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OIG Increases Oversight of Telehealth Services

For over a year, the world has collectively adjusted to a new normal as we all contemplate the impacts of the COVID-19 pandemic. One of the tenets of this new normal is the prevalence of telehealth services. On March 31, 2020, at the sunrise of the pandemic, Day Pitney outlined how regulators relaxed many of the regulatory burdens often associated with providing telehealth services. Now, more than a year later, with such relaxed requirements still in place, the federal government is turning its attention to oversight to ensure that telehealth services are not wrought with fraud, abuse or misuse and that providers using telehealth are aware of the government's enforcement focus.

To that end, the U.S. Department of Health and Human Services Office of Inspector General (OIG) is conducting at least seven audits of telehealth services under the Medicare and Medicaid programs. Those audits are:

- Audit of Home Health Services Provided as Telehealth During the COVID-19 Public Health Emergency
- Audits of Medicare Part B Telehealth Services During the COVID-19 Public Health Emergency
- Home Health Agencies' Challenges and Strategies in Responding to the COVID-19 Pandemic
- Medicare Telehealth Services During the COVID-19 Pandemic: Program Integrity Risks
- Use of Medicare Telehealth Services During the COVID-19 Pandemic
- Medicaid – Telehealth Expansion During COVID-19 Emergency
- Use of Telehealth to Provide Behavioral Health Services in Medicaid Managed Care

OIG anticipates issuing its audit findings between 2021 and 2022. OIG has not released extensive telehealth-related audit findings since its report on telehealth reimbursement from 2018. There, OIG released a study of telehealth-related claims paid in 2014-2015 and determined that the Centers for Medicare & Medicaid Services paid several practitioners for such telehealth services that did not meet various Medicare requirements. Notably, for many of the claims that were deemed improperly paid, the rationale for such determination would be allowed under the current relaxed regulatory landscape. Such rationale included (i) services received at nonrural originating sites, (ii) services billed by ineligible institutional providers, (iii) services provided to beneficiaries at unauthorized originating sites, and (iv) services provided by an unallowable means of communication.

Attorneys at Day Pitney will continue to monitor the progress of the OIG audits and are available to provide counsel related to telehealth regulatory compliance.

For more Day Pitney alerts and articles related to the impact of COVID-19, as well as information from other reliable sources, please visit our COVID-19 Resource Center.

COVID-19 DISCLAIMER: As you are aware, as a result of the COVID-19 pandemic, things are changing quickly and the effect, enforceability and interpretation of laws may be affected by future events. The material set forth in this document is not an unequivocal statement of law, but instead represents our best interpretation of where things stand as of the date of first publication. We have not attempted to address the potential impacts of all local, state and federal orders that may have been issued in response to the COVID-19 pandemic.

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