

Title of Rule: Revision to the Medical Assistance Act Rule concerning Non-Emergent Medical Transportation, Sections 8.014.1.N, 8.014.3.C.2, 8.014.3.D.1, 8.014.4.A, 8.014.6.A.3
Rule Number: MSB 20-04-30-B
Division / Contact / Phone: Health Programs Office / Ryan Dwyer / 303-866-6163

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).

This rule revision permits NEMT services for covered Medicaid services to locations that are not enrolled with the Colorado Medical Assistance Program. The purpose of this rule is to expand the list of allowable NEMT destinations to include alternative care sites (e.g., the Colorado Convention Center) that are not covered places of service. By temporarily waiving the covered place of service requirement, members can receive treatment for COVID-19 at a wider range of locations. This will potentially increase hospital capacity by shifting patients to sites that are not enrolled with the Colorado Medical Assistance Program.

In addition, the revision suspends the ability for NEMT providers to transport more than one member at a time, unless the additional passenger is an approved Escort.

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:

Permitting NEMT trips to non-covered places of service will prevent hospital overcrowding while ensuring that members receive treatment for COVID-19. The change allows flexibility and takes advantage of newly established alternative care sites that may be temporary in nature and thus not enrolled in the Colorado Medical Assistance Program. If members with COVID-19 can only receive care at covered places of service, those sites may become overcrowded and may see a shortage of available beds.

Suspending multi-loading will ensure compliance with social distancing guidelines by limiting a vehicle's occupants.

3. Federal authority for the Rule, if any:

42 CFR 440.170 (2020)

4. State Authority for the Rule:

Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2019);
25.5-5-324, C.R.S. (2019)

Initial Review

Proposed Effective Date

5/8/2020

Final Adoption

Emergency Adoption

5/8/2020

DOCUMENT #12

Title of Rule: Revision to the Medical Assistance Act Rule concerning Non-Emergent Medical Transportation, Sections 8.014.1.N, 8.014.3.C.2, 8.014.3.D.1, 8.014.4.A, 8.014.6.A.3
Rule Number: MSB 20-04-30-B
Division / Contact / Phone: Health Programs Office / Ryan Dwyer / 303-866-6163

Initial Review
Proposed Effective Date

5/8/2020

Final Adoption
Emergency Adoption

5/8/2020

DOCUMENT #12

Title of Rule: Revision to the Medical Assistance Act Rule concerning Non-Emergent Medical Transportation, Sections 8.014.1.N, 8.014.3.C.2, 8.014.3.D.1, 8.014.4.A, 8.014.6.A.3
Rule Number: MSB 20-04-30-B
Division / Contact / Phone: Health Programs Office / Ryan Dwyer / 303-866-6163

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.

Members utilizing or eligible for NEMT services (nearly all members with State Plan/Title XIX are eligible), NEMT providers, and facilities treating COVID-19 patients will all benefit from the proposed revisions.

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

Affected members will benefit from increased access to care, and transportation providers will benefit from a slight uptick in utilization when trip volumes have fallen. Medical providers and facilities will benefit from an increased ability to transport patients to prevent any one facility from becoming overloaded.

For the multi-loading revision, members and drivers will benefit from a reduction in potential exposure to COVID-19. Drivers will not see a reduction in trip volume because the Department previously issued guidance that suspended multi-loading during the public health emergency. This rule simply formalizes that guidance.

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 are no costs to the Department or to any other agency to implement and enforce the proposed rule.

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

For the covered place of service requirement, the probable cost of the proposed rule is a potential minimal increase in utilization, which is more than offset by the reduction in NEMT utilization during the stay at home order. The benefits of the proposed rule are increased access to care and the ability to move members to different sites as they recover, which frees up hospital beds.

Title of Rule: Revision to the Medical Assistance Act Rule concerning Non-Emergent Medical Transportation, Sections 8.014.1.N, 8.014.3.C.2, 8.014.3.D.1, 8.014.4.A, 8.014.6.A.3

Rule Number: MSB 20-04-30-B

Division / Contact / Phone: Health Programs Office / Ryan Dwyer / 303-866-6163

The cost of inaction is that members in a hospital for COVID-19 will continue to tie up beds if they cannot be moved to an alternate location as they recover. This will potentially strain hospital resources.

For multi-loading, the cost of the revision is a small increase in claims. One driver will have to take one patient at a time rather than multiple patients on the same route. As a result, the Department will need to dispatch more drivers. The cost will be offset by the substantial reduction in NEMT utilization for March and April. The benefit to implementation is that drivers and passengers will maintain social distancing standards and reduce the spread of COVID-19.

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 or less intrusive methods for achieving the purpose of the proposed rule.

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.

There are no alternative methods for achieving the purpose for the proposed rule.

1 **8.014 NON-EMERGENT MEDICAL TRANSPORTATION**

2 **8.014.1. DEFINITIONS**

3 8.014.1.A. Access means the ability to make use of.

4 8.014.1.B. Air Ambulance means a Fixed-Wing or Rotor-Wing Air Ambulance equipped with
5 medically necessary supplies to provide Emergency Medical Transportation.

6 8.014.1.C. Ambulatory Vehicle means a passenger-carrying vehicle available for those clients able
7 to walk and who do not rely on wheelchairs or other mobility devices, during boarding or
8 transportation, which would necessitate a vehicle with a lift or other accommodations.

9 8.014.1.D. Ancillary Services mean services incurred indirectly when a client authorized to receive
10 NEMT also requires the assistance of an Escort or financial assistance for meals or lodging.

11 8.014.1.E. At-Risk Adult means an adult who is unable to make personal or medical determinations,
12 provide necessary self-care, or travel independently.

13 8.014.1.F. Child means a minor under the age of 18.

14 8.014.1.G. Day Treatment means facility-based services designed for Children with complex medical
15 needs. Services include educational or day care services when the school or day care system is
16 unable to provide skilled care in a school setting, or when the Child's medical needs put them at
17 risk when around other Children.

18 8.014.1.H. Emergency Medical Transportation means Ground Ambulance or Air Ambulance
19 transportation under Section 8.018 during which clients who are ill, injured, or otherwise mentally
20 or physically incapacitated receive needed emergency medical services en route

21 8.014.1.I. Escort means a person who accompanies an At-Risk Adult or minor client.

22 8.014.1.J. Fixed-Wing Air Ambulance means a fixed wing aircraft that is certified as a Fixed-Wing
23 Air Ambulance by the Federal Aviation Administration.

24 8.014.1.K. Ground Ambulance means a ground vehicle, including a water ambulance, equipped with
25 medically necessary supplies to provide Emergency Medical Transportation.

26 8.014.1.L. Medicaid Client Transport (MCT) Permit means a permit issued by the Colorado
27 Department of Regulatory Agencies Public Utilities Commission (PUC) in accordance with the
28 PUC statute at Section 40-10.1-302, C.R.S.

29 8.014.1.M. Mode means the method of transportation.

30 8.014.1.N. Non-Emergent Medical Transportation (NEMT) means transportation to or from medically
31 necessary non-emergency treatment, ~~that is covered by the Colorado Medical Assistance~~
32 ~~Program.~~ Non-emergency care may be scheduled or unscheduled. This may include Urgent
33 Care transportation and hospital discharge transportation.

34 8.014.1.O. Program of All Inclusive Care for the Elderly (PACE) is a capitated rate benefit which
35 provides all-inclusive long-term care to certain individuals as defined in Section 8.497.

- 1 8.014.1.P. Rotor-Wing Air Ambulance means a helicopter that is certified as an ambulance by the
2 Federal Aviation Administration.
- 3 8.014.1.Q. State Designated Entity (SDE) means the organization responsible for administering
4 NEMT. For the purposes of this rule, the responsible SDE is determined by the client's county of
5 residence.
- 6 8.014.1.R. Stretcher Van means a vehicle that can legally transport a client in a prone or supine
7 position when the client does not require medical attention en route. This may be by stretcher,
8 board, gurney, or another appropriate device.
- 9 8.014.1.S. Taxicab means a motor vehicle operating in Taxicab Service, as defined in 4 CCR 723-6,
10 § 6001(yyy) (2019), which is hereby incorporated by reference.
- 11 8.014.1.T. Taxicab Service has the same meaning as defined in 4 CCR 723-6, § 6001(yyy) (2019),
12 which is hereby incorporated by reference.
- 13 8.014.1.U. Trip means one-way transportation from the point of origin to the point of destination.
- 14 8.014.1.V. Urgent Care means an appointment for a covered medical service with verification from
15 an attending physician or facility that the client must be seen or picked up from a discharged
16 appointment within 48 hours.
- 17 8.014.1.W. Wheelchair Vehicle means a motor vehicle designed and used for the non-emergent
18 transportation of individuals with disabilities who use a wheelchair. These vehicles include vans
19 modified for wheelchair Access or wheelchair accessible minivans.

20 **8.014.2. CLIENT ELIGIBILITY AND RESPONSIBILITIES**

- 21 8.014.2.A. All Colorado Medical Assistance Program clients are eligible for NEMT services unless
22 the client falls within the following eligibility groups on the date of the Trip:
- 23 1. Qualified Medicaid Beneficiary (QMB) Only
 - 24 2. Special Low Income Medicare Beneficiary (SLMB) Only
 - 25 3. Medicare Qualifying Individual-1 (QI-1) Only
 - 26 4. Old Age Pension- State Only (OAP-state only)
- 27
- 28 8.014.2.B. Child Health Plan Plus clients are not eligible for NEMT.
- 29 8.014.2.C. PACE clients receive transportation provided by their PACE organization and are not
30 eligible for NEMT.
- 31 8.014.2.D. NEMT services may be denied if clients do not observe the following responsibilities:
- 32 1. Comply with applicable state, local, and federal laws during transport.
 - 33 2. Comply with the rules, procedures and policies of the SDE.
 - 34 3. Obtain authorization from their SDE.

- 1 4. Clients must not engage in violent or illegal conduct while utilizing NEMT services.
- 2 5. Clients must not pose a direct threat to the health or safety of themselves or others,
- 3 including drivers.
- 4 6. Clients must cancel their previously scheduled NEMT Trip if the ride is no longer needed,
- 5 except in emergency situations or when the client is otherwise unable to cancel.

6 **8.014.3. PROVIDER ELIGIBILITY AND RESPONSIBILITIES**

7 8.014.3.A. Providers must enroll with the Colorado Medical Assistance Program as an NEMT
8 provider.

9 8.014.3.B. Enrolled NEMT providers must:

- 10 1. Meet all provider screening requirements in Section 8.125;
- 11 2. Comply with commercial liability insurance requirements and, if applicable, PUC financial
- 12 responsibility requirements established in the PUC statute at C.R.S. § 40-10.1-107;
- 13 3. Refrain from attempting to solicit clients known to have already established NEMT
- 14 service with another provider;
- 15 4. Maintain and comply with the following appropriate licensure, or exemption from
- 16 licensure, requirements:
 - 17 a. PUC common carrier certificate as a Taxicab;
 - 18 b. PUC MCT Permit as required by the PUC statute at C.R.S. § 40-10.1-302;
 - 19 c. Ground Ambulance license as required by Department of Public Health and
 - 20 Environment (CDPHE) rule at 6 CCR 1015-3, Chapter Four;
 - 21 d. Air Ambulance license as required by CDPHE rule at 6 CCR 1015-3, Chapter
 - 22 Five; or
 - 23 e. Exemption from licensure requirements in accordance with PUC statute at C.R.S.
 - 24 § 40-10.1-105.
- 25 5. Only provide NEMT services appropriate to their current licensure(s) and within the
- 26 geographic limitations applicable to the licensure; and
- 27 6. Ensure that all vehicles and auxiliary equipment used to transport clients meet federal,
- 28 state, and local safety inspection and maintenance requirements.

29 PUC statute at C.R.S. §§ 40-10.1-105, 40-10.1-107 and 40-10.1-302 (2019) and CDPHE rule at 6
30 CCR 1015-3, Chapters Four and Five (2019), are hereby incorporated by reference.

31 8.014.3.C. NEMT transportation providers must maintain a Trip report for each NEMT Trip provided
32 and must, at a minimum, include:

- 33 1. The pick-up address;

2. The destination address; ~~which must be a covered place of service under Section 8.014.4;~~
3. Date and time of the Trip;
4. Client's name or identifier;
5. Confirmation that the driver verified the client's identity;
6. Confirmation by the client, Escort, or medical facility that the Trip occurred;
7. The actual pick-up and drop off time;
8. The driver's name; and
9. Identification of the vehicle in which the Trip was provided.

8.014.3.D. Multiple Loading

1. ~~NEMT providers may not transport more than one client at the same time, unless the additional passenger is an Escort. Except as otherwise specified at Section 8.014.3.D.2., NEMT providers may transport more than one client at the same time if:~~
 - a. ~~Standard safety guidelines are followed;~~
 - b. ~~Each client agrees to be transported with other clients;~~
 - c. ~~No client is in the vehicle for more than thirty minutes longer than if the client were transported alone; and~~
 - d. ~~Children traveling without an Escort are transported only with persons known by such Children including, but not limited to, other Children attending the same service, family members, or friends, at all times.~~
2. ~~Taxicabs must comply with applicable PUC rules regarding multiple passengers at 4 CCR 723-6, § 6252 (2019), which is hereby incorporated by reference.~~

8.014.3.E. The Section 8.014.3 requirements do not apply to client reimbursement or bus or rail systems.

8.014.4. COVERED PLACES OF SERVICE

~~8.014.4.A. NEMT must be to service location(s) enrolled with the Colorado Medical Assistance Program to provide the medical services the client is receiving, regardless of whether the medical services will be paid for by the Colorado Medical Assistance Program or another entity.~~

8.014.4.BA. NEMT must be provided to the closest provider available qualified to provide the service the client is traveling to receive. The closest provider is defined as a provider within a 25-mile radius of the client's residence, or the nearest provider if one is not practicing within a 25-mile radius of the client's residence. Exceptions may be made by the SDE in the following circumstances:

1. If the closest provider is not willing to accept the client, the client may use NEMT to access the next closest qualified provider.

1 2. If the client has complex medical conditions that restrict the closest medical provider from
2 accepting the patient, the SDE may authorize NEMT to be used to travel to the next
3 closest qualified provider. The treating medical provider must send the SDE written
4 documentation indicating why the client cannot be treated by the closest provider.

5 3. If a client has moved within the three (3) months preceding an NEMT transport, the client
6 may use NEMT to their established medical provider seen in their previous locale. During
7 these three (3) months, the client and medical provider must transfer care to the closest
8 provider as defined at Section 8.014.4.B. or determine transportation options other than
9 NEMT.

10 **8.014.5. COVERED SERVICES**

11 8.014.5.A. Transportation Modes

12 1. Covered Modes of transportation include:

- 13 a. Bus and public rail systems
 - 14 i. Transit passes may be issued by the SDE when the cumulative cost of
 - 15 bus tickets exceeds the cost of a pass.
- 16 b. Personal vehicle mileage reimbursement
- 17 c. Ambulatory Vehicles
- 18 d. Wheelchair Vehicles
- 19 e. Taxicab Service
- 20 f. Stretcher Van
- 21 g. Ground Ambulance
- 22 h. Air Ambulance
- 23 i. Commercial plane
- 24 j. Train

25 8.014.5.B. NEMT Services

26 1. NEMT is a covered service when:

- 27 a. The client does not have Access to other means of transportation, including free
28 transportation;
- 29 b. Transportation is required to obtain a non-emergency service(s) that is medically
30 necessary, as defined in Section 8.076.1.8.; and
- 31 c. The client is receiving a service covered by the Colorado Medical Assistance
32 Program.

- 1 b. The appointment is for a covered medical service with verification from an
- 2 attending physician that the client must be seen within 48 hours; and
- 3 c. The client is transported to an Urgent Care facility, which may include a trauma
- 4 center if it is the nearest and most appropriate facility.

5 8.014.5.C. Personal Vehicle Mileage Reimbursement

- 6 1. Personal vehicle mileage reimbursement is covered for a privately owned, non-
- 7 commercial vehicle when used to provide NEMT services in accordance with Section
- 8 8.014.5.B and owned by:
 - 9 a. A client, a client's relative, or an acquaintance; or
 - 10 b. A volunteer or organization with no vested interest in the client.
- 11 2. Personal vehicle mileage reimbursement will only be made for the shortest Trip length in
- 12 miles as determined by an internet-based map, Trip planner, or other Global Positioning
- 13 System (GPS).
 - 14 a. Exceptions can be made by the SDE if the shortest distance is impassable due
 - 15 to:
 - 16 i. Severe weather;
 - 17 ii. Road closure; or
 - 18 iii. Other unforeseen circumstances outside of the client's control that
 - 19 severely limit using the shortest route.
 - 20 b. If an exception is made under Section 8.014.5.C.2.a., the SDE must document
 - 21 the reason and pay mileage for the actual route traveled.
- 22 3. To be reimbursed for personal vehicle mileage, the client must provide the following
- 23 information to the SDE within forty-five (45) calendar days of the final leg of the Trip:
 - 24 a. Name and address of vehicle owner and driver (if different from owner);
 - 25 b. Name of the insurance company and policy number for the vehicle; and
 - 26 c. Driver's license number and expiration date.

27 8.014.5.D. Ancillary Services

- 28 1. Escort
 - 29 a. The Colorado Medical Assistance Program may cover the cost of transporting
 - 30 one Escort when the client is:
 - 31 i. A Child.
 - 32 1. An Escort is required to accompany a client if the client is under
 - 33 thirteen (13) years old, unless the Child:

- 1 a. Is traveling to a Day Treatment program (Children are
2 not eligible for NEMT travel to and from school-funded
3 day treatment programs);
- 4 b. The parent or guardian signs a written release;
- 5 c. An adult will be present to receive the Child at the
6 destination and return location; and
- 7 d. The Day Treatment program and the parents approve of
8 the NEMT provider used.
- 9 2. Clients who are at least thirteen (13) years old, but younger than
10 eighteen (18) years old, may travel without an Escort if:
 - 11 a. The parent or guardian signs a written release; and
12 An adult will be present to receive the Child at the
13 destination and return location.
 - 14 ii. An At-Risk Adult unable to make personal or medical determinations, or
15 to provide necessary self-care, as certified in writing by the client's
16 attending Colorado Medical Assistance Program enrolled NEMT
17 provider.
 - 18 b. The Escort must be physically and cognitively capable of providing the needed
19 services for the client.
 - 20 i. If a client's primary caregiver has a disability that precludes the caregiver
21 from providing all of the client's needs during transport or extended stay,
22 a second Escort may be covered under Section 8.014.5.D.1.c.ii.
 - 23 c. The Colorado Medical Assistance Program may cover the cost of transporting a
24 second Escort for the client, if prior authorized under Section 8.014.7. A second
25 Escort will only be approved if:
 - 26 i. The client has a behavioral or medical condition which may cause the
27 client to be a threat to self or to others if only one Escort is provided; or
 - 28 ii. The client's primary caregiver Escort has a disability that precludes the
29 caregiver from providing all of the client's needs during transport or
30 extended stay.
- 31 2. Meals and Lodging
 - 32 a. Meals and lodging for in-state treatment may be reimbursed when:
 - 33 i. Travel cannot be completed in one calendar day; or
 - 34 ii. The client requires ongoing, continuous treatment and:
 - 35 1. The cost of meals and lodging is less than or equal to the cost of
36 traveling to and from the treatment facility and the client's
37 residence; or

1 8.014.6.B. General Limitations

- 2 1. The SDE is responsible for ensuring that the client utilizes the least costly Mode of
3 transportation available that is suitable to the client's condition.

4 **8.014.7. AUTHORIZATION**

5 8.014.7.A. All NEMT services must be authorized as required by the SDE.

- 6 1. Authorization requests submitted more than three months after an NEMT service is
7 rendered will be denied.

- 8 2. NEMT services may be denied if proper documentation is not provided to the SDE.

9 8.014.7.B. If a client requests transportation via Wheelchair Vehicle, Stretcher Van, or ambulance,
10 the SDE must verify the service is medically necessary with the client's medical provider

- 11 1. Medical or safety requirements must be the basis for transporting a client in the prone or
12 supine position.

13 8.014.7.C. Out-of-State NEMT

- 14 1. NEMT to receive out of state treatment is permissible only if treatment is not available in
15 the state of Colorado.

- 16 2. The following border towns are not considered out of state for the purposes of NEMT
17 prior authorization:

18 a. Arizona: Flagstaff and Teec Nos Pos.

19 b. Kansas: Elkhart, Goodland, Johnson, Sharon Springs, St. Francis, Syracuse,
20 Tribune.

21 c. Nebraska: Benkelman, Cambridge, Chappell, Grant, Imperial, Kimball, Ogallala,
22 and Sidney.

23 d. New Mexico: Aztec, Chama, Farmington, Raton, and Shiprock.

24 e. Oklahoma: Boise City.

25 f. Utah: Monticello and Vernal.

26 g. Wyoming: Cheyenne and Laramie.

27 8.014.7.D. Prior Authorization

- 28 1. The following services require prior authorization by Colorado Medical Assistance
29 Program:

30 a. Out-of-state travel, except to the border towns identified at section 8.014.7.C.2.

31 b. Air travel, both commercial air and Air Ambulance.

32 c. Train travel via commercial railway.

- 1 d. Second Escort.
- 2 2. Prior authorization requests require the following information:
- 3 a. NEMT prior authorization request form completed by SDE and member's
- 4 physician and submitted to Colorado Medical Assistance Program according to
- 5 form instructions.
- 6 i. The Colorado Medical Assistance Program will return requests
- 7 completed by non-physicians and incomplete requests to the SDE.
- 8 ii. The Colorado Medical Assistance Program's determination will be
- 9 communicated to the SDE. If additional information is requested, the
- 10 SDE must obtain the information and submit to the Colorado Medical
- 11 Assistance Program. If the request is denied, the SDE must send the
- 12 client a denial notice.

13 **8.014.8. INCORPORATIONS BY REFERENCE**

14 The incorporation by reference of materials throughout section 8.014 excludes later amendments to, or
15 editions of, the referenced materials. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains
16 copies of this incorporated text in its entirety, available for public inspection during regular business
17 hours, at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO
18 80203. Certified copies of incorporated materials are provided at cost upon request.

19