AHLA WEEKLY
10/14/2016

Offering Ridesharing Services to Patients: Uber Risky?

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More than three million Americans miss or delay medical appointments every year because of inadequate transportation,[1]and ridesharing companies are eager to break into the $3 billion industry.[2]

Several ridesharing companies are providing non-emergency medical transportation (NEMT) services in cities across the country. As traditional public transit and taxi cab services can be fraught with cancellations, delays, and lengthy travel time, ridesharing platforms appear to offer promising solutions to access and continuity of care issues, particularly for vulnerable patient populations with limited resources. Just as ridesharing companies have aimed to fill a need in the market for general transportation, they see a need to be met in the NEMT space as well.

Uber is the most recent ridesharing company to announce a NEMT initiative through a partnership with Circulation, a Boston-based startup, that intends to pilot a NEMT digital service initiative at three hospital locations on the East Coast, as well as an all-inclusive care program for the elderly.[3] Circulation's Health Insurance Portability and Accountability Act[4]- (HIPAA-) compliant platform integrates with existing hospital electronic medical records systems to pull patient contact information and medical history, allowing for verification of health insurance and ride eligibility, as well as auto-population of specific transportation needs (i.e., wheelchair assistance, hearing/vision impairment, or necessity to travel with a caregiver).

Circulation allows hospital transportation coordinators to schedule and manage rides to/from authorized sites (as determined by the hospital), restricting pick-up and drop-off locations in an effort to protect against system abuse. The hospital arranging for the ride pays the bill, but Circulation platform provides monthly expense reports and billing invoices to participating hospitals and each hospital may decide to sponsor rides for their patients, share ride costs with their patients, and/or submit claims for reimbursement, as appropriate.

Separate from its partnership with Circulation, Uber already offers NEMT services via unique partnerships with various hospitals across the country. Other ridesharing companies in the NEMT space include Lyft and Veyo. In January, Lyft, began offering NEMT services via the National Medtrans Network in New York and CareMore in California.[5] San Diego-based startup Veyo plans to offer NEMT services for Medicaid patients in Idaho.[6]

The benefits, however, should be considered in light of the various legal and regulatory risks the services pose including licensing, insurance, fraud and abuse, privacy, and reimbursement issues.

Licensing and Insurance

Providers should consider the legality of the platform itself, along with the potential risk of liability arising from driver negligence. Horrific news stories about violent or inappropriate drivers pop up with some consistency, and providers could find themselves entangled in a public relations and legal nightmare if they arrange for service with such a driver. Ridesharing companies often face intense scrutiny for licensing,[7] insurance,[8] and even discrimination[9] issues, which can become provider

issues if providers are arranging patient transportation services through these ridesharing companies. Providers should avoid joint-marketing initiatives with ridesharing companies to ensure a clear distinction between the transportation service and the provider's medical services. Providers also may wish to avoid an exclusive relationship with any one ridesharing company to decrease a patient's perception that the NEMT ridesharing company is an agent of the provider.

Fraud and Abuse

Ridesharing initiatives pose fraud and abuse concerns if providers offer these services at little or no cost to federal program beneficiaries. Potential violations of the Civil Monetary Penalties Law,[10] the federal Anti-Kickback Statute,[11] and Stark Law[12] can lead to severe penalties.[13]

The Department of Health and Human Services Office of Inspector General (OIG) has issued several Advisory Opinions acknowledging that "free transportation [arrangements] have . . . beneficial effects on patient care, especially where such arrangements are narrowly tailored to address issues of financial need, limited transportation resources, treatment compliance, or safety."[14]

To meet the favorable treatment of past OIG Advisory Opinions, providers must bear the total cost for the free transportation service and cannot shift such cost to any federal health care program, payer, or individual. The free transportation service should:

- be provided only to established patients for medically necessary services;[15]
- not target select profitable patient populations;[16]
- not be marketed or advertised;[17]
- not be provided via luxury transportation;[18]
- not be provided outside of a provider's geographic service area (25 miles)[19]; and
- not be of a greater value than $10 per trip or $50 per year per beneficiary.[20]

Of note, transportation to and from an offeror's premises presents a lower risk than transportation to a different provider or supplier.

Privacy

As with any arrangement, providers must consider HIPAA-associated privacy implications. Providers should consider the patient protected health information (PHI) that ridesharing companies may store including patient names, addresses, and phone numbers. Even if a platform is HIPAA-compliant, providers risk potential imposition of stiff penalties for data breaches, and Business Associate Agreements should be implemented between providers and ridesharing companies.

Reimbursement

With many, if not all, ridesharing NEMT programs, the provider pays the cost of transportation upfront and then determines whether to bill for it later. Providers seeking reimbursement should consider whether payers will reimburse for NEMT. Medicaid covers qualified NEMT, with the extent of reimbursement varying by state. Although traditional Medicare does not cover NEMT, commercial Medicare Advantage plans cover NEMT for nearly 70% of beneficiaries.[21] Private payer coverage will vary by contract.

Conclusion

For now, participating providers offering NEMT services face the lowest risk if such services are solely offered to established patients with financial need, without access to adequate transportation,

who require frequent appointments for high-risk medical needs. If in doubt, providers may always seek advice from experienced legal counsel on proposed arrangements.

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[1] Richard Wallace et al., *Access to Health Care and Nonemergency Medical Transportation: Two Missing Links*, Transportation Research Record Journal of the Transportation Research Board, at 76 (Jan. 2005).

[2] Richard Garrity and Kathy McGehee, *Impact of the Affordable Care Act on Non-Emergency Medical Transportation (NEMT): Assessment for Transit Agencies,* 2 (2014).

[3] *Circulation Chosen as Uber's Preferred Healthcare Platform Partner for Non-Emergency Medical Transportation; Launches Hospital Pilot Programs*, BusinessWire, Sept. 27, 2016, *available at*http://www.businesswire.com/news/home/20160927005396/en/Circulation-Chosen-Uber%E2%80%99s-Preferred-Healthcare-Platform-Partner.

[4] Pub. Law No. 104-191.

[5] Meg Bryant, *Rideshare Partnerships Could Help Lower Costs of Patient Transport*, HealthcareDIVE, Sept. 7, 2016,*available at* http://www.healthcaredive.com/news/rideshare-partnerships-could-help-lower-costs-of-patient-transport/425808.

[6] Audrey Dutton, *Can Uber-style rides work for Medicaid patients in Idaho?,* July 13, 2016, *available at*http://www.idahostatesman.com/news/local/watchdog/article89518017.html.

[7] Thompson Reuters, *Michigan Attacks May Renew Scrutiny of Uber Vetting Processes*, Bus. Ins., Feb. 23, 2016, *available at*, http://www.businessinsurance.com/article/20160223/NEWS06/160229950.

[8] Jason Williams, *Uber, Lyft Arrive Amid Praise, Scrutiny*, Cincinnati Enquirer, Apr. 10, 2014, *available at*http://www.cincinnati.com/story/news/2014/04/09/uber-lyft-raising-questions-safety-fairness/7506935.

[9] Dan Adams, *New Law Says Uber, Lyft Must be Accessible to All*, Boston Globe, Aug. 11, 2016, *available at*https://www.bostonglobe.com/business/2016/08/11/under-new-law-uber-and-lyft-must-accessible-all/gJ5E4Xvpf60A5la8Ad95HL/story.html.

[10] 42 U.S.C. § 1320a–7a.

[11] 42 U.S.C. § 1320a-7b.

[12] 42 U.S.C. § 1395nn. Note that a Stark Law implication will depend on whether a financial relationship exists between the transportation provider and the location to which the provider sends the beneficiary.

[13] John Carreyrou, *Florida Hospitals Agree to Settle Medicare-Fraud Allegations*, Wall St. J., Apr. 30, 2015 (Nine Jacksonville hospitals and an ambulance company paid $7.5 million to settle allegations of beneficiary inducement and improper Medicare billing for NEMT services), *available at* http://www.wsj.com/articles/florida-hospitals-agree-to-settle-medicare-fraud-allegations-1430419940.

[14] OIG Advisory Opinion no. No. 00-7 (Nov. 24, 2000).

[15] OIG Advisory Opinion no. 16-02 (Mar. 1, 2016); OIG Advisory Opinion no. 15-13 (Oct. 21, 2015); OIG Advisory Opinion no. 11-02 (Mar. 24, 2011); OIG Advisory Opinion no. 11-01 (Jan. 10, 2011); OIG Advisory Opinion no. 09-01 (Mar. 13, 2009).

[16] OIG Advisory Opinion no. 16-02 (Mar. 1, 2016); OIG Advisory Opinion no. 15-13 (Oct. 21, 2015); OIG Advisory Opinion no. 13-04 (June 14, 2013); OIG Advisory Opinion no. 11-02 (Mar. 24, 2011); OIG Advisory Opinion no. 11-01 (Jan. 10, 2011);OIG Advisory Opinion no. 09-01 (Mar. 13, 2009); OIG Advisory Opinion no. 00-7 (Nov. 24, 2000).

[17] OIG Advisory Opinion no. 16-02 (Mar. 1, 2016); OIG Advisory Opinion no. 15-13 (Oct. 21, 2015); OIG Advisory Opinion no. 13-04 (June 14, 2013); OIG Advisory Opinion no. 11-01 (Jan. 10, 2011); OIG Advisory Opinion no. 09-01 (Mar. 13, 2009).

[18] OIG Advisory Opinion no. 16-02 (Mar. 1, 2016); OIG Advisory Opinion no. 15-13 (Oct. 21, 2015).

[19] OIG Advisory Opinion no. 15-13 (Oct. 21, 2015); OIG Advisory Opinion no. 13-04 (June 14, 2013); OIG Advisory Opinion no. 00-7 (Nov. 24, 2000).

[20] OIG Advisory Opinion no. 11-02 (Mar. 24, 2011); OIG Advisory Opinion no. 09-01 (Mar. 13, 2009); OIG Advisory Opinion no. 00-7 (Nov. 24, 2000).

[21] Bryant, *supra* note 5.