



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON

Medicaid Fraud Control Division
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September 26, 2019

Jim Fredman
Polsinelli LLP
1000 Second Ave, Suite 3500
Seattle, WA 98104

RE: *San Juan Island EMS Investigation*

SUBJECT TO RULE 408
CONFIDENTIAL SETTLEMENT NEGOTIATIONS

Dear Mr. Fredman,

Our office has concluded its initial investigation into San Juan Island EMS's billing practices concerning off-island transport. As you know, until approximately April 2016, San Juan Island EMS (SJI EMS) submitted claims to Health Care Authority (HCA) for Island Air Ambulance (IAA) to transport patients to off-island locations, almost exclusively with fixed-wing aircraft. In many of these instances, a fixed-wing transport was not justified and SJI EMS failed to use more appropriate and less costly transportation options. We have identified four broad categories where SJI EMS improperly submitted fixed-wing aircraft transport claims to HCA.

First, SJI EMS used fixed-wing aircraft to transport patients with basic life support (BLS) needs. While SJI EMS routinely coded every fixed-wing transport as advanced life support (ALS), the underlying patient file often did not support that assessment. Even other EMS agencies would code the same transport as BLS after they received the patient from IAA and transported the patient from the landing site to the destination hospital. SJI EMS could have transported these patients using ground ambulance and ferry service to and from the island at a significant discount to the State. We have identified at least 200 claims for BLS transports on fixed-wing aircraft.

Second, SJI EMS used fixed-wing aircraft for inter-facility transportation. Like BLS transports, a non-emergent transportation between hospitals does not justify the much higher cost of a fixed-wing aircraft transport. We have identified over 100 claims involving improper inter-facility transportation.

Third, SJI EMS used fixed-wing aircraft for transporting mental health patients without proper authorization. HCA requires a County Designated Mental Health Professional to examine a

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mental health patient prior to air transportation. There is no evidence of any such consultations being made in at least 34 flights.

Finally, SJI EMS used fixed-wing aircraft for intra-island transport when IAA did not have verification from the Department of Health to fly as an air ambulance for outer-island flights to Peace Island Medical Center. We have identified over 80 claims for unverified outer-island flights.

These categories all stem from the same troubling conduct—SJI EMS never made any independent assessment of whether these fixed-wing transports were appropriate or medically necessary, and instead affirmatively and repeatedly chose the most expensive mode of ambulance travel available. SJI EMS's conduct of routinely billing the State for the highest level of transportation, irrespective of the underlying circumstances, contravened multiple rules and regulations of the State's Medicaid program (*e.g.* WAC 182-546-4000, 5000 *et seq.*). We also have significant concerns about the close relationship between SJI EMS and IAA, especially through the numerous roles that Michael Sullivan, MD, played on behalf of parties that should have maintained an arms-length relationship.

Should SJI EMS be found liable under the Washington State False Claims Act, RCW 74.66.020, it faces significant monetary liability including treble damages plus a fine of over \$11,000 for each separate violation. We have calculated this total liability to well exceed a million dollars. But we are cognizant that SJI EMS is a public entity, it no longer bills the state directly for fixed-wing transport, and it appears that Michael Sullivan has now resigned as its Medical Director. Those facts are significant and mitigate in SJI EMS's favor.

As such, we are looking to close this matter as it pertains to SJI EMS for the period for which it billed services to HCA, and will settle with SJI EMS for \$350,000. In addition, we will seek SJI EMS's written assurance that it will abide by Medicaid regulations; most importantly, SJI EMS will develop and follow protocols for making its own truly independent judgment about what level of transport is appropriate and medically necessary. Last, SJI EMS must agree to assist our office in any ongoing investigation into other parties related to this conduct.

We anticipate your response will point out the potential difficulties of proving medical necessity. There is strong evidence here showing SJI EMS knowingly billed fixed-wing flights for what were patently obvious BLS transports, but in order to help resolve this case expeditiously our offer is based primarily on the last three categories of fraudulent billing identified above. These categories are effectively *per se* violations of material regulations and involve little or no issue of medical necessity. Therefore, based on this and the mitigating facts mentioned above, our offer represents a significant discount to SJI EMS's total liability and exposure. Should we be unable to settle this matter, we will conclude our investigation and prepare to file an action against SJI EMS for all conduct outlined above, including potential liability for the multiple conflicts of interest SJI EMS had based on at least Mr. Sullivan's multiple roles.

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We are available to discuss this matter further and hope we can work together to resolve this matter in the near future. Please contact me at your convenience. I look forward to your response.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nickolas Bohl".

Nickolas Bohl
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