

Need a Ride? A Lyft? Or an Uber?

The Anti-Kickback Statute's Local Transportation Safe Harbor



The Office of Inspector General's (OIG) Final Rule establishing new safe harbors to the Anti-Kickback Statute and exceptions to the beneficiary inducement provisions of the Civil Monetary Penalties law went into effect January 6, 2017.

One new safe harbor having an impact on several Diamond programs is the Local Transportation Safe Harbor. The following provides an overview of the Local Transportation Safe Harbor and addresses the most frequently asked questions from our programs.

Q: What is The Local Transportation Safe Harbor?

A: The Local Transportation Safe Harbor provides protection for free or discounted local transportation made available by an eligible entity to a federal health care program beneficiary when the following criteria are met:

- The transportation service is set forth in a policy that is uniformly applied and consistent (not determined based on past or anticipated volume or value of federal health care program business)
- The transportation service is not publicly marketed or advertised (**this includes brochures and websites**)
- The transportation service is made available to an established patient as defined below
- The transportation is not provided via air, luxury or ambulance service
- There is no marketing of services that occurs during the transportation service
- Drivers or staff are not paid on a per-beneficiary-transported basis
- Transportation is offered within appropriate geographic limitations (within 25 miles of the provider to or from which the patient is transported, provided that, if the provider is in a "rural area" the limit is extended to 50 miles)
- The transportation service is available only for the purposes of obtaining medically necessary items and services
- The entity bears the cost of the transportation and does not pass the cost on to Medicare, other payers or the individual\

The safe harbor allows for a practice that, although would potentially implicate the Anti-Kickback Statute, is not treated as an offense under the statute thus providing protection for the eligible entity.

Q: Who is considered an "established patient" for purposes of offering transportation?

A: The Final Rule now defines an established patient as:

- An individual/patient who has attended an appointment with the provider or supplier, OR
- An individual/patient who has selected and initiated contact with a provider or supplier to schedule an appointment. [NOTE: If the individual/patient is unable to call a provider on their own, or has otherwise given consent to a family member or case manager, etc. to make the call, then the request for the appointment made on behalf of the patient is sufficient to meet the safe harbor criterion. This must occur independent of any influence by the selected provider.]



For example, a scenario in which a case manager (i.e., someone coordinating a patient's care) reaches out to schedule an appointment for someone and asks the provider if transportation might be available would be a protected situation under the safe harbor provided that all other conditions were met. However, a health care provider who reaches out to a potential patient (or to the patient's case manager) and asks to have the new patient come in, coupled with an offer of transportation would not be a protected situation under the safe harbor as it does not evidence that the patient has selected the provider by initiating contact.

Q: If an individual/potential new patient calls and requests an appointment and it is determined that transportation is needed based on the facility policy, is an order required prior to providing transportation?

A: No, a physician order for transportation to the appointment is not required under the safe harbor. However, it is important to follow individual facility policies and processes for requesting and providing transportation (including securing a transportation order if required by the facility). Additionally, programs should have a method for documenting patient calls indicating whether the individual is making a first appointment or whether someone else (name and relationship) is calling on his/her behalf.

Q: Under the safe harbor, can transportation be provided back to the patient's home?

A: Yes, all other conditions being met, the safe harbor provides protection for transportation both to a provider and back to that patient's home.

Q: Can an entity provide transportation via a taxi service or utilize Uber or Lyft for patients to come to appointments or receive care?

A: Yes, all other criteria being met, services such as Uber or Lyft can be utilized. However, a service such as UberSELECT or Lyft Premier would not fall under the safe harbor as these are considered luxury, high-end modes of transportation.

Q: What about the use of transportation vouchers?

A: Transportation may be provided either directly by the eligible entity or through vouchers. Remember that the eligible entity must bear the cost of the transportation. If transportation is offered via a driver or private company hired by the eligible entity, the entity cannot pay the service provider on a per-patient transported basis (it could pay on the basis of total distance traveled by a vehicle).

If the transportation is provided via public transportation such as a bus, the transportation can be paid through vouchers or bus fare reimbursed to the individual patient but again, it must follow a stated transportation policy and entities should require valid receipts showing the cost of transportation and have a process for tracking and accounting of such services.

Q: What about offering shuttle service?

A: The Final Rule separately establishes protection under the safe harbor for shuttle services that provide local transportation using a set schedule and route. In operating the shuttle service, there must be no more than 25 miles between any stop and any location where health care items/services are provided along the shuttle's route (or up to 50 miles in "rural areas").

The shuttle service must comply with all of the requirements described above, with two important exceptions:

- Shuttle services need not be operated in accordance with a policy that is applied uniformly and consistently, although implementation of such a policy may be advisable from a risk management perspective, and
- Shuttle services need not be limited to established patients or provided for the sole purpose of obtaining medically necessary items and services (for example, employees, visitors and patients of an eligible entity may utilize the shuttles).

While the provisions of the new safe harbor allow for eligible entities to potentially increase access to care for those who may otherwise be restricted from seeking services due to transportation constraints; documentation and analysis of a particular entity's situation based on the Anti-Kickback statute is key. In light of the Final Rule, facilities should take a look at their policies and practices to assess compliance with the Anti-Kickback Statute, any applicable safe harbors and to determine what processes and records need to be in place to obtain the safe harbor protection.

¹81 Fed. Reg. 88368 (Dec. 7, 2016)

²An eligible entity is any individual or entity that provides healthcare items and services other than those that primarily supply and sell health care items, such as durable medical equipment suppliers or pharmaceutical companies