

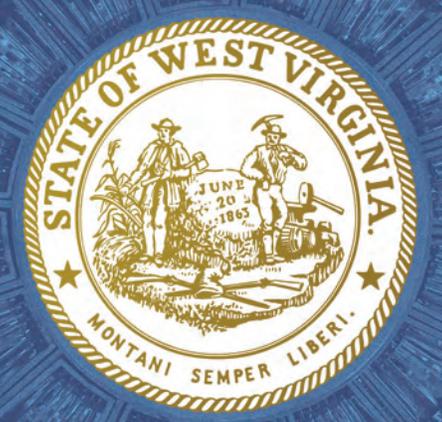
JOINT COMMITTEE ON GOVERNMENT AND FINANCE
WEST VIRGINIA OFFICE OF THE LEGISLATIVE AUDITOR

POST AUDIT DIVISION

LEGISLATIVE AUDIT REPORT

WV Non-Emergency Medical Transportation Program

Post Audit Division Director: Justin Robinson



GENERALLY ACCEPTED GOVERNMENT
AUDITING STANDARDS STATEMENT

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (**GAGAS**). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

POST AUDIT DIVISION
Justin Robinson, Director

POST AUDIT DIVISION

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WV Non-Emergency Medical Transportation Program

November 12, 2024

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Background

In 1974 a class action lawsuit, *Smith v. Vowell*, 379 F. Supp. 139 (W.D. Tex. 1974), alleged that the state of Texas failed to provide effective non-emergency medical transportation to a patient with cerebral palsy, who claimed he didn't have the physical capacity or the financial resources to take a taxi to his rehabilitation appointments. The case resulted in a ruling in favor of the plaintiff, recognizing the state's obligation to ensure Medicaid patients have proper transportation to and from necessary medical appointments. This court case resulted in non-emergency medical transportation, or NEMT, to be an eligible expense to be covered through Medicaid to attend Medicaid covered treatments. While these services became Medicaid eligible, for a long period of time there was no centralized provider or resource for Medicaid recipients who needed transportation to obtain it. In 1997, the state of Georgia and LogistiCare, currently ModivCare, launched the first NEMT brokerage service system.

Here in West Virginia, the Bureau for Medical Services (BMS) within the West Virginia Department of Human Services (DoHS) offers NEMT services to eligible Medicaid recipients for travel to and from scheduled medical appointments¹. As Georgia did in 1997, beginning October 1, 2014, the administration of the NEMT program in West Virginia became the responsibility of a contracted third-party NEMT broker. In September 2018, LogistiCare LLC became the third-party broker and remains the broker, currently operating as ModivCare². Presently, ModivCare is responsible for full administration of the NEMT program, including customer service, provider enrollment, benefit replacement, safety requirements, and monitoring for fraud, waste, and abuse. The BMS-NEMT Program Manager is the only full-time BMS employee responsible for the oversight of West Virginia's NEMT program.

In West Virginia, Medicaid eligibility numbers can vary month to month. In 2023, this ranged from a high of approximately 615,000 down to a low of approximately 536,400 Medicaid eligible West Virginians in March 2024. Taking into account several exclusions that make certain Medicaid members not eligible for NEMT services including those in long term care, incarcerated members, and qualified disabled working individuals among other program exclusions³, only a small percentage of NEMT eligible members actually utilize the program. Table 1 below shows the annual Medicaid NEMT program costs for 2019 through 2022, as well as the average monthly Medicaid enrollment and actual NEMT utilization.

Table 1: West Virginia NEMT Program Statistics 2019-2022				
	2019	2020	2021	2022
Total Medicaid NEMT Program Costs	\$32,878,035	\$36,589,672	\$43,911,323	\$36,813,147
Avg. Monthly Medicaid Enrollment	475,036	471,928	526,658	571,169
Avg. NEMT Member Utilization	18,542	16,566	12,529	12,571
Avg. % of Total Medicaid Enrollment	4%	4%	2%	2%

Source: WV BMS Medicaid LogistiCare/ModivCare Monthly Client Summary Reports

¹ This excludes members who require stretcher services transported via ambulance.

² On January 6, 2021, after acquiring ModivCare, LogistiCare adopted ModivCare as its company name.

³ According to BMS, Qualified Medicare Beneficiaries (QMB), Specified Low Income Medicare Beneficiaries (SLIMB), Qualified Disabled Working Individuals (QDWI), Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID), Long Term Care (LTC/Nursing Homes), Psychiatric Residential Treatment Facility (PRTF), Incarcerated Members (D1) are all excluded from receiving NEMT services.

The NEMT program is operated through Medicaid funding which is distributed monthly to ModivCare based on the number of eligible NEMT Medicaid members reported to the DoHS by Gainwell Technologies⁴. This monthly number of eligible NEMT Medicaid members is then multiplied by the contractually stipulated per member per month (PMPM) rate to arrive at the amount of monthly funding made available to the NEMT program. ModivCare is currently limited to earning an annual profit margin not to exceed 7.5% on the operation of the NEMT program in West Virginia. Each year, ModivCare provides BMS audited financial statements specific to the West Virginia NEMT program in verification of this profit amount, and any annual profit in excess is rebated back to the West Virginia BMS.

According to the ModivCare brochure available through DoHS and its website to all Medicaid members in West Virginia seeking NEMT services, transportation is provided at the ambulatory and wheelchair levels of services⁵ and all trips must be arranged and confirmed by ModivCare. Medical facilities can also make transportation arrangements through ModivCare for their residents/patients or can arrange a standing order for transportation to pre-scheduled appointments when recurring at least once per week over an eight-week period, such as for dialysis or long-term rehabilitation.

The types of transportation services available to eligible NEMT Medicaid members are:

- Gas mileage reimbursement
- Fixed route bus
- Private transportation provider

Mileage reimbursements are available to members who drive themselves or obtain transportation to a qualifying Medicaid appointment through another family member, friend, or other individual using a “Mileage Reimbursement Trip Log” that is submitted to ModivCare. Gas mileage reimbursement is limited to the nearest medically appropriate and qualified provider not to exceed 125 miles from the member’s home in-state or within 30 miles of the West Virginia border. Fixed bus route transportation includes the request for an advance bus ticket or fare for the member and for one escort if medically necessary.

A second transportation option available is the common carrier/fixed route option. These services are provided by public railways, buses, or airlines. The transportation rates are negotiated by ModivCare with each individual company. The most frequent usage in West Virginia involves buses, which is what is advertised in the brochure. There is a possibility for services to be provided by railway or airline transportation as available.

Finally, members can seek reservation of transportation through ModivCare and one of its registered private transportation providers. These providers may include registered medical transportation companies, local taxi services, and registered individuals, depending on the member location and provider availability in the area. ModivCare classifies the medical transportation providers and taxi companies as Transportation Providers (TP) and local individual drivers as

⁴ Gainwell Technologies is a third-party vendor with the DoHS, which receives Medicaid Eligibility and subtracts the Medicaid members not eligible for NEMT and transfers this information to the NEMT broker (ModivCare) for calculating the monthly Per Member Per Month costs.

⁵ Ambulatory refers to a member able to walk without the assistance of a wheelchair and does not require the assistance of someone else to walk. However, the member may still require transportation via the NEMT program. Wheelchair service is for members who specifically require wheelchair assistance when being transported to their designated medical facility.

Independent Drivers (ID). Transportation Providers (TP) are contracted and paid through the broker. Independent Drivers register to become eligible to provide transportation through ModivCare and primarily serve smaller communities and rural areas, somewhat like Uber and Lyft drivers. However, all Uber and Lyft drivers are not registered as NEMT providers. Some ID drivers may also work for Uber and Lyft but all reservations for NEMT services must be made through ModivCare and not Uber or Lyft. ModivCare requires all IDs, who volunteer their assistance to transport members to have CPR training and a First Aid Kit in their car, have proper insurance, and a clean driving record. Other safety and preventative measures are taken to ensure these requirements are met by ModivCare.

Issue 1: BMS is in compliance with the Code of Federal Regulations requirements for auditing and oversight of the NEMT program operated through its contracted third-party vendor. However, BMS lacks formally documented policies and procedures governing its auditing and oversight activities for the NEMT program which is a recommended best practice for organizations to guide operations and prevent errors and non-compliance. BMS also lacks a fraud risk management plan to prevent, detect, and respond to fraud risks associated with its contracted third-party vendor.

The Legislative Auditor was made aware of concerns regarding the NEMT program based on constituent complaints received and reported by a Senator regarding the NEMT services. The nature of these complaints varied but were generally issues regarding members not receiving rides due to unavailability of drivers in their area. However, the audit concern was that these issues may be systematic or widespread, and therefore the Legislative Auditor instructed a review of the program to determine the effectiveness of BMS oversight over the NEMT program and vendor as well as the responsiveness to complaints. During this review, the auditors determined that while the operations of ModivCare were sufficient in documenting and responding to complaints and suspected fraud, waste, abuse, and misuse; the BMS does not have specific internal controls or documented processes, policies, or procedures for its oversight of the NEMT program and the third-party contracted to operate the NEMT program.

ModivCare Operations for Fraud, Waste, Abuse, or Misuse and Complaints

In the auditors' review of the operations of ModivCare in providing NEMT program services, these operations appear to be well designed and operated, most likely lending to the vendor's history in the market. LogistiCare purchased ModivCare and was the first NEMT broker established nationally in 1997. The contract between BMS and ModivCare requires a monthly report to be provided to BMS concerning various aspects of the program and its operation. There are several data points for performance indicators contained in this report. This report is in Microsoft Excel format and contains 27 sub-reports. These reports contain information such as:

- Broker performance (ModivCare) including monthly member/vendor no shows, cancellations, validation checks, call center performance data, driver validation checks, and unauthorized charges.
- Provider report cards noting number of trips, late arrivals, no shows, and complaints for each provider of transportation.
- County level data including net trips, mileage, and length of trips.
- Call center data including staffing levels and monitoring of calls.
- Complaint data and details of complaints.
- Member denials for transportation and denial details.
- Transportation provider network data for those transportation providers operating with ModivCare.
- Accident reports.
- Member satisfaction scores.
- Vehicle inspections.
- Provider monitoring reports.

- Excessive distance reports.
- Suspected Fraud, Waste, Abuse or Misuse Reports.

Complaint data and information in the monthly ModivCare reports reviewed by the auditors appears to be detailed and complete. Complaints appear to originate from multiple sources including transportation providers, members, and medical facilities. The complaints include, but are not limited to, no shows on the part of both the rider and provider, attitude issues for either party, inability to provide transport for a given time (no provider available), and incorrect type of transportation. Both BMS and ModivCare receive the complaints. Any complaints received by DoHS are forwarded to ModivCare Client Services for action. Details of the complaints are noted as well as confirmation in a post verification process that is followed up with a quality assurance review. The resolutions to the complaints are also noted in these reports. The complaint summary shows the complaint number, member name, date of the complaint, type of complaint, response to the complaint, who made the complaint, the provider, the trip id, and the date of resolution. There are two reports provided by ModivCare to BMS which provide information on complaints: the R09 which is a complaint summary and then R10 which has the complaint details. The complaint summary report shows that operations of the NEMT program are approximately 99.8% complaint free.

A majority of issues noted in the fraud, waste, abuse, and misuse (FWAM) reports concern mileage reimbursement issues, where a member was reimbursed for mileage for a medical appointment but during the post trip verification it was found that the member did not attend the appointment, which was then confirmed through a quality assurance review. The second most common issue noted in the FWAM reports concerns transportation providers paid for trips where the post verification process determined the member did not attend medical appointments. The quality assurance reviews conducted and maintained by ModivCare confirmed these instances.

While there does exist the possibility that fraud is a factor in some of these instances, it appears from the information available that most issues noted are not related to fraud by the third-party NEMT broker or the transportation providers, but by individual members who receive gas mileage reimbursements for trips that were not in fact taken. The most likely cause for this being that pre-planned or scheduled trips are setup in advance of an appointment, but the eligible member misses the appointment for various reasons. Based on the current state approved NEMT reimbursement rate of \$0.50 per mile and the 125-mile limit for eligible reimbursement, the highest expense that could be falsely incurred for one of these instances would be \$125 per round trip. However, these ModivCare reports seem to indicate such ineligible charges are caught consistently through the post trip verification process and verified through a secondary quality assurance check. Therefore, **it appears that ModivCare is doing a sufficient job at preventing, detecting, and correcting these invalid reimbursements.**

Typically, when fraud, waste or abuse is identified ModivCare recovers these funds by negating future mileage reimbursements to a member by not providing future payments to a transportation provider until the invalid amount is recovered. As previously discussed, many issues are classified as abuse or misuse rather than actual fraud and the amounts are relatively small per instance, making recovery achievable as the transportation providers and members remain active program participants. If ModivCare identifies a fraud that they determine is beyond their ability to recover through recoupment from future payments, ModivCare coordinates with DoHS-BMS Program Integrity for referral, who reports the case to the WV Attorney General's Office, Medicaid Fraud and Control Unit (MFCU).

Concerning the integrity and security of the data reported to BMS, ModivCare has supplied Systems and Organization Controls 2 (SOC-2) Type II Reports to BMS at their request. A SOC-2 report is designed to provide assurances about the effectiveness of controls in place at a service organization that are relevant to the security, availability, or processing integrity of the system used to process clients' information, or the confidentiality or privacy of that information. The Type II reports assess how the controls in place function over a period of time. It is designed to answer the question as to whether the security controls in place are functioning as intended. The SOC reports provided cover companywide issues on the national level and address issues discovered in audits conducted for ModivCare specific to data reliability, compliance, and confidentiality.

BMS Lacks Documented Policies and Procedures for the Oversight and Auditing of the NEMT Program.

While the operation of West Virginia's NEMT program is contracted to a third-party to carry out all of its functions, the DoHS still has oversight responsibility for the program and its outcomes. The auditors requested policies, procedures, and a copy of a fraud risk management plan specific to BMS's oversight over the NEMT program and the third-party it contracts with to carry out these activities. **However, BMS stated it did not have policies or procedures specific to its oversight activities and did not have a fraud risk management plan.** DoHS and BMS representatives stated that the terms of the contract and the financial risk of fraud being placed solely on the third-party through those contract terms were what DoHS relies on to prevent, detect, and respond to fraud, waste, abuse, and misuse. Additionally, BMS stated it has several internal processes that it performs monthly regarding program oversight. According to BMS, each monthly report provided by ModivCare is reviewed by the BMS NEMT Program Manager. BMS provided monthly reports maintained in Microsoft Excel which documents its review of these monthly ModivCare reports specific to each monthly reporting requirement.

Additionally, ModivCare and the BMS NEMT Program Manager hold monthly face to face meetings to discuss the main points of the overall report packet as well as informal and conversational meetings throughout the year. These meetings are not documented, and minutes of the meetings are not maintained. With regard to fraud, waste, and abuse, the BMS NEMT Program Manager, BMS Director of Professional Services, and ModivCare review the ModivCare Monthly Fraud, Waste, Abuse, and/or Misuse (FWAM) reports for the purpose of identifying members and/or providers who have the same recurring issues. Additionally, the BMS NEMT Program Manager has regular discussions with ModivCare regarding these reports and member/provider fraud issues. If deemed necessary, restrictions and/or suspensions may be imposed on the fraudulent party. There is no formal documentation of these meetings imposing any restrictions and/or suspensions however a review of the ModivCare reports confirms these do occur.

While BMS does perform some oversight activities, the lack of documented policies and procedures to direct how this oversight is to occur presents several potential problems. Without formally documented policies and procedures detailing the oversight requirements and responsibilities, there is a risk these processes may not be carried out consistently. Further, undocumented oversight activities provide no confirmation they were conducted and, if so to what extent. A lack of documented policies and procedures also increases the risk of knowledge gaps resulting from a change in personnel. The lack of such policies and procedures also prevents auditors from determining if the oversight was performed as dictated by policy or if there are deviations from those procedures that may have a material impact on the effectiveness of this oversight.

As previously stated, there is one Program Manager at BMS responsible for the oversight of the NEMT program. In the event this employee separates, there would be no policies and procedures to direct a replacement employee on how to properly perform oversight of the NEMT program. Finally, without policies and procedures governing this oversight, it precludes BMS from regularly reviewing these procedures to determine the effectiveness of each oversight activity and whether modification or improvements to those activities could be made to provide better oversight.

These issues may be the result of the current limited staff resources dedicated to the NEMT program, which may be reflective of the intent to contract the operations out to a third-party. Currently, the Program Manager is the only full-time person assigned to the management of the NEMT program. Although the Program Manager sometimes works in conjunction with the Director of the BMS Program Integrity Unit, the ultimate responsibility for the management and operation of the program is limited to one full-time staff person. While it does appear to the auditors that the current vendor has sufficient internal controls, processes, and procedures in place and an established reputation in providing NEMT services, this does not provide absolute assurance or alleviate all risks. Having limited staff and a reliance on a third-party contractor reinforces the need for clearly defined and documented policies and procedures for how the oversight of the NEMT program and the third-party contractor is to occur within BMS. It is important for documentation requirements to be developed to reflect these activities, outcomes, and recommendations. Further, the Code of Federal Regulations sets forth requirements for the oversight of the NEMT program, 42 Code of Federal Regulations (CFR)§440.170(4), states:

(42 Code of Federal Regulations (CFR)§440.170(4) states in part:

...a State plan may provide for the establishment of a non-emergency medical transportation brokerage program in order to more cost-effectively provide non-emergency medical transportation services for individuals eligible for medical assistance under the State plan...

(C) Is subject to regular auditing and oversight by the State in order to ensure the quality and timeliness of the transportation services provided and the adequacy of beneficiary access to medical care and services.

Given BMS has chosen to use a third-party vendor for the operation of the West Virginia NEMT Program to provide services to qualifying West Virginians, it should engage in best practices for proper third-party risk management, including developing, documenting, and implementing policies and procedures governing its oversight of the NEMT vendor as well as a fraud risk management plan specific to its use of a third-party contracted to carry out these services.

Best Practices for Third-Party Risk Management

The practice of government entities outsourcing services to third-parties is fairly common as evidenced by the multi-state operations of the current NEMT vendor ModivCare. It is a common best practice for organizations engaging with third-parties to contract out significant functions to develop and implement effective third-party risk management procedures and internal controls to effectively monitor and manage the third-party in carrying out its contracted obligation. In addition to having internal controls applied at the third-party management level, BMS should establish its own documented internal controls and processes for assessing the performance of the third-party. This would include regular assessments of the adequacy of internal controls of the third-party, as

well as reviewing the activities and outcomes of the third-party independently to monitor and detect potential issues including fraud, waste, and abuse and to ensure all internal controls are functioning as designed.

While the third-party may attest to its internal controls and even provide reports such as System and Organization Control Reports⁶ (SOC Reports), the contracting entity still has the responsibility to independently verify that these controls are operating effectively through its own internal procedures and system of internal controls. Reliance on the terms of the contract and SOC reports alone are not sufficient to mitigate the third-party risk and must be substantiated through an internal process that assesses this performance and risk on a regular basis. While ModivCare has supplied their SOC 2 Type II reports to BMS, they have not been reviewed by BMS. These best practices are further outlined in the *Standards for Internal Control in the Federal Government* (known as the Green Book).

Further, according to the Association of Certified Fraud Examiners (ACFE), organizations should implement a Fraud Risk Management Plan to assess, identify, and respond to risks it faces, including fraud risk. This includes those risks associated with third-party vendors which an organization contracts with to carry out one or more of its required functions. Since the control environment, policies, and procedures of the third-party are outside of the direct control of the organization contracting these services, it is a detrimental to wholly rely on the third-party's internal controls to prevent or detect fraud. This means it is critical that the organization establish and implement a fraud risk management plan specific to its third-party vendors to monitor those activities to ensure fraud risk is mitigated to an acceptable level. This monitoring should include a periodic review and assessment of the third-party's fraud risk management plan and internal audits of the third-party activities. Periodic monitoring is designed to ensure compliance with the contract terms and to assess fraud risk that may impact those activities and may have otherwise gone undetected by the third-party. Within the current contract BMS has access to ModivCare's systems to conduct such audits.

Organizations faced with a high likelihood of becoming victims of fraud should employ proactive approaches to fraud management which can be assisted by developing a fraud management framework. According to the ACFE a fraud management framework is a comprehensive approach to combating fraud. The Committee of Sponsoring Organizations of the Treadway Commission (COSO) and the ACFE released a joint Fraud Risk Management Guide. The Fraud Risk Management Guide has five fraud risk management principles that are necessary for the effective management of an organization's fraud risk. These five principles include establishing a Fraud Risk Management Program, performing comprehensive fraud risk assessments, utilizing preventive and detective fraud controls, establishing a communication process, and ongoing monitoring of fraud controls.

Additionally, in specific relation to the NEMT program, the CFR and the WV Medicaid State Plan⁷ specifically requires regular auditing and oversight by the State of the third-party provider. The function of the audits and oversight is to ensure the beneficiary is provided

⁶ SOC reports are governed by the American Institute of Certified Public Accountants (AICPA) and focus on offering assurance that the controls service organizations put in place to protect their clients' assets (data in most cases) are effective.

⁷ The State Plan governs the running of the Medicaid programs and is approved by the Federal Centers for Medicare & Medicaid Services (CMS).

transportation services which provide adequate access to medical care in a timely and quality manner. While BMS was been found by CMS to be in compliance with the State Plan and thus the CFR, as recently as 2022, based on the Department's attestation it was fulfilling the obligations of the State Plan, the Legislative Auditor believes BMS should take a more proactive approach to this requirement with the documenting any reviews and/or audits as evidence this required oversight is occurring.

Review of Transactional Data Provided by ModivCare

The Legislative Auditor instructed the Post Audit Division to sample transactions from the NEMT program to determine what information is maintained by ModivCare for the transactions it processes and to determine if that information is sufficient to be used by BMS in conducting oversight activities. Auditors chose to review transactions that had been completed and processed for Fiscal Year 2022. Transaction for Fiscal Year 2022 totaled 1,089,198 individual transactions totaling \$21,290,806, with an average transaction of \$19.55. The majority of these transactions were for qualifying mileage reimbursements to and from medical appointments with 707,881 transactions for mileage reimbursements totaling approximately \$10.6 million or 49.8% of the total cost of these transactions. Auditors used statistical sampling methodology to sample and review 338 transactions and the supporting documentation used to process the transaction. After reviewing these transactions and supporting documentation, it was determined that the information maintained is sufficient to allow BMS to provide adequate oversight to ensure the proper processing of valid transactions by ModivCare. Auditors did not note any material weaknesses with the documentation and data received, however did note a lack of trip logs for 22 transactions and errors in 4 transactions resulting from an error within the documentation. Given the individual transaction amounts, these errors were deemed immaterial.

Auditors did note that the length of time for ModivCare to provide the requested information was substantial. Auditors requested this information at the end of November 2023, and the information was not fully supplied until March of 2024. While this does represent a significant amount of time to fulfill such a request, ModivCare was able to supply all requested information to allow for the planned review of transactions. A cause for the delay in supplying this information was not sought or determined but should BMS choose to conduct reviews of transactions as part of its oversight of the NEMT vendor, the ability for ModivCare to provide such information timely would be desirable.

Conclusion

Based on the auditors' review, the activities of ModivCare under the terms of the contract based on the monthly reports it provides to BMS appear to be efficient and effective in managing and providing NEMT services in West Virginia. ModivCare has a multi-layered process for reviewing and verifying attendance to each appointment for which NEMT services are provided that appear to consistently identify and respond to potential instances of fraud, waste, abuse, and misuse. Common issues that result in improper reimbursement do not appear to be large on a per instance basis and could be more aptly classified as abuse or misuse, greatly reducing the potential for high dollar single instance fraud cases. The complaint process also appears sufficient to address concerns from participants in the program and the monthly reports provide evidence of follow up and resolution to complaints by ModivCare. While from the information available it does appear ModivCare is operating effectively under the contract terms, there is more that BMS can do to

further reduce the risk of fraud, waste, abuse, and misuse to the program and to ensure consistent operation of the program and its oversight through BMS.

The establishment and implementation of documented policies and procedures for the operation and oversight of the NEMT program within BMS would ensure the consistency and effectiveness of operating the program over time and provide staff policies and procedures to follow in the event of turnover. Further, the establishment of a fraud risk management plan for ModivCare or third-parties that the BMS or ModivCare would report potential instances of fraud. It may be in the best interest of the program to obtain the input and direction of the Attorney General regarding the design and implementation of a fraud risk management plan.

Recommendations:

1. The Legislative Auditor recommends that BMS develop and implement internal controls, policies, and procedures designed specifically to monitor the performance of the third-party contracted to operate the NEMT program under the terms of the contract as well as to prevent, detect, and deter potential fraud that may impact the program.
2. The Legislative Auditor recommends that BMS establish and implement a fraud risk management plan, which allows for the assessment of the potential for fraud risks facing the NEMT program as it seeks to achieve its objective of being efficient and effective in providing non-emergency transportation to its eligible members. If it would be necessary or beneficial, BMS may want to work with the Attorney General's Medicaid Fraud Control Unit.
3. The Legislative Auditor recommends BMS conduct regular auditing and oversight of the Non-Emergency Medical Transportation (NEMT) program as administered by a third-party brokerage and document the results of such activities so that it may be reviewed by independent third-party auditors or reviewers.

Appendix A

WEST VIRGINIA LEGISLATIVE AUDITOR'S OFFICE

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Justin Robinson
Director

September 5, 2024

Cynthia Beane, Commissioner
Department of Human Services,
Bureau for Medical Services
350 Capitol Street, Room 251
Charleston, WV 25301

Commissioner Beane,

This is to transmit a draft copy of the Post Audit Division's report on the Non-Emergency Medical Transport (NEMT) Program under the Department of Human Services, Bureau for Medical Services. The report is not yet scheduled to be presented but we anticipate its release during the October interim meetings of the Legislature. When the meeting is scheduled, and we are aware of the date and time we will contact you to let you know the time, date, and location of the meeting. Currently, the October interims are scheduled for October 6-8, 2024. It is recommended that a representative of your agency be present at the meeting to respond to the report and answer any questions the committee members may have during or after the meeting.

If you would like to schedule an exit conference to discuss this draft report prior to its release, please contact Terri Stowers at 304-347-4880 or terri.stowers@wvlegislature.gov to schedule this meeting to occur prior to the end of September. In addition, if you would like to provide a written response to the report, we ask that this be provided no later than 12:00 pm on Wednesday, October 2, 2024, for it to be included in the final report. Thank you for your cooperation.

Sincerely,

A handwritten signature in blue ink that reads "Justin Robinson".

Justin Robinson

Enclosure: Post Audit Draft Report – NEMT

C: Brian Cassis, Director of Internal Control & Policy Development, WV DH/DHF/DHS

Objectives, Scope, and Methodology

The Post Audit Division of the Office of the Legislative Auditor conducted this post audit as authorized by Chapter 4, Article 2, Section 5 of the West Virginia Code, as amended.

Objectives

The objectives of this audit were to determine if the Bureau for Medical Services (BMS) provides adequate oversight of the Non-Emergency Medical Transportation (NEMT) programs and the vendor contract.

Scope

The scope of the audit consisted of a review of the NEMT program from FY 2018 to FY 2022 as it relates to the operation of the program per the contract, as well as applicable W.Va. Code and the Code of Federal Regulations (CFR). Also included was a review of internal controls, policies and procedures, and processes for operating the program.

Methodology

Audit staff obtained and analyzed all NEMT contracts (Initial, Emergency, and Current) from 2018-2022 as well as policy and procedure manuals, systems of internal control policies regarding the NEMT program. The Audit staff reviewed WV-BMS oversight of the NEMT vendor program, to determine if the transactions were properly verified according to ModivCare policies and procedures for processing a transaction while verifying key supporting documents are present and procedures were performed as required. To perform the review the Audit staff sampled the transactions for FY 2022. Based on the population size and the de minimis amount per transaction, the auditors determined the use of statistical sampling is the best method for selecting transactions for further review to achieve the audit objective. Results will not be projected due to a change in objective deeming it unnecessary. The review demonstrated that the documentation is available for BMS to perform audit testing going forward. Additionally, the audit team reviewed and analyzed the requirements for BMS's responsibility over their NEMT contracts in the WV Code and/or the CFR. Based on the legal requirements, DHHR-BMS properly monitors the performance of ModivCare in fulfilling its contractual obligation to the NEMT program. The contracts were reviewed to determine if they contained contract language regarding fraud. ModivCare is contracted as DHHR-BMS's full-risk capitation broker. As the full-risk capitation broker, if there is an occurrence of fraud ModivCare has the full risk and DHHR-BMS does not bear any loss. DHHR-BMS informed the audit staff that ModivCare has the full risk, and it does not bear any loss. Due to ModivCare being paid per member per month, ModivCare is motivated to catch occurrences of fraud and assumes all risk if fraud does take place. The contracts did not have a documented fraud management framework that DHHR-BMS needs to follow to catch or monitor occurrences of fraud.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Appendix C



STATE OF WEST VIRGINIA
DEPARTMENT OF HUMAN SERVICES
BUREAU FOR MEDICAL SERVICES

Cynthia A. Persily, Ph.D.
Cabinet Secretary

Cynthia Beane
Commissioner

October 3, 2024

Justin Robinson, Director
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Charleston, WV 25305-0610

Director Robinson:

This is to acknowledge receipt of a draft copy of the Post Audit Division's report on the Non-Emergency Medical Transport (NEMT) Program under the Department of Human Services, Bureau for Medical Services. After reviewing the report and the recommendations, the Bureau for Medical Services agrees with the findings and the recommendations set forth by the West Virginia Legislative Auditor's Office.

BMS has documented our internal controls, policies and procedures specifically to monitor the performance of the third-party vendor which operates the NEMT program.

BMS has requested that Myers and Stauffer provide support to establish and implement a fraud risk management plan which allows for the assessment of the potential for fraud risks facing the Non-Emergency Medical Transportation (NEMT) program as it seeks to achieve its objective of being efficient and effective in providing non-emergency transportation to its eligible members. The estimated completion date for this project is January 3, 2025.

BMS has added internal auditing procedures to its Standard Operating Procedure for the Broker Non-Emergency Transport Program (NEMT) to provide oversight documentation.

Thank you for the opportunity to review this report. If we can be further assistance, please do not hesitate to contact our office at 304-558-1700.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Cynthia Beane'.

Cynthia Beane, MSW, LCSW
Commissioner

Attachments/Enclosures

Cc: Richard Ernest, Program Manager, BMS





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