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OIG Releases Special Fraud Alert on Telemedicine Arrangements

On July 20, 2022, the U.S. Department of Health and Human Services Office of Inspector General ("OIG") issued a new Special Fraud Alert urging caution when entering into arrangements with telemedicine companies.

Here, in encapsulated form, is what you need to know:

1. These schemes, which abound, exploit the public's acceptance of remote treatment tech, and purport to use telehealth, telemedicine, or telemarketing services.
2. In some of these schemes (for example, see the blog post [Greasy Kickback Residue Is All That's Left of Pain Cream Fraud](#)) the companies intentionally pay physicians kickbacks to prescribe prescription medication. Other schemes involve unnecessary DME, genetic testing, and wound care. All result in fraudulent claims to Medicare, Medicaid, and other Federal health care programs.
3. Although the breadth of scams is wide both in type, as mentioned above, and in operation, e.g., call centers, staffing companies, marketers, brokers, etc., the commonality is the use of kickbacks to recruit and reward the practitioners.
4. Generally, the telemedicine companies solicit and recruit purported patients and shunt them to practitioners, with the aim of arranging for the order or prescription of medically unnecessary items and services for individuals with whom the practitioners have limited, if any, interaction, and without regard to medical necessity.
5. Payments to practitioners are sometimes described as payment per review, audit, consult, or assessment of medical charts.
6. The telemedicine companies often tell practitioners that they do not need to contact the purported patient or that they only need speak to the purported patient by telephone.
7. Practitioners are not given an opportunity to review the purported patient's real medical records.
8. The telemedicine company may direct the practitioner to order or prescribe a preselected item or service, regardless of medical necessity or clinical appropriateness.
9. In many cases, the telemedicine company sells the order or prescription generated by practitioners to other individuals or entities that then fraudulently bill for the unnecessary items and services.

The Special Fraud Alert includes a nonexclusive list of telehealth/telemedicine fraud scam characteristics for you to keep in mind:

- The purported patients for whom the practitioner orders or prescribes items or services were identified or recruited by the telemedicine company, telemarketing company, sales agent, recruiter, call center, health fair, and/or through internet, television, or social media advertising for free or low out-of-pocket cost items or services.
- The practitioner does not have sufficient contact with or information from the purported patient to meaningfully assess the medical necessity of the items or services ordered or prescribed.
- The telemedicine company compensates the practitioner based on the volume of items or services ordered or prescribed, which may be characterized to the practitioner as compensation based on the number of purported medical records that the practitioner reviewed.
- The telemedicine company only furnishes items and services to Federal health care program beneficiaries and does not accept insurance from any other payor.
- The telemedicine company claims to only furnish items and services to individuals who are not Federal health care program beneficiaries but may in fact bill Federal health care programs.
- The telemedicine company only furnishes one product or a single class of products (e.g., durable medical equipment, genetic testing, diabetic supplies, or various prescription creams), potentially restricting a practitioner's treating options to a predetermined course of treatment.
- The telemedicine company does not expect practitioners (or another practitioner) to follow up with purported patients nor does it provide practitioners with the information required to follow up with purported patients (e.g., the telemedicine company does not require practitioners to discuss genetic testing results with each purported patient).

The danger to physicians and other practitioners considering participation in these arrangements is that they potentially implicate multiple Federal laws, including the Federal anti-kickback statute (the “AKS”), the Federal *criminal* law that prohibits knowingly and willfully soliciting or receiving (or offering or paying) any remuneration in return for (or to induce), among other things, referrals for, or orders of, items or services reimbursable by a Federal health care program. Other triggered laws include the Civil Monetary Penalty Law, the criminal health care fraud statute, and the Federal False Claims Act. Penalties range from multi-year prison terms to significant fines to very large civil penalties.

Often lost on physicians is the fact that even though they might not be the moving party involved in the scam, liability falls on both sides of a kickback scheme. In other words, you can be personally liable, criminally and civilly, in connection with these scams, including for submitting or causing the submission of claims.

With lots of money at play, it's not hard to see why the government is motivated to investigate and prosecute in order to obtain huge fines and the benefit of the forfeiture (generally to the investigating agency) of scores of millions of dollars.

Some final takeaways for you:

Any deal must be structured in compliance with the federal Anti-Kickback Statute, Stark, and various state law counterparts and other restrictions.

Money, big money, is tempting. I know because I've counseled many clients in connection with telemedicine "ventures" paying what they must have thought was money from heaven.

Yes, telemedicine has many valid applications. Violation of the AKS and committing fraud are not among them.

And, the money's not from heaven. It's from hell.

Let's talk before you consider any telehealth or telemedicine arrangement.



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Newsflash: Business Life In the Time of Coronavirus - The Way Out

The coronavirus crisis, especially as it has become politicized, raises a number of business issues and, quite frankly, business opportunities in regard to future disruptive events.

Check out our [mini-series](#), with actionable business lessons for medical group leaders.

Sooner or later this crisis will end. You can't allow yourself to be too busy, too occupied, too concerned with current events, to devote time and effort to strategizing for your future.



Wisdom. Applied. 164 - FMV Is No More Anti-Kickback Compliance Than Ground Pepper Is Pot Roast

A recent U.S. District Court ruling serves as a reminder that more than fair market value is needed to remove an arrangement from scrutiny under the federal Anti-Kickback Statute ("AKS").

All Things Personal

I'm in an American Airlines Admirals Club in Dallas, waiting for a flight to DC.

There's some guy seated about 9 feet away from me doing a conference call on his cell phone, and he's not wearing any sort of headphones. I can clearly hear both sides of the conversation.

Didn't anyone teach this self-absorbed moron any manners? Does he honestly think anyone else is interested? I'm certainly not.

But wait . . . what if I were?

Years ago, I was having dinner in a small restaurant, just eight or 10 tables or so. In a booth close by was someone, Dr. X, who was on the other side of a matter my firm was handling. He was with one other guy and they were clearly drinking too much, so much so that Dr. X began loudly laying out his strategy. I flagged down a waiter, got a pad and pen from him, and took wonderful notes the rest of the evening.

Sure, "Mr. Phoneconference" can be seen as the poster boy for poor manners. But even worse, and here's the lesson for you, sometimes talking out loud in public isn't just annoying, it's giving away tremendously valuable information. Act as if everyone is listening.

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- [Allegations Punch ENT in the Nose. He Sinuses Off on Multi-Million Dollar Settlement.](#)
- [Is Someone Else Using Your Medical License?](#)
- [OIG Releases Special Fraud Alert on Telemedicine Arrangements](#)

Published Articles

- [Anesthesia Services RFPs: Cognitive Biases and Hidden Opportunity](#), published in the Summer 2022 Issue of [Communique](#).
- [Popularity Contests and Disruptive Physicians: Avoiding the Death of Your Anesthesia Group](#), Fall 2021 Issue of [Communique](#).

Books and Publications



We all hear, and most of us say, that the pace of change in healthcare is quickening. That means that the pace of required decision-making is increasing, too. Unless, that is, you want to take the “default” route. That’s the one in which you let someone else make the decisions that impact you; you’re just along for the ride. Of course, playing a bit part in scripting your own future isn’t the smart route to stardom. But despite your own best intentions, perhaps it’s your medical group’s governance structure that’s holding you back. In fact, it’s very likely that the problem is systemic. The Medical Group Governance Matrix introduces a simple four-quadrant diagnostic tool to help you find out. It then shows you how to use that tool to build your better, more profitable future. Get your free copy [here](#).

Whenever you're ready, here are 4 ways I can help you and your business:

- 1. Download a copy of The Success Prescription.** My book, The Success Prescription provides you with a framework for thinking about your success. Download a copy of The Success Prescription [here](#).
- 2. Be a guest on “Wisdom. Applied. Podcast.”** Although most of my podcasts involve me addressing an important point for your success, I’m always looking for guests who’d like to be interviewed about their personal and professional achievements and the lessons learned. [Email me](#) if you’re interested in participating.
- 3. Book me to speak to your group or organization.** I’ve spoken at dozens of medical group, healthcare organization, university-sponsored, and private events on many topics such as The Impending Death of Hospitals, the strategic use of OIG Advisory Opinions, medical group governance, and succeeding at negotiations. For more information about a custom presentation for you, [drop us a line](#).
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