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OIG Identifies Telehealth Billing Risks in Recent Audit

On September 2, the U.S. Department of Health and Human Services Office of Inspector General (OIG) issued the results of a study titled "Medicare Telehealth Services During the First Year of the Pandemic: Program Integrity Risks." This study examined data from March 2020 through February 2021 related to telehealth services provided to Medicare beneficiaries in order to identify possible patterns of fraud and abuse by telehealth providers. The study is part of a series on the use of telehealth services by Medicare beneficiaries during the pandemic. The OIG conducted this study in response to a dramatic increase in the use of telehealth services during the first year of the COVID-19 pandemic. Beginning in March 2020, the Centers for Medicare & Medicaid Services (CMS) relaxed prior restrictions on the provision of telehealth services during the early stages of the pandemic, taking several measures to improve and expand access to telehealth while pausing ongoing integrity and fraud-detection programs. Thus, the increase in use of telehealth coupled with the decrease in restrictions on providers prompted this study to identify areas of potential fraud and abuse. The study analyzed claims data for Medicare telehealth services submitted by approximately 742,000 health care providers and examined this data through the lens of seven possible indicators of fraudulent billing for:

- facility fees in conjunction with telehealth services;
- the highest (and most expensive) level of telehealth services;
- telehealth appointments for a high number of days in a year;
- both Medicare fee-for-service and Medicare Advantage for the same telehealth services
- a high number of hours for a single telehealth visit;
- telehealth services for a high number of Medicare beneficiaries; and
- telehealth services and for medical equipment in connection with those services.

The report noted that none of the findings were definitive. The OIG determined that certain providers' practices appeared risky based on the data and stated that it plans to follow up with individual investigations to confirm whether there was any actual fraud. Overall, the study found that only around 0.2 percent (1,714) of Medicare providers had engaged in the practices listed above, thereby presenting a risk to the integrity of the Medicare program. The services rendered by these providers were associated with approximately half a million Medicare beneficiaries and $127.7 million in Medicare benefits. The number of potentially fraudulent providers was small compared with the total number of providers examined in the study, but the report acknowledged that the study evaluated the data only for very high indicators of fraud. For instance, the study identified two family medicine providers who billed Medicare for telehealth services every single day during the first year of the pandemic. One mental health counselor billed an average of four hours per visit for 37 different telehealth visits. Another provider billed for telehealth services for 27,400 beneficiaries during the year; this would have required him to provide telehealth services to 75 patients per day if he had billed for services every single day that year. OIG believes these examples demonstrate a high likelihood that these services were not either medically necessary or provided at all. The study

concluded with five recommendations on how CMS can improve the integrity of the Medicare program with respect to telehealth services:

- strengthening the oversight and monitoring of telehealth services
- educating providers on proper telehealth billing practices
- improving tracking of "incident to" services when billed in conjunction with telehealth
- identifying telehealth companies that provide services to Medicare beneficiaries
- investigating the 1,714 providers identified in the report.

Based on these recommendations, we suggest that clients who currently provide telehealth services to Medicare beneficiaries expect certain changes to the program in the future. First, providers should be aware of the potential for increased oversight of their telehealth billing practices. Second, providers can expect opportunities for education on proper billing for telehealth, which would be made available through CMS' Medicare Learning Network. Last, this study is part of a series on telehealth and Medicare during the pandemic, so providers can expect the OIG to release more information on this topic. The full study is available here. If any provider has questions on the appropriateness of telehealth billing or is contacted for an audit, our Day Pitney healthcare attorneys are well versed in the Medicare telehealth rules and ready to assist in this area.

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