

Center for Medicaid and CHIP Services

CMCS Informational Bulletin

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CHIP Services

SUBJECT: **Medicaid Coverage of Certain Medical Transportation under the
Consolidated Appropriations Act, 2021 (Public Law 116-260)**

This Informational Bulletin (Bulletin) highlights for states important details of provisions added by the Consolidated Appropriations Act, 2021, Division CC, Title II, Section 209, concerning Medicaid coverage of certain medical transportation (section 209). This provision codifies in statute the longstanding regulatory interpretation of section 1902(a)(4) of the Social Security Act (the Act) that generally requires states to assure necessary transportation for beneficiaries to and from covered services. This provision of the Consolidated Appropriations Act, 2021, also added new requirements for a state's Medicaid transportation program.

Background

The Centers for Medicare & Medicaid Services (CMS) has long recognized the need for states to assure necessary transportation to and from covered services, helping to ensure access to care for beneficiaries who have no other means of transportation. Historically, the transportation assurance included both non-emergency medical transportation (NEMT) and emergency medical transportation and was based on the principles identified in section 1902(a)(4) of the Act, which requires that state plans “provide such methods of administration . . . as are found by the Secretary to be necessary for proper and efficient operation of the plan.” This provision was the basis for CMS to promulgate the assurance of transportation requirement in 42 CFR § 431.53. This regulation established the transportation assurance as a state plan requirement, providing that the plan must include a specification that “the Medicaid agency will ensure necessary transportation for recipients to and from providers” and “[d]escribe the methods that the agency will use to meet this requirement.” When provided pursuant to 42 CFR § 431.53, transportation is an administrative activity under the plan and is matched at the standard 50 percent federal matching rate provided under section 1903(a)(7) of the Act for administrative expenditures. However, the transportation assurance can also be implemented as an optional medical service under 42 CFR § 440.170(a), based on section 1905(a)(31) of the Act, which provides the Secretary the authority to include in the definition of medical assistance “any other medical care, and any other type of remedial care recognized under State law, specified by the Secretary.” Thus, states may meet the assurance of transportation requirement by providing necessary transportation as an administrative activity or as an optional medical service; when provided as

an optional medical service, transportation expenditures are matched at the applicable federal medical assistance percentage, or FMAP.

Assurance of Transportation

As mentioned above, section 209 formally incorporates the assurance of transportation requirement previously found only in regulation into section 1902(a)(4) of the Act. Specifically, the statute now provides that, subject to new provisions in section 1903(i), the Medicaid state plan must include “a specification that the single State agency . . . will ensure necessary transportation for beneficiaries under the State plan to and from providers and a description of the method that such agency will use to ensure such transportation.” Congress also made corresponding amendments to section 1937(a)(1) of the Act, adding a new paragraph (F) applying substantially the same assurance of transportation requirements for benchmark and benchmark equivalent coverage, also known as Alternative Benefit Plans (ABPs). Prior to this amendment, the assurance of transportation in ABPs was required by regulation under 42 CFR § 440.390, which references the state plan assurance of transportation requirement in 42 CFR § 431.53.

Additionally, section 1903(i) of the Act was amended to include a new paragraph (9), providing that, “with respect to any amount expended for non-emergency transportation [NEMT] authorized under section 1902(a)(4),” no payment may be made “unless the State plan provides for the methods and procedures required under section 1902(a)(30)(A)[.]” Section 1902(a)(30)(A) of the Act generally requires the state plan to provide methods and procedures as may be necessary to assure that “payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area[.]” This means that when determining and updating state plan rates for NEMT, states should evaluate and set the rates so that beneficiaries will have access to NEMT consistent with the availability of NEMT services to non-Medicaid individuals in geographic areas of the state. For states with a managed care delivery system, 42 CFR § 438.206(a) requires that each state ensure that all services covered under the state plan are available and accessible to enrollees of managed care plans in a timely manner. As such, if states include NEMT as a covered service under a managed care contract, states should carefully analyze their contract language and capitation rates to ensure adequate access and availability of services and to ensure compliance with all of the requirements in 42 CFR part 438.

Effective Date

The amendments made by section 209 are effective upon enactment of that law, which was December 27, 2020.

Additional New Transportation Provisions

Provider and Driver Requirements

Section 209 also added a new provision specifying NEMT provider and driver requirements. Specifically, section 209 added section 1902(a)(87) of the Act, requiring the Medicaid state plan

to provide for a mechanism, which may include attestation, that ensures any provider (including a transportation network company) or individual driver of non-emergency transportation to medically necessary services receiving payments under such plan (but excluding any public transit authority), meets specified minimum requirements.

These minimum requirements under the state plan must include that:

- (A) Each provider and individual driver is not excluded from participation in any federal health care program (as defined in section 1128B(f) of the Act) and is not listed on the exclusion list of the Inspector General of the Department of Health and Human Services;
- (B) Each such individual driver has a valid driver's license;
- (C) Each such provider has in place a process to address any violation of a state drug law; and
- (D) Each such provider has in place a process to disclose to the state Medicaid program the driving history, including any traffic violations, of each such individual driver employed by such provider, including any traffic violations.

Notably, these requirements apply to transportation network companies (such as, without endorsement or limitation, Uber, Lyft, and other "ride sharing" companies) as well as individual drivers. However, this provision excludes those providers that are public transit authorities. CMS understands that states may already include these minimum requirements as part of their transportation program.

Effective Date

The provider and driver requirements specified in section 1902(a)(87) of the Act are generally effective upon enactment of the Consolidated Appropriations Act, 2021 (December 27, 2020), and apply to services furnished on or after the date that is one year after the date of enactment (December 27, 2021). The statute includes an exception to this effective date to accommodate states that the Secretary determines require state legislation to meet any of the foregoing newly added requirements.

State Plan Amendment (SPA) Submission Requirements

Although the regulatory requirements for the assurance of transportation are longstanding, to ensure state compliance with the statutory provisions newly added by section 209, each state must submit a SPA for the Assurance of Transportation located at attachment 3.1-D to conform the state plan to the amendments made by section 209. The SPA must specify the mechanism (which may include attestation) that the state will use to ensure the statutory minimum requirements for NEMT providers and individual drivers are satisfied.

Consultation Relating to Nonemergency Medical Transportation

Section 209(c) of the Consolidated Appropriations Act, 2021, Division CC, Title II, provides that states exercising the option under section 1902(a)(70) of the Act to establish an NEMT brokerage program may, in establishing such program, consult with relevant stakeholders, including stakeholders representing patients (including disability advocacy organizations),

medical providers, Medicaid managed care organizations, brokers for NEMT, and transportation providers (including public transportation providers).

Effective Date

The consultation option established in this paragraph is effective upon enactment (December 27, 2020).

Stakeholder Engagement and Future Guidance

As required under section 209, we will hold a series of stakeholder meetings to obtain input and shared learning about the leading practices for improving Medicaid program integrity for NEMT. These efforts will be formally announced at a future date. Additionally, CMS intends to conduct a comprehensive review of guidance regarding NEMT, as required under section 209(b)(3) of the Consolidated Appropriations Act, 2021, Division CC, Title II, and may update such guidance as necessary, including by issuing new, comprehensive guidance on NEMT.

Conclusion

The assurance of transportation is now an explicit statutory requirement in the Medicaid program. For additional information about this Bulletin, or for states requesting technical assistance, please contact Kirsten Jensen, Director of the Division of Benefits and Coverage, at Kirsten.Jensen@cms.hhs.gov.