

In an Unprecedented Move, OIG Expands Access to Telehealth in Response to the COVID-19 Outbreak

By Jennifer E. Michael and Melissa L. Jampol

March 2020

On March 17, 2020, the U.S. Department of Health and Human Services (“HHS”) Office of Inspector General (“OIG”) issued a Policy Statement¹ and a companion Telehealth Factsheet² notifying health care providers that they will not be subject to administrative sanctions for reducing or waiving cost-sharing amounts for telehealth services furnished to Medicare beneficiaries during the COVID-19 outbreak. The purpose behind OIG’s Policy Statement is to enable Medicare beneficiaries, who are reportedly the most vulnerable to the COVID-19 virus, to receive medical care, such as routine office visits, prescription refills, preventative screenings, and mental health services, without having to travel to a doctor’s office or a health care facility.

Typically, health care providers that routinely waive cost-sharing amounts, such as copayments, coinsurance, and deductibles, may be liable under the federal Anti-Kickback Statute,³ the civil monetary penalty (“CMP”) and exclusion laws related to kickbacks,⁴ and the CMP law prohibiting inducements to beneficiaries.⁵ Notably, OIG’s Policy Statement applies to **all telehealth services and is not limited to telehealth services provided in connection with the diagnosis or treatment of COVID-19**. OIG’s Policy Statement permits health care providers to waive all cost-sharing amounts “for telehealth services furnished consistent with the then-applicable coverage and payment rules” during the COVID-19 public health emergency, which began on January 31, 2020.

¹ OIG Policy Statement Regarding Physicians and Other Practitioners That Reduce or Waive Amounts Owed by Federal Health Care Program Beneficiaries for Telehealth Services During the 2019 Novel Coronavirus (COVID-19) Outbreak, March 17, 2020, available at <https://oig.hhs.gov/fraud/docs/alertsandbulletins/2020/policy-telehealth-2020.pdf>.

² HHS Office of Inspector General Fact Sheet – March 2020, available at <https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet>. See also the Q&A, available at <https://www.cms.gov/files/document/medicare-telehealth-frequently-asked-questions-faqs-31720.pdf>

³ 42 U.S.C. 1320a-7b(b).

⁴ 42 U.S.C. 1320a-7(b)(7) and 1320a-7a(a)(7).

⁵ 42 U.S.C. 1320a-7a(a)(5).

OIG's Policy Statement comes on the heels of HHS's recent exercise of the authority granted to it during national emergencies to expand coverage for telemedicine services⁶ and to waive potential penalties against health care providers with respect to violations of certain privacy protections associated with telehealth.⁷ Medicare historically has provided very limited coverage of telehealth services, largely to benefit beneficiaries living in rural areas.⁸

Although OIG's Policy Statement does not require health care providers to reduce or waive cost-sharing obligations, the Telehealth Factsheet informs Medicare beneficiaries that their health care providers are not required to charge any cost-sharing amounts for telehealth services. Consequently, given the current crisis, we anticipate that many health care providers will begin providing telehealth services to Medicare beneficiaries in a variety of new treatment areas, and will waive these cost-sharing amounts.

HHS recently enacted initiatives provide new ways for Medicare beneficiaries to receive the care they require while staying at home (thus, adhering to government directives regarding social distancing during the COVID-19 outbreak). Health care providers now have unprecedented flexibilities with respect to telehealth services for Medicare beneficiaries—at least temporarily.

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*This Client Alert was authored by **Jennifer E. Michael** and **Melissa L. Jampol**. For additional information about the issues discussed in this Client Alert or if you have questions regarding OIG's Policy Statement, or telehealth services generally, please contact one of the authors or the Epstein Becker Green attorney who regularly handles your legal matters.*

⁶ Medicare.gov, Telehealth ("Due to the [Coronavirus \(COVID-19\)](#) Public Health Emergency, doctors and other health care providers can use telehealth services to treat COVID-19 (and for other medically reasonable purposes) from offices, hospitals, and places of residence (like homes, nursing homes, and assisted living facilities) as of March 6, 2020. Medicare will pay for these services for patients who have seen the health care provider or another health care provider in the same practice. Coinsurance and deductibles apply."), available at <https://www.medicare.gov/coverage/telehealth>.

⁷ OCR Announces Notification of Enforcement Discretion for Telehealth Remote Communications During the COVID-19 Nationwide Public Health Emergency, available at <https://www.hhs.gov/about/news/2020/03/17/ocr-announces-notification-of-enforcement-discretion-for-telehealth-remote-communications-during-the-covid-19.html>.

⁸ See Epstein Becker Green's blog post "Congress's COVID-19 Funding Legislation Expands Access to Telehealth Services for Medicare Beneficiaries," available at <https://www.healthlawadvisor.com/2020/03/17/congress-covid-19-funding-legislation-expands-access-to-telehealth-services-for-medicare-beneficiaries/>, for a more comprehensive discussion of Medicare's historically limited telehealth coverage and recent expansions. Additionally, see Epstein Becker Green's analysis of New York State's telemedicine expansion, available at https://www.healthlawadvisor.com/2020/03/18/covid-19-new-york-expands-telehealth-utilization/?utm_source=Epstein+Becker+%26+Green+-+Health+Law+Advisor&utm_campaign=43a2022e2c-RSS_EMAIL_CAMPAIGN&utm_medium=email&utm_term=0_41d6f4a777-43a2022e2c-72934633.

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