

This quarter's focus is: **Mitigating Risks of Fraud for Practitioners During the Expansion of Telemedicine**

The Centers for Medicare and Medicaid Services (CMS) has expanded access to telehealth.* With use of computers and now cellular phones for telemedicine visits, unintended consequences and different types of risks emerge. Not only is telemedicine becoming a new area for fraud and abuse scrutiny, but there are also unique patient safety risks associated with telemedicine visits.

In response to the COVID-19 crisis, Medicare now pays for a much broader range of services furnished through telehealth at the same rate as in-person visits.¹ Not surprisingly, the DOJ has directed all U.S. Attorneys to prioritize the investigation and prosecution of COVID-19 related fraud.²

The most common types of telemedicine fraud include: Payment in exchange for referral of business (kickback), incorrect billing or coding, excessive remote prescriptions, and Medicare scams.³ As an example, in July of 2019, the DOJ indicted an anesthesiologist for participating in a \$7 million dollar telemedicine conspiracy to fraudulently bill Medicare, Medicare Part D plans, and private insurance. The indictment alleged that the doctor prescribed prescription drugs and durable medical equipment that were medically unnecessary and without a genuine physician-patient relationship.⁴

With relaxed regulations and increased reimbursement, it is important for providers to know how to protect themselves and the office practice from falling victim to telehealth fraud and unintentionally committing fraud themselves.

Loss prevention strategies to mitigate the risks in telemedicine for providers/physician practices

1. Informed Consent: Informed consent should be specific to telemedicine. The utilization of telehealth and the proposed

medical plan need to be communicated clearly with the patient. Utilize a teach back method to confirm patient understanding.⁵ A physician-patient relationship must be established. As well, personalizing the virtual appointment to make it more supportive is critical especially in the elderly population.⁶

2. Type of Telehealth Visit: Know the different types of telemedicine visits for proper coding and billing purposes (telehealth, virtual check-ins, phone communication).⁷ Each type of visit has specific criteria and time requirements. Also, be aware of the type of practitioner that is qualified for payment of covered telehealth services.⁸ It is recommended that the length of the visit is clearly documented in the progress note and that the visit was specified as a telehealth visit versus an in-person visit.

3. Prescriptive Authority: Federal action is currently in place for as long as the Secretary's designation of a public health emergency remains in effect and this allows DEA registered practitioners to issue prescriptions for controlled substances to patients for whom they have not conducted an in-person medical evaluation. However, once the emergency has resolved, it is important to pay close attention to prescribing rules as they may change.⁹

4. Administrative/Office:

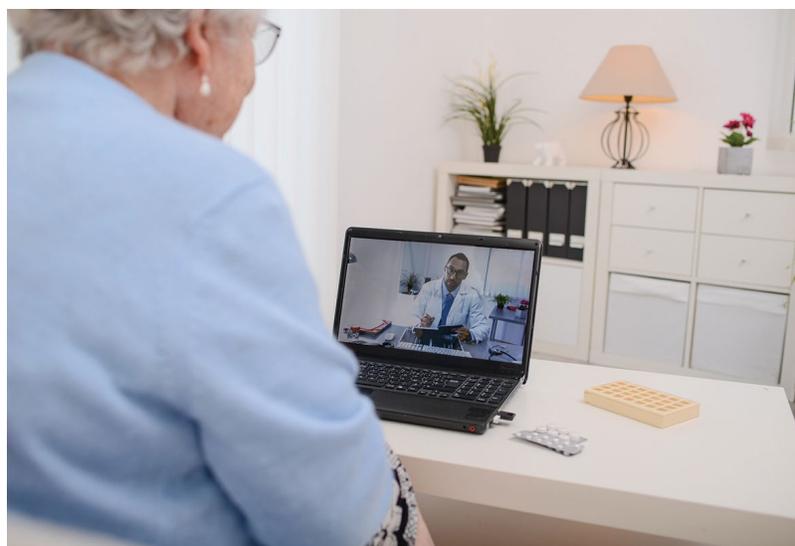
- **Triage Plan:** Telemedicine administrative protocols should include criteria to triage patients clinical issues accordingly. Telemedicine is ideal for established patients who: have limited access to care; for review of routine issues; or, for patients experiencing more mild issues. It is important to have a process to identify more urgent/emergent issues and triage them in an appropriate and timely manner.



- **Established Office Space:** Private space in an office or outside location should be set up to accommodate the telehealth visits. Non-HIPAA compliant communication technologies (FaceTime, Zoom, Skype) can be used during the COVID-19 crisis, however, there is an expectation that HIPAA regulations will tighten soon. When possible, utilize the telehealth links through the EHR system as many have telemedicine technology linked to the patient portal. Be sure to have safeguards in place to limit access to data.¹⁰
- **Credentialing:** Ensure that providers have the appropriate credentialing and training to complete telehealth visits. A formal office process needs to be established.
- **Audits:** Incorporate a billing audit system within the practice for telehealth visits.
- **ID/Passwords:** Protect electronic ID (identification) and passwords always. There is never a reason to share a log in.
- **Education:** Educate patients and staff about signs of telehealth fraud. If a patient communicates a concerning call received about prescriptions or equipment that were not discussed at the time of the visit, look into this immediately. If an electronic order for signature comes to the office for a patient for a prescription, medical devices or services, complete due diligence before signing.
- **Encourage staff that if they see something, say something.**

* CMS defines telehealth or telemedicine as terms that refer to an exchange of medical information from one site to another through electronic communication to improve a patient's health.

- 1 Medicare Telemedicine Health Care Provider Fact Sheet, (2020); <https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet>
- 2 Brian Rafferty, DOJ's COVID-19 Fraud Enforcement Targets Telehealth Industry, Nat. L. Rev., (2020)
- 3 <https://www.hchlawyers.com/blog/2019/december/telemedicine-fraud-how-are-doctors-affected/>
- 4 <https://www.justice.gov/opa/pr/new-york-anesthesiologist-indicted-alleged-role-telemedicine-health-care-fraud-conspiracy>
- 5 <https://www.ahrq.gov/health-literacy/informed-consent-telehealth.html>
- 6 See strategies; www.ih.org/communities/blogs/the-keys-to-effective-telemedicine-for-older-adults
- 7 <https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet>
- 8 <https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet>
- 9 <https://www.cchpca.org/reources/covid-19-telehealth-coverage-policies>
- 10 <https://www.ama-assn.org/practice-management/digital/ama-quick-guide-telemedicine-practice>



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