Ambulance Alert: Increased Fraud Risks for Medical Transport Providers

Healthcare fraud risks in medical transport services has been receiving increasing attention. In Tennessee, the owners of Murfreesboro Ambulance Service face not merely exclusion but up to twenty year prison terms based on charges that they billed Medicare and Medicaid over $587,000 for unnecessary transportation.[1] According to allegations, the company transported more than one patient at a time, allowed patients to sit in the front seat, placed patients who were allowed to walk on stretchers, and even billed Medicare for supposed trips to a dialysis clinic while taking patients to pick up food orders.

While Murfreesboro Ambulance Services is an extreme case, the risk of healthcare fraud abound in ambulance and medical transport services. Ambulance companies are subject to a number of regulations regulatory risks, the most common being questions of medical necessity for transports, and the adequacy and accuracy of documentation and billing information for Medicare reimbursements. In recent years, the question of federal anti-kickback statute violations in ambulance contracts with municipalities, hospitals and other responders has been a subject of increased attention. For example, Medicare's fraud investigation arm, the Office of Inspector General ("OIG") has investigated whether medical transport companies are subsidizing transport costs that are the responsibility of skilled nursing facilities (Medicare Part A trips) in order to induce those facilities to refer Medicare Part B trips that are independently reimbursable.[2] Medical necessity, documentation, and anti-kickback concerns are only the beginning of a long list of critical issues that transport companies must consider in obtaining and maintaining licensure and necessary certifications, operating and submitting reimbursement claims.

Federal and state oversight of medical transport is on an upswing. One of the issues in the Murfreesboro Ambulance case involves the transportation to a dialysis clinic, which would ordinarily be considered a nonemergency medical transportation service ("NEMT"). NEMT violations are frequently the source of federal fraud investigations.[3] According to a report issued by the Office of Inspector General of the Department of Health and Human Services, there were over five hundred NEMT investigations between 2004 and 2006, emanating from suspicions that medical transport is unnecessary for many of these trips.

Federal regulations allow ambulances to provide medically necessary services and NEMT services, but determining how to classify a particular trip can be challenging. An ambulance service is considered "medically necessary" if a beneficiary is in such condition that other means of transportation are contraindicated.[4] NEMT may be appropriate if the beneficiary is bed-confined, or the beneficiary's medical condition is such that transportation by ambulance is required.[5] Medicare may also cover nonemergency transportation in specific circumstances, including the transporting renal dialysis patients to and from appointments at issue in the Mufreesboro case.[6]
In addition to the existing ambulance company regulations, the Patient Protection and Affordable Care Act ("PPACA") includes a number of provisions applicable to ambulance companies. For example, Section 3401 of PPACA amends the repayment structure for ambulance services.[7] PPACA also provides federal prosecutors with enhanced tools for investigating and prosecuting Medicare fraud, which will impact ambulance companies.[8]

In a time of increasing regulatory enforcement, ambulance and medical transport providers should review their practices, contracts, documentation, and all aspects of operations and billings to ensure they are in full compliance with these complex regulations. While the Murfreesboro Ambulance Service case is an extreme example, many more ambulance and transport providers will find themselves under scrutiny in the near future. Ambulance companies would benefit from taking time before encountering government audits and investigations to examine their level of compliance.

For more information on Nelson Hardiman's services for ambulance and medical transport companies, contact alachant@nelsonhardiman.com.

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[1] http://www.dnj.com/article/20111204/NEWS06/112040311/Company-targeted-by-Feds-health-care-fraud
[2] See 68 C.F.R. 14245.
[3] Office of Inspector General, Memorandum Report: "Fraud and Abuse Safeguards for State Medicaid

Nonemergency Medical Transportation Services" OEI-06-07-00320, 2 (May 28, 2009).
[4] 42 C.F.R. 410.40(d)(1). In order for the ambulance service to be considered "medically necessary," the beneficiary's condition must require the ambulance transport, and the level of service provided by an ambulance. Id.
[5] 42 C.F.R. 410.40(d)(1).
[6] 42 C.F.R. 410.40(e)(4).
[7] Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010).
[8] *Id.* at 10606 (amending the sentencing guidelines for health care fraud convictions, and granting the United States Attorney general increased subpoena and prosecutorial powers).

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