

**May 6, 2009**

**Ambulance Association of Pennsylvania  
Reimbursement Conference**

***Medicaid Audits***

**Maggie Adams**

**Email: [madams@pwwemslaw.com](mailto:madams@pwwemslaw.com)**



5010 East Trindle Road, Suite 202  
Mechanicsburg, PA 17050  
717-691-0100  
Web site: [www.pwwemslaw.com](http://www.pwwemslaw.com)

**Disclaimer:** These seminar materials are designed to provide an overview of general legal principles and should not be relied on as legal advice. You should seek advice from an attorney if you have particular factual situations related to the materials presented here.

**Copyright 2009, Page, Wolfberg & Wirth, LLC  
All Rights Reserved  
May Not Be Duplicated or Transmitted Without Express Permission**

**Margaret M. Adams:**

Margaret M. ("Maggie") Adams is a Senior Consultant and Reimbursement Specialist for Page, Wolfberg & Wirth, LLC. Maggie has considerable experience in assisting ambulance services and EMS organizations across the country in maintaining billing compliance, organizing and obtaining maximum efficiency from their billing operations, as well as in managed care payment, accounts receivable management, contracting and appeals issues.

Prior to joining PWW, Maggie was the founder and president of EMS Financial Services, Inc. a company dedicated to resolving billing and collections problems for medical transportation providers. Her firm successfully collected thousands of ambulance bills for volunteer, hospital-based, for-profit, and non-profit ambulance services. Maggie later expanded her business to offer consulting services for ambulance providers on accounts receivable management and reimbursement issues.

Maggie currently serves on the Reimbursement Committee for the Ambulance Association of Pennsylvania, and has written numerous articles on reimbursement issues for the ambulance industry. She is an engaging and popular speaker at EMS conferences such as EMS Today, conferences of The American Ambulance Association, Ambulance Association of Pennsylvania and other state and national organizations on subjects such as maintaining compliance, improving collections and cash flow, coping with collections problems, insurance and managed care issues, and accounts receivable management. Maggie is also a member of the editorial board of *Best Practices in Emergency Services*.

Maggie is a member of Sigma Kappa Phi, the Wharton School Honors Society, and is a *Cum Laude* graduate of the Wharton School of Economics & Finance of the University of Pennsylvania with a BBA in Management.

Devoted to community service, Maggie has served on the board of directors of several non-profit organizations, including the Philadelphia Chapter of Altrusa International, an international community service organization that supports literacy programs and an end to the problem of domestic violence. She was invited to be the first female member of the Drexel University Entrepreneurial Forum, a program for small businesses offering management advice and educational seminars. She has served as a judge for *PennVention*, the University of Pennsylvania's joint venture of the School and Engineering and the Wharton School to foster new invention and technology. In addition, Maggie spent several years actively involved in the Boys Club of her community.

## AAP Reimbursement Conference *Medicaid Audits*

Maggie Adams  
madams@pwwemslaw.com



© Copyright 2009 Page, Wolfberg & Wirth, LLC

## Please Remember....

- These materials are for general information purposes only – they do not constitute legal or accounting advice or a definitive statement of the law. Many items are abbreviated to fit into the slide format and therefore may not be a complete statement of the particular issue portrayed by the slide.

© Copyright 2009 Page, Wolfberg & Wirth, LLC



## Why Are We Here Today?

© Copyright 2009 Page, Wolfberg & Wirth, LLC



To help maintain compliance in obtaining the level of reimbursement you are entitled to in accordance with all laws, regulations and payment policies

© Copyright 2009 Page, Wolfberg & Wirth, LLC



## Audit Issues That May Arise

- Documentation
- Medically necessary in accordance with Medicaid regulations?
- Correct level of service?
- Mileage correctly documented?
- Was it verified that no third-party payor is liable for transport?
- Are staff certifications and licenses up to date?

© Copyright 2009 Page, Wolfberg & Wirth, LLC



## OIG Audit of Non-Emergency Trips

- October 24, 2008
- Total overpayment: \$864,000
- OIG released report about Medicaid billing problems of Washington, D.C. non-emergency transportation provider...
- Documentation problems cited as significant issue

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### Medical Necessity Audit

- July 9, 2008
- Rural/Metro fined nearly \$1 million
- Billing audit investigation conducted by FBI, HHS-OIG and D.C. Office of the Inspector General
- Gov't said some services not medically necessary, not provided at level of service billed

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### Medicaid Mileage Fraud

- U.S. Attorney for the Southern District of Indiana Timothy M. Morrison announced May 20, 2008 that Teresa Jo Hedrick was charged with a \$780,000 healthcare fraud.

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### Medicaid Mileage Fraud, cont'd

- Hedrick, a bookkeeper for a transportation services business, allegedly submitted claims to Medicaid for transportation of Medicaid recipients to and from medical appointments as if they were in wheelchairs, when in fact they were able to walk, and also allegedly inflated the mileage the Medicaid recipients were being transported.

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### Certification Audits

- February 2, 2009-US Attorney for Western District of Wisconsin:
- "Tender Care Transport, Inc. a company providing specialized medical vehicle services, agreed to pay the federal government \$39,487.52 to resolve allegations that, over a three-year period, it submitted claims to Medicaid for non-emergency transport when drivers sent out on runs had not yet obtained their required CPR certification. . ."

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### \$52 Million Medicaid Fraud Recovery

- January 6, 2009
- "North Carolina's Medicaid fraud investigators recovered more than \$52 million and investigated dozens of cases of fraud in 2008."

© Copyright 2009 Page, Wolfberg & Wirth, LLC



**Most important fact to remember - Medicare and Medicaid Are NOT Insurance Plans....**

**They are LAW!**

© Copyright 2009 Page, Wolfberg & Wirth, LLC



## Medicaid

- Medicaid became law in 1965
- Title XIX of the Social Security Act
  - Federal/State entitlement program
  - Pays for medical assistance for people with low income and resources
- Medicaid is a joint federal/state program
- Broad guidelines established by federal law
- Specific guidelines established by states

© Copyright 2009 Page, Wolfberg & Wirth, LLC



## Medicaid Reimbursement

- Traditionally much lower than cost of service
- States are slow to raise rates
  - Example: PA ambulance rates were in effect from 1989 to 2004 without so much as an inflation adjustment

© Copyright 2009 Page, Wolfberg & Wirth, LLC



## Medicare vs. Medicaid

- Medicare covers 9 types of service
- Medicare does not cover wheelchair or stretcher van/ambulette
- Medicaid typically covers fewer levels of service

© Copyright 2009 Page, Wolfberg & Wirth, LLC



## Medicaid vs. Medicare

- Each state determines how medical transportation will be handled
- Like Medicare, services rendered to Medicaid recipients must be documented and maintained on file

© Copyright 2009 Page, Wolfberg & Wirth, LLC



## Medicaid vs. Medicare

- Big Problem: Many state Medicaid programs do not pay according to "levels of service" under the Medicare FS
- Key: Know the rules. An investigation may well cover both types of claims

© Copyright 2009 Page, Wolfberg & Wirth, LLC



## Medicaid Coverage

- Low income is one test for Medicaid
- Assets and resources are also tested against established thresholds
- Medically needy persons who would be categorically eligible except for income or assets may become eligible for Medicaid solely because of excessive medical expenses

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### Medicaid Coverage

- Coverage may start retroactive to any or all of the 3 months prior to application, if the individual would have been eligible during the retroactive period
- Unlike Medicare, Medicaid coverage generally stops at the end of the month in which a person's circumstances change

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### Retroactive Medicaid

- Fact that Medicaid can be granted retroactively can be a particular challenge to providers when filing claims

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### Retroactive Medicaid

- Patient did not have Medicaid at time of transport
- Billing efforts ensue
- Takes time to find patient
- Providers have to go back to Medicaid and file three-month old claims – impacts cash flow

© Copyright 2009 Page, Wolfberg & Wirth, LLC



“Spending for Medicaid is on pace to meet or exceed Medicare spending.”

Kimberly Brandt  
CMS Director of Program Integrity

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### Biggest Medicaid Populations

1. California
2. New York
3. Texas
4. Florida
5. Illinois
6. **Pennsylvania**
7. Ohio
8. Michigan

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### Medicaid Managed Care

© Copyright 2009 Page, Wolfberg & Wirth, LLC



## More Medicaid Recipients are in Managed Care Plans than Medicaid FFS Programs

65.34% of all Medicaid enrollees are in managed care

© Copyright 2009 Page, Wolfberg & Wirth, LLC



## Medicare vs. Medicaid

- Medicare beneficiaries enrolled in managed care:
  - 10 million
- Medicaid recipients enrolled in managed care:
  - Almost 30 million

© Copyright 2009 Page, Wolfberg & Wirth, LLC



## Top States for Managed Care

1. Tennessee	100%
2. Missouri	99.2%
3. South Dakota	98.57%
4. Colorado	92.49%
5. Kentucky	92.16%
6. Oregon	91.60%
7. Michigan	90.54%
8. Arizona	89.62%
9. Oklahoma	88.84%
10. <b>Pennsylvania</b>	<b>87.34%</b>

© Copyright 2009 Page, Wolfberg & Wirth, LLC



In Pennsylvania, fraud and abuse are issues in Medicaid managed care as well as traditional FFS Medicaid

© Copyright 2009 Page, Wolfberg & Wirth, LLC



## Abuse

- "Any practices that are inconsistent with sound fiscal, business, or medical practice and which result in unnecessary cost to the MA Program, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards or contractual obligations (including the terms of the RFP, contracts, and requirements of state or federal regulations) for health care in the managed care setting."

• Commonwealth of Pennsylvania, HealthChoices, Program Standards and Requirements, 1/1/08

© Copyright 2009 Page, Wolfberg & Wirth, LLC



## Fraud

- "Any intentional deception or misrepresentation made by an entity or person with the knowledge that the deception could result in an unauthorized benefit to the entity, him/herself or another responsible person in a managed care setting."

• Commonwealth of Pennsylvania, HealthChoices, Program Standards and Requirements, 1/1/08

© Copyright 2009 Page, Wolfberg & Wirth, LLC



## Medicaid Fraud Initiatives

New World of Medicaid Audits

© Copyright 2009 Page, Wolfberg & Wirth, LLC



## GAO and Medicaid

- Government Accountability Office (GAO) Report "High Risk Series: An Update" (GAO-07-310)
- Medicaid is at high risk for fraud and abuse
- CMS had poor oversight of Medicaid, and while Medicare has improved, weaknesses at Medicaid were not addressed

© Copyright 2009 Page, Wolfberg & Wirth, LLC



## Medicaid Overpayments & Fraud

- Massive crackdown on Medicaid overpayments and fraud
- Medicaid fraud and abuse oversight dramatically increased
  - CMS had only have 8 employees with oversight of Medicaid
  - Staff increased
  - 100 new people in the Medicaid Integrity Group

© Copyright 2009 Page, Wolfberg & Wirth, LLC



## Medicaid Fraud Initiatives

- Office of Inspector General (OIG)
- Medicaid Integrity Program (MIP)
- PERM (Payment Error Rate Measurement)
- State Medicaid Fraud Control Units

© Copyright 2009 Page, Wolfberg & Wirth, LLC



## Medicaid Integrity Program

- Established by Deficit Reduction Act 2005
- Congress appropriated
  - \$5 million in 2006
  - \$50 million in 2007 and 2008
  - \$75 million annually beginning 2009

© Copyright 2009 Page, Wolfberg & Wirth, LLC



## Medicaid Integrity Program

- Review actions of those providing services
- Provide support to States to combat fraud, waste and abuse in Medicaid
- MIP designed to mirror Medicare Integrity Program
- Annual report to Congress on program

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### Medicaid Integrity Program

- Medicaid Integrity Contractors
  - Conduct reviews and audits
  - Provide education
- Field Operations provide assistance to States
- Fraud Research & Detection

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### Payment Error Rate Measurement “PERM”

- PERM enacted in 2002
- Part of Improper Payment Information Act
- PERM designed to measure improper Medicaid and State CHIP program payments

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### PERM

- States must recover payments from providers that were identified as errors
- Each state audited every three years
- PERM contractors will be requesting records from providers
  - Failure to provide records will be regarded as an automatic error

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### PERM Extrapolation

- Payment errors under PERM are extrapolated
  - Based on audit sample
  - Error rate extrapolated to entire claims universe
- 10% error rate in sample, then 10% of entire claims universe considered in error

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### PERM Contractors Seek

- Records from providers for services rendered to traditional Medicaid FFS recipients
- PERM contractors can also ask for documentation of services provided to patients in Medicaid managed care plans

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### Who are the PERM Contractors?

- Lewin Group
- Livanta LLC
- Health Data Insights, LLC

© Copyright 2009 Page, Wolfberg & Wirth, LLC



## PERM Contractors

- Lewin will provide statistical support
  - Generates provider samples
  - Calculates state error rates
- Health Data Insights
  - Checks accuracy of claims process
  - Reviews the medical necessity of claims

© Copyright 2009 Page, Wolfberg & Wirth, LLC



## Livanta LLC

The contractor sending audit letters to providers

© Copyright 2009 Page, Wolfberg & Wirth, LLC



## All New False Claims Acts!

- New financial incentives for states to beef up their own systems and staff
- States get a big cut of the recovery!
- New opportunities for whistleblowers in *qui tam* lawsuits

© Copyright 2009 Page, Wolfberg & Wirth, LLC



Bottom Line:  
Unprecedented Medicaid  
Anti-Fraud Initiatives Underway

Criminal and Civil Penalties!

© Copyright 2009 Page, Wolfberg & Wirth, LLC



## What This Means . . .

- BAD: New wave of both prepayment and postpayment audits
- GOOD: Increased educational efforts directed to providers and facilities
- Effective compliance programs are needed ---NOW MORE THAN EVER!

© Copyright 2009 Page, Wolfberg & Wirth, LLC



**Preparing For Your Appeal:**  
*Medicaid Appeal Strategies*

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### Medicaid Appeals

- Can be large audit or claim by claim
- Usually specific forms and processes
- Usually review by State Medicaid Office
- Often tied to a Medicare Appeal (one triggered the other)

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### Medicaid Appeals - Strategies

- Know the rules
- Concede a few for good faith
- Show where the Medicaid reviewer has flawed
- Rely on state case laws and past decisions

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### Appeal Strategies

- Review the claims at issue
- Perform a "self audit" to assess whether or not they're properly payable – be self-critical!
- Consider additional information and evidence that may exist
- Consider using outside legal counsel

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### Appeal Strategies

- Many appeals are won or lost before you turn the key on your ambulance!
- Improve the call intake process
- Improve the client intake process
- "Garbage in, garbage out!"

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### Appeal Strategies

- Documentation
- Ensure that crews receive detailed, periodic training on field documentation
- Improve the PCR QA process and incorporate medical necessity documentation, reason for transport and other claim-related indicators in the process

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### Appeal Strategies

- Obtain supplemental documentation
- Consider using other sources of medical necessity documentation

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### Types of Documents That May Support Your Appeal

- Letters from physicians or other providers
- Records from other providers or facilities
- Patient photographs/videos, showing condition, ambulatory status, etc. (with consent, of course!)

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### Appeal Strategies

- Utilize professional medical expertise
- Use your service medical director, or a contracted physician or nurse reviewer, to help you make the case in the early stages of the appeals process

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### Appeal Strategies

- Organization
- Keep accurate and up-to-date case files of each appeal

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### Appeal Strategies

- Concessions are not always a bad thing!
- Willingness to “concede” your clearly unsupportable claims shows good faith
- And establishes your credibility for the ones you *really* want to challenge

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### Appeal Strategies

- Point out where prior decisions were wrong – cite to Manuals and Rules
- Repeat key and important phrases
- Be honest and truthful in the evidence and opinions you’re stating

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### Medicaid Managed Care

- Separate state law exists
- Specific appeal provisions in place
- Same rules apply
  - Convince the Medicaid HMO of their errors
  - Know your stuff
  - Documentation, Documentation, Documentation

© Copyright 2009 Page, Wolfberg & Wirth, LLC



Best answer - Good documentation by field providers and compliant billing and follow-up

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### “Step Up” Your Compliance Efforts

- Maintaining Medicaid compliance has become as critical as ensuring Medicare compliance
- Both the MIP and PERM will have their own set of auditors

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### Check the Rules for Updates

- Pennsylvania Medical Assistance
- 55 PA Code Chapter 1245
- Ambulance Transportation Regulations
- Ten page document

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### Perform Self Audits

- Conduct routine internal audits
- Prospective claims – not yet filed
- Post-payment claims
  - Filed correctly?
  - Proper level of service?
  - Documentation supports medical necessity?
  - Mileage?
  - Medicaid or SNF responsible to pay?

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### Check Staff Credentials

- Verify staff credentials are up to date
- Also check drivers license to ensure it is up to date

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### External Claims Review

- Consider a routine external claims review for Medicare AND Medicaid claims

© Copyright 2009 Page, Wolfberg & Wirth, LLC



### Compliance Guidance

- **OIG Compliance Guidance for Ambulance Suppliers**
  - Federal Register, Vol. 68, No. 56
  - March 24, 2003
- **OIG Compliance Guidance for Third-Party Medical Billing**
  - Federal Register, Vol. 63, No. 243
  - December 18, 1998

© Copyright 2009, Page, Wolfberg & Wirth, LLC



Sign up for our free  
EMS Law Bulletins at  
**[www.pwwemslaw.com](http://www.pwwemslaw.com)**



### Mark the Dates!

- *All NEW "ABC 3"*
- Hershey Lodge
- October 21-22, 2009
- Special Ceremony for first graduating class of Certified Ambulance Coders

