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Risks, Red Flags and Best Practices: Choosing a Vendor for your Telehealth Program

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COVID PHE/Emergency Declaration Status Check

- Federal DHHS PHE Extended through July 19, 2021
- Oklahoma: Rescinded May 5
- Kansas: Set to Expire June 15

BREAKING NEWS
Federal Telehealth Legislation

• H.R. 4040 Advancing Telehealth Beyond COVID-19 Act of 2022 *Passed* July 28, 2022
• Same provisions as the Consolidated Appropriations Act of 2022
• Extends to December 31, 2024
• **Important! This is not law yet. It must be passed by the Senate. Senate goes on recess after the end of this week.**
  • Bipartisan negotiations to get to comprise to permanent change took place, but couldn’t reach final agreement
  • Hesitation seemed to be cost and uncertainty on program integrity
  • No KS, MO representatives on Rules Committee, but OK member
  • Waiting for report that will come out next year
  • Still looking to make changes permanent

Rules Committee Meeting on H.R. 4040 and H.R. 263 | House of Representatives Committee on Rules
Overview

OIG’s Mandate to Study Telehealth Risks

Considerations in Vendor Selection

OIG’s Telehealth Fraud Investigations

Split/Shared Visits
Congressional Mandate to Study Program Integrity Risks of Telehealth

- March 2022 Consolidated Appropriations Act
- More reports forthcoming
OIG has investigated a number of telehealth companies’ exploitation of the growing use of telehealth. Some business arrangements that make sense in any other industry could be illegal in the healthcare context.
• Kickbacks are a common red flag indicia of an improper business arrangement
• Kickback defined: offering or receiving anything of value in exchange for referrals for services payable to healthcare programs
• Ascribes liability to parties on both sides of an impermissible kickback transaction
• Typically a government-payor concept, but there are usually state law equivalents
• Often, where there are kickbacks, there are false claims
Red Flags

• Provider will have limited, if any, interaction with patients
• Provider is being ask to write orders, prescriptions, or certifications
• Look for “per review”, “per audit”, “consult” or “chart assessment” payments
• Look for statements that provider does not need to contact patients
• Look for indication that provider would review “pertinent” or limited records rather than a full medical record
• Test, medication, item, or service may be preselected for provider by telemedicine company
Red Flags

• Patients were identified by vendor and brought to the provider
• Advertisements to patients for free or low out of pocket cost items
• Only patients covered by federal health care programs are involved
• Vendor only offers limited products or services
• No need to follow up with patients, nor ability to do so
• Calls, faxes, other messages stating a clinical team determined your patients should receive certain services and requesting you approve orders
Risks

• 2018 OIG Report
  • Missing originating site fees
  • Provider was outside the U.S.
  • 31 claims out of 100 did not meet requirements; extrapolated to assume $3.7M in improper payments
  • Many errors could have been identified through better claims editing on both provider/payor end
Risks

• Waiving patient cost-sharing
  • Typically, a potential kickback issue
  • OIG waiver during PHE: OIG Policy Statement (hhs.gov)
Georgia nurse practitioner convicted of health care fraud in complex telemedicine fraud scheme

- Vendor engaged in telemarketing campaign to target Medicare recipients
- Orders for orthotic braces
- “telehealth company” sold orders to DME providers
Owner Of Telemedicine Company Pleads Guilty To Health Care Fraud Conspiracy

- Genetic tests
- Vendor would engage in door to door sales to collect specimen
- Sold to labs
- Labs bill Medicare, Medicaid
Several due diligence steps can help protect your telehealth programs
Vendor Diligence

- Did they call you or did you call them?
- Full legal name
- Owners, officers, directors
- Find their website, general web search
- Secretary of State website
- Medicare providers, licensed providers, verify their status
- Check OIG/SAMS lists
- Review the contract
  - Any red flags?
Questions?

Heartland Telehealth Resource Center for Technical Assistance
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