

Fraud, Compliance, and Telehealth

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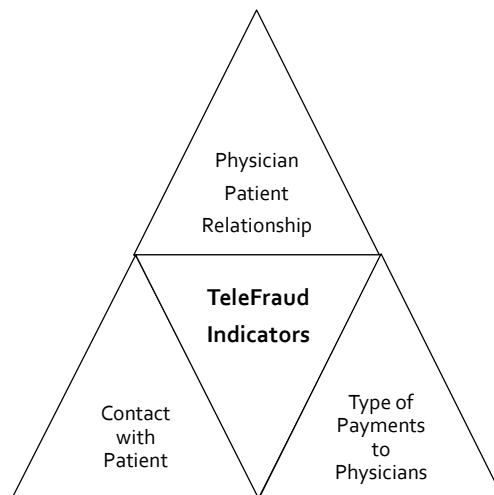
Agenda

OIG: Scams & Trends

- What is *Tele-Health* compared to *Tele-Fraud*?
- What is the Brace Scam?
- What is the Genetic Testing Scam?
- What are some current **fraud** schemes we are seeing?

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Tele-Fraud



- Does the physician on the claim have a relationship with the patient?
- Did the patient ask to be contacted for this type of supply or service?
- Is the physician being paid by a provider or some other non-healthcare entity?

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Brace Scam

Recent DOJ Press Releases

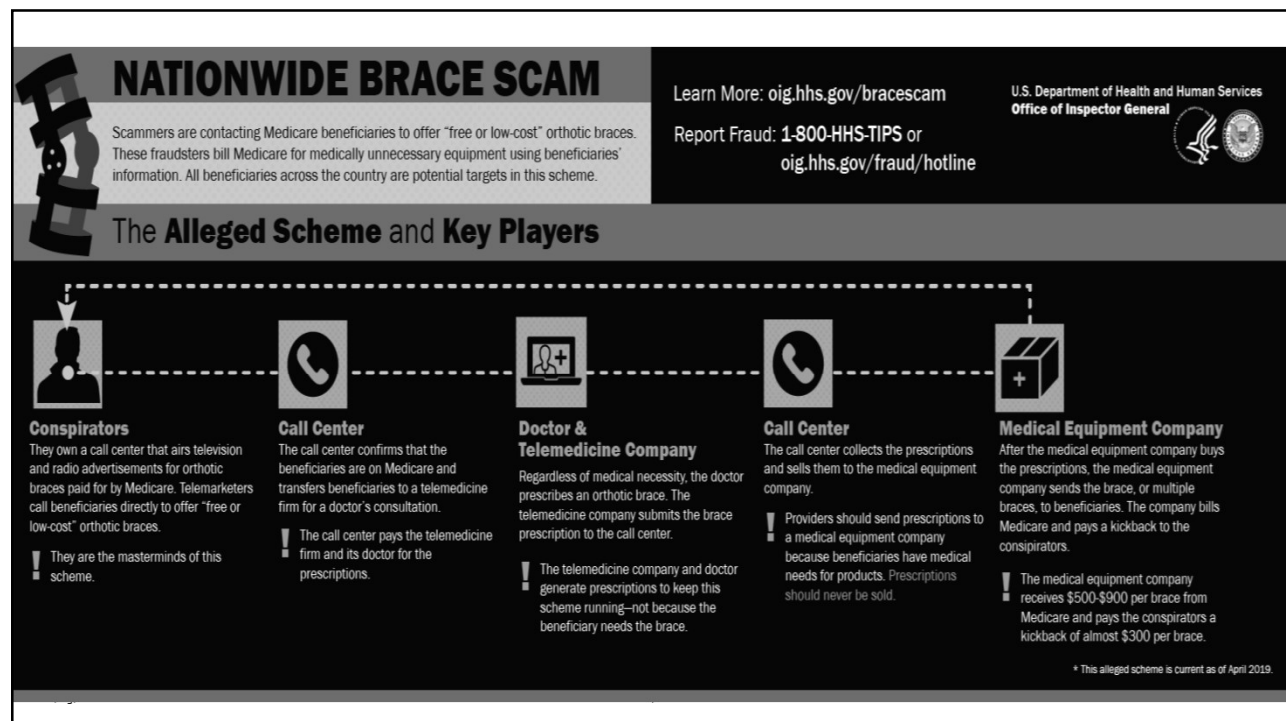
- **Federal Indictments & Law Enforcement Actions in One of the Largest Health Care Fraud Schemes Involving Telemedicine and Durable Medical Equipment Marketing Executives Results in Charges Against 24 Individuals Responsible for Over \$1.2 Billion in Losses**
- **South Carolina U.S. Attorney Announces Operation Dismantling One of the Largest Medicare Fraud Schemes in History**
- **Federal Health Care Fraud Takedown in Northeastern U.S. Results in Charges Against 48 Individuals**

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Genetic Testing Scam

Recent DOJ Press Releases

- Florida-Based Doctor Charged with Fraudulently Ordering Genetic Tests
- Federal Law Enforcement Action Involving Fraudulent Genetic Testing Results in Charges Against 35 Individuals Responsible for Over \$2.1 Billion in Losses in One of the Largest Health Care Fraud Schemes Ever Charged.
- Genetic Testing Company and Three Principals Agree to Pay \$42.6 Million to Resolve Kickback and Medical Necessity Claims.

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CFR

The Medicare Part B program excludes from coverage diagnostic tests, which include genetic tests, "that are not reasonable and necessary" ... [for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member." 42 C.F.R. 411.15(k)(l). In order to be considered "reasonable and necessary," Medicare rules require that genetic testing "must be ordered by the physician who is treating the beneficiary, that is, the physician who furnishes a consultation or treats a beneficiary for a specific medical problem and who uses the results in the management of the beneficiary's specific medical problem." 42 C.F.R. 410.32(a). "Tests not ordered by the physician who is treating the beneficiary are not reasonable and necessary."

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Genetic Testing

Genetic Testing SCAM

Scammers are offering Medicare beneficiaries “free” genetic testing or cheek swabs in order to obtain beneficiaries’ personal information for fraudulent purposes.



Recruiter

The recruiter (who may also be called a marketer or telemarketer), targets the beneficiary to take a genetic test in person or by mail.



Doctor

The doctor orders a test for the beneficiary even if it's not medically necessary. The doctor gets a kickback from the recruiter for ordering the test.



Lab

The lab runs the test and receives the reimbursement payment from Medicare. The lab shares the proceeds of that payment with the recruiter.

The alleged scheme is current as of September 2019.

Learn More: oig.hhs.gov/genetic scam

Report Fraud: 1-800-HHS-TIPS or
oig.hhs.gov/fraud/hotline

U.S. Department of Health and Human Services
Office of Inspector General



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Protecting Patients from Identity Theft

- Once compromised patient information may end up being sold on a lead list.
- Protecting Seniors
 - New Medicare Cards
 - Medicare Beneficiary Identifiers (MBIs)
 - If lost, stolen, or compromised Call 1-800-MEDICARE (1-800-633-4227). TTY users can call 1-877-486-2048. There might be a problem that needs to be corrected, like updating your mailing address.

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Fraud Trends

- Pharmacy Fraud
- DME Orthotics
- Genetic Testing
- Identity Theft
- Footbaths
- Excluded Individuals
- Schemes Moving to Medicare Advantage

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BEST PRACTICES FOR TELEHEALTH FRAUD & ABUSE COMPLIANCE

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Newly-Proposed Fraud and Abuse Waivers

- Incentives for Patient Engagement and Preventative Tools, Items, and Services
- Waivers of Patient Co-Payments for CCM and RPM Services
- Safe Harbor for End Stage Renal Disease Telehealth Technology



Hot Issues in Medicare Telehealth Compliance

- ☐ *Qualifying rural area*
- ☐ *Qualifying originating site*
- ☐ *Eligible modality*
- ☐ *Overseas providers*
- ☐ *Distant site billing for orig. site facility fee*
- ☐ *Reassignment to originating site*
- ☐ *Charging beneficiaries out of pocket for telehealth services*
- ☐ *Telehealth vs non-face-to-face services*
- ☐ *Telehealth admitting physician*
- ☐ *Incident to billing*
- ☐ *Global surgical period and post-op, follow-up care*
- ☐ *G code and consultations*
- ☐ *Telemedicine and EMTALA*
- ☐ *Conditions of Participation vs. Conditions for Payment*

General Compliance – Best Practices

- Proper physician-patient relationship
- Prudent marketing practices
- Legitimate medically necessary services
- Adherence to state practice standards
- Claims, coding, billing education (Medicare, Medicaid AND commercial)
- Consider application of Stark and Anti-kickback statute (even if contracted services not billed to federal programs)



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Beyond In-Person Exams

Federal

- Anti-Kickback Statute
- Physician Self-Referral
- Civil Monetary Penalty Law
- Payer Rules
- HIPAA
- FTC, FDA, DEA

State

- Patient Brokering Acts
- Fee-Splitting Laws
- Self-Referral Laws
- Corporate Practice of Medicine
- eCommerce
- Insurance Laws
- Supervision of NPPs
- Privacy & Security
- Medical Advertising

Privacy, Security, eCommerce

- HIPAA and HITECH
- State privacy laws
- Website or App Terms of Use and Privacy Policy
- E-Commerce Considerations
- FTC Considerations
- ADA accessibility and disclosures

International

- Foreign Corrupt Practices Act
- US Export Control Laws
- US Anti-Terrorism Laws
- US Anti-Boycott Laws
- International Corporate Laws and Tax
- Data protection; data ownership; data sharing
- Intellectual Property

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Question and Answer

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Thank you!

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