

Title of Rule: Revision to the Medical Assistance Home and Community Based Services for Elderly Blind and Disabled Rule Concerning Non-Medical Transportation Section 8.494
Rule Number: MSB 16-07-14-A
Division / Contact / Phone: LTSS / Cassandra Keller / 866-5181

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

The purpose of this correspondence is to request clearance of the rule change for Non-Medical Transportation service. The rule is found at 10 CCR 2505-10 §8.494. This rule change is in response to a statutory change. The legislature passed HB16-1097, which created a new category of transportation permits administered by the Public Utilities Commission. This rule change is needed to come into compliance with the legislative mandate.

This new category of Medicaid Client Transport (MCT) permits will be administered to NMT and NEMT providers, upon the completion of several requirements, which includes, but is not limited to, a criminal background check and vehicle inspections.

The rule outlines the new requirements for providers, how new and existing providers become qualified, and requirements for background checks for drivers. This rule does not drive any additional cost for the Department and increases oversight of a critical service.

The Department has worked closely with the PUC to develop the changes to this section of the rule, and has received buy-in on these changes, as well as with the NMT stakeholder workgroup.

2. An emergency rule-making is imperatively necessary

- to comply with state or federal law or federal regulation and/or
- for the preservation of public health, safety and welfare.

Explain:

3. Federal authority for the Rule, if any:

4. State Authority for the Rule:

25.5-6-303, C.R.S. (2015);
25.5-1-301 through 25.5-1-303, C.R.S. (2015)

Initial Review **08/12/2016** Final Adoption **09/09/2016**
Proposed Effective Date **10/30/2016** Emergency Adoption

DOCUMENT #08

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REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

Individuals who will be affected by this rule are individuals who use the NMT service. They will benefit from this rule change due the new requirements, but they will not bear any cost from this rule change. NMT providers may have a slight additional administrative burden but the Department does not anticipate any bearing any additional cost.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

All LTSS waiver clients who use NMT will benefit from the new requirements additional oversight it will bring to the program.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

There will not be a cost increase to the Department.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

The clarification of the new requirements to LTSS providers significantly outweighs any additional administrative burdens on the part of the providers.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

There are no less costly methods available.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

No alternative methods were considered.

1 **8.494 NON-MEDICAL TRANSPORTATION**

2 **8.494.10 DEFINITIONS**

3 ~~.11~~

4 ~~Non-Mmedical Ttransportation (NMT) services~~ means transportation which enable eligible clients
5 to gain ~~personal~~ physical access to non-medical community services and ~~resources~~supports, as
6 required by the care plan to prevent institutionalization.

7 ~~.12~~ ~~Non-Mmedical Ttransportation pProvider (provider)~~ means a provider agency that has
8 met all of the standards and requirements as specified in subsection 8.494.40 of this regulation.
9 as defined at 10 CCR 2505-10 section 8.484.50.P which has met all the certification standards for
10 transportation providers listed below.

11 Medicaid Client Transport (MCT) Permit means a permit that is issued to a Non-Medical
12 Transportation provider by the Public Utilities Commission (PUC).

13

14 **8.494.20 INCLUSIONS**

15 .21 Non-Mmedical ~~transportation~~Transportation services shall include, but not be limited to,
16 transportation between the client's home and non-medical services or ~~resources~~supports
17 such as Adult Day Center's, services, shopping, activities that encourage community
18 integration, therapeutic swimming, dentist appointments, counseling sessions, and other
19 services as required by the care plan to prevent institutionalization.

20 **8.494.30 EXCLUSIONS**

21 .31 Non-~~medical~~Medical transportationTransportation services shall not be used to
22 substitute for medical transportation, which is subject to reimbursement under 10 CCR
23 2505-10 sections 8.680 through 8.691.

24 .32 Non-Mmedical ~~transportation~~Transportation services shall only be used after the case
25 manager has determined that free transportation is not available to the client.

26 **8.494.40 CERTIFICATION PROVIDER STANDARDS FOR NON-MEDICAL**
27 **TRANSPORTATION SERVICES**

28 .41 Transportation providers shall conform to all general ~~certification~~ standards and
29 procedures set forth within Department regulations at 10 CCR 2505-10 sections 8.494
30 and 8.487 with the following exceptions:-

31 A. Existing Non-Medical Transportation providers have until January 1st, 2018 to
32 fully comply with section 8.494 regarding the new Medicaid Provider and MCT
33 Permit applications.

~~.42 Transportation providers shall assure that:~~

~~.42 A. Transportation providers shall ensure that A~~all drivers ~~shall~~ possess a valid Colorado driver's license, ~~are shall~~ be free of physical or mental impairment that would adversely affect driving performance, and have not had two or more convictions or chargeable accidents within the past two years.

~~.43 B. Transportation providers shall ensure that A~~all vehicles and related auxiliary equipment shall meet all applicable federal, state, and local safety inspection and maintenance requirements, and ~~transportation providers~~ shall be in compliance with ~~state automobile commercial liability~~ insurance requirements ~~and PUC financial responsibility requirements, as set forth in section 40-10.1-107, C.R.S.~~

~~.43~~ Provider and Driver Qualifications:

A. Each Provider must have and maintain a valid MCT Permit from the PUC, as required by section 40-10.1-302, C.R.S.; and

B. Each Provider must maintain safe and functioning vehicles, free of deficiencies, and in compliance with PUC safety rules as required by 4 C.C.R. 723-6, § 6100-6199; and

CC. Each Provider shall ensure that all drivers, prior to providing NMT services, have been qualified based upon the results of the statutorily required criminal history record check as conducted via the PUC, as outlined in Section 40-10.1-110, C.R.S.

8.494.50 LIMITATIONS AND REIMBURSEMENT

.51 Reimbursement for non-medical transportation shall be the lower of billed charges or the prior authorized unit cost at a rate not to exceed the cost of providing medical transportation services.

.52 A provider's submitted charges shall not exceed those normally charged to the general public, other public or private organizations, or non-subsidized rates negotiated with other governmental entities.

~~.53 No payment shall be made for charges when the recipient is not actually in the vehicle~~Provider charges shall not accrue when the recipient is not physically present in the vehicle.

1 .54 Providers shall not bill for services before they are an approved Medicaid provider and
2 may bill only for those NMT services performed by a driver that has been qualified based
3 upon the results of the statutorily required criminal history record check.

4
5 ~~.54~~ ~~Effective 2/1/99, tThere shall be no reimbursement under this section for non-medical~~
6 ~~transportation services provided to clients residing in uncertified congregate facilities.~~
7 ~~Case managers may submit a written request to the Department for a waiver not to~~
8 ~~exceed six months for clients receiving services in uncertified congregate facilities prior to~~
9 ~~the effective date of this rule. After that time, services shall be discontinued.~~

10 .55 Effective 12/01/2009, eExcluding transportation to HCBS Adult Day facilities, a client may
11 not receive more than the equivalent of two (2) round trip services per week, or 104
12 round trip services per annual certification period utilizing NMT, unless otherwise
13 authorized by the Department.

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