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OFFICE OF AUDIT SERVICES  
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**JUN 1 2 2006**

Report Number: A-03-04-00014

Catherine Fackovec  
Director Emergency Services Department  
Allegheny General Hospital  
320 East North Avenue  
Pittsburgh, Pennsylvania 15212

Dear Ms. Fackovec:

Enclosed are two copies of the U.S. Department of Health and Human Services (HHS), Office of Inspector General final report entitled "Review of Medicare Claims for Air Ambulance Services Paid to Allegheny General Hospital." A copy of this report will be forwarded to the action official noted below for review and any action deemed necessary. Final determination as to actions taken on all matters reported will be made by the HHS action official named below. We request that you respond to the HHS action official within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

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If you have any questions or comments about this report, please do not hesitate to call me or James Maiorano, Audit Manager at (215) 861-4476. Please refer to report number A-03-04-00014 in all correspondence.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Virbitsky", with a long horizontal line extending to the right.

Stephen Virbitsky  
Regional Inspector General  
for Audit Services

Enclosures - as stated

**Direct Reply to HHS Action Official:**

Nancy B. O'Connor,  
Regional Administrator  
Centers for Medicare & Medicaid Services  
150 South Independence Mall West, Suite 216  
Philadelphia, PA 19106-3409

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**REVIEW OF MEDICARE CLAIMS  
FOR AIR AMBULANCE SERVICES  
PAID TO ALLEGHENY GENERAL  
HOSPITAL**



Daniel R. Levinson  
Inspector General

June 2006  
A-03-04-00014

# ***Office of Inspector General***

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## **OAS FINDINGS AND OPINIONS**

The designation of financial or management practices as questionable or a recommendation for the disallowance of costs incurred or claimed, as well as other conclusions and recommendations in this report, represent the findings and opinions of the HHS/OIG/OAS. Authorized officials of the HHS divisions will make final determination on these matters.



## EXECUTIVE SUMMARY

### BACKGROUND

#### Medicare Air Ambulance Services

Congress established Medicare under Title XVIII of the Social Security Act in 1965 to provide health insurance coverage to people age 65 and over, the disabled, and people with end-stage renal disease. Medicare pays for air ambulance services through Medicare Part B. The Centers for Medicare & Medicaid Services (CMS) contracts with fiscal intermediaries (FIs) to pay air ambulance services to hospitals, and suppliers under arrangements with hospitals, which are collectively termed providers. Either a fixed wing (airplane) or rotary wing (helicopter) can provide air ambulance services when the patient's medical condition requires immediate and rapid transportation that ground ambulances cannot provide.

Medicare requires each air ambulance provider to:

- document medical necessity and appropriateness of billed services, and document that it transported patients to the nearest hospital with appropriate facilities;
- include all supplies and services for the air ambulance transport in the air ambulance charge, calculate mileage only when the patient is on board, using statute miles, and use the proper fee payment amounts from the Provider Statistic and Reimbursement System when completing its Medicare cost report;
- submit claims first to primary payers when Medicare is the secondary payer, and refund any Medicare payments for services paid by another primary payer (Medicare secondary payer overpayments); and
- transport patients to acute care hospitals for services, comply with State and local licensing requirements for emergency medical transportation, and furnish services in an aircraft equipped for medical emergencies and staffed by an emergency medical technician and at least one other person.

For calendar year (CY) 2002, Medicare paid Allegheny General Hospital (Allegheny) interim reimbursement totaling \$2,133,900<sup>1</sup> for 465 air ambulance claims. Allegheny provides air ambulance services using five Pennsylvania helicopter bases: Allegheny, Indiana Regional Hospital, Butler County Airport, Rostraver Airport in Westmoreland County, and Greensburg-Jeannette County Airport.

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<sup>1</sup>The Medicare FIs pay providers during the fiscal year with an interim reimbursement amount. Upon settlement of a provider's cost report, the FI adjusts reimbursement to the final amount.

## **OBJECTIVE**

Our objective was to determine whether Allegheny claimed Medicare air ambulance services during CY 2002 in accordance with Medicare requirements.

## **SUMMARY OF FINDINGS**

Contrary to Medicare billing requirements, Allegheny incorrectly billed Medicare for 45 of 100 sampled air ambulance claims during CY 2002. Specifically, Allegheny:

- transported patients beyond the nearest hospital with appropriate facilities on 45 of 100 sampled claims and
- transported a patient by air ambulance when a ground ambulance could have transported the patient on one of the sampled claims.

The Medicare FI reduced charges on five of these claims due to transports beyond the nearest hospital with appropriate facilities. We did not include these in the total sample overcharges/excess fees or projected amounts. Allegheny overcharged Medicare \$26,524 and received excess fees of \$10,951 on the remaining 40 unreduced sample claims. Projecting the sampled claim overcharges and excess fees to the universe of 465 combined air ambulance and related mileage claims, and determining the effect of these projections on Allegheny's cost report reimbursement, Allegheny received overpayments totaling \$10,134.<sup>2</sup>

## **RECOMMENDATIONS**

We recommend Allegheny:

- refund \$10,134 to the Medicare program for air ambulance overpayments,
- exclude mileage beyond the nearest hospital with appropriate facilities from Medicare air ambulance claims, and
- bill Medicare for only medically appropriate air transports.

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<sup>2</sup>Charges and fees are both components of the cost report reimbursement amount. We projected overcharges to the universe of 465 CY 2002 Allegheny air ambulance claims at the 90 percent confidence level, which totaled \$78,079 and projected excess fees totaling \$29,517. The overcharges relate to Medicare reimbursement based upon lower of cost or cost limit. Medicare determines cost reimbursement based upon the provider cost-to-charge ratio, which is multiplied by the charges and compared to the cost limit. We used Medicare cost report software and Allegheny cost report information to determine Allegheny cost report overpayments. We added this result to 20 percent of the fee overpayments to determine the overpaid reimbursement amount of \$10,134.

## **ALLEGHENY GENERAL HOSPITAL COMMENTS**

By letter dated May 5, 2006, Allegheny disagreed with our findings and recommendations. It cited the following three reasons for disagreeing with the finding that it transported patients beyond the nearest hospitals with appropriate facilities:

- A) The transports comply with Medicare's locality rule, an exception to Medicare's nearest hospital with appropriate facilities rule.
- B) The transports are subject to Emergency Medical Treatment and Labor Act (EMTALA) mandates (United States Code, Part 42 §1395dd), which are inconsistent with requirements to transport the patient to the nearest hospital with appropriate facilities.
- C) Several courts recognize that a treating physician should be given deference and this should be upheld when the treating physician selects the ambulance destination facility and Allegheny cannot make determinations contrary to physician medical judgments.

Allegheny officials also disagreed that a patient was transported by air ambulance when the patient could have been transported by ground ambulance (this situation is also called a medically inappropriate transport). Allegheny's comments are presented in their entirety in Appendix C.

## **OFFICE OF INSPECTOR GENERAL RESPONSE**

When Allegheny submitted these claims for payment, it did not submit evidence that the destinations were in the same locality as the origin facilities, nor during the course of our audit did it ever assert that it based the original claims on the locality provision it cites in the response. Because questioned transports ranged from 13 to 72 air miles from the patient's residence or flight origin to the destination, we cannot consider the destinations and transport origins as being in the same locality.

Allegheny's claim that EMTALA requirements were inconsistent with the Medicare requirement to transport the patient to the nearest hospital with appropriate facilities is incorrect. EMTALA is not inconsistent with this requirement.

Regarding the physician opinions, we agree that a physician's opinion should be given some deference, however, the physicians' opinions and reasons for selecting the destination facility were not documented on any claim. Allegheny's documentation for these claims also did not mention any required services or specialists that were not available at closer hospitals. Therefore, as we stated in the report, Allegheny did not document that the destinations were the nearest hospital with appropriate facilities as required by the Medicare Benefits Policy Manual.

Allegheny disagreed that it claimed a medically inappropriate air transport (ground ambulance would have been allowable). Allegheny stated in its reply that this case was similar to the other claims that we questioned citing locality, EMTALA and the treating physician rule. We concluded for this claim, as well as the others discussed previously, that this patient was not transported to the nearest appropriate facility.

We also concluded, based on the opinion of the Veritus medical reviewer, that if the patient was taken to the nearest appropriate facility, ground ambulance would have been the proper means for transport.

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# INTRODUCTION

## BACKGROUND

### **The Medicare Program**

The Medicare program established by Title XVIII of the Social Security Act in 1965 provides health insurance coverage to people age 65 and over, the disabled and people with end-stage renal disease. Administered by the Centers for Medicare & Medicaid Services (CMS) within the Department of Health and Human Services, the program consists of four parts, including Part B - Supplemental Medical Insurance. Part B covers a multitude of medical and other health services, including air ambulance services. Medicare fiscal intermediaries (FIs) process Part B claims for air ambulances associated with hospitals (providers). Veritus Medicare Services (Veritus) is the FI that processes Medicare claims for the Allegheny General Hospital (Allegheny).

### **Medicare Air Ambulance Services**

Medicare considers air ambulance services medically necessary and reasonable if the use of any other method of transportation would endanger the patient's health. Air ambulance services also must be medically appropriate. That is, distances, ground transport time requirements, or unstable weather conditions for transportation by either basic or advanced life-support ground ambulance would pose a threat to the patient's survival or seriously endanger the patient's health.

Medicare reimburses air ambulance providers for:

- transporting a Medicare patient one way and
- mileage while the patient is on board.

### **Medicare Air Ambulance Service Requirements**

Medicare requires each air ambulance provider to:

- document medical necessity and appropriateness of billed services, and document that it transported the patient to the nearest hospital with appropriate facilities;
- include all supplies and services for the air ambulance transport in the air ambulance charge, calculate mileage only when the patient is on board, using statute miles, and use proper fee payment amounts from the Provider Statistic and Reimbursement System (PS & R) when completing its Medicare cost report;
- submit claims first to primary payers when Medicare is the secondary payer, and refund any Medicare payments for services paid by another primary payer (Medicare secondary payer overpayments); and

- transport patients to acute care hospitals for services, comply with State and local licensing requirements for emergency medical transportation, and furnish services in an aircraft equipped for medical emergencies and staffed by an emergency medical technician and at least one other person.

Medicare paid air ambulance providers using two methods during calendar year (CY) 2002 with: (1) the lower of cost or cost limit through March 31, 2002, and (2) a combination of 80 percent of the lower of cost or cost limit with 20 percent of the fee schedule amount after March 31, 2002.

### **Allegheny General Hospital Air Ambulance Services**

Since 1978, Allegheny has provided air ambulance services through its Life Flight program. Allegheny uses five helicopters at five Pennsylvania helicopter bases: Allegheny, Indiana Regional Hospital, Butler County Airport, Rostraver Airport in Westmoreland County, and Greensburg-Jeannette County Airport.

### **OBJECTIVE, SCOPE AND METHODOLOGY**

#### **Objective**

Our objective was to determine whether Allegheny claimed Medicare air ambulance services during CY 2002 in accordance with Medicare requirements.

#### **Scope**

As part of an Office of Inspector General multistate review of Medicare air ambulance services, we selected the air ambulance provider that received the largest amount of interim Medicare payments in Pennsylvania<sup>1</sup>. Allegheny received interim Medicare payments totaling \$2,133,900 for 465 air ambulance claims during CY 2002. We reviewed a random sample of 100 claims (a claim consisted of an air ambulance transport service and related air mileage) to determine whether Allegheny:

- claimed medically necessary and appropriate services, and transported patients to the nearest hospital with appropriate facilities;
- included all air ambulance supplies and services, except mileage in the air ambulance charge, billed accurate mileage, and accurately reported fees on the cost report;
- received Medicare secondary payer overpayments; and
- transported Medicare beneficiaries to acute care hospitals for services, and was licensed and properly equipped to bill Medicare air ambulance services.

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<sup>1</sup>The Medicare FIs pay providers during the fiscal year with an interim reimbursement amount. Upon settlement of a provider's cost report, the FI adjusts reimbursement to the final amount.

We limited our internal control review to obtaining an understanding of controls over the selection of destination hospitals and submission of claims to Medicare for air ambulance services.

We performed our review at Allegheny in Pittsburgh, Pennsylvania.

### **Methodology**

To accomplish our objective, we:

- reviewed applicable Federal regulations and Medicare requirements;
- reviewed Allegheny policies and procedures for air ambulance transports;
- reviewed sampled claim medical records, patient account ledgers and other claim related information from Allegheny;
- verified the claim mileage with latitude/longitude and travel distance websites;
- reviewed listings of Western Pennsylvania, West Virginia, Virginia, Maryland and Ohio trauma center hospitals, (collectively referred to as neighboring hospitals);
- interviewed officials at neighboring hospitals to determine if they could treat the sampled patients and had beds available for the sampled claim dates;
- interviewed Allegheny officials to obtain an understanding of the Medicare billing processes for air ambulance services;
- reviewed 100 sampled claims with medical review staff from Veritus; and
- used a variable unrestricted appraisal software program to project charges and fees to the universe of Allegheny CY 2002 Medicare air ambulance claims.

Our sampling information appears in Appendix A.

We performed our review in accordance with generally accepted government auditing standards.

### **FINDINGS AND RECOMMENDATIONS**

Contrary to Medicare billing requirements, Allegheny improperly claimed air ambulance services. Specifically, Allegheny:

- transported patients beyond the nearest appropriate facility on 45 of 100 sampled claims and

- transported a patient by air ambulance when a ground ambulance could have transported the patient on one of the sampled claims.

Veritus reduced charges on five of these claims due to transports beyond the nearest hospital with appropriate facilities. We did not include these in the total sample overcharges, excess fees or projected amounts. Allegheny overcharged Medicare \$26,524 and received excess fees of \$10,951 on the remaining 40 unreduced sample claims. Projecting the unreduced sampled claim overcharges and excess fees to the population of 465 combined Allegheny CY 2002 air ambulance and related mileage claims, and determining the effect of these projections on cost report reimbursement, Allegheny received overpayments totaling \$10,134.<sup>2</sup>

These overpayments occurred because Allegheny did not:

- reduce its mileage charges because it did not determine the nearest hospital with appropriate facilities and
- review air ambulance claims to ensure it billed Medicare for medically appropriate air transports.

In our sample of Allegheny claims, we did not find any overpayments due to: Medicare secondary payer, additional charges for air ambulance services/supplies, medically unnecessary services, inaccurate mileage calculation, transports not associated with hospital service, or inaccurate fees on Allegheny's cost report. Additionally, we determined Allegheny was licensed and had the necessary equipment/supplies to bill for air ambulance services.

### **TRANSPORTING PATIENTS BEYOND THE NEAREST HOSPITAL WITH APPROPRIATE FACILITIES**

Allegheny transported patients beyond the nearest hospital with appropriate facilities on 45 claims. Federal Regulation (CFR 42 § 410.40) states that Medicare covers ambulance transports from: "...any point of origin to the nearest hospital...that is capable of furnishing the required level and type of care that is necessary for the beneficiary's illness or injury." Regarding better equipped institutions, the Medicare Benefits Policy Manual (Manual) states: "The fact that a more distant institution is better equipped, either qualitatively or quantitatively, to care for the patient does not warrant a finding that a closer institution does not have 'appropriate facilities'." Regarding required documentation, the Manual states that full payment for mileage may be considered: "...**only** if the evidence clearly establishes that *the*

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<sup>2</sup>Charges and fees are both components of the cost report reimbursement amount. We projected overcharges to the universe of 465 CY 2002 Allegheny air ambulance claims at the 90 percent confidence level, which totaled \$78,079 and projected excess fees totaling \$29,517. The overcharges relate to Medicare reimbursement based upon lower of cost or cost limit. Medicare determines cost reimbursement based upon the provider cost-to-charge ratio, which is multiplied by the charges and compared to the cost limit. We used Medicare cost report software and Allegheny cost report information to determine Allegheny cost report overpayments. We added this result to 20 percent of the fee overpayments to determine the overpaid reimbursement amount of \$10,134.

*destination institution was the nearest one with appropriate facilities under the particular circumstances.”*

Of these 45 sampled patient claims, Allegheny transported patients on 36 claims to Allegheny or Allegheny affiliated hospitals<sup>3</sup>. In contrast to Medicare requirements, Allegheny did not evidence that any of the destinations were the nearest hospitals with appropriate facilities. Veritus reduced Allegheny payments for mileage beyond nearest appropriate facility on 5 of these claims and did not reduce 40 of these claims. Allegheny claimed additional mileage charges of \$21,309 for 590 miles as shown on the table below.

### **Bypassed Nearest Hospitals With Appropriate Facilities**

<b>Location of Nearest Hospital With Appropriate Facilities</b>	<b>Number of Claims</b>	<b>Additional Mileage</b>
Johnstown, PA	13	270
Youngstown, OH	10	239
Washington County, PA	3	58
Pittsburgh, PA	14	23
<b>Total Unreduced Claims</b>	<b>40</b>	<b>590</b>

Allegheny bypassed hospitals with helipads and personnel capable of treating each of the patient’s illness/injuries, and the proper bed available at the time of the transport. Additional details on these transports can be found in Appendix B.

Allegheny officials stated physicians at referring hospitals determined the destinations on 38 of the 40 unreduced transport claims. Air ambulance personnel determined the other two destinations. Allegheny billed Medicare for the mileage to the destination the physicians and air ambulance personnel selected. Allegheny did not determine the nearest hospital with appropriate facilities; therefore, it could not reduce its mileage charges accordingly. As a result, Allegheny billed Medicare mileage beyond the nearest hospital with appropriate facilities.

### **MEDICALLY INAPPROPRIATE AIR AMBULANCE SERVICE**

Allegheny overcharged Medicare \$5,215 for an air ambulance service, when it should have billed Medicare for a ground ambulance (aka medically inappropriate air ambulance service). Federal Regulations (CFR 42 § 410.40) state that: “the beneficiary’s condition must require both the ambulance transportation itself and the level of service provided...to be considered medically necessary.” The Manual states, “In all cases, the appropriate documentation must be kept on file and, upon request, presented to the carrier/intermediary. It is important to note that the presence (or absence) of a physician’s order for a transport by ambulance does not necessarily prove (or disprove) whether the transport was medically necessary.”

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<sup>3</sup>Allegheny General Hospital is affiliated with West Penn Allegheny Health Systems, which also includes Western Pennsylvania Hospital, Ali-Kinski Medical Center, Canonsburg General Hospital, Forbes Regional Hospital and Allegheny General Hospital Suburban campus in Bellevue.

For one sampled air ambulance claim, Allegheny transported the beneficiary beyond the nearest appropriate facility for the cardiac-catherization and possible cardiac-surgery required. Allegheny had no evidence indicating that transport by air ambulance was necessary to treat the beneficiary's conditions.

If a ground ambulance transported this patient to the nearest hospital with appropriate facilities, it could have driven the distance in approximately 14 minutes. Additionally, a Medicare medical reviewer determined that the patient was stable enough for this 14-minute transport. For the transport date, no weather hazards would have delayed the transport by ground ambulance. Therefore, the medical staff determined this patient could have been transported by ground ambulance.

Allegheny did not have policies to review air ambulances claims and determine if ground ambulances could transport these patients. It did not reduce Medicare air ambulance charges to ground ambulance charges when a patient could be transported by ground ambulance. Therefore, it could not ensure billing Medicare for only medically appropriate air transports. As a result, Allegheny officials billed Medicare for an air ambulance, contrary to Medicare requirements in Chapter 10 of the Manual.

## **RECOMMENDATIONS**

We recommend Allegheny:

- refund \$10,134 to the Medicare program for air ambulance overpayments,
- exclude mileage beyond the nearest hospital with appropriate facilities from Medicare air ambulance claims, and
- bill Medicare for only medically appropriate air transport.

## **ALLEGHENY GENERAL HOSPITAL COMMENTS**

By letter dated May 5, 2006, Allegheny officials disagreed with our report findings and recommendations. It cited the following three reasons for disagreeing with the report finding that they transported patients beyond the nearest hospitals with appropriate facilities:

- A) The transports comply with Medicare's locality rule, an exception to Medicare's nearest hospital with appropriate facilities rule.
- B) The transports are subject to Emergency Medical Treatment and Labor Act (EMTALA) mandates (United States Code, Part 42 §1395dd), which are inconsistent with requirements to transport the patient to the nearest hospital with appropriate facilities.

- C) Several courts recognize that a treating physician should be given deference and this should be upheld when the treating physician selects the ambulance destination facility and Allegheny cannot make determinations contrary to physician medical judgments.

Allegheny officials also disagreed that it had a medically inappropriate air ambulance service. They based this on their disagreement that they transported this patient beyond the nearest hospital with appropriate facilities. Also they indicated that the air ambulance could have arrived sooner than a ground ambulance at either the nearest hospital with appropriate facilities or the destination. Allegheny's comments are presented in their entirety in Appendix C.

## **OFFICE OF INSPECTOR GENERAL RESPONSE**

### **Nearest Appropriate Facilities**

Regarding the locality rule, Allegheny offered no proof that people from any transport origin community regularly traveled to or would be expected to travel to any transport destinations. Because the questioned transports ranged from 13 to 72 air miles, we do not know that people from the origin communities regularly traveled to or would be expected to travel to the destination facilities, for hospital services, if not transported by the Allegheny air ambulance. Without proof of this, we cannot consider the origins and destinations represent the same locality.

Allegheny incorrectly asserted that during CY 2002, EMTALA requirements were inconsistent with Medicare requirements to transport air ambulance patients to the nearest hospital with appropriate facilities. Based on a review of significant EMTALA related decisions, we found no interpretive judgment indicating that EMTALA precluded ambulances from transporting patients to the nearest appropriate facility. Additionally, EMTALA was changed in November 2003, in that requirements regarding hospital owned ambulances are not applicable if operated under a county wide emergency medical service protocol that direct it to transport the patient to the closest appropriate facility. The Federal Register Volume 68 Number 174 of September 2003, states that these were "clarifying changes" in EMTALA. Because these were clarifying changes, and generally clarifying changes are considered by courts to be retroactive, EMTALA was always consistent with requirements to transport the patient to the nearest appropriate facility.

While we agree that a physician's opinion should be given some deference, the physicians' opinions and reasons for selecting the destination facilities were not documented on any Allegheny air ambulance claim. Allegheny's documentation for these claims also did not mention any required services or specialists that were not available at closer hospitals. Therefore, Allegheny did not document that the destinations were the nearest hospital with appropriate facilities as required by the Manual.

In summary, Allegheny transported patients beyond the nearest hospital with appropriate facilities, and should have reduced its mileage as specified above.

## **Medically Inappropriate Air Transport**

Allegheny disagreed that it claimed a medically inappropriate air transport (ground ambulance would have been allowable). It stated in its reply that this case was similar to the other claims that we questioned citing locality, EMTALA and the treating physician rule. We concluded for this claim, as well as the others discussed previously, that this patient was not transported to the nearest appropriate facility. For this claim, the closer bypassed hospital official stated that they could perform the emergency services that Allegheny performed for this patient in a similar time frame.

Allegheny's comments regarding shorter air transport time are based on an incomplete comparison. They did not account for the 10 minute shorter transport of the ground ambulance to pick up the patient at the transport origin. When this is added to the comparison, the total transport time is exactly equal.

We also concluded, based on the opinion of the Veritus medical reviewer, that if the patient was taken to the nearest appropriate facility, ground ambulance would have been the proper means for transport.

# **APPENDIXES**

**STATISTICAL SAMPLING INFORMATION  
SAMPLE PROJECTION AND RESULTS – VARIABLE APPRAISAL**

Universe	465 Air Ambulance and Related Mileage Claims
Sample Size	100 Air Ambulance and Related Mileage Claims

**OVERCHARGES**

Overcharges	40
Total Sample Overcharge Amount	\$26,524
Sample Mean	\$265.24
Standard Error Mean	\$58.62
Point Estimate	\$123,337
Standard Error Total	\$27,257
Lower Limit at 90 Percent Confidence	\$78,079
Upper Limit at 90 Percent Confidence	\$168,594
Precision Amount	\$45,257

**FEE PAYMENTS**

Excess Fees	28
Total Excess Fee Amount in Sample	\$10,951
Sample Mean	\$109.51
Standard Error Mean	\$27.72
Point Estimate	\$50,920
Standard Error Total	\$12,890
Lower Limit at 90 Percent Confidence	\$29,517
Upper Limit at 90 Percent Confidence	\$71,323
Precision Amount	\$21,403

<b>ALLEGHENY GENERAL HOSPITAL SAMPLE CLAIMS WITH EXCESS MILEAGE</b>					
<b>Sample Number</b>	<b>Transport Origin and Destination</b>	<b>Mileage Charged To Medicare</b>	<b>Nearest Hospital With Appropriate Facilities</b>	<b>Mileage To The Nearest Hospital With Appropriate Facilities</b>	<b>Overcharged Mileage</b>
1	United Community Hospital to Allegheny General Hospital	49	St. Elizabeth Health Center	30	19
5	Forbes Regional Hospital to Allegheny General Hospital	13	University of Pittsburgh Medical Center	11	2
7	Indiana Hospital to Allegheny General Hospital	45	Conemaugh Memorial Medical Center	24	21
10	Forbes Regional Hospital to Allegheny General Hospital	13	University of Pittsburgh Medical Center	11	2
11	Indiana Hospital Mercy Hospital	45	Conemaugh Memorial Medical Center	24	21
13	Allegheny Valley Hospital to Allegheny General Hospital	18	University of Pittsburgh Medical Center	17	1
14	Indiana Hospital to University of Pittsburgh Medical Center Shadyside Hospital	43	Conemaugh Memorial Medical Center	24	19
17	Purchase High School Accident Scene to Allegheny General Hospital	59	University of Pittsburgh Medical Center	58	1
18	Indiana Hospital to Allegheny General Hospital	45	Conemaugh Memorial Medical Center	24	21
19	Forbes Regional Hospital to Western Pennsylvania Hospital	13	University of Pittsburgh Medical Center	11	2
20	Brownsville General Hospital to Allegheny General Hospital	32	University of Pittsburgh Medical Center	31	1
21	United Community Hospital to Allegheny General Hospital	49	St. Elizabeth Health Center	30	19
30	United Community Hospital to Allegheny General Hospital	47	St. Elizabeth Health Center	30	17
35	Indiana Hospital to Allegheny General Hospital	45	Conemaugh Memorial Medical Center	24	21

<b>ALLEGHENY GENERAL HOSPITAL SAMPLE CLAIMS WITH EXCESS MILEAGE</b>					
<b>Sample Number</b>	<b>Transport Origin and Destination</b>	<b>Mileage Charged To Medicare</b>	<b>Nearest Hospital With Appropriate Facilities</b>	<b>Mileage To The Nearest Hospital With Appropriate Facilities</b>	<b>Overcharged Mileage</b>
36	Sharon Regional Hospital to Allegheny General Hospital	63	St. Elizabeth Health Center	12	51
38	East Ohio Regional Hospital to Western Pennsylvania Hospital	47	Washington Hospital	26	21
40	Monongahela Valley Hospital to Allegheny General Hospital	20	University of Pittsburgh Medical Center	18	2
41	Indiana Hospital to Allegheny General Hospital	45	Conemaugh Memorial Medical Center	24	21
43	Indiana Hospital to Mercy Hospital	45	Conemaugh Memorial Medical Center	24	21
44	United Community Hospital to Allegheny General Hospital	49	St. Elizabeth Health Center	30	19
47	Forbes Regional Hospital to Allegheny General Hospital	13	University of Pittsburgh Medical Center	11	2
57	Indiana Hospital to Allegheny General Hospital	44	Conemaugh Memorial Medical Center	24	20
59	Wetzel County Memorial Hospital to University of Pittsburgh Medical Center Shadyside Hospital	72	Washington Hospital	48	24
60	Latrobe Hospital to Allegheny General Hospital	33	University of Pittsburgh Medical Center	31	2
63	Allegheny Valley Hospital to Allegheny General Hospital	18	University of Pittsburgh Medical Center	17	1
65	Jameson Memorial Hospital to Allegheny General Hospital	44	St. Elizabeth Health Center	17	27
67	Jeannette Hospital to Allegheny General Hospital	22	University of Pittsburgh Medical Center	20	2
68	United Community Hospital to Allegheny General Hospital	49	St. Elizabeth Health Center	30	19

<b>ALLEGHENY GENERAL HOSPITAL SAMPLE CLAIMS WITH EXCESS MILEAGE</b>					
<b>Sample Number</b>	<b>Transport Origin and Destination</b>	<b>Mileage Charged To Medicare</b>	<b>Nearest Hospital With Appropriate Facilities</b>	<b>Mileage To The Nearest Hospital With Appropriate Facilities</b>	<b>Overcharged Mileage</b>
69	Indiana Hospital to Allegheny General Hospital	45	Conemaugh Memorial Medical Center	24	21
74	Indiana Hospital to Allegheny General Hospital	45	Conemaugh Memorial Medical Center	24	21
76	Allegheny Valley Hospital to Allegheny General Hospital	18	University of Pittsburgh Medical Center	17	1
81	Indiana Hospital to Allegheny General Hospital	45	Conemaugh Memorial Medical Center	24	21
82	Indiana Hospital to Allegheny General Hospital	45	Conemaugh Memorial Medical Center	24	21
84 <sup>1</sup>	Canonsburg Hospital to Allegheny General Hospital	18	Washington Hospital	5	13
86	Brownsville General Hospital to Allegheny General Hospital	32	University of Pittsburgh Medical Center	31	1
90	Indiana Hospital to Allegheny General Hospital	45	Conemaugh Memorial Medical Center	24	21
92	Accident Scene in Rostraver to Allegheny General Hospital	20	University of Pittsburgh Medical Center	17	3
93	St. Frances Hospital in New Castle to University of Pittsburgh Medical Center Presbyterian Hospital	44	St. Elizabeth Health Center	18	26
96	Salem Ohio Hospital to Sharon Regional Hospital	32	St. Elizabeth Health Center	17	15
97	Jameson Memorial Hospital to Allegheny General Hospital	44	St. Elizabeth Health Center	17	27
<b>TOTAL</b>					<b>590</b>

<sup>1</sup>Allegheny also received an overpayment on this claim for flying the patient when a ground ambulance would suffice.



WEST PENN ALLEGHENY HEALTH SYSTEM

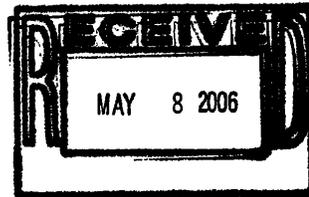
320 EAST NORTH AVENUE, PITTSBURGH, PA 15212-4772

412-359-3131

May 5, 2006

By Federal Express and  
By Facsimile 215.861.4541

Stephen Virbitsky  
Regional Inspector General for Audit Services  
Department of Health and Human Services  
Office of the Inspector General  
Office of Audit Services  
150 South Independence Mall West, Suite 316  
Philadelphia, PA 19106-3499



Subject: Report Number A-03-04-00014  
Review of Medicare Claims for Air Ambulance Services Paid to  
Allegheny General Hospital

Dear Mr. Virbitsky:

We have reviewed the Office of Inspector General's draft report, dated April, 2006, entitled "Review of Medicare Claims for Air Ambulance Services Paid to Allegheny General Hospital" (the "Report"). We appreciate the opportunity to comment on the Report and respectfully request that consideration be given to our comments that are contained in this letter. The following is Allegheny General Hospital's ("Allegheny General") response to the findings and recommendations:

***I. Patients Not Transported to the Nearest Facility – Nonconcurrency***

The Report states that Allegheny General's air ambulance services transported patients beyond the nearest appropriate facility in forty-five (45) of one hundred (100) sampled claims. The Report acknowledges that five (5) of the forty-five (45) claims were addressed by the fiscal intermediary, thereby leaving forty (40) claims for air ambulance services that are the subject matter of the Report.

We disagree with the Report's findings that patients were not transported to the nearest facility for the following reasons:

A. *The Transports Comply with the Medicare Locality Rule.*

The underlying regulation that is cited in the Report provides that Medicare covers ambulance transportation from “any point of origin to the nearest hospital, CAH or SNF that is capable of furnishing the required level and type of care for the beneficiary’s illness or injury.” 42 C.F.R. § 410.40(e)(1). The Report also cites §10.3.6 of the Medicare Benefit Policy Manual (the “Manual”) as support for its position that Allegheny General was not the nearest appropriate hospital. The Report, however, fails to take into consideration the Manual’s “locality” rule, which is an exception to the general rule that only mileage to the nearest appropriate facility is covered. The “locality” rule provides that if two or more facilities that meet the destination requirements<sup>1</sup> can treat the patient appropriately and the “locality” of each facility encompasses the place where the ambulance transportation began, then the full mileage to any one of the facilities to which the beneficiary is taken is covered. *Medicare Benefit Policy Manual, Chapter 10, § 10.3.* Section 10.3.5 of the Manual defines the term “locality” as “the service area surrounding the institution to which individuals normally travel or are expected to travel to receive hospital or skilled nursing services.” Furthermore, the Manual provides the following specific example:

Mr. A becomes ill at home and requires ambulance service to the hospital. The small community in which he lives has a 35-bed hospital. Two large metropolitan hospitals are located some distance from Mr. A’s community and both regularly provide hospital services to the community’s residents. The community is within the “locality” of both metropolitan hospitals and direct ambulance service to either of those (as well as to the local community hospital) is covered.

The Report’s reliance on Section 10.3.6 is misplaced as the destination hospital, in each of the disputed transports, is within the service area, i.e. the “locality,” of the community from where the transports originated. As such, the full mileage should be allowed.

B. *The Transports Are Subject to EMTALA’s Mandates.*

The Report fails to consider the mandates of the Emergency Medical Treatment Act (“EMTALA”). 42 U.S.C.S. § 1395dd. Thirty-two (32) of the forty (40) disputed transports involved transports from either the transferring hospital’s emergency department (the “Emergency Room Transports”) or transports from accident scenes (the “Accident Scene Transports”) and are, thereby, subject to the specific obligations imposed by EMTALA. Contrary to the position taken in the Report, EMTALA does not recognize or provide any

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<sup>1</sup> It is our assumption that there is no dispute that the receiving hospital met the destination requirements.

exception permitting a transport, which otherwise is subject to EMTALA, to be diverted to another hospital under the premise that such other hospital is the "nearest" appropriate facility. Rather, the EMTALA implementing regulations provide, in pertinent part, that:

"A participating hospital that has specialized capabilities or facilities (including, but not limited to, facilities such as burn units, shock-trauma units, neonatal intensive care units, or (with respect to rural areas) regional referral centers) **may not refuse to accept** (*emphasis added*) from a referring hospital within the boundaries of the United States an appropriate transfer of an individual who requires such specialized capabilities or facilities if the receiving hospital has the capacity to treat the individual." 42 C.F.R. § 489.24 (f). Moreover, a hospital that negligently violates such requirement is subject to civil monetary penalties. 42 U.S.C.S. § 1395dd(d)(1); see also, *St Anthony Hospital v. U.S. Dep't of Health and Human Services*, 309 F.3d 680 (2002).

In each of the Emergency Room Transports, once a medical determination was made by the transferring hospital that it lacked the ability to perform the complex medical procedure needed, EMTALA imposed on the transferring facility an obligation to effect an appropriate patient transfer to another medical facility. 42 U.S.C. § 1395dd(b)(1)(B). Consistent with such obligation, it is our understanding that the transferring hospital contacted the destination hospital and informed the destination hospital of the emergent condition of the patient. Once the destination hospital determined that it had the capability and capacity to treat the respective patient, EMTALA's nondiscrimination provisions<sup>2</sup> mandated that the destination hospital accept the respective transfer. Allegheny General's air ambulance personnel did not have the ability to divert the respective patients to another facility, regardless as to whether any other facility may have been the "nearest" appropriate facility. Any such diversion would have been a violation of EMTALA.

EMTALA also applies to the Accident Scene Transports. At the time of the disputed claims<sup>3</sup>, EMTALA regulations provided that if an individual was in

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<sup>2</sup> 42 U.S.C.S. § 1395dd(g), 42 C.F.R. § 489.24(f).

<sup>3</sup> We recognize that as of November 10, 2003, an exception to the existing rule requiring EMTALA applicability to hospitals owned ambulances became effective. Specifically, as of November 10, 2003 EMTALA is not applicable to hospital-owned ambulances if:

(i) The ambulance is operated under communitywide emergency medical service (EMS) protocols that direct it to transport the individual to a hospital other than the hospital that owns the ambulance; for example, to the closest appropriate facility. In this case, the individual is considered to have come to the emergency department of the hospital to which the individual is transported, at the time the individual is brought onto hospital property; or

(ii) The ambulance is operated at the direction of a physician who is not employed or otherwise affiliated with the hospital that owns the ambulance.

an ambulance owned and operated by a hospital, the individual was considered to have come to the hospital's emergency department, even if the ambulance was not on hospital property. With respect to the Accident Scene Transports, once Allegheny General's air ambulance picked up the individual at the accident scene, the patient was considered to have come to Allegheny General's emergency department. As such, transportation to Allegheny General was not only appropriate but was required.

We acknowledge that the issue as to whether EMTALA's mandates preempt the Medicare mileage limitation has not been addressed. However, several courts have recognized that an interpretative rule is binding unless it is irrational<sup>4</sup>, contradicted by other regulations<sup>5</sup> or ultra vires.<sup>6</sup> In the instance case, it is our position that the Medicare reimbursement rule requiring transport to the "nearest" appropriate facility is inconsistent with the explicit mandates of EMTALA. As such, it is our position that EMTALA should be dispositive of the Emergency Room Transports and the Accident Scene Transports and the full mileage should be allowed.

*C. The Treating Physician Opinion Should be Given Deference.*

The Report also fails to take into consideration that the treating physician made a determination that the destination hospital was the appropriate facility to treat the patient. Several courts have recognized that some version of the treating physician rule which expressly applies in Social Security disability cases might apply in Medicare reimbursement cases.<sup>7</sup> In the context of Social Security disability determinations, a treating physician's opinion of a claimant's condition is afforded considerable weight if it is not inconsistent with other substantial evidence.<sup>8</sup> In one Medicare coverage case, the court noted that although the "considerations bearing on the weight to be

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42 C.F.R. § 489.24(b)(3)(i),(ii).

<sup>4</sup> Keefe v. Shalala, 71 F.3d, 1060, 1066 (2d. Cir 1995), citing Iuteri v. Nardoza, 732 F.2d 32, 37 (2d Cir. 1984).

<sup>5</sup> Id., citing Securities Indus. Ass'n v. Board of Governors of the Federal Reserve Sys., 839 F.2d 47, 53 (2d Cir), cert. denied, 486 U.S. 1059, 100 L.Ed. 2d 931, 108 S.Ct. 2830 (1988).

<sup>6</sup> Id., citing Federal Election Comm'n v. NRA Political Victory Fund, 130 L. Ed. 2d 439, 115 S.Ct. 537, 543 (1994).

<sup>7</sup> See e.g., Hospital Service District No.1 of the Parish of Lafourche v. Thompson, 343 F. Supp. 2d 518 (2004); Keefe v. Shalala, 71 F.3d 1060, 1064 (2d Cir. 1995).

<sup>8</sup> See Leggett v. Chater, 67 F.3d 558, 566 (5<sup>th</sup> Cir. 1995); Greenspan v. Shalala, 38 F.3d 232, 237 (5<sup>th</sup> Cir. 1994), cert. denied, 514 U.S. 1120, 131 L.Ed. 2d 871, 115 S.Ct. 1984 (1995); See also, Klementowski v. Secretary, Dep't of HHS, 801 F. Supp. 1022, 1025-26 (W.D.N.Y. 1992).

accorded a treating physician's opinion are not necessarily identical in the disability and Medicare contexts, we would expect the [Health and Human Services] Secretary to attach significant reliance to the informed opinion of a treating physician and either to apply the treating physician rule, with its component of "some extra weight" to be accorded to that opinion or to supply a reasoned basis, in conformity with statutory purposes, for declining to do so." *State of New York on Behalf of Holland v. Sullivan*, 927 F.2d 57, 60 (2d Cir. 1991).

In addition, EMTALA recognizes the role of the treating physician by requiring a signed certification that the medical benefits of the transfer outweigh the risks associated with the transfer.<sup>9</sup> Moreover, the transferring facility is required to ensure that the transfer is effectuated through qualified personnel and transportation.<sup>10</sup>

In each of the claims in question, the treating physician made a determination as to the facility to which the patient should be transferred. Allegheny General's air ambulance personnel relied on the treating physician's medical judgment that the transports met the Medicare rules and that the destination hospital was the "nearest" appropriate facility to provide the necessary care and services to the patients. Furthermore, Allegheny General's air ambulance personnel are not in a position to make a determination that is contrary to a physician's medical judgment. As such, it is our position that the full mileage should be allowed.

## II. **One Patient Transported by Air Ambulance When Ground Transportation Could Have Transported the Patient – Nonconcurrency**

The Report stated that one (1) of the forty (40) disputed claims could have been transported by ground transportation. It should be noted that this disputed claim was also an Emergency Room Transport and was included in the Report as a transport not to the nearest appropriate facility. Based on our comments above with respect to the Medicare locality rule, EMTALA and the applicability of the treating physician rule, it is our position that Allegheny General met the requirement of the "nearest" appropriate facility. As such, in the instance case, ground transportation to Allegheny General would have taken 40 minutes. As a general guideline, the Manual provides that "when it would take a ground ambulance 30-60 minutes or more to transport a beneficiary whose medical condition at the time of pick-up required immediate and rapid transport due to the nature and/or severity of the beneficiary's illness/injury, contractors should consider air transportation to be appropriate." *Medicare Benefit Policy Manual §10.4.3*.

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<sup>9</sup> 42 U.S.C.S. § 1395dd(c)(1)(A)(ii); 42 C.F.R. § 489.24(e)(1)(i).

<sup>10</sup> 42 U.S.C.S. § 1395dd(c)(2)(D); 42 C.F.R. § 489.24(e)(2)(iv).

Additionally, Section 10.4.2 of the Manual provides that medical appropriateness for air ambulance is warranted when the "beneficiary's condition is such that the time needed to transport a beneficiary by ground, or the instability of transport by ground, poses a threat to the beneficiary's survival or seriously endangers the beneficiary's health."

In the instance case, the treating physician at the referring facility made the determination that the patient's condition was too critical to allow for longer transportation by ground. The seriousness of the patient's condition is supported retrospectively by the fact that (i) during the 9 minute transport time the patient continued to have chest pain; and (ii) within thirty minutes of arrival at Allegheny General's emergency department, the patient underwent angioplasty of a coronary artery for a 95% occlusion. We believe in light of the circumstances, both from a prospective and retrospective view, that the air transportation met the Medicare rules with respect to medical appropriateness even if it were assumed that the nearest hospital was 14 minutes away by ground transportation.<sup>11</sup>

### III. Responses to Recommendations.

The Report listed two (2) findings and three (3) proposed recommendations, for which you requested a statement of concurrence or non-concurrence to be included with our response. We have noted our non-concurrence to the specific findings above. Our statement of concurrence or non-concurrence for each of the recommendations is as follows:

**Recommendation #1:**

Allegheny General should refund \$10,134 to the Medicare program for air ambulance overpayments – Nonconcurrence.

**Recommendation #2:**

Allegheny General should exclude mileage beyond the nearest hospital with appropriate facilities from Medicare air ambulance claims – We concur with the general statement but do not concur that any of the disputed claims require mileage to be excluded.

**Recommendation #3:**

Allegheny General should bill Medicare for only medically appropriate air transports - We concur with the general statement, however, we do not concur that any of the disputed claims represent billing for inappropriate air transports.

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<sup>11</sup> The Report notes that if "a ground ambulance transported this patient to the nearest hospital with appropriate facilities, it could have driven the distance in approximately 14 minutes."

We respectfully request that our comments be given consideration and that appropriate revisions be made to the final report. If there are any questions about this response, please do not hesitate to contact me at 412.359.6583.

Sincerely,



Connie Cibrone