

## HIPAA Business Associates

### Non-Emergency Medical Transportation (NEMT) brokers are Health Insurance Portability and Accountability Act (HIPAA) Business Associates of the Health Care Authority (HCA)

#### Background

As the Medicaid agency in Washington, the HCA ensures the provision of necessary medical transportation in accordance with federal regulations ([42 CFR 431.53](#)). The HCA provides this Medicaid benefit (non-emergency medical transportation or NEMT) through contracts with six regional [transportation brokers](#) ([42CFR 440.170](#)).

These HCA contracts designate the NEMT brokers as HIPAA Business Associates. The contracted NEMT brokers are required to document a client's medical transportation is eligible for payment under Medicaid rules. The HCA provides contracted NEMT brokers with information necessary to verify a client's Medicaid eligibility and benefit service package (BSP).

Upon learning from the HCA that a client is eligible for Medicaid, it is the broker's responsibility to confirm with the health care provider that the proposed service at the facility is Medicaid covered. A performance measure integral to the NEMT contract between the HCA and the broker requires that a minimum of 10% of trips be pre-verified and a minimum of 10% of trips post verified. Adherence to this performance measure is essential to control fraud and misuse of Medicaid funds. This information is a primary focus of both state and federal audits of the NEMT program. Failure to perform trip verification has the potential to lead to two unacceptable outcomes:

1. The broker may have to refuse to provide transportation service to a health care provider, and
2. State or federal audits will present significant fiscal findings against the HCA.

#### Federal Guidance

The HCA's consultation with the Centers of Medicare and Medicaid Services (CMS) provided the following guidance:


*The HIPAA Privacy Rule permits/requires a health care provider to disclose protected health information about an individual, without the individual's authorization, to*

*another health care provider (in this case the NEMT broker because this is non-emergency medical transportation) for the provider's treatment or payment purposes, as well as to another covered entity for certain health care operations of that entity ([45 CFR 164.506](#)). As a State Medicaid contract/trading partner with a valid trading partner agreement, the broker is required by its contract with the HCA, the state Medicaid agency, to request and receive necessary information for payment of the NEMT service (and the required prior authorization of the NEMT service).*

#### Necessary Information

The NEMT broker may request necessary information from health care providers to determine that payment for a client's medical transportation is allowable, such as but not limited to, the following:

- Appointment Information. Verification that a client has an appointment for a Medicaid-covered service, including details of that appointment, such as:
  - Appointment time, location, duration, and servicing and billing provider information (in addition to assuring that payment for the transportation can be authorized). This helps ensure a client arrives at the right place and time, for the correct provider, and that their return trip home can be scheduled as well;
  - Post-verification of the client keeping an appointment for which transportation was authorized (for the purpose of health care fraud and abuse detection or compliance), and that a Medicaid-covered service occurred on the day a trip was provided; and
  - In limited situations, the NEMT brokers may need details such as



the Medicaid-covered billing procedure codes, in case the health care provider offers non-Medicaid services as well as Medicaid-covered services at the appointment location. To determine if payment for non-emergency medical transportation can be authorized, the NEMT broker uses this information to verify whether the procedure is Medicaid-covered by referencing the HCA's Medicaid [Provider Guides](#).

- Justification for a certain type of non-emergency medical transportation, or for transportation which is more costly than what appears necessary, such as:
  - If a client requires a certain type of transport (e.g., a wheelchair accessible vehicle, or a sedan instead of a transit bus), the NEMT broker takes into consideration the medical condition of the client before identifying the most appropriate type of ride. The health care provider must provide information about the client's condition to justify payment for that type of transport.
  - If a client requires an attendant (e.g., due to the client's age or health) in order to travel, the broker could pay for the attendant's transport expense when necessary. The health care provider must provide information about the client's need for an attendant to justify the additional expense.
  - "Same day" or "next day" request without the required two business day prior authorization, and not documentation of urgency.
  - Trips to a location which is farther and more costly than what appears necessary.

### **Working with Transportation Brokers**

There are several ways the broker can communicate with a health care facility to verify a trip expense is allowable. Following are the most common methods used throughout the brokerage system. This listing is not ranked nor meant to be comprehensive or the only acceptable methods.

- Broker uses a template to develop a customized information release form that is client specific and usually sent via facsimile.
- Broker develops a password-protected arrangement with a health care facility for verification by phone.
  - This may/may not specify the broker or provider staff who will be involved in the communication.
- Broker develops encrypted arrangement with a health care facility for verification via email.
- Broker crafts HIPAA Business Associate agreement with a health care facility/organization (the higher the level in the provider organization the better, to minimize the number of individual agreements), specifying a communication method or allowing all types.

### **Questions**

For additional information about the NEMT program, please refer to Washington Administrative Code (WAC) [182-546-5000 through 6200](#). You may also email the NEMT program directly at [transportation services](#).