

Rural Ridesharing: Providing Patient Transportation Assistance



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Transportation Services

Anti-Kickback Statute
New Local Transportation Safe Harbor

- Recent Changes to the Anti-Kickback Statute
 - On December 7, 2016, the OIG released a final rule codifying a new local transportation safe harbor which protects the provision by eligible entities of local transportation to existing patients who have a need for discounted or free transportation for the purpose of obtaining medically necessary services within a specified geographic area

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- Requirements to meet the Safe Harbor
 - Must be an **“Eligible Entity”** which is defined to include all entities and individuals including physicians, hospitals, physical therapists, dialysis facilities, home care agencies and entities that do not provide health care services to patients, such as managed care organizations
 - The provision of transportation must be for the delivery of **“Medically Necessary”** services
 - The patient must be an **“Established Patient”** which is defined to encompass both a returning patient as well as any patient who has made an initial appointment for medically necessary services but has not been previously seen. A patient is considered “established” once he or she selects and initiates contact with a hospital or other Eligible Entity to schedule an appointment

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- What does Local Transportation Mean?
 - Under the safe harbor, “**local transportation**” means transportation provided within 25 miles of the health care provider or supplier to or from which the individual is being transported in an urban area **OR** 50 miles if the individual resides in a rural area
 - These are separate and distinct limits
 - Urban has its own definition – Metropolitan Statistical Area (MSA) or New England County Metropolitan Area
 - Rural is defined as an area that is not urban (i.e., anything outside of a MSA)

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- Mileage is measured directly (as the crow flies – straight route)
- This is a bright line test which is easy to apply
- Thus, the safe harbor protects transportation to a hospital or other Eligible Entity and back to a patient’s home – so long as all the requirements of the safe harbor are met
- The transportation **does not have to be planned in advance**
- Eligible Entities wanting to provide beneficial, low risk transportation arrangements that are outside of the Safe Harbor requirements should consult with their legal counsel to determine whether the arrangements are sufficiently low risk to be protected

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- Marketing Limitations
 - Transportation assistance cannot be publicly advertised or marketed to patients or others who are potential referral sources
 - No marketing of health care items or services can occur during the course of transportation
 - However, signage designating the source of the transportation on vehicles used to transport patients is an important safety feature and is not considered marketing

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- Providers cannot post signs or give patients pamphlets or other marketing or informational materials during transport
- Any discussion of services that patients may receive should come from the health care provider and not the transportation provider
- Cannot use transportation as a sales tool

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- Stark Law Implications
 - If free/discounted local transportation is provided to a physician or a family member of a physician who refers patients to the hospital or other Eligible Entity that provides Designated Health Services (DHS), then the value of the local transportation will need to be included within Non-Monetary Compensation exception
 - Review current transportation policy regarding physicians and physician family members

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- HIPAA
 - When local transportation is being provided to a patient, the information provided to the transportation provider (e.g. patient name, address, telephone number) is considered Protected Health Information ("PHI")
 - Then why isn't there a BAA with Liberty/Lyft/Uber/taxi company?
 - Because a BAA between the Hospital/Health System and Lyft/Uber would not reach the drivers who are independent third parties
 - As such, a secondary agreement (e.g. individual BAAs or agreements tying the drivers back to the Concierge Agreement/BAA) with **EACH** driver would be necessary to obtain the protections afforded by a BAA which may not be practical

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- HIPAA Compliance: Two Prong Approach
 1. **Hybrid Entity Status**
 - If a covered entity provides a non-covered function, meaning a function that does not trigger covered entity status, then it can designate itself as a hybrid entity
 - As a hybrid entity, its covered functions will be subject to HIPAA and its non-covered functions will not be subject to HIPAA
 - As such, a Hybrid Entity Policy identifies which functions of the health system or hospital are covered by HIPAA and which functions are not (e.g. gift stores, school nurses, and arranging patient transportation)
 - Local transportation services requested through the dashboard should be added to the policy as a non-covered function
 - Once identified as a non-covered function, HIPAA is not applicable

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2. **HIPAA Authorization**
 - The patient expressly consents to the release of limited PHI to the transportation provider (Liberty, Lyft, Uber, taxi) and the underlying drivers
 - This can be accomplished by having the patient sign the Consent and Waiver for Transportation form which includes HIPAA authorization

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- Consent and Waiver for Transportation
 - A Consent and Waiver for Transportation form will need to be prepared for Hospital or other Eligible Entity use
 - The form serves dual purposes:
 - From a HIPAA compliance perspective, the patient is expressly authorizing the release of PHI to the transportation provider and driver
 - From a liability perspective, the patient is acknowledging and accepting the risks associated with the provision of transportation services provided by an independent driver

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- State Law
 - In addition to complying with federal regulations (e.g. Anti-Kickback Statute, Stark Law), implementation of services such as transportation for hire must also align with state law and municipal ordinances

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