemedicine spending is still a fraction of overall Medicare spending, and the service doesn't have any unique vulnerabilities to fraud and abuse, Dale C. Van Demark, a health-care attorney at McDermott Will & Emery in Washington, told Bloomberg Law.

Telemedicine will grow in popularity, and reimbursements will also grow, but growth will be steady, Demark said. The OIG report's findings indicate it is a service that is unique and filled with complex requirements, rather than one vulnerable to fraud, according to Demark.

As more people become familiar with telemedicine and its regulations, there will be more robust compliance levels, Demark said.

The 2016 and 2017 Health Care Fraud and Abuse Control reports didn't mention any enforcement associated with telemedicine, and the service isn't a high priority for criminal enforcement right now due to its relatively small Medicare spending, Chang said.

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