



## Health Care ADVISORY ■

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### OIG Releases Its Semiannual Report to Congress and Reports on COVID-19 Testing Concerns

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The Department of Health and Human Services (HHS) Office of Inspector General (OIG) is required by statute to submit semiannual reports on its efforts to both HHS and Congress. In [its most recent semiannual report](#), issued December 5, 2022, OIG renewed its commitment to “drive positive change” in HHS programs and in the lives of program beneficiaries. The report highlights another record year in recovering funds subject to fraud, waste, and abuse, including nearly \$1.2 billion in expected audit recoveries and \$2.73 billion in expected investigative recoveries for Fiscal Year 2022. Pandemic-related programs and the ongoing opioid crisis continue to be significant focal points of OIG’s work, as does nursing home oversight and ensuring the health and safety of the elderly, children, and adults with developmental differences. However, OIG’s work also extended to cybersecurity, health care equity, reducing prescription drug costs, protecting the Medicare Trust Fund, and promoting program integrity (particularly for Medicare Advantage and Medicaid Managed Care).

#### **A Shift in COVID-19 Investigations Is Coming**

In addition to the numerous reports already issued addressing COVID-19, pandemic-related programs and activities continue to be a focus for OIG. The vast majority of OIG’s reports to date have focused on how HHS’s own agencies, particularly the Health Resources and Services Administration and the Food and Drug Administration, operated pandemic-related programs and activities. As OIG moves past internal evaluations, health care providers, particularly high-dollar recipients, can expect OIG’s future audits and investigations to shift toward determining how program participants utilized pandemic-related funding, particularly participants in the Provider Relief Fund and the COVID-19 Uninsured Program.

#### **Opioid Abuse and Treatment Will Continue to Be a Priority**

In FY 2022, OIG continued its efforts to protect beneficiaries from prescription drug abuse. OIG highlighted its efforts, in coordination with the Department of Justice, to stem the tide of prescription drug diversion

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and misuse. OIG also issued a report noting that Medicare beneficiaries often have limited options when seeking treatment for opioid use disorder. If the Centers for Medicare & Medicaid Services (CMS) implements OIG's recommendations, we should expect a shift in focus to more reliable access to addiction treatment under the Medicare and Medicaid programs.

### **Telehealth's Benefits and Risks**

OIG continues to highlight the risks and benefits of telehealth services. On the positive side, one OIG report noted that access to telehealth aided in ensuring more equitable access to high-quality care, particularly among urban and Hispanic program beneficiaries. On the negative side, however, another report highlighted the program integrity risks associated with the provision of telehealth, particularly noting the high incidence of fraudulent billing. While pandemic-related waivers that promoted telehealth services are beginning to be rolled back, beneficiaries and advocacy groups have been pushing the Administration to continue to permit telehealth flexibilities. Providers should expect the government's efforts in this area to continue to evolve and should also expect increased OIG efforts to oversee the provision of care via telehealth.

### **Patient Safety Will Continue to Be a Concern**

In one report, OIG found that nearly a quarter of Medicare patients experienced patient harm during hospital stays in just one month (October 2018). Specifically, OIG determined that patient harm from medications, procedures, surgeries, and infections resulted in adverse events or undesirable clinical outcomes not associated with the beneficiaries' underlying diseases. Providers should expect CMS, OIG, and state enforcement agencies to focus on these issues as they initiate policies to prevent such harms.

### **COVID-19 Testing Is Under the Microscope**

The day after the release of the semiannual report, OIG released a separate evaluation report on labs that had billed Medicare for questionably high levels of additional respiratory tests alongside COVID-19 tests in 2020. Specifically, OIG found that nearly 44% of the nearly 20,000 labs that billed Medicare for COVID-19 tests included additional testing, such as individual respiratory tests or respiratory pathogen panels. OIG asserted that many of these labs (378) had questionably high levels in volume, payment amount, or both, with Medicare reimbursing some additional tests at six times more than COVID-19 testing alone. Given the disarray of testing during the early stages of the pandemic and the significant amount of Medicare and Medicaid reimbursement utilized for these tests, clinical labs and providers should expect significant scrutiny of COVID-19 testing claims submissions.

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Alston & Bird has launched the [Digital Transformation of Health Care](#), an initiative that advances our commitment to an industry approach to providing legal services in the health care space. Our health care and technology teams can assist with establishing or significantly growing telehealth capabilities and navigating the regulatory landscape.

If you have any questions, or would like additional information, please contact one of the attorneys in our [Health Care Group](#).

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