



Welcome!

Please locate the **questions portion** of the webinar panel. This is the place for you to ask questions, comment, and engage!

Recent Regulatory Updates and Compliance Standards

August 26, 2020



A **smarter** healthcare makes a **safer** healthcare.

We monitor your healthcare populations to identify compliance and credential issues before they impact patients.

Say **hello** to today's presenter.



Mike Rosen, Esq.
Co-founder, ProviderTrust



Today's Agenda:

1. HHS OIG Updates
2. Telehealth Expansion
3. COVID-19 News
4. DOJ Guidance

HHS OIG Updates



HHS OIG Turnover

April 2019

OIG IG Daniel Levinson Resigns

December 2019

OIG Acting IG Joanne Chiedi Retires

January 2019

Christi A. Grimm assumes responsibility as Principal Deputy Inspector General

May 2020

Trump Administration nominates Jason Weida (assistant U.S. Attorney, Boston) as permanent OIG Inspector General

May:

Christi A. Grimm speaks with the U.S. House of Representatives Committee on **Oversight and Reform** for a **COVID-19 Briefing**.

The Trump administration nominated Jason Weida, an Assistant U.S. Attorney in Boston to become the **next permanent HHS OIG Inspector General**. He has yet to be confirmed.



[Watch Christi A. Grimm's COVID-19 Testimony](#)



HHS OIG Work Plan Updates

May

- Audit of Nursing Home Infection Prevention and Control Program Deficiencies
- Audit of CARES Act Provider Relief Funds-Distribution of \$50 Billion to Health Care Providers

June

- A Review of Medicare Data To Understand Hospital Utilization During COVID-19
- Opioid Treatment Program Challenges During the COVID-19 Pandemic

July

- **Medicaid: Expedited Provider Enrollment During COVID-19 Emergency**
- Geographic Distribution of Provider Relief Funds to Communities Disproportionately Impacted by Adverse COVID-19 Outcomes
- Use of Medicare Telehealth Services During the COVID-19 Pandemic

View all HHS OIG Work Plan Updates, [here](#).



OIG Administrative Enforcement Authorities

OIG Inquiries for Enforcement Authorities During COVID-19

- Federal Anti-Kickback Statute
- CMP Beneficiary Inducements

Submit an Inquiry:



OIGComplianceSuggestions@oig.hhs.gov

View the full [FAQ Section](#) for COVID-19 Questions.



Visit the HHS OIG COVID-19 Portal

Fraud Alerts

Policies and Guidance

Emergency Response Toolkits

Telehealth Expansion



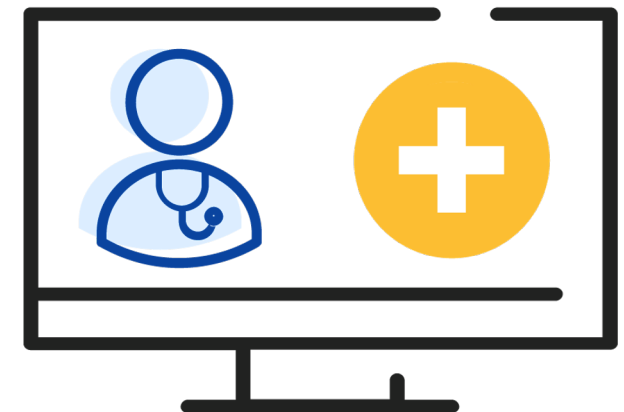
CMS Telehealth **Waivers**

CMS has broadened access to Medicare telehealth services so that beneficiaries can receive a wider range of services from their doctors without having to travel to a healthcare facility.

CMS is expanding this benefit on a temporary and emergency basis under the **1135 waiver authority** and Coronavirus Preparedness and Response Supplemental Appropriations Act..

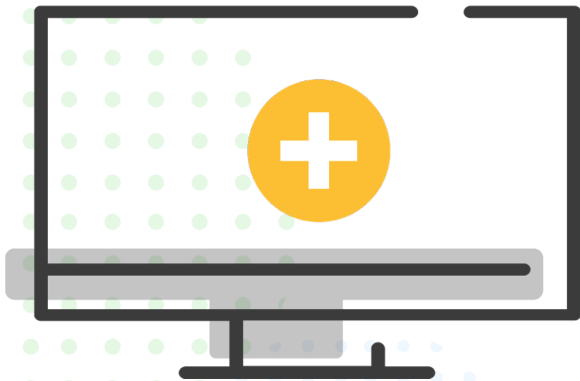
In April, **43.5% of all Medicare primary care visits** were being conducted through telehealth.

Services covered: Medicare **telehealth visits, virtual check-ins,** and **e-visits.**





Exponential Growth



HHS Report on Medicare Telehealth Activity

- Before the public health emergency (PHE), only 14,000 beneficiaries received a Medicare telehealth service in a week while over 10.1 million beneficiaries have received a Medicare telehealth service during the public health emergency from mid-March through early-July

Roll Back of Telehealth Payment and Location Restrictions

- Medicare to reimburse more broadly for telehealth, 135 telehealth services are covered by FFS Medicare for its almost 40 million beneficiaries.

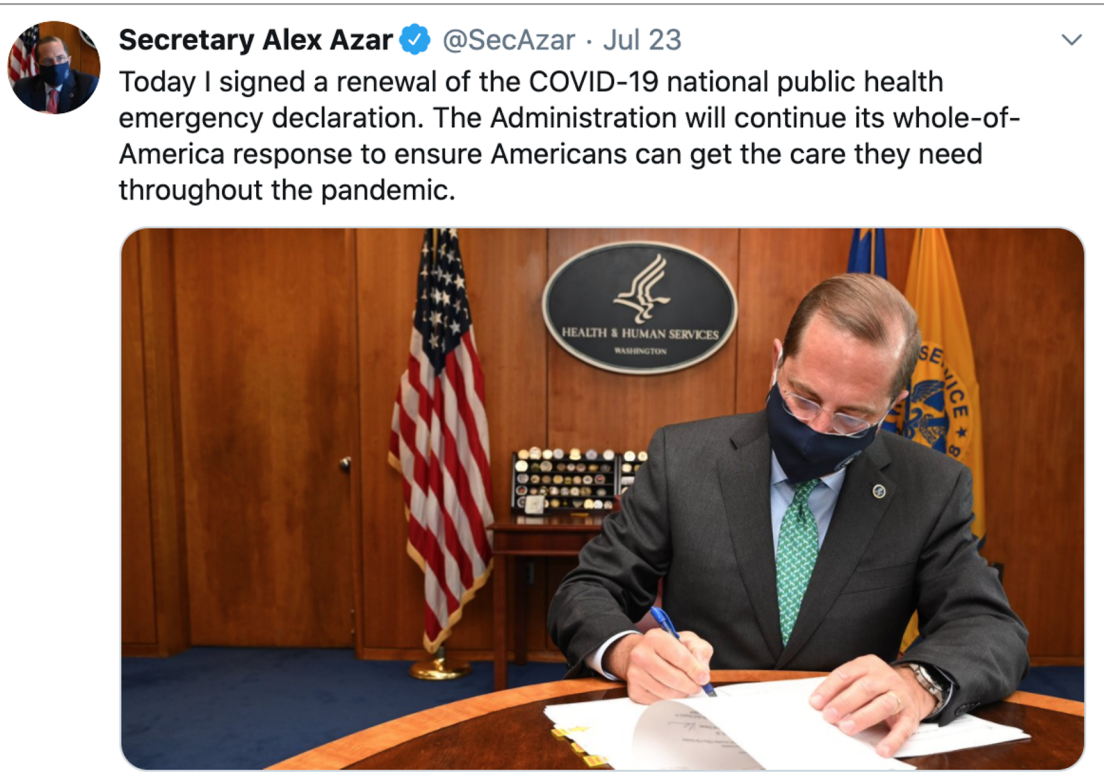
Rural Health Initiative

- Trump Administration Executive Order aims to improve access and quality
- Community Health Access and Rural Transformation [\(CHART\) Program](#)

COVID-19 News

Public Health Emergency **Extension**

July 23



HHS Secretary Alex Azar extends the Public Health Emergency

- Extended the PHE for at least 90 more days
- Increased Medicaid funding
- Hospital benefits and flexibility continues
- Less restrictions on care and reimbursement
- Waivers and license portability continues for certain states

State Medical Board Updates

- Review each state's [emergency waivers and updates](#) to understand specific emergency guidelines and credential renewal expectations.



CMS Updates and Releases

August 17

CMS Audits Resume

- CMS will resume routine inspections of all Medicare and Medicaid certified providers and suppliers to improve the safety and quality of life of patients and residents.
- Resumption of onsite revisit surveys, non-immediate jeopardy complaint surveys and annual recertification surveys as soon as resources are available.
- Providing guidance on resolving enforcement cases that were previously on hold because of survey prioritization changes.
- Expand the desk review policy, when state surveyors ensure that facilities return back into compliance with Federal requirements without an onsite survey, to include all noncompliance reviews except for immediate jeopardy citations that have not been removed

Toolkit on State Actions to Mitigate COVID-19 Prevalence in Nursing Homes

- View the Nursing Home Toolkit, [here](#).



Be Aware of Security Threats

Identifying Bad Actors

- **Independently verify the identity** of any company, charity, or individual that contacts you regarding COVID-19.
- **Check the websites and email addresses** offering information, products, or services related to COVID-19. Be aware that scammers often employ addresses that differ only slightly from those belonging to the entities they are impersonating.
- **Be wary of unsolicited emails** offering information, supplies, or treatment for COVID-19.
- **Do not click on links or open email attachments** from unknown or unverified sources. Doing so could download a virus onto your computer or device.
- Make sure the **anti-malware and antivirus software** on your computer is operating and up to date.

*Recommendations from the DOJ



Federal Healthcare Fraud Warnings

FBI Warns of Advance Fee and BEC Schemes Related to Procurement of PPE

The FBI advises to be on the lookout for any suspicious activity, to include:

- Unusual payment terms (e.g., supplier asking for up-front payments or proof of payment)
- Last-minute price changes
- Last-minute excuses for delay in shipment (e.g., claims that the equipment was seized at port or stuck in customs)
- Unexplained source of bulk supply



U.S. Department of Justice Creates Coronavirus Response Portal

- Informs the public and healthcare organizations about fraudulent schemes
- Report price gouging and PPE hoarding
- Provides safe ways to report on healthcare fraud



Polling Question

Which risks are you most focused on right now?

DOJ Guidance



Principles of Federal Prosecution of Businesses

This DOJ document guides the investigation and decision making of whether criminal prosecution should be sought or if a civil settlement should be pursued.



Section 9.28.300 - Factors to be considered

One of the factors to be considered is the effectiveness of a corporate compliance program. The guidance listed below relates specifically to this section.

Section 9.28.800 - Corporate Compliance Programs

This section provides a description of a corporate compliance program and some context for investigating.

9-28.800 - CORPORATE COMPLIANCE PROGRAMS

A. General Principle: Compliance programs are established by corporate management to prevent and detect misconduct and to ensure that corporate activities are conducted in accordance with applicable criminal and civil laws, regulations, and rules. The Department encourages such corporate self-policing, including voluntary disclosures to the government of any problems that are sufficient, in all circumstances, to warrant prosecution of employees, or of the corporation, or of its officers or directors.

9-28.300 - FACTORS TO BE CONSIDERED

A. General Principle: Generally, prosecutors apply the same factors in determining whether to charge a corporation as they do with respect to individuals. See [JM 9-27.220 et seq.](#) Thus, the prosecutor must weigh all of the factors normally considered in the sound exercise of prosecutorial judgment: the sufficiency of the evidence; the likelihood of success at trial; the probable deterrent, rehabilitative, and other consequences of conviction; and the adequacy of noncriminal approaches. See *id.* However, due to the nature of the corporate "person," some additional factors are present. In conducting an investigation, determining whether to bring charges, and negotiating plea or other agreements, prosecutors should consider the following factors in reaching a decision as to the proper treatment of a corporate target:

1. the nature and seriousness of the offense, including the risk of harm to the public, and applicable policies and priorities, if any, governing the prosecution of corporations for particular categories of crime (see [JM 9-28.400](#));
2. the pervasiveness of wrongdoing within the corporation, including the complicity in, or the condoning of, the wrongdoing by corporate management (see [JM 9-28.500](#));
3. the corporation's history of similar misconduct, including prior criminal, civil, and regulatory enforcement actions against it (see [JM 9-28.600](#));
4. the corporation's willingness to cooperate, including as to potential wrongdoing by its agents (see [JM 9-28.700](#));
5. the adequacy and effectiveness of the corporation's compliance program at the time of the offense, as well as at the time of a charging decision (see [JM 9-28.800](#));
6. the corporation's timely and voluntary disclosure of wrongdoing (see [JM 9-28.900](#));
7. the corporation's remedial actions, including, but not limited to, any efforts to implement an adequate and effective corporate compliance program or to improve an existing one, to replace responsible management, to discipline or terminate wrongdoers, or to pay restitution (see [JM 9-28.1000](#));
8. collateral consequences, including whether there is disproportionate harm to shareholders, pension holders, employees, and others not proven personally culpable, as well as impact on the public arising from the prosecution (see [JM 9-28.1100](#));
9. the adequacy of remedies such as civil or regulatory enforcement actions, including remedies resulting from the corporation's cooperation with relevant government agencies (see [JM 9-28.1200](#));
10. the adequacy of the prosecution of individuals responsible for the corporation's malfeasance (see [JM 9-28.1300](#)); and
11. the interests of any victims (see [JM 9-28.1400](#)).

Third-Party Due Diligence

DOJ - 9.28.800



Questions to Consider

- How is your organization monitoring third-parties?
- Does your organization engage in risk management of third parties throughout the lifespan of the relationship, or primarily during the onboarding process?



What if Risk is Found?

- Has a similar third party been suspended, terminated, or audited as a result of compliance issue?

Evaluation of Corporate Compliance Programs



June 2020 Update

This guidance was put together by the DOJ to help prosecutors apply certain factors and give credit to organizations for good corporate compliance programs when making criminal prosecution decisions.

As the Justice Manual notes, there are three **fundamental questions** a prosecutor should ask:

- 1. Is the corporation's compliance program **well designed**?**
- 2. Is the program being applied **earnestly** and in **good faith**? In other words, is the program adequately resourced and empowered to function effectively?**
- 3. Does the corporation's compliance program **work in practice**?**



Resources

1. [HHS OIG Work Plan Items](#)
2. [CMS News Update - Telehealth Expansion](#)
3. [CMS Preliminary Medicare COVID-19 Data Snapshot](#)
4. [DOJ - 9-28.000 - PRINCIPLES OF FEDERAL PROSECUTION OF BUSINESS ORGANIZATIONS](#)
5. [DOJ - Evaluation of Corporate Compliance Programs \(June Update\)](#)
6. [ProviderTrust License Portability and State Medical Board Waivers Portal](#)
7. [ASPE ISSUE BRIEF: MEDICARE BENEFICIARY USE OF TELEHEALTH VISITS: EARLY DATA FROM THE START OF THE COVID-19 PANDEMIC](#)
8. [Healthcare Dive - Public Health Emergency Extended](#)
9. [HHS OIG COVID-19 Portal](#)
10. [HHS OIG - FAQs–Application of OIG's Administrative Enforcement Authorities to Arrangements Directly Connected to the Coronavirus Disease 2019 \(COVID-19\) Public Health Emergency](#)
11. [HHS OIG COVID-19 Fraud Alert](#)
12. [U.S. House Oversight and Reform Committee - Christ A. Grimm COVID-19 Testimony](#)
13. [Briefing with the Principal Deputy Inspector General for the Department of Health and Human Services](#)
14. [Trump Administration Nominates Jason Weida for HHS OIG Inspector General](#)

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