



DEPARTMENT OF HEALTH AND HUMAN SERVICES

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**OFFICE OF INSPECTOR GENERAL**

WASHINGTON, DC 20201



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**OIG Policy Statement Regarding Physicians and Other Practitioners That Reduce or Waive Amounts Owed by Federal Health Care Program Beneficiaries for Telehealth Services During the 2019 Novel Coronavirus (COVID-19) Outbreak**

**March 17, 2020**

In response to the unique circumstances resulting from the outbreak of 2019 novel coronavirus (COVID-19) and the Secretary's January 31, 2020, determination, pursuant to section 319 of the Public Health Service Act, that a public health emergency exists and has existed since January 27, 2020 (COVID-19 Declaration),<sup>1</sup> the Office of Inspector General (OIG) issues this Policy Statement to notify physicians and other practitioners that they will not be subject to administrative sanctions for reducing or waiving any cost-sharing obligations Federal health care program beneficiaries may owe for telehealth services furnished consistent with the then-applicable coverage and payment rules, subject to the conditions specified herein.

OIG is committed to protecting patients by ensuring that healthcare providers have the regulatory flexibility necessary to adequately respond to COVID-19 concerns. Ordinarily, routine reductions or waivers of costs owed by Federal health care program beneficiaries, including cost-sharing amounts such as coinsurance and deductibles, potentially implicate the Federal anti-kickback statute,<sup>2</sup> the civil monetary penalty and exclusion laws related to kickbacks,<sup>3</sup> and the civil monetary penalty law prohibition on inducements to beneficiaries.<sup>4</sup> Nonetheless, recognizing the unique circumstances resulting from the COVID-19 outbreak, OIG will not subject physicians and other practitioners to OIG administrative sanctions for arrangements that satisfy both of the following conditions:

1. A physician or other practitioner reduces or waives cost-sharing obligations (*i.e.*, coinsurance and deductibles) that a beneficiary may owe for telehealth services furnished consistent with the then-applicable coverage and payment rules.
2. The telehealth services are furnished during the time period subject to the COVID-19 Declaration.<sup>5</sup>

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<sup>1</sup> See U.S. Department of Health & Human Services, *Determination that a Public Health Emergency Exists* (Jan. 31, 2020), available at

<https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx>.

<sup>2</sup> Section 1128B(b) of the Social Security Act (Act), 42 U.S.C. § 1320a-7b(b).

<sup>3</sup> Sections 1128(b)(7) and 1128A(a)(7) of the Act, 42 U.S.C. §§ 1320a-7(b)(7) and 1320a-7a(a)(7).

<sup>4</sup> Section 1128A(a)(5) of the Act, 42 U.S.C. § 1320a-7a(a)(5).

<sup>5</sup> Note that “[a public health emergency] declaration lasts until the Secretary declares that the [public health emergency] no longer exists or upon the expiration of the 90-day period beginning on the date the Secretary declared a [public health emergency] exists, whichever occurs first. The Secretary may extend the [public health emergency] declaration for subsequent 90-day periods

This Policy Statement is subject to the following considerations:

1. Nothing in this Policy Statement *requires* physicians or other practitioners to reduce or waive any cost-sharing obligations Federal health care program beneficiaries may owe for telehealth services during the time period specified in condition 2 above.
2. For any free telehealth services furnished during the time period subject to the COVID-19 Declaration, OIG will not view the provision of free telehealth services alone to be an inducement or as likely to influence future referrals (*i.e.*, OIG will not view the furnishing of subsequent services occurring as a result of the free telehealth services, without more, as evidence of an inducement).
3. Nothing in this Policy Statement affects the operation of CMS's programmatic rules and regulations.
4. Nothing in this Policy Statement otherwise affects a physician's or other practitioner's responsibility to bill only for services performed and to comply with legal authorities related to proper billing, claims submission, cost reporting, or related conduct.
5. Nothing in this Policy Statement affects a physician's or other practitioner's responsibility to comply with Federal, State, or local statute, rule, regulation, ordinance, or other law that may be applicable in effect at the time.

**OIG reserves the right to reconsider the issues raised in this Policy Statement and to modify or terminate this Policy Statement.**

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for as long as the [public health emergency] continues to exist, and may terminate the declaration whenever he determines that the [public health emergency] has ceased to exist.” See U.S. Department of Health & Human Services, *Public Health Emergency Declaration Q&As*, available at <https://www.phe.gov/Preparedness/legal/Pages/phe-qa.aspx#faq7>.