

EMSAAC 2017 Annual Conference

The Top Threats to EMS and How to Effectively Manage Them

Presented by
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Doug Wolfberg is a founding partner of Page, Wolfberg & Wirth, and one of the best known EMS attorneys and consultants in the United States. Widely regarded as the nation's leading EMS law firm, PWW represents private, public and non-profit EMS organizations, as well as billing companies, software manufacturers and others that serve the nation's ambulance industry. Doug answered his first ambulance call in 1978 and has been involved in EMS ever since. Doug became an EMT at age 16, and worked as an EMS provider in numerous volunteer and paid systems over the decades. Doug also served as an EMS educator and instructor for many years.



After earning his undergraduate degree in Health Planning and Administration from the Pennsylvania State University in 1987, Doug went to work as a county EMS director. He then became the director of a three-county regional EMS agency based in Williamsport, Pennsylvania. He then moved on to work for several years on the staff of the state EMS council. In 1993, Doug went to the nation's capital to work at the United States Department of Health and Human Services, where he worked on federal EMS and trauma care issues. Doug left HHS to attend law school, and in 1996 graduated magna cum laude from the Widener University School of Law. After practicing for several years as a litigator and healthcare attorney in a large Philadelphia-based law firm, Doug co-founded PWW in 2000 along with Steve Wirth and the late James O. Page. As an attorney, Doug is a member of the Pennsylvania and New York bars, and is admitted to practice before the United States Supreme Court as well as numerous Federal and state courts. He also teaches EMS law at the University of Pittsburgh, and teaches health law at the Widener University School of Law, where he also serves as a member of the University's Board of Trustees and has endowed the Douglas M. Wolfberg Scholarship at the Commonwealth Law School.

Doug is known as an engaging and humorous public speaker at EMS conferences throughout the United States. He is also a prolific author, having written books, articles and columns in many of the industry's leading publications, and has been interviewed by national media outlets including National Public Radio and the Wall Street Journal on EMS issues. Doug is a Certified Ambulance Coder (CAC) and a founder of the National Academy of Ambulance Coding (NAAC). Doug also served as a Commissioner of the Commission on Accreditation of Ambulance Services.

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THE TOP THREATS TO EMS and How to Effectively Manage Them

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Threat Number



Aggressive Healthcare
Compliance Enforcement Against
the Ambulance Industry

Enforcement

- Governmental agencies that pay for healthcare services are cracking down like we've never seen before
 - Medicare
 - Medicaid
 - Other governmental payers

Enforcement

- Enforcement actions can run the whole gamut, including:
 - Administrative: payer audits, benefit integrity audits, OIG reviews
 - Civil: false claims act/whistleblower cases
 - Criminal: health care fraud cases

The Ambulance Industry

- Ambulance payments comprise:
 - Less than 5% of all Medicare Part B expenditures
 - Less than 1% of total Medicare expenditures
- But there is a disproportionate amount of enforcement activity in our industry

Why?

“Historically, Medicare has been vulnerable to fraud involving ambulance transports.”

Office of Inspector General Quote from a 2015 Report Titled “Inappropriate Payments and Questionable Billing for Medicare Part B Ambulance Transports”

How we see ourselves is not how the government sees us

It's Not Just the Government

- The biggest potential EMS false claims whistleblowers:
 - Former employees
 - Current employees
 - Competitors
 - Facility employees

Specific Risk Areas

- ALS billing
 - Particularly overbilling for ALS1-Emergencies based on ALS Assessment rule
- BLS Non-Emergency transports
 - Especially dialysis/repetitive transports

Specific Risk Areas

- Discounts and other potential kickbacks to facilities and referral sources
- Utilization and billing patterns that stand out from your peers

Strategies to Mitigate These Risks



Managing the Risks

- No single magic bullet
- No way to guarantee you won't be audited or targeted with a false claims case or other investigation
- But, taking certain important steps can help

Compliance Program

- There's no longer any excuse: a *functioning* compliance program is a must
- More than just a written compliance plan
- It's an active process of top-down engagement



PWW Ambulance Compliance Program Toolkit

- Model compliance plan
- Model compliance forms and policies
- Ready-to-use compliance training presentation

Key Issues

- Compliance officer (who has real authority within the organization)
- Compliance hotline
- Employee background/exclusion checks
- Regular audits
- Refunding overpayments promptly after they are identified

Key Issues

- Job-specific compliance training
 - Billers and coders – CAC
 - Compliance officer – CACO
 - Field personnel – Documentation training

Preventing Whistleblowers

- “Hire for attitude, train for skills”
- Always reinforce honesty, accuracy, ethics and integrity in every word and deed
 - This *especially* includes in staff meetings and in all e-mail communications

These are actual excerpts from the crew training manual of an ambulance service in Florida...

12. On Non-emergencies and hospital discharge, NEVER write "patient ambulated to stretcher" or patient was sitting in wheelchair. While this may be pertinent information on scene before a trip to the ER it is immaterial information on other types of transports.

The following list of diagnoses have, in the past, proven successful in aiding claims successfully through the payment process. It is strongly suggested that you use these wordings when writing your run reports. Only use the description if the info is pertinent.

Those excerpts were attached as Exhibit A to a False Claims Lawsuit brought by the Department of Justice against the Ambulance Service in 2016

Preventing Whistleblowers

- Obtain employee feedback
 - Ask employees if they have any concerns about documentation, coding, billing or other business practices
 - Make this a part of regular employee evaluation process
- Conduct exit interviews
 - Retain documentation in employee's file

Monitor Your Billing and Utilization Data

- Use the publicly available Medicare data
- Track high-risk areas (ALS vs. BLS billing percentage, BLS non-emergencies)



Monitor Critical Revenue Cycle KPIs

Threat Number



Privacy Pitfalls

HIPAA Enforcement Has
Gone From This...

To This...

But lucky for you, this
really isn't going to be
about HIPAA...

It's About Your **People**...

And the principles of
ethics, integrity and human decency!

And of course, social media has changed the privacy landscape completely...

How would you feel if that patient was a family member, friend or loved one?

It doesn't matter that the posting didn't specifically identify the patient by name. There was more than enough information that some could use to reasonably identify the patient.

Ethical Obligations

- Our patients' information is not *ours* to give out
- It belongs to the patient
- Effective health care depends upon *trust* in the provider-patient relationship

Images and Videos as PHI

- Photos and Videos that identify patients (or could reasonably be used to identify) must be protected in the same manner as any other PHI, such as:
 - Patient care reports
 - Hospital face sheets and facility records
 - Physician certification statements

Strategies to Mitigate These Risks



Privacy Risk Assessment

- Make sure you have a current, up-to-date privacy risk assessment on file
- This is the first thing that OCR investigators will ask for when investigating a privacy complaint

Personnel Training

- Critical to train personnel and provide periodic reminders of the importance of maintaining patient privacy
- Have a social media policy in place for *all* your employees
 - This includes even off-duty conduct

PWW Social Media Survival Kit

Includes:

- Sample Social Networking Policy
- Staff training materials
- Approved for CEU credit
- Detailed explanation of the law and your rights

Order at pwwmedia.com



Portable Electronic Devices

- Prohibit use of personal cell phone cameras
- Prohibit copying or downloading of any PHI onto portable media
- Secure all laptops, tablets and other devices with encryption
- Protect data at rest, in motion and on disposal

Threat Number



A Changing Health Care System
That Will Pass Us By if We Don't
Adapt

The Post-Reform Healthcare System

- It's a whole new world
- In addition to the post-ACA healthcare fraud crackdown, there is also an emphasis on payment reform
- The proposed American Health Care Act (AHCA) would shift the sands under our feet yet again

ACA vs. AHCA

What May Stay

- Pre-existing condition coverage
- Dependent coverage through age 26
- Marketplace insurer subsidies
- Fraud and abuse provisions

What May Go

- Community rating
- Individual mandate (replaced with 30% surcharge incentive)
- Employer mandate
- Medicaid expansion
- Minimum essential benefits

Medicaid Reform

- For existing Medicaid, feds considering converting the Federal share to block grants
- This would force states to either:
 - Increase their own Medicaid spending to maintain/expand benefit levels, OR
 - Reduce benefits (reimbursement amounts, covered services or both)

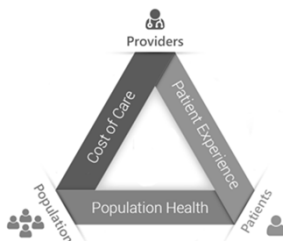
Medicaid Reform

- One area the feds will likely allow states to curtail is non-emergency medical transportation (NEMT)
- This is a vital “access to care” issue
- NEMT revenues also subsidize 911 operations in many areas

Payers Are Changing Focus

- From “fee for service” to “pay for performance”
- This means that we can expect reimbursement only for things that are shown to work

The “Triple Aim”



Does EMS Make a Difference?

- We’re asking the wrong questions, like:
 - What are our response times?
- What we should be measuring are things like:
 - Improvement in outcomes
 - Affect on overall patient health
 - Reduction in hospital stays
 - Prevention of readmissions

Strategies to Mitigate These Risks



Adapt or Die

Recognize the Competitive Shift From *Internal to External*

Old EMS Competition:
INTERNAL

- Public vs. Private
- Hospital-based vs. Independent Ambulance

New EMS Competition:
EXTERNAL

- Home Health Agencies
- Visiting Nurse Associations
- Urgent Care Clinics/Freestanding E.D.s

EMS ⇌ Integrated Healthcare

- Position your EMS agency as a participant in the total healthcare of your community's patients
 - Not just a transportation commodity

Ignite a Cultural Shift in Your Agency

- From a "public safety" culture to a "population health" culture

Positioning EMS in the Modern
Healthcare System Requires a mental
shift from lightbars to lab coats!

Find Opportunities in Integrated Care

- Partner with hospitals, hospices, health plans and others to effectively manage patients' out-of-hospital healthcare needs



Make Your Voice Heard

- It will be more important than ever for state associations to be active and engaged
- Much of the “battleground” will shift to state capitals as the feds return power to the states

Threat Number



A Workforce That Votes With its Feet

“Job Hopping Millenials”

EMS Workforce Issues

- Low pay
- Stress
- Personal health and safety concerns
- Limited opportunities for advancement

Job Hopping

- The average person will change *careers* up to 7 times during their working life
- The average worker has already had 10 jobs by the age of 42

With an Inadequate Workforce...

- We can't meet our mission
- We can't grow our companies
- We can't innovate
- We can't compete

Strategies to Mitigate These Risks



Improve Workplace Safety

- Employees want to know that they have a workplace that cares about their safety, health and well-being
 - Ambulance vehicle safety
 - Operational policies to prevent injury and accidents
 - Employee health and fitness

Recognize and Reward

- Much of what motivates employees is non-monetary
- Don't overlook the value of simple recognition for good work

“Note to Personnel File”

- “We received a call from the patient's daughter, stating how much she appreciated your taking the extra steps to care for her mother. She said you even took the time to feed her cats before you left the house since she lives alone and wouldn't be able to. This personal attention was very important to our patient and her family and you deserve special thanks for being so caring and considerate. Keep up the great work!”

Innovate and Excel

- Employees want to be a part of an organization that is doing something new and vital
- Give employees and opportunity to improve the organization
- Allow them to contribute to innovation and learn new skills

Create the Right Culture

- Foster a workplace culture that is positive, encouraging, respectful and rewarding

Threat Number



A Toxic Organizational Culture

The Three Types of Toxic Culture That Can Eat EMS Agencies From the Inside

- A Culture of Complacency
- A Culture of Bad Behaviors
- A Culture of Non-Compliance

A Culture of Complacency

A Culture of Bad Behaviors

A Culture of Non-Compliance

Strategies to Mitigate These Risks



Avoiding Toxic Organizational Culture

- Continually reinforce expectations
 - For example: sexual harassment awareness training
- Open-minded leadership
 - Ban the phrase “this is how we’ve always done it”
- *Embrace* change as an opportunity
 - Don’t *fear* it as a threat

Threat Number



Facility Partnerships Create New Compliance Risks

DOJ is Pursuing New False Claims Theories

- It is the ambulance service’s responsibility to properly code its claims for ambulance transportation
- *However*, in several recent cases, the DOJ has also gone after hospitals and other healthcare facilities for their role in ambulance utilization

Facilities and Ambulance Services

- Often the documentation on a PCS from a facility is intended to get you to move the patient –
- It’s not always an accurate record of the patient’s condition at the time of transport!

You can’t just look the other way

Remember . . .

- The presence of the signed physician certification statement does not alone demonstrate that the ambulance transport was medically necessary.

42 CFR 410.40(d)

Other Risks in Facility Arrangements

- “Swapping”
 - This is the OIG’s term for giving discounts to the facility on Part A business in exchange for Part B referrals

Strategies to Mitigate These Risks



Improve Call Intake

- It’s critical to practice proper non-emergency deployment
- Ask more questions than simply “what time is the pickup and where are we going?”

Revamp Medical Necessity Screening

- Ambulance services and facilities have to be partners in compliance
- Ensure that the shared goal is making sure that only those patients who truly require transport by ambulance are the ones being transported

Use Care With PCS Forms

- PCS forms can be a big liability trap
- Ambulance services should **not**:
 - Complete PCSs for the facility
 - Alter any PCSs that have been completed
 - Tell the facility what to write

Use Care With PCS Forms

- Only the authorized clinician who completes the form should document the patient's medical information
- Be sure to verify signatures and credentials of the signer
- If the PCS doesn't accurately describe the patient's condition, it's invalid

Perform a Cost Analysis

- Having a documented cost analysis
 - Ensure that facility contracts and other business is priced appropriately – and that you can *prove* you are not charging facilities less than your cost
 - “Cost” means fully-loaded, average cost per transport – *not* marginal cost or unit-hour cost

PWW Facility Contracting Tool Kit

Includes:

- Model facility contracts for SNFs, hospitals, hospices
- PWW Cost Analysis Tool
- Facility Education Packet
- Detailed explanation of pricing compliance strategies



Facility Contracting Tool Kit



Order at pwwmedia.com

Threat Number



Damn Lawyers

Liability in EMS

- We've already talked about FCA and AKS liability
- But don't forget about:
 - Tort liability
 - Medical malpractice
 - Vehicle accidents
 - Other personal injury cases

Strategies to Mitigate These Risks



Your Lines of Defense

- Defense # 1 – Good patient care
- Defense #2 – Good lawyer
- Defense #3 – Good insurance policy

Reduce Patient Care Liability

- Keep clinical protocols current
- Active medical oversight
- Meaningful QI programs
- Continuing education – especially on skills you don't use very often

Reduce Operational Liability

- Always revisit operational procedures to ensure they are as safe as possible
- This involves rethinking everything we do and assessing evolving threats
 - Driving
 - Infectious disease precautions
 - Scene safety
 - Terrorism

Do an Insurance Checkup

- Sometimes the Main St. insurance agent isn't the best option
- You might be surprised what activities may not be covered
- Consider dealing with a business insurance broker to review and insure against the entire range of risks

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