



Telehealth & EHR Meaningful Use Payments—Expect Greater Scrutiny in Upcoming Medicare Audits

In July 2017, the United States Department of Health and Human Services' Office of Inspector General ("OIG") revealed two new Work Plan items related to digital health: first, a review of Medicare incentive payments for meaningful use of electronic health records ("EHRs"); and second, a review of telehealth reimbursement under Medicare Part B.

As Jones Day analyzed [last month](#), the government has increased scrutiny of Medicare incentive payments for meaningful use of EHR technology. Most recently, the OIG updated its FY2017 Work Plan to include a review of Medicare EHR incentive payments to identify providers who had not met the payment qualifications. The OIG updated its Work Plan following an OIG review that determined an estimated \$729 million in inappropriate incentive payments were made to eligible providers between May 2011 and June 2014. The OIG reported that it intends to conduct another review, this time focused on the significant amount of incentive payments to hospitals, totaling \$14.6 billion between 2011 and 2016. The OIG will review hospitals' incentive payment calculations to identify potential overpayments resulting from inaccuracies in the hospitals' calculations of total incentive payments.

Another recently added OIG Work Plan item impacting digital health involves review of Medicare Part B payments for services provided via telehealth. By way of background, Medicare reimburses providers for telehealth services under a very limited set of circumstances. First, a beneficiary must receive services at an originating site (i) located in a rural area, and (ii) in a practitioner's office or specified medical facility, not the beneficiary's home. Second, services must be delivered via live, interactive videoconferencing. Third, providers must use a specific modifier to designate claims for services provided via telehealth. The OIG will focus its pending review on payments for telehealth services provided at distant sites with no corresponding claim from an originating site.

Given the increased scrutiny of EHR meaningful use and telehealth payments, health care providers should strengthen compliance protocols in both areas.

- Providers submitting claims for EHR incentive payments should conduct self-audits of meaningful use attestations and maintain complete supporting documentation.
- In seeking reimbursement for telehealth services, distant site providers should verify that originating sites meet location requirements for reimbursement under Medicare Part B and consider contractual risk-sharing strategies like effective representations, collaboration covenants, and indemnification in agreements with originating sites.

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