

Federal Audits and Enforcement Actions of Telehealth Providers: Future Trends and Mitigating Risk



As the COVID-19 pandemic progresses and the expanded use of telehealth has appeared to stabilize over the past year according to a [July report from McKinsey & Company](#), Federal agencies have continued the recent trend of enforcement actions and audits of telehealth providers.

On September 17, 2021, the U.S. Department of Health and Human Services Office of Inspector General (HHS OIG) and U.S. Department of Justice (DOJ) [announced their latest enforcement action](#), totaling \$1.4 billion, with approximately \$1.1 billion involving alleged telehealth fraud. This is the latest action taken by enforcement agencies, with a [\\$143 million COVID-19 enforcement action announced in May 2021](#) and a [\\$4.5 billion telehealth enforcement action announced in September 2020](#). These actions have focused in part on the use of telehealth to submit fraudulent claims to private payors as well as Federal health care programs. The May 2021 enforcement action involved fourteen defendants in seven Federal judicial districts and the September 2020 enforcement action involved over three-hundred defendants in fifty-one Federal judicial districts.

This most recent round of enforcement actions from September 2021 targeted telemedicine executives who were alleged to have paid physicians the nurse practitioners in exchange for ordering durable medical equipment, genetic testing, other diagnostic tests, and pain medications that were considered unnecessary. The government charged that items were ordered without patient interactions or minimal telephonic conversations, and that the physicians and nurse practitioners at issue had never even met or seen their patients. Additionally, in January 2021, HHS OIG announced a [series of audits](#) reviewing Medicare Part B payments to telehealth providers during the public health emergency to determine whether Medicare requirements were met. The first phase of audits focus on whether services such as evaluation and management, opioid use disorder, end-stage renal disease, and psychotherapy met Medicare requirements. The second phase includes additional audits regarding distant and originating site locations, virtual check-in services, electronic visits, remote patient monitoring, use of telehealth technology, and annual wellness visits.

While the long-term effects of Federal agency actions remain unclear, so long as telehealth is utilized at a substantial level, government agencies will likely continue to scrutinize telehealth industry practices to mitigate fraud, waste and abuse. Telehealth providers and others in the industry can decrease the likelihood and impact of being audited or charged in an enforcement action by structuring their compliance programs and operations to abide by Federal health care program requirements such as provider credentialing, sufficient medical necessity documentation, program integrity requirements and other coverage and reimbursement issues.

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questions.