



Helping Your Patients Get There:

What You Need to Know About Offering Patient Transportation

By Laura F. Fryan

HAVE YOU EVER THOUGHT ABOUT HOW YOUR PATIENTS GET TO YOUR OFFICE FOR THEIR APPOINTMENTS?

FOR MANY PATIENTS, transportation to and from appointments is a barrier to receiving medical care.

In October 2014, the Office of Inspector General of the U.S. Department of Health and Human Services (OIG) proposed a new safe harbor to the Anti-Kickback Statute to protect free or discounted local transportation for patients to obtain medically necessary items and services. An “Eligible Entity,” including physicians, clinics, hospitals, and health systems, may offer transportation services to established patients at the entity’s cost. The proposed safe harbor would codify transportation arrangements that have previously been approved by the OIG in advisory opinions. Transportation arrangements under the proposed safe harbor are limited by the following conditions:

- + “Eligible Entity” is narrowly defined. It does not include manufacturers, laboratories, and suppliers of healthcare items, such as durable medical equipment and pharmaceuticals. The proposed rule sought comments as to whether home health agencies and other types of providers should be excluded as well.
- + Transportation can only be offered to established patients, not new patients. Once a patient has selected a practice

and has attended an appointment with a physician there, the physician can offer transportation assistance to the patient.

- + Transportation must be offered to all patients. The offer cannot be made only to patients referred by particular healthcare providers or suppliers, and the transportation cannot be offered to patients contingent on the patient’s seeing particular providers or suppliers who may be referral sources for the provider.
- + Providers may place restrictions on use of the transportation, but the restrictions must be unrelated to the volume or value of referrals and cannot be based on the type of treatment a patient may receive. The proposed safe harbor would allow a provider to restrict offers of free or discounted local transportation to patients whose conditions require frequent or critical appointments or patients with chronic conditions.
- + The form of transportation excludes air, luxury and ambulance-level transportation. The proposed rule also excludes transportation services that are publicly advertised or marketed to patients or others who are potential referral sources. Physician groups and hospitals can put their logos

on the vehicle transporting patients, but no other marketing of healthcare items and services can occur during the transportation.

- + Perhaps the most limiting requirement is the range of the transportation. If a patient is transported no more than 25 miles, then the transportation is considered “local.” There is no clarification as to whether this means a 25-mile round trip or 25 miles one way. The proposed rule solicited comments on whether to allow a more expansive service area for patients who reside in rural or underserved areas, but providers will need to consider this limitation carefully before offering transportation under this proposed safe harbor.

Certain parts of the rule will require more clarification, such as which providers are excluded from offering transportation services and how many miles a patient can be transported. However, providers have the opportunity to make their services more readily accessible under this proposed safe harbor, and patients can benefit from the convenience through consistency and continuity of care.

Laura Fryan is an attorney with the full-service corporate law firm of Brouse McDowell in Akron, Ohio. Her practice focuses on health care. ■