

Criminal and Civil Enforcement, Compliance, & Telehealth

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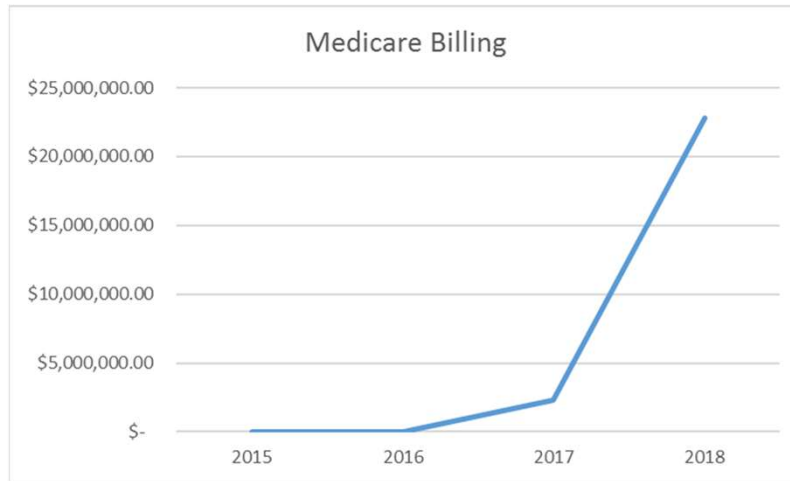
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Agenda

- DOJ Criminal Enforcement
- DOJ Civil False Claims Act Enforcement
- Telehealth Compliance
- Potential Areas of Telehealth Concern

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Sudden Spike in Billing



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April 2019: Operation Brace Yourself

The New York Times

24 Charged in \$1.2 Billion Medicare Scheme, U.S. Says

By Niraj Chokshi and Julia Jacobs

April 9, 2019

Federal officials said Tuesday that they had dismantled a \$1.2 billion Medicare scheme that spanned continents and ensnared hundreds of thousands of unsuspecting elderly and disabled patients.

Under the scheme, which the authorities described as one of the largest health care frauds in United States history, doctors prescribed back, shoulder, wrist and knee braces that were not needed, prosecutors said. Twenty-four people were charged, according to the Justice Department.

"These defendants — who range from corporate executives to medical professionals — allegedly participated in an expansive and sophisticated fraud to exploit telemedicine technology meant for patients otherwise unable to access health care," Brian Benczkowski, the assistant attorney general for the department's criminal division, said in a statement.

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Operation Brace Yourself

- 24 charged defendants
- Time from start of investigation to charging: six months
- \$1.2 billion billed, \$438 million paid
- 17 judicial districts
- 70+ FBI agents
- 80+ premises search warrants
- 100+ terabytes of data seized
- CMS/CPI adverse administrative action against 130 DME companies that submitted over \$1.7 billion in claims and were paid over \$900 million

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September 2019: Operation Double Helix

Gene-Test Fraud Billed \$2.1 Billion to U.S. Medicare Program

By [Kristen V. Brown](#)
September 27, 2019, 1:44 PM EDT

- ▶ DNA-test scam is new twist on an old tactic by criminals
- ▶ Health programs have faced billions in fraudulent billings

In what U.S. law-enforcement officials are calling one of the biggest health-care frauds in history, the Justice Department said that Medicare was fraudulently billed \$2.1 billion after seniors were enticed to take unnecessary genetic tests for cancer.

The Justice Department and the Department of Health and Human Services said on Friday that 35 defendants associated with dozens of telemedicine companies and cancer genetic testing laboratories had been charged with fraud. Those charged included nine doctors.

"These defendants allegedly duped Medicare beneficiaries into signing up for unnecessary genetic tests, costing Medicare billions of dollars," Assistant Attorney General Brian A.

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Operation Double Helix

- 36 defendants
- \$2.1 billion billed
- 13 judicial districts
- Seized over \$8 million in cash, luxury vehicles, and other fraud proceeds
- CMS/CPI adverse administrative action against 52 medical professionals

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September 2020: Operation Rubber Stamp

DOJ and HHS-OIG's 2020 Health Care Fraud Takedown: Focus on 'Telefraud'

This year alone, many providers and patients transitioned to using telehealth platforms out of necessity, as with all areas of health care, expansion means increased risk for enforcement.

By Melissa L. Jampol, Amy Lerman and Elena M. Quattrone November 04, 2020 at 02:00 PM



Credit: H_Ko / Shutterstock.com

Utilizing telehealth platforms to deliver health-care services is an area of recent, rapid expansion. Since the worldwide spread of COVID-19, safe access to health-care services has been limited, and demand for telehealth services has surged. Alexander GC, et al., *Use and Content of Brimani Para Offis Reaktif Talamartina Para Mole During the COVID-19*

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September 2020: Operation Rubber Stamp

- More than 86 defendants
 - 26 medical professionals
- \$4.5 billion billed
- HHS-OIG, FBI, DEA, DCIS, IRS, DOL, MFCU, and other state and local law enforcement coordination
- 19 judicial districts
- CMS/CPI adverse administrative action against 256 medical professionals

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September 2021 Enforcement Action

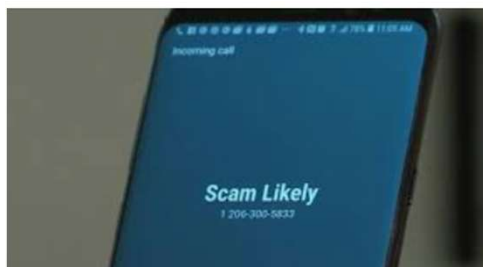
- Over \$1.1 billion in allegedly false and fraudulent claims submitted
- More than 43 criminal defendants
- 11 judicial districts
- CMS/CPI adverse administrative actions



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2022 Telemedicine, Clinical Labs, and DME Enforcement Action

- Over \$1.2 billion in allegedly false and fraudulent claims submitted
- More than \$8 million seized
- More than 36 criminal defendants
- 11 judicial districts
- 52 CMS/CPI adverse administrative actions



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2023 National Law Enforcement Action

- Over \$2 billion in allegedly false and fraudulent claims submitted
- Approx. 11 criminal defendants
- Approx. 8 districts



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Criminal Telehealth Enforcement

Criminal and Civil Enforcement, Compliance, and Telehealth

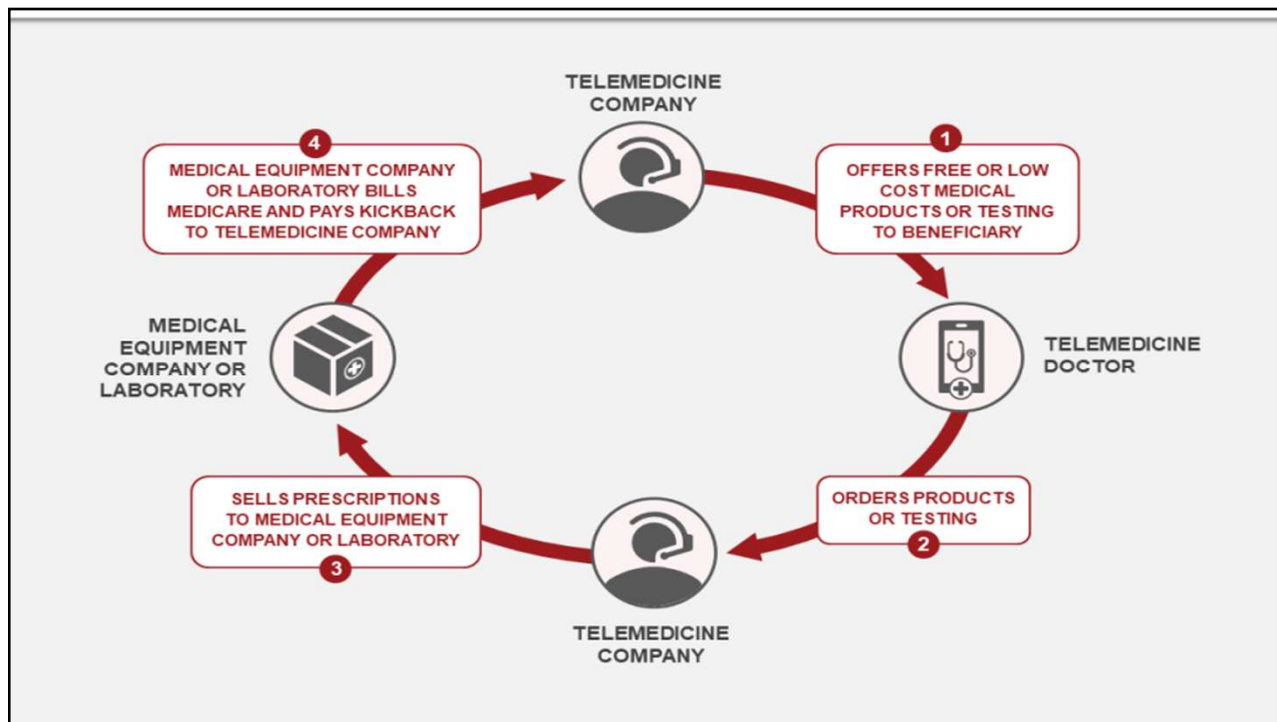
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The Scheme



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Key Players



- Telemedicine Providers
- Call Centers
- Lead Generators
- Purported Marketers or Brokers
- Medical Professionals
 - Doctors
 - Nurse Practitioners
- Medical Providers
 - DME Companies
 - Labs
 - Pharmacies

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Managers of Arizona Telemedicine Company Admit Roles in \$64 Million Nationwide Kickback, Health Care Fraud Schemes

Examples of Recent Cases

Man Convicted in \$67M “Doctor Chase” Genetic Testing Fraud Scheme

Lab Owner Sentenced for \$463M Genetic Testing Scheme

South Florida nurse practitioner convicted in \$200 million Medicare fraud scheme

Doctor Pleads Guilty to Role in \$54 Million Medicare Fraud Scheme

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The Product

- Durable Medical Equipment
 - Braces: back, knee, shoulder, ankle
 - UV Boxes and Wands
- Pharmaceuticals
 - Pain creams, scar creams, allergy medication
 - Foot bath compounds
- Genetic Testing: CGX, PGX, Cardio
- Continuous Glucose Monitoring and Diabetic Supplies
- Covid-19 and RPP Testing



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The Result



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Common Features in Past DOJ Telemedicine Cases

- Use of call centers
- Shared platform to create and house documents
- Medical information gathered by non-medical professionals
- Limited choice in what can be prescribed
- Doctors getting paid with the expectation they will prescribe ordering/prescribing
- Doctors have limited, if any, contact with patients
- Keeping patient away from order/prescription

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Frequently Used Charges in Past DOJ Telemedicine Cases

- Health care fraud
- Wire fraud
- Anti-Kickback Statute
- False statements relating to healthcare matters
- Money laundering
- Aggravated identity theft

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Telehealth is an important medical tool but . . .

- Telehealth does not permit lies
- Telehealth does not permit kickbacks
- Telehealth requires real patient contact and care



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CIVIL & CMS ADMINISTRATIVE TELEHEALTH ENFORCEMENT

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CMS Administrative Action on Telehealth

- As part of Operation Rubber Stamp (Oct. 2020):
 - 256 medical professionals billing privileges revoked
- Others charged by DOJ subsequently excluded by CMS

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DOJ Civil Action on Telehealth


- False Claims Act
- Qui tams?

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DOJ False Claims Act Settlement

- December 2022 Settlement
 - Cardiac Monitoring
 - Performed by Offshore Technicians
 - \$44.8 Million Settlement

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DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL
WASHINGTON, DC 20201

HHS OIG Special Fraud Alert

**Special Fraud Alert: OIG Alerts Practitioners To Exercise Caution
When Entering Into Arrangements With Purported Telemedicine Companies**


July 20, 2022

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OIG Report on Medicare Telehealth Services During First Year of the Pandemic

7 Indicators of Fraud Waste and Abuse

- Billing both a telehealth service and a facility fee for most visits;
- Billing telehealth services at the highest, most expensive level every time;
- Billing telehealth services for a number of days in a year;
- Billing both Medicare fee-for-service and a Medicare Advantage plan for the same service for a high proportion of services;
- Billing a high average number of hours of telehealth services per visit;
- Billing telehealth services for a high number of beneficiaries; and
- Billing for a telehealth service and ordering medical equipment for a high proportion of beneficiaries



RISK

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HHS Office of Civil Rights

- December 2022 Bulletin
 - Telehealth Tracking Technologies
 - Google Analytics
 - Meta Pixel



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Takeaways?

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