

DOJ's COVID-19 Fraud Enforcement Targets Telehealth Industry

Article By:

Brian Rafferty

Like Like the rest of the world, the Department of Justice is laser-focused on COVID-19 and averting its detrimental impacts. Last week, Attorney General Barr directed all U.S. Attorneys to prioritize the investigation and prosecution of COVID-19 related fraudulent schemes. The DOJ announced it is already investigating individuals who are, among other things, selling fake cures for COVID-19, sending phishing emails posing as the World Health Organization and the CDC, and obtaining patient health information for COVID-19 testing and using that information to fraudulently bill for unrelated tests and procedures. The Attorney General urged all Americans to report these and other similar fraudulent schemes to the National Center for Disaster Fraud. In fact, the DOJ took its first legal action to combat COVID-19 related fraud over the weekend, filing an [enforcement action in Austin, Texas](#) against website owners who were selling fake COVID-19 cures for \$4.95. The DOJ has further directed all U.S. Attorney's Offices to appoint a Coronavirus Fraud Coordinator to serve as the legal counsel for the federal judicial district on matters relating to COVID-19, direct the prosecution of COVID-19 -related crimes, and to conduct outreach and awareness.

This heightened Government enforcement will only continue to expand as billions of dollars of relief funds are paid and relaxed regulations are implemented throughout the country over the next few weeks. One industry in particular will have increased exposure to Government oversight—the telehealth services industry. Telehealth providers have already seen two of the biggest DOJ takedowns in history this past year for rampant kickback and fraudulent billing schemes related to [durable medical equipment](#) and [cancer genomic testing](#). Now that the COVID-19 is putting an unprecedented strain on the health care system, the federal Government and insurance companies alike are urging patients to embrace telehealth services for both COVID-19 testing and non-emergent conditions in order to preserve health care resources. To encourage providers to implement telehealth services into their treatment regimes, the Government is rolling back industry regulations for the first time to make it easier for patients and providers to engage in proper telehealth consultations. For instance, Centers for Medicare & Medicaid Services has waived a number of Medicare reimbursement requirements, including that the visit must occur at an originating site. The Drug Enforcement Administration has waived restrictions that previously prohibited prescribing opioids via telehealth. States have been primarily waiving Medicaid requirements, including allowing telehealth to qualify as the establishment of a doctor-patient relationship.

With relaxed regulations and increased reimbursements comes significant opportunities for telehealth

companies, health care providers, and technology companies. It also comes with heightened Government scrutiny and oversight. While this temporary regulatory landscape certainly eases the requirements for telehealth, it has no impact on the applicability of the Anti-Kickback Statute or False Claims Act—the bases for the Government’s previous telehealth takedowns. Before engaging in telehealth services of any kind, you should seek legal guidance on the temporary rules and regulations to ensure compliance. If you or your company receive any communication from the Department of Justice, FBI, HHS-OIG, or state Attorney General’s Office regarding potential fraud related to COVID-19, Polsinelli’s Government Investigation Group remains willing and able to assist.

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