Data Reveals Bigger Picture Beyond HHS' Telehealth Audit

By **Jaime Jones, Brenna Jenny and Francesca Ozinal** (March 10, 2023)

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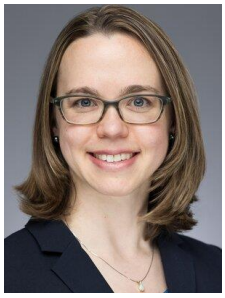

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In September 2022, the U.S. Department of Health and Human Services Office of Inspector General released a highly anticipated report assessing Medicare program integrity risks arising from telehealth services furnished during the first year of the pandemic.[1]

Using the Freedom of Information Act, we obtained a broader set of data than what the HHS OIG previously disclosed. This data reinforces what was implicit in the report — the HHS OIG only highlighted the most extreme outliers.

Studying the data offers clues and insights for health care providers who are seeking to gauge the extent to which their own pandemic telehealth billing is consistent with industry trends.

Background on the HHS OIG Report

As a result of the surge in telehealth usage during the COVID-19 pandemic, the HHS OIG reviewed billing data for the 742,000 providers who billed Medicare fee-for-service and Medicare Advantage plans for a telehealth service during the first year of the pandemic.

The HHS OIG assessed these providers' billing patterns against seven metrics that, according to the HHS OIG, could suggest inappropriate telehealth billing:

1. Billing both a telehealth service and a facility fee for most visits;

2. Billing telehealth services at the highest, most expensive level every time;

3. Billing telehealth services for a high number of days in a year;

4. Billing both Medicare fee-for-service and a Medicare Advantage plan for the same service for a high proportion of services;

5. Billing a high average number of hours of telehealth services per visit;

6. Billing telehealth services for a high number of beneficiaries; and

7. Billing for a telehealth service and ordering medical equipment for a high proportion of beneficiaries.

The HHS OIG identified 1,714 outliers on one or more of these metrics "whose billing for telehealth services during the first year of the pandemic poses a high risk to Medicare."[2]

For example, on the metric "billing a high average number of hours of telehealth services per visit," the HHS OIG called out 86 providers who billed for an average of more than 2 hours of telehealth services per visit, which "is far higher than the median of 21 minutes of

telehealth services per visit."[3]

However, the HHS OIG did not provide data on the length of visit that would render a provider well above the median, even if below the top 86 outliers on this metric.

Furthermore, the HHS OIG acknowledged in the report that it set very high thresholds to identify providers whose billing poses a high risk to Medicare, and that this set of outliers "does not capture all concerning billing related to telehealth services that may be occurring in Medicare."[4]

Federal Agencies Continue to Scrutinize Telehealth Services Billed to Medicare

This telehealth program integrity report is part of a broader oversight trend by multiple federal agencies all seeking to root out inappropriate instances of billing federal health care programs for telehealth services during the pandemic.

The government's oversight interest makes sense in light of the fact that federal health care spending on telehealth services surged during the pandemic. For example, Medicare spending on telehealth services increased from $306 million during April-December 2019, to $3.7 billion over the same time period in 2020.[5]

In response, among other developments last year, the HHS OIG jointly issued a report with other inspectors general analyzing risks posed by the spike in telehealth usage across federal health care programs during the pandemic — with Medicare footing the lion's share of that bill.[6]

The HHS OIG also issued a special fraud alert urging providers to exercise caution when entering into arrangements with telehealth companies.[7]

The U.S. Department of Justice has also been prioritizing telehealth fraud.

For example, the DOJ entered into a False Claims Act settlement with Physician Partners of America LLC, a provider group that allegedly abused HHS telehealth pandemic regulatory flexibilities by requiring its physicians to schedule medically unnecessary telehealth visits with patients every 14 days, to compensate for lost revenue during the pandemic.[8]

Auditing and monitoring of telehealth services that were billed to federal health care programs during the pandemic continues to be a priority for the HHS OIG, as demonstrated by its work plan, which features several additional telehealth-focused reports set to be released in 2023.

For example, the HHS OIG has announced plans to audit home health services furnished via telehealth during the pandemic to determine whether those services were billed in accordance with Medicare requirements.[9]

The HHS OIG is also auditing Medicare Part B and Medicaid telehealth services provided during the pandemic.[10] The results of this auditing work may fuel further oversight by the HHS OIG, DOJ and other law enforcement agencies.

Compliance Takeaways for Telehealth Providers

Providers who relied upon the Centers for Medicare & Medicaid Services' telehealth billing flexibilities during the pandemic should consider assessing their own organizations for

potential outliers or trends warranting further review.

The HHS OIG has indicated that later this year it plans to release a toolkit that will provide information for our public and private sector partners about analyzing claims data for telehealth services.[11]

In the meantime, a fuller picture of the data underlying the HHS OIG's latest telehealth report provides a road map for compliance and legal functions interested in getting a head start.

We obtained from the HHS OIG anonymized data reflecting a range of outcomes on its identified metrics. This data confirms that the HHS OIG selected providers to highlight in its report by identifying only those at or near the 100th percentile — i.e., only a subset of providers based on how the HHS-OIG often defines outliers.

For example, with respect to the metric "billing telehealth services for a high number of days in a year," the HHS OIG isolated 328 providers in its report who each billed for telehealth services for more than 300 days in a year.[12] The HHS OIG selected this metric because "billing for telehealth for a high number of days may indicate that the provider may not be providing the services for which they are billing."[13]

However, the report does not disclose the number of days that the median provider billed for telehealth services, which can foreclose providers from making more meaningful comparisons. The data reveals that the median provider billing for at least one telehealth service during the first year of the pandemic did so on only 26 days out of the year, with a significant upswing by the 90th percentile — 133 days.

Similarly, with respect to the metric "billing a high average number of hours of telehealth services per visit," the HHS OIG highlighted 86 providers who billed for an average of more than two hours of telehealth services per visit.[14]

The HHS OIG noted that "when providers bill for a high average number of hours of telehealth services per visit, they may be billing for unnecessary services or for services not rendered."[15]

Disclosing the 86 most extreme outliers is unlikely to offer practical guidance for legal and compliance functions. The fuller data reveals not only the median of 21 minutes, but also a noticeable upswing in length between the 75th percentile, 28 minutes, and the 90th percentile, 50 minutes.

The HHS OIG's report also elides important differences between provider types. Under the metric "billing telehealth services at the highest, most expensive level every time," the HHS OIG identified 365 providers who "billed for certain telehealth services at the highest, most expensive level" 100% of the time.[16]

A more granular review of the data reveals that for providers billing for telehealth services in the physician office setting, the provider at the 75th percentile billed only 3.2% of encounters at the highest, most expensive level.

In contrast, the 75th percentile assisted living provider and nursing home provider billed at the most expensive level 10.7% and 13.4% of the time, respectively, suggesting more intensive telehealth services in these settings.

Armed with data, legal and compliance functions can identify how their organizations compare to other providers, and whether there are particular outliers within the organization — either at points in time or through year-over-year increases — potentially warranting a closer look.

As law enforcement makes clear it will be drilling down on data to identify overbilling for telehealth services, health care providers should consider assessing their own data first.

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[1] See U.S. Department of Health and Human Services Office of Inspector General Data Brief, OEI-02-02-00720 (Sept. 2022), https://oig.hhs.gov/oei/reports/OEI-02-20-00720.pdf (hereinafter, September 2022 Telehealth Report).

[2] Id. at 2.

[3] Id. at 9.

[4] Id. at 2-3.

[5] Government Accountability Office, Medicare Telehealth Actions Needed to Strengthen Oversight and Help Providers Educate Patients on Privacy and Security Risks, at 3–4 (Sept. 2022), https://www.gao.gov/assets/730/723087.pdf.

[6] See Pandemic Response Accountability Committee, Insights on Telehealth Use and Program Integrity Risks Across Selected Health Care Programs During the Pandemic (Dec. 2022), https://www.pandemicoversight.gov/media/file/telehealthfinal508nov30pdf.

[7] See U.S. Department of Health and Human Services Office of Inspector General, Special Fraud Alert: OIG Alerts Practitioners To Exercise Caution When Entering Into Arrangements With Purported Telemedicine Companies (July 20, 2022), https://oig.hhs.gov/documents/root/1045/sfa-telefraud.pdf.

[8] See Press Release, DOJ, Physician Partners of America to Pay $24.5 Million to Settle Allegations of Unnecessary Testing, Improper Remuneration to Physicians and a False Statement in Connection with COVID-19 Relief Funds (Apr. 12, 2022), https://www.justice.gov/opa/pr/physician-partners-america-pay-245-million-settle-allegations-unnecessary-testing-improper.

[9] See U.S. Department of Health and Human Services Office of Inspector General, Audit of Home Health Services Provided as Telehealth During the COVID-19 Public Health

Emergency, https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000553.asp.

[10] See U.S. Department of Health and Human Services Office of Inspector General, Audits of Medicare Part B Telehealth Services During the COVID-19 Public Health Emergency, https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000556.asp; U.S. Department of Health and Human Services Office of Inspector General, Medicaid—Telehealth Expansion During COVID-19 Emergency, https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000488.asp.

[11] U.S. Department of Health and Human Services Office of Inspector General, OIG Toolkit on Analyzing Telehealth Claims To Assess Program Integrity Risks (Jan. 2023), https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000754.asp.

[12] September 2022 Telehealth Report at 8.

[13] Id.

[14] Id. at 9.

[15] Id.

[16] Id. at 7.