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November 12, 2010

Donald Berwick, M.D.
Administrator
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244-1850

Re: Medicare, Medicaid, and Children's Health Insurance Programs; Additional Screening Requirements, Application Fees, Temporary Enrollment Moratoria, Payment Suspensions and Compliance Plans for Providers and Suppliers; CMS 6028-P

Dear Administrator Berwick:

On behalf of the National Association of Emergency Medical Technicians (NAEMT), I want to thank you for providing us the opportunity to comment on the various proposals set forth in the Proposed Rule titled "Medicare, Medicaid, and Children's Health Insurance Programs; Additional Screening Requirements, Application Fees, Temporary Enrollment Moratoria, Payment Suspensions and Compliance Plans for Providers and Suppliers" (the "Proposed Rule"). 75 *Fed. Reg.* 58204 (September 23, 2010).

Formed in 1975 and more than 33,000 members strong, NAEMT is the nation's only organization solely dedicated to representing the professional interests of all EMS practitioners, including paramedics, emergency medical technicians, first responders and other professionals working in pre-hospital emergency medicine. NAEMT members work in all sectors of EMS, including government service agencies, fire departments, hospital-based ambulance services, private companies, industrial and special operations settings, and in the military.

NAEMT strongly opposes the proposal to differentiate governmental and publicly-traded ambulance services from privately-held ambulance services for provider screening purposes.

Section 6401(a) of the Patient Protection and Affordable Care Act (Pub. L 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152) (hereinafter collectively referred to as the "ACA"), requires the Centers for Medicare and Medicaid Services ("CMS"), in consultation with the HHS Office of the Inspector General (the "OIG"), to establish procedures for screening providers and suppliers enrolled in the Medicare, Medicaid and Children's Health Insurance Program ("CHIP"). The law authorized CMS to determine the level of screening to be conducted based on the risks of fraud, waste and abuse posed by each category of health care provider or supplier. These screening procedures would apply to newly enrolling providers and suppliers at the time they apply for participation in Medicare, Medicaid or CHIP, and would also apply to currently enrolled providers and suppliers at the time they revalidate their enrollment information.

In the Proposed Rule, CMS is proposing to establish three levels of risk ("limited", "moderate" and "high"). The Proposed Rule also set forth the screening procedures that would apply to each of these levels of risk that are related to increasing levels of verification and screening.

In the Proposed Rule, CMS proposed to assign public or government owned or affiliated ambulance services to the "limited" level of risk. Ambulance services that are publicly traded on the New York Stock Exchange or NASDAQ system would also be assigned to the "limited" level of risk. By contrast, CMS proposed to assign non-public, privately-held ambulance services to the "moderate" level of risk. For convenience, we will hereinafter refer to government owned or affiliated ambulance services as "public ambulance services" and to non-governmental ambulance services as "private ambulance services".

While NAEMT does not object to the proposed levels of risk, or the screening procedures that would be associated with each level of risk, we strongly object to the proposal to assign public ambulance services to the "limited" risk category, while relegating private ambulance services to the "moderate" risk category. We believe such a distinction to be arbitrary.

Public and private ambulance providers and suppliers are already subject to multiple layers of government oversight

Ambulance services operate in a complex regulatory environment that typically involves multiple layers of government oversight. For example, ambulance services typically must apply for and receive the appropriate business licenses from a State Department of Health or other licensing agency. This may involve a "Certificate of Need" process that requires an ambulance service to demonstrate to the appropriate governmental agency not only that a public need exists for a new ambulance service in the geographic area, but also that the ambulance service has the capability to meet such public need. Ambulance services must also operate under the operational protocols of a state or local EMS agency. The vehicles used by an ambulance service may be licensed and/or regulated by the State Department of Transportation. Finally, the Emergency Medical Technicians (EMTs) and Paramedics employed by ambulance services are also licensed by the appropriate state or local agency. These various oversight bodies do not distinguish between public and private ambulance services, indicating that these governmental agencies do not believe one sector poses a greater risk than any other sector of the ambulance industry.

In addition, many private ambulance services are organized as nonprofit corporations. These entities may be subject to oversight and enhanced disclosure requirements by their State Attorney General or some other state governmental agency. To the extent they have obtained federal tax-exempt status, these nonprofit ambulance services are also subject to oversight from the Internal Revenue Service.

NAEMT does not believe that site visits are necessary to ensure that ambulance providers and suppliers are in compliance with applicable program requirements

Under the Proposed Rule, providers and suppliers placed in the "moderate" risk category will be subject to unannounced pre- and post-enrollment site visits. CMS indicated that these site visits are intended to ensure that affected providers and suppliers are "operational", and that they remain in compliance with their reporting responsibilities, including the requirement that they report any change of practice location pursuant to 42 C.F.R. §424.516. NAEMT understands CMS' concern that non-operational providers may pose a greater risk of fraud, waste and abuse. However, we are concerned that the time associated with conducting pre-enrollment site visits will act to further slow down the enrollment process. Further, ambulance services are already subject to site inspections by the state licensing agency. NAEMT

believes that existing procedures are sufficient to ensure that ambulance providers and suppliers are operating in compliance with program requirements.

In the Proposed Rule, CMS indicated that "certain types of providers and suppliers that easily enter a line or business without clinical or business experience, for example by leasing minimal office space and equipment, present a higher risk of possible fraud to our programs". NAEMT agrees that there may be a heightened risk of fraud and abuse where the barriers to entering a particular category of health care service are low. However, the requirements necessary to operate an ambulance service are quite high. For example, prior to enrolling in the Medicare, Medicaid or CHIP Programs, a prospective ambulance service typically must:

- Acquire the necessary business licenses from the applicable state and local government agencies;
- Acquire vehicles. The ambulance service must also arrange for these vehicles to be garaged and maintained. Finally, the service must have these vehicles licensed by the appropriate state and local governmental agencies;
- Stock each of its vehicles with the medications, medical and communications equipment required by state and local regulations;
- Hire crew members to staff these vehicles, who are subject to their own state licensing and educational requirements;
- Create and staff a dispatch center (or contract with an existing dispatch center); and
- Contract with a Medical Director who will oversee their operations.

These requirements are not only time-consuming, but are also extremely capital-intensive. As a result, we believe it is unlikely that a prospective ambulance service is going to complete these steps without the intention of then operating as a going concern. Moreover, each of these steps is easily verifiable as part of the screening procedures currently proposed for providers/suppliers in the "limited" risk category. .

Private ambulance services are subject to essentially the same governmental oversight as public ambulance services; therefore, NAEMT does not believe that there is any reasonable basis to differentiate between public and private ambulance services for screening purposes

CMS indicated in the Proposed Rule that the "additional government oversight" associated with public ambulance services justified placing these providers/suppliers in the "limited" risk category. However, as noted above, private ambulance services are subject to the same levels of state and local government oversight. Moreover, there is no evidence supporting the assertion that private ambulance services pose a greater risk of fraud, waste or abuse. CMS cited a January 2006 report by the OIG titled "Medicare Payments for Ambulance Transports" (OEI-05-02-000590) as the justification for placing private ambulance services in the higher, "moderate" risk category. However, the OIG's report did not single out private ambulance services as posing a greater risk of fraud, waste and abuse. In the absence of objective evidence to support the assertion that private ambulance services are at greater risk of fraud and abuse, this distinction is arbitrary and without merit.

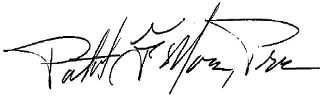
The marketplace for ambulance services is somewhat unusual, in that public and private ambulance services directly compete against one another. NAEMT is concerned that CMS' proposal to draw a distinction between public and private ambulance services could place private ambulance services at a competitive disadvantage vis-à-vis public ambulance services. Specifically, we are concerned that this proposal could be used to paint all private ambulance services with a "broad brush", i.e., to say that, as a whole, they are somehow more suspect or less compliant than their public counterparts. In proposing

rules designed to screen against fraud, waste and abuse, we do not believe that CMS intended to favor one segment of the pre-hospital care industry over another.

While NAEMT believes that all ambulance services should be placed in the “limited” risk category, we are strongly opposed to the proposal to assign public and private ambulance services to different risk categories. Accordingly, we respectfully request that CMS reconsider its proposal, and assign all ambulance services, public or private, to the same risk category.

We appreciate the opportunity to provide you with our comments. Please do not hesitate to contact should you have any questions. We would also welcome the chance to discuss our concerns with you and your staff at your earliest convenience.

Sincerely



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