

DEPARTMENT OF SOCIAL SERVICES

NOTICE OF INTENT TO ADOPT REGULATIONS

In accordance with the provisions of subsection (a) of section 4-168 of the Connecticut General Statutes, notice is hereby given that the Commissioner of Social Services, under section 17b-262 of the Connecticut General Statutes, proposes to establish in regulation, the policies for the administration of non-emergency medical transportation, a benefit conferred under the Medicaid program.

Statement of Purpose: (A) The purpose of the regulation is to adopt new sections 17b-262-1040 to 17b-262-1047, inclusive of the Regulations of Connecticut State Agencies and repeal section 17-134d-33 of the Regulations of Connecticut State Agencies. The proposed regulation updates the regulation for the provision of non-emergency medical transportation in compliance with 42 CFR 440.170 and section 17b-276 of the Connecticut General Statutes.

(B) The issues that the regulations propose to address include: (1) the authority of the Department of Social Services to procure a broker to manage non-emergency medical transportation on its behalf; (2) the role of the broker; (3) the requirements to serve as a transportation provider which provides transport for Recipients to and from the Recipients' Medicaid-covered services; (4) the requirements for payment of the participating transportation providers; (5) the requirements for reimbursement to be issued for those providing private transportation or transportation through a homemaker-companion agency; (6) when a Recipient is entitled to non-emergency medical transportation and how they may obtain transport; and (7) the rights of Recipients to appeal decisions made by the broker with which the client disagrees.

The main provisions of the regulation provide: (1) Definitions; (2) Scope; (3) Covered Services, Non-Covered Services, and Limitations on service; (4) Broker responsibilities; (5) Prior Authorization Requirements (6) Transportation Provider responsibilities; (7) Recipient Responsibilities; and (6) Department Responsibilities.

(C) The legal effects of the regulation, including all of the ways that the regulation would change existing regulations or other laws are: The proposed regulation will set forth the policies for payment and administration of the non-emergency medical transportation services under the Medicaid program.

A copy of the complete text of this regulation is available, at no cost, upon request from the Office of Legal Counsel, Regulations and Administrative Hearings, Department of Social Services, 55 Farmington Avenue, Hartford, Connecticut 06105; email: joseph.smiga@ct.gov.

A public hearing is scheduled to be held on October 29, 2014 from 10:00 a.m. – 12:00 p.m. or until all the comments have been heard or until the last person has testified. The public hearing will be at the Department of Social Services' Central Office, on the 1st floor of 55 Farmington Avenue, Hartford, CT 06105. Speakers are requested, although not required, to submit a written copy of their comments. Written comments, questions, and concerns regarding this regulation may be submitted at any time prior to the close of the public hearing, and should be sent to the Department of Social Services, Office of Legal Counsel, Regulations & Administrative Hearings, 55 Farmington Avenue, Hartford, Connecticut, 06105, attention: Brenda Parrella, Director. All comments must be received by the close of the public hearing and will not be accepted or considered if received after the close of the public hearing. When submitting correspondence, please refer to Regulation Control Number 12-03/NEMT.

R-39 Rev. 08/2012
(Title page)

IMPORTANT: Read instructions on
back of last page (Certification Page)
before completing this form. Failure
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disapproval of proposed Regulations

State of Connecticut
REGULATION
of

NAME OF AGENCY

Department of Social Services

Concerning

SUBJECT MATTER OF REGULATION

Non-Emergency Medical Transportation

Section 1. The Regulations of Connecticut State Agencies are amended by adding sections 17b-262-1040 to 17b-262-1047, inclusive, as follows:

(NEW) Sec. 17b-262-1040. Scope

Sections 17b-262-1040 to 17b-262-1047, inclusive, set forth the requirements for payment of non-emergency medical transportation provided by or on behalf of the Connecticut Department of Social Services under sections 17b-262 and 17b-276 of the Connecticut General Statutes, 42 CFR 431.52, and 42 CFR 440.170.

(NEW) Sec. 17b-262-1041. Definitions

As used in sections 17b-262-1040 to 17b-262-1047, inclusive, of the Regulations of Connecticut State Agencies:

- (1) “Appeal” means the process by which a recipient requests a hearing to contest a decision by the broker relating to coverage.
- (2) “Attendant” means a person who accompanies a recipient to a Medicaid-covered service because the provider to whom the recipient is being transported has determined that it is in the best interest of the recipient.
- (3) “Border provider” means a provider located in an area of a state bordering Connecticut, which allows it to generally serve Connecticut residents, and which is enrolled as a CMAP provider.
- (4) “Broker” means the entity with which the department contracts to arrange and manage transportation for recipients to and from Medicaid-covered services.
- (5) “Canceled call” means a trip that has been approved through the prior authorization process and scheduled by the broker, but that is subsequently canceled by the broker after notice from the recipient that the recipient no longer requires the trip.

- (6) “Closest appropriate provider” means a provider with the skills and expertise necessary to meet the medical needs of the recipient and located either within a fifteen-mile radius of the address where the recipient resides or, if a provider is not available within the fifteen-mile radius, then the closest possible provider to the recipient.
- (7) “Connecticut Home Care Program for Elders” has the same meaning as provided in section 17b-342 of the Connecticut General Statutes.
- (8) “Connecticut Medical Assistance Program” or “CMAP” means the Medicaid program administered by the Department of Social Services.
- (9) “Department of Social Services” or the “Department” means the State of Connecticut Department of Social Services.
- (10) “Durable medical equipment” or “DME” has the same meaning as provided in section 17b-262-673 of the Regulations of Connecticut State Agencies.
- (11) “Emergency” means a medical condition, including labor and delivery, manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in placing a recipient’s health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of a bodily organ or part.
- (12) “Escort” means a person with the legal authority to consent to medical treatment for a recipient who does not have the legal capacity to consent and who accompanies the recipient to or from a Medicaid-covered service. If a parent has previously consented to medical treatment for the recipient, the parent may appoint another adult to accompany the child in this capacity.
- (13) “Homemaker-companion agency” has the same meaning as provided in section 20-670 of the Connecticut General Statutes.
- (14) “Invalid coach” or “wheelchair van” means a vehicle used exclusively for the transportation of a non-ambulatory recipient, who is confined to a wheelchair, but does not require a stretcher, to or from either a facility or the recipient’s home in non-emergency situations.
- (15) “Legally liable relative” means the spouse of a recipient who is at least 18 years old and the parents of a recipient who is under 18 years old.
- (16) “Livery” means a vehicle, operated by a livery carrier or taxi carrier in compliance with state Department of Transportation requirements and registered as such with the state Department of Motor Vehicles.

- (17) “Medicaid” means Title XIX of the Social Security Act and its accompanying regulations.
- (18) “Medicaid-covered service” means a service that either will be paid for by the department through the Medicaid program or would be paid for if the department were the payer of last resort, and includes medically necessary training and education related to the Medicaid-covered service.
- (19) “Medical” means physical, dental and behavioral health.
- (20) “Medically necessary” has the same meaning as provided in section 17b-259b of the Connecticut General Statutes.
- (21) “Modes of transportation” means the type of transportation to or from a Medicaid-covered service, including, but not limited to, ambulances, public and private transportation, livery, wheelchair accessible livery, wheelchair vans or invalid coaches, and airplanes.
- (22) “No-show” means a scheduled trip that does not occur because the recipient or the transportation provider did not appear, and which was not canceled by the recipient or the transportation provider.
- (23) “Non-emergency ambulance” means a pre-arranged ambulance trip that is not responding to emergency injury or illness.
- (24) “Non-emergency medical transportation” or “NEMT” means transportation for recipients to and from Medicaid-covered services that are not emergencies and for which prior authorization is required.
- (25) “Notice of action” is a document issued in accordance with 42 CFR 431.210 to a recipient when NEMT is denied, in part or in whole, which details the reasons for the denial and the recipient’s right to a hearing.
- (26) “Out-of-state trip” means a trip starting or ending outside of the state of Connecticut that is to transport the recipient to or from a provider that is not located in Connecticut and is not a border provider.
- (27) “Prior authorization” means approval and assignment to an NEMT provider by the broker for a recipient’s transportation to or from a Medicaid-covered service before the transportation is provided.
- (28) “Private transportation” means transportation in a vehicle owned by a recipient or other individual and not licensed for commercial carriage. Private transportation does not include transport in a vehicle owned or operated by a community, company, corporation, society or association.

- (29) “Provider” means an entity or practitioner with a signed CMAP provider enrollment agreement with the department.
- (30) “Public transportation” means transportation provided by a municipal, city or state bus service and includes buses designed specifically for persons in wheelchairs.
- (31) “Recipient” means a person eligible for and receiving Medicaid services under CMAP.
- (32) “Relative” means a person connected to the recipient by blood, marriage or legal adoption.
- (33) “Secure correctional or detention facility” means any facility run by the Connecticut Department of Correction or the Federal Bureau of Prisons.
- (34) “Shared ride” means transportation provided to two or more recipients traveling in the same vehicle to or from a Medicaid-covered service.
- (35) “Static disability” means a disability with severe and permanent limitations that is unlikely to improve with time.
- (36) “Third party insurer” means any form of medical coverage other than Medicaid, including Medicare or Veterans benefits.
- (37) “Transportation provider” means a transportation entity or organization, enrolled with the Department as a provider, which transports recipients to and from Medicaid-covered services, as assigned by the broker.
- (38) “Trip” means a one-way transport of a recipient between work, school or a residence and a Medicaid-covered service within the state of Connecticut.
- (39) “Urgent condition” means a condition that is not an emergency medical condition, but which requires prompt medical attention, as determined by a medical, dental or behavioral health provider. Such determination must be provided to the broker at the time of scheduling a trip.
- (40) “Urgent request” means a request for NEMT that is made with less than two business days’ advance notice of the trip due to the presence of an urgent condition.
- (41) “Wheelchair accessible livery” means a vehicle operating under the regulations of the state Department of Transportation and registered as such by the state Department of Motor Vehicles, which is specifically designed for the transportation of recipients who use wheelchairs.

(NEW) Sec. 17b-262-1042. Covered Services, Non-Covered Services and Limitations

- (a) Covered Services.

- (1) NEMT is covered by Medicaid when transportation is required to or from a Medicaid-covered service for a recipient who does not have access to transportation through other means. The broker, in accordance with DSS policies, shall determine the mode of transportation that is appropriate based on an individualized determination of what is the least expensive, medically necessary mode of transportation for the recipient.
 - (2) Out-of-state trips are covered services subject to the conditions set forth at 42 CFR 431.52(b) and section 17b-262-532 of the Regulations of the Connecticut State Agencies.
- (b) Non-Covered Services. NEMT for recipients shall not be authorized or paid for if the trip is:
- (1) For someone other than the recipient, who is being transported to or from a Medicaid-covered service, including a relative of a recipient, unless the person is acting as the recipient's attendant or escort;
 - (2) solely for the purpose of picking up a prescription drug or a written prescription order or solely for the purpose of picking up an item that does not require a fitting;
 - (3) to or from a secure correctional or detention facility;
 - (4) to transport a recipient who is a hospital inpatient to a Medicaid-covered service outside the hospital, except if the transportation is for the purpose of having a computerized axial tomography (CAT) scan or a magnetic resonance imaging (MRI) if these services are not offered at the hospital where the recipient is an inpatient; or
 - (5) a no-show or a canceled call.
- (c) Limitations.
- (1) Closest appropriate provider.
 - (A) The department shall pay for NEMT to the closest appropriate provider.
 - (B) The department shall not pay for NEMT to accommodate the recipient's choice of providers, unless it is the closest appropriate provider.
 - (C) If the trip is for a Medicaid-covered service and a third party insurer is paying for the service, the department shall pay for NEMT to a provider that is not the closest appropriate provider if:

- (i) That provider accepts payment from such third party insurer; and
 - (ii) the payment for the NEMT is less than the payment would be if the recipient had been transported to the closest appropriate provider that did not accept payment from the third party insurer.
 - (D) If a recipient has been receiving care from a provider for a specific health condition and a subsequent request for transportation is for continuation of that care for that specific health condition, the broker may consider that provider to be the closest appropriate provider, regardless of the distance from the recipient's residence, for a period of six months.
 - (E) If the recipient moves and wishes to continue to see the same provider for a particular medical condition after relocation, the broker may continue to authorize transportation to the same provider for the same medical condition for up to six months.
- (2) Children.
- (A) Except as provided in paragraph (B) of this subdivision, recipients who are under 16 years of age may not be transported to or from a Medicaid-covered service by a transportation provider without an escort.
 - (i) The parent or legal guardian of the child under 16 years of age, or an escort, identified in writing by the parent or legal guardian of such child to the broker, shall accompany the child to the medical appointment.
 - (ii) If a parent or legal guardian does not identify an escort in accordance with this subdivision, the broker may deny prior authorization of NEMT, or terminate authorization that was previously granted. In such circumstances, the broker shall issue a notice of action to the recipient.
 - (iii) Under no circumstances shall a transportation provider or an employee of the broker serve as the recipient's escort.
 - (B) Exceptions.
 - (i) The parent or legal guardian of a child between the ages of 12 to 15, inclusive, may consent to NEMT being provided to the child without an escort. The parent or legal guardian shall provide such consent to the broker, in writing and on a form provided by the broker and approved by the department, prior to the broker authorizing the NEMT.

- (ii) If a child under 16 years of age seeks NEMT for a Medicaid-covered service for which parental consent is not required, and the child tells the broker that an escort is not wanted because the child wants to maintain confidentiality, the broker shall arrange for such transportation of a minor without an escort or parental consent. If the child under 16 years of age wants an escort to such a Medicaid-covered service, the broker shall permit an escort to accompany the child without obtaining parental consent.
- (C) Car or booster seats. A parent or legal guardian of the child must provide the type of car seat or booster seat that is required by state law in order for the transportation provider to transport a child. If the car seat or booster seat is not provided by the parent or legal guardian at the time of pick up, the trip will be canceled and no transport shall take place.
- (3) Durable medical equipment. A recipient with a health condition that necessitates the use of durable medical equipment during transport must provide such equipment. If such equipment is not supplied, the recipient shall not be transported by the transportation provider.

(NEW) Sec. 17b-262-1043. Prior Authorization Requirements

- (a) All trips require prior authorization before the trips take place. The request for prior authorization may come from the recipient, the recipient's family member, the facility in which the recipient resides or the facility from which the recipient receives services, including, but not limited to, nursing facilities, behavioral health providers, dialysis clinics, methadone clinics, and chemotherapy treatment facilities.
- (b) No payments shall be made to any transportation provider if prior authorization has not been obtained from the broker either before or at the time the broker assigns the trip.
- (c) The broker shall determine the least expensive, medically necessary mode of transportation for the recipient, based on an individualized assessment of the recipient and the recipient's needs. The broker shall consider:
 - (1) The recipient's and provider's proximity to mass transit;
 - (2) the recipient's access to a vehicle;
 - (3) the medical condition of the recipient, as documented by the signature of a licensed Medicaid provider treating the recipient; and
 - (4) any other factor that is relevant in order for the broker to determine the least expensive, medically necessary mode of transportation for the recipient.

- (d) Whenever practicable, the broker shall utilize shared rides for recipients, unless it is medically necessary to transport a recipient alone.
- (e) When reviewing a request for prior authorization, the broker shall obtain the following information from the recipient or whoever is requesting prior authorization on behalf of the recipient:
 - (1) The recipient's name, address, age, telephone number and Medicaid number;
 - (2) The provider's name, address and telephone number;
 - (3) The reason for the trip;
 - (4) The date and time of the medical appointment;
 - (5) The minimum amount of details about the recipient's medical condition necessary for the broker to make an individualized determination of the least expensive, medically necessary mode of transportation;
 - (6) Whether a friend or family member is available and capable of transporting the recipient;
 - (7) Proximity of the recipient and the provider to public transportation; and
 - (8) Whether an escort or attendant must accompany the recipient, as required by section 17b-262-1042 of the Regulations of Connecticut State Agencies or as detailed by a medical provider.
- (f) Requests for prior authorization may be made online, by telephone or facsimile. Except for urgent conditions, requests for prior authorization shall be made at least two business days before the recipient's appointment for which transportation is being sought. The broker shall honor urgent requests, on an as-needed basis, after the broker confirms with the recipient and the provider that the recipient has an urgent condition.
- (g) Prior authorization may be given for single or multiple trips, depending on the circumstances. Where medical need is shown, multiple trips may be authorized for periods up to three months.
- (h) For certain modes of transportation, the recipient must submit medical documentation detailing the need for the type of transportation. Except as provided by subdivisions (1) and (2) of this subsection, re-certifications of the continued need must be submitted to the broker at least every three months based on medical necessity. The initial documentation and subsequent re-certifications must be completed by the treating medical provider, confirming the continuing need for such mode of transportation, unless the broker determines that the recipient has a static disability.

- (1) If the broker determines that a recipient has a static disability and has no other means of transportation, the timeframe for such re-certification may be extended to once per year.
- (2) In determining whether a recipient has a static disability, the broker will assess the environmental and social barriers that may contribute to the need for the particular mode of transportation, and the recipient's medical condition, including, but not limited to, the following conditions:
 - (A) Inability to ambulate effectively on a sustained basis such as in disorders of the spine, amputations and major joint dysfunction;
 - (B) Severe limitations in mobility, self-care or communication and requiring multiple services over an extended period of time;
 - (C) Sensory or physical deficits requiring use of adaptive technology, accommodations or assistance from others;
 - (D) Severe cardiopulmonary disease with limited residual functional capacity necessitating the dependence on internal/external assistive devices;
 - (E) Persistent disorganization of motor function with serious limitation in cognition, independence and social functioning, such as in Parkinson's Disease or Alzheimer's Disease; and
 - (F) Severe developmental delay or persistent mental disorder resulting in impairment in cognition, independence and social functioning.

(NEW) Sec. 17b-262-1044. Broker Responsibilities

- (a) The department may procure the services of a broker for the oversight and management of the NEMT program.
- (b) In accordance with 42 CFR 440.170, the broker may not have a financial interest in any of the transportation entities that are part of the network to which the broker assigns trips.
- (c) The broker shall have a call center and administrative offices in the state of Connecticut, which shall include its quality assurance and operations units.
 - (1) The call center shall operate seven days a week and at hours approved by the department.
 - (2) A back-up call center shall operate at all other times.
 - (3) Both call centers shall provide language assistance and utilize scripts approved by the department.

- (d) The broker shall assist transportation providers to enroll in CMAP and ensure that there is an adequate number of qualified transportation providers enrolled in CMAP to serve recipients.
- (e) The broker shall maintain an online portal for scheduling transportation, accessible by facilities and individuals.
- (f) As part of the approval of the request for prior authorization, the broker shall:
 - (1) Assign a prior authorization number to each trip;
 - (2) conduct an individualized determination of the recipient to determine the least expensive, medically necessary mode of transportation for the recipient, which includes a review of the recipient's physical and mental condition;
 - (3) determine whether an attendant is medically necessary based on the recommendation of a Medicaid provider;
 - (4) authorize the mode of transportation that is the least expensive, medically necessary one for the recipient; and
 - (5) schedule the trip with a transportation provider that has a vehicle that meets the recipient's needs using the online standardized mapping tool approved by the department to determine the closest appropriate provider and the mileage for the trip.
- (g) If the broker denies a request for prior authorization or does not authorize the mode of transportation the recipient requests, or in any other way does not provide the recipient with the entirety of what is requested, the broker shall issue a notice of action to the recipient. The notice of action shall be in accordance with the requirements of 42 CFR 431.210 to 431.220, inclusive, and any other applicable state and federal laws. The notice of action shall include:
 - (1) An explanation of the reason for the denial; and
 - (2) details about how a recipient may appeal the denial and request a hearing.
- (h) The broker shall accept claims for payment from all transportation providers, except ambulances, and submit such claims electronically, to the department or the department's fiscal intermediary, in a format determined by the department. The broker shall also assist such transportation providers with the claims process, as necessary.

(NEW) Sec. 17b-262-1045. Transportation Providers' Requirements and Responsibilities

- (a) Transportation providers shall:

- (1) Meet and maintain all mandatory licenses and certifications applicable to the modes of transportation that they operate;
 - (2) enroll with the department as a Medicaid provider;
 - (3) comply with the requirements of the Medicaid Provider Enrollment Agreement;
 - (4) comply with the broker's requirements, as set forth in the transportation providers' agreement with the broker;
 - (5) maintain mandatory levels of insurance, as determined by the department;
 - (6) perform trips for recipients only as assigned by the broker;
 - (7) meet assigned pick-up and drop-off times, as scheduled; and
 - (8) submit claims to the broker, or, in the case of ambulances, directly to the department or the department's fiscal intermediary, with all required information in a format prescribed by the broker, the department or the department's fiscal intermediary and maintain documentation to substantiate all claims submitted.
- (b) Transportation providers shall not:
- (1) Affirmatively seek or solicit consent to transport minors without an escort; or
 - (2) request prior authorization for a trip on behalf of a recipient.
- (c) A provider's failure to comply with the requirements in subsections (a) and (b) of this section, and any other requirements the department determines are necessary, may result in the department's denial, suspension or termination of the provider from participation in the Medicaid program.
- (d) The department may reimburse a homemaker-companion agency for NEMT that companions provide to Medicaid recipients at a rate per mile determined by the department. The homemaker-companion agency shall:
- (1) Be enrolled with the department as a Connecticut Home Care Program for Elders provider and comply with the requirements of the Medicaid Provider Enrollment Agreement;
 - (2) enter into and comply with a "NEMT Account Setup" agreement with the broker;
 - (3) submit to the broker its employees' reimbursement claims monthly; and

- (4) reimburse its employees for approved trips at the per mile rate set by the department.
- (e) The department may reimburse an individual who provides private transportation to a recipient to or from a Medicaid-covered service at a rate per mile, as determined by the department.
 - (1) In order to obtain payment for such private transportation, the individual shall obtain prior authorization from the broker and provide to the broker proof of registration, driver's license and insurance.
 - (2) The department will not pay a recipient's legally liable relative for private transportation unless the total mileage to and from a Medicaid-covered service is:
 - (A) Over 50 miles in 7 consecutive days; or
 - (B) over 215 miles in 30 consecutive days.

(NEW) Sec. 17b-262-1046. Recipient Responsibilities

- (a) Recipients may request a trip to a Medicaid-covered service by calling the broker or by requesting a trip through the broker's online portal.
- (b) Recipients shall make every effort to contact the broker at least two business days' prior to the date and time of the appointment to and from which transportation is sought. In the event of an urgent condition necessitating transport with fewer than two business days' notice, the recipient shall call the broker to arrange for transportation as soon as possible after making the medical appointment and shall be prepared to provide information to the broker to support the urgent request.
- (c) Recipients shall make every effort to:
 - (1) Cancel a trip as soon as they are aware they will not need the transportation; and
 - (2) be ready for the trip at the scheduled time of the trip.
- (d) Recipients shall:
 - (1) Follow all laws of the state of Connecticut with regard to child safety seats, transportation safety and other related areas; and
 - (2) comply with any safety standards or policies established by the transportation provider or the broker.

(NEW) Sec. 17b-262-1047. Department Responsibilities

- (a) The department shall:
- (1) Set and publish on its website a fee schedule for all applicable modes of transportation and update the fee schedule as necessary;
 - (2) publish on its website any documents for recipients related to NEMT for ease of use by recipients;
 - (3) contract with a broker for the operations and management of NEMT, in accordance with section 17b-276 of the Connecticut General Statutes;
 - (4) pay claims for prior authorized trips for all modes of transportation, which includes payment for the fee schedule amount and mileage. Mileage shall be rounded to the nearest whole mile and calculated as the lesser of the mileage:
 - (A) submitted by the transportation provider; or
 - (B) determined by a standard or commercial mileage calculator.
 - (5) perform quality assurance reviews and audits of the broker from time to time; and
 - (6) act as a liaison between the broker, transportation providers, medical providers, recipients and other contractors of the department to ensure that NEMT is provided in accordance with state and federal law.

Section 2. Section 17-134d-33 of the Regulations of Connecticut State Agencies is repealed.