

CHAPTER 388

HEALTH CARE POLICY AND FINANCING

HOUSE BILL 26-1328

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AN ACT

CONCERNING NONEMERGENCY MEDICAL TRANSPORTATION FOR MEDICAID MEMBERS, AND, IN CONNECTION THEREWITH, MAKING AND REDUCING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 25.5-1-801, **amend** the introductory portion, (1), (3), and (4); and **add** (6) and (7) as follows:

25.5-1-801. Definitions.

As used in this ~~section~~ PART 8, unless the context otherwise requires:

(1) "Nonemergency medical transportation" OR "NEMT" means transportation to or from medically necessary nonemergency treatment.

(3) "Transportation broker" means an entity ~~designated by~~ CONTRACTED WITH the department of health care policy and financing to administer nonemergency medical transportation for medicaid members.

(4)(a) "Transportation provider" means an individual or ENTITY, INCLUDING, BUT NOT LIMITED TO, A NONPROFIT, PUBLIC, OR ~~business entity, other than a transportation broker,~~ that:

~~(a)~~ (I) Provides transportation services TO MEDICAID MEMBERS; or

~~(b)~~ (II) Arranges the facilitation of transportation services FOR MEDICAID MEMBERS by an individual.

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(b) "TRANSPORTATION PROVIDER" DOES NOT INCLUDE A TRANSPORTATION BROKER OR A TRANSPORTATION NETWORK COMPANY AS DEFINED IN SECTION 40-10.1-602.

(6) "TRANSPORTATION COMMUNITY ADVISORY BOARD" OR "BOARD" MEANS THE TRANSPORTATION COMMUNITY ADVISORY BOARD DESCRIBED IN SECTION 25.5-1-802 (4).

(7) "TRIP CAPS" MEANS NUMERICAL LIMITS ON THE NUMBER OF TRIPS A TRANSPORTATION PROVIDER IS ASSIGNED AND MAY ACCEPT WITHIN A SPECIFIED PERIOD OF TIME THAT ARE NOT BASED ON TRANSPORTATION PROVIDER CAPACITY, PERFORMANCE, SAFETY, OR COMPLIANCE CONSIDERATIONS.

SECTION 2. In Colorado Revised Statutes, **amend** 25.5-1-802 as follows:

25.5-1-802. Medicaid transportation services - transportation community advisory board - safety and oversight - rules.

(1) The state department shall collaborate with ~~stakeholders, including, but not limited to, disability and consumer advocates, PACE providers operating pursuant to section 25.5-5-412, transportation brokers, and transportation providers,~~ THE TRANSPORTATION COMMUNITY ADVISORY BOARD to establish rules and processes for the safety and oversight of nonmedical transportation services and nonemergency medical transportation services provided to medicaid members pursuant to articles 4 to 6 of this title 25.5. ~~The rules and processes must:~~

~~(a) Ensure the safety of passengers;~~

~~(b) Protect passenger access to transportation services; and~~

~~(c) Establish driver and vehicle requirements that minimize financial and administrative burdens for transportation providers, direct support professionals as defined in section 25.5-6-406, long-term care direct care workers, independent contractors, and employees providing transportation services.~~

(2) ~~To the extent possible, the state department shall use existing oversight procedures to ensure compliance with the requirements as described in subsection (1) of this section.~~

(3) ~~If a provider of transportation services already complies with transportation safety standards established by another state department which meet or exceed the rules and processes established pursuant to subsection (1) of this section, demonstrating such compliance to the state department is sufficient to verify compliance with the requirements of this section.~~

(4) THE TRANSPORTATION BROKER SHALL ESTABLISH THE TRANSPORTATION COMMUNITY ADVISORY BOARD, WHICH IS COMPOSED OF REPRESENTATIVES OF A CROSS-SECTION OF NEMT STAKEHOLDERS, INCLUDING MEMBERS, TRANSPORTATION PROVIDERS, HEALTH-CARE TREATMENT PROVIDERS, AND DISABILITY ADVOCATES. THE BOARD MEMBERSHIP MUST INCLUDE:

(a) MEDICAID MEMBERS FROM BOTH RURAL AND URBAN AREAS WHO UTILIZE NEMT SERVICES;

(b) BEHAVIORAL HEALTH, PRIMARY CARE, AND OTHER TREATMENT PROVIDERS SERVING MEDICAID MEMBERS;

(c) NEMT PROVIDERS REPRESENTING:

(I) RURAL AND URBAN SERVICE AREAS; AND

(II) LARGE, MEDIUM, AND SMALL PROVIDER ORGANIZATIONS;

(d) NEMT PROVIDERS WITH EXPERIENCE IN MANAGEMENT, DISPATCH, DRIVING, AND COMPLIANCE;

(e) CONSUMER AND DISABILITY ADVOCATES REPRESENTING POPULATIONS WITH DIVERSE MOBILITY, HEALTH, AND ACCESS NEEDS; AND

(f) HOSPITAL AND HEALTH SYSTEM REPRESENTATIVES, INCLUDING ENTITIES INVOLVED IN DISCHARGE PLANNING AND CARE TRANSITIONS FOR MEMBERS;

(g) A REPRESENTATIVE FROM THE STATE DEPARTMENT WITH KNOWLEDGE AND SPECIALIZATION IN NEMT; AND

(h) A NONPROFIT OR PUBLIC TRANSPORTATION PROVIDER REPRESENTING BOTH RURAL AND URBAN SERVICE AREAS.

(5) (a) TO ENSURE THAT THE COMPOSITION OF THE BOARD REPRESENTS ACTIVE TRANSPORTATION PROVIDERS, FORTY PERCENT OF BOARD MEMBERS MUST BE PROVIDERS WITH DIRECT NEMT OPERATIONAL EXPERIENCE, INCLUDING MANAGEMENT, DISPATCH, DRIVING, OR COMPLIANCE.

(b) THE BOARD SHALL ELECT A CHAIR FROM AMONG ITS MEMBERS.

(c) WHEN APPOINTING OR APPROVING NEMT PROVIDER REPRESENTATIVES TO THE BOARD, THE TRANSPORTATION BROKER AND THE STATE DEPARTMENT SHALL ENSURE EQUITABLE REPRESENTATION AMONG:

(I) FOR-PROFIT TRANSPORTATION PROVIDERS;

(II) NONPROFIT TRANSPORTATION PROVIDERS; AND

(III) PUBLIC TRANSPORTATION PROVIDERS, INCLUDING LOCAL GOVERNMENT OR PUBLIC TRANSIT AGENCIES.

(6) BOARD MEMBERS SERVE TWO-YEAR TERMS. BOARD MEMBERS SERVE WITHOUT COMPENSATION AND WITHOUT REIMBURSEMENT FOR EXPENSES.

(7) THE BOARD CHAIR AND STATE DEPARTMENT SHALL CIRCULATE MEETING AGENDAS TO THE BOARD MEMBERS AT LEAST TEN DAYS IN ADVANCE OF MEETINGS. THE BOARD SHALL DOCUMENT MEETING MINUTES AND APPROVE MEETING MINUTES

WITHIN FIFTEEN BUSINESS DAYS AFTER EACH MEETING. THE BOARD MUST GIVE BOARD MEMBERS THE OPPORTUNITY TO SUBMIT WRITTEN RECOMMENDATIONS OR COMMENTS TO THE BOARD PRIOR TO BOARD ACTION OR ADVICE.

(8) THE BOARD IS AN ADVISORY BODY. THE BOARD DOES NOT REPLACE OR LIMIT THE STATE DEPARTMENT'S COLLABORATION WITH NEMT PROVIDERS WHEN DEVELOPING RULES, PROCESSES, OR POLICIES.

(9) THE BOARD SHALL PROVIDE RECOMMENDATIONS TO THE STATE DEPARTMENT ABOUT THE STATE DEPARTMENT'S RULES, PROCESSES, AND POLICIES THAT GOVERN NEMT. FINAL DECISIONS REGARDING RULES, PROCESSES, AND POLICIES REMAIN THE RESPONSIBILITY OF THE STATE DEPARTMENT.

(10) THE STATE DEPARTMENT, IN COLLABORATION WITH THE BOARD, SHALL ADOPT RULES THAT:

(a) ESTABLISH DRIVER, VEHICLE, AND TRANSPORTATION PROVIDER CREDENTIALING REQUIREMENTS;

(b) PROHIBIT TRIP CAPS, MARKET-SHARE RESTRICTIONS, OR OTHER POLICIES THAT LIMIT TRANSPORTATION PROVIDER PARTICIPATION IN THE MARKET, EXCEPT AS ALLOWED PURSUANT TO SUBSECTION (11) OF THIS SECTION;

(c) REQUIRE THE STATE DEPARTMENT TO HOST MEETINGS WITH THE BOARD NO LESS THAN QUARTERLY TO REVIEW PROGRAM PERFORMANCE, IDENTIFY AND ADDRESS PROGRAM CHALLENGES, DISCUSS PROGRESS TOWARD PROGRAM GOALS, AND IDENTIFY OPPORTUNITIES TO ENHANCE EFFICIENCY AND OUTCOMES OF THE PROGRAM;

(d) REQUIRE REASONABLE ACCOMMODATION OF MEMBER REQUESTS FOR AN ALTERNATE OR SPECIFIC TRANSPORTATION PROVIDER WHEN OPERATIONALLY FEASIBLE;

(e) CREATE A PROCESS FOR MEMBERS AND TRANSPORTATION PROVIDERS TO FILE CONCERNS WITH THE STATE DEPARTMENT AND FOR THE STATE DEPARTMENT TO REPORT TO THE BOARD THE NUMBER OF CONCERNS FILED;

(f) ESTABLISH PROCESSES FOR CLAIM SUBMISSION FROM TRANSPORTATION PROVIDERS AND PAYMENT OF TRANSPORTATION PROVIDERS;

(g) ESTABLISH POLICIES REGARDING THE STORAGE, ACCESS, RETENTION, AND DELETION OF VIDEO RECORDINGS OF MEMBERS MADE DURING NONEMERGENCY MEDICAL TRANSPORTATION. THE POLICIES MUST NOT PROHIBIT THE USE OF VIDEO RECORDING FOR SAFETY OR DRIVER ACCOUNTABILITY PURPOSES;

(h) DEVELOP BILLING PROCEDURES AND REQUIREMENTS FOR THE PAYMENT OF TRANSPORTATION PROVIDERS;

(i) DEVELOP A PROCESS FOR TRANSPORTATION PROVIDERS TO RESOLVE BILLING ISSUES WITH THE STATE DEPARTMENT OR TRANSPORTATION BROKER;

(j) ESTABLISH POLICIES AND PROCEDURES TO VERIFY MEMBER ELIGIBILITY PRIOR TO A MEMBER RECEIVING TRANSPORTATION SERVICES;

(k) ESTABLISH POLICIES REQUIRING TRANSPORTATION PROVIDERS OR THE TRANSPORTATION BROKER, OR BOTH, TO UTILIZE A DIGITAL DISPATCH SOFTWARE SYSTEM THAT AUTOMATICALLY RECORDS PICK-UP AND DROP-OFF ADDRESSES, GPS COORDINATES, TIMES OF PICK-UP AND DROP-OFF, ROUTES DRIVEN, MILES DRIVEN, AND THE DRIVER AND VEHICLE THAT PERFORMED THE TRIP; AND

(l) ESTABLISH THAT MEMBERS HAVE A RIGHT TO RECEIVE NEMT SERVICES THAT ARE ACCESSIBLE AND APPROPRIATE TO THEIR INDIVIDUAL MEDICAL AND FUNCTIONAL NEEDS, INCLUDING MOBILITY AND COMMUNICATION ACCOMMODATIONS.

(11) THE STATE DEPARTMENT MAY IMPOSE TRIP CAPS OR MARKET-SHARE RESTRICTIONS ON A TRANSPORTATION PROVIDER AS CORRECTIVE ACTION AS PART OF A CORRECTIVE ACTION PLAN BASED ON A TRANSPORTATION PROVIDER'S DOCUMENTED MATERIAL PERFORMANCE DEFICIENCIES THAT ARE SUPPORTED BY OBJECTIVE MEASURABLE CRITERIA APPLIED ON AN INDIVIDUALIZED, PROPORTIONAL, AND TIME-LIMITED BASIS FOLLOWING PRIOR WRITTEN NOTICE OF THE DEFICIENCIES AND A MEANINGFUL OPPORTUNITY TO CURE.

(12) THE STATE DEPARTMENT SHALL ENSURE ALL TRANSPORTATION PROVIDERS, DRIVERS, AND VEHICLES ARE CREDENTIALLED IN A MANNER SUFFICIENT TO PROTECT MEMBER SAFETY AND ENSURE PROGRAM INTEGRITY. THE STATE DEPARTMENT SHALL ESTABLISH REQUIREMENTS FOR TRANSPORTATION PROVIDER, DRIVER, AND VEHICLE CREDENTIALING THROUGH CONTRACT OR PROGRAM POLICY. THE TRANSPORTATION BROKER SHALL VERIFY COMPLIANCE WITH CREDENTIALING REQUIREMENTS.

(13) SERVICES PROVIDED BY NONCOMPLIANT OR NONCREDENTIALLED DRIVERS OR IN NONCOMPLIANT OR NONCREDENTIALLED VEHICLES ARE NOT ELIGIBLE FOR REIMBURSEMENT.

(14) FOR THE PRIMARY PURPOSE OF SAFETY, DRIVER ACCOUNTABILITY, AND FRAUD PREVENTION, TRANSPORTATION PROVIDERS SHALL USE VEHICLES EQUIPPED WITH TWO-WAY VIDEO DASH CAMERAS AND A VIDEO RECORDING SYSTEM WHEN TRANSPORTING MEMBERS. THE VIDEO DASH CAMERA AND VIDEO RECORDING SYSTEM MUST CAPTURE VISUAL DOCUMENTATION OF TRIPS, INCLUDING IMAGES OF PICK-UP AND DROP-OFF OF A MEMBER. THE POLICIES REGARDING THE USE OF VIDEO RECORDING DURING TRANSPORTATION SERVICES ESTABLISHED PURSUANT TO SUBSECTION (10)(g) OF THIS SECTION MUST ADDRESS MEMBER PRIVACY, OPERATIONAL FEASIBILITY, AND COMPLIANCE WITH APPLICABLE FEDERAL AND STATE LAWS AND RELATED REGULATORY STANDARDS, INCLUDING MEDICAID REQUIREMENTS. VIDEO RECORDINGS OF MEMBERS ARE NOT REQUIRED FOR BILLING PURPOSES, BUT MAY BE USED FOR AUDITING PURPOSES. THIS SUBSECTION (14) DOES NOT APPLY TO TRANSPORTATION PROVIDERS OPERATING FLEETS OF FIVE OR FEWER VEHICLES.

(15) THE DATA COLLECTED PURSUANT TO SUBSECTION (10)(k) OF THIS SECTION MUST ONLY BE MADE AVAILABLE TO THE STATE DEPARTMENT OR THE TRANSPORTATION BROKER IN DIGITAL FORMAT.

(16) THE STATE DEPARTMENT SHALL, IN ACCORDANCE WITH THE "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24, PROVIDE ADVANCED NOTICE AND THE OPPORTUNITY FOR PUBLIC COMMENT PRIOR TO THE IMPLEMENTATION OF AN NEMT RULE CHANGE.

(17) THE STATE DEPARTMENT SHALL ESTABLISH BILLING PROCEDURES, DOCUMENTATION REQUIREMENTS, AND PAYMENT STANDARDS FOR TRANSPORTATION PROVIDERS PURSUANT TO SUBSECTION (10)(f) OF THIS SECTION. THE PROCEDURES MUST BE CONSISTENT WITH STATE AND FEDERAL MEDICAID REQUIREMENTS AND MUST NOT REQUIRE PAYMENT FOR CLAIMS THAT DO NOT MEET APPLICABLE PROGRAM INTEGRITY, DOCUMENTATION, OR ELIGIBILITY STANDARDS. THE PROCEDURES MUST ESTABLISH:

- (a) REQUIRED CLAIM FORMATS AND SUPPORTING DOCUMENTS;
- (b) CLAIM DENIAL CRITERIA; AND
- (c) REIMBURSEMENT REQUIREMENTS.

(18) THE STATE DEPARTMENT MAY ISSUE INTERIM OPERATIONAL GUIDANCE TO CLARIFY PROCEDURES, IMPROVE ADMINISTRATIVE EFFICIENCY, OR PROVIDE TECHNICAL INSTRUCTIONS TO TRANSPORTATION PROVIDERS. INTERIM GUIDANCE MUST NOT SUBSTANTIVELY CHANGE BILLING, DOCUMENTATION, OR PAYMENT STANDARDS IDENTIFIED IN THE PROCEDURES ADOPTED PURSUANT TO SUBSECTION (17) OF THIS SECTION, EXCEPT AS NECESSARY TO ADDRESS PROGRAM INTEGRITY RISKS, INCLUDING FRAUD, WASTE, OR ABUSE, OR TO ENSURE COMPLIANCE WITH STATE OR FEDERAL LAW. IN INSTANCES OF FRAUD, WASTE, OR ABUSE OF NEMT SERVICES, THE STATE DEPARTMENT MAY PROVIDE IMMEDIATE INTERIM OPERATIONAL GUIDANCE IF THE STATE DEPARTMENT INCLUDES THE JUSTIFICATION FOR THE INTERIM OPERATIONAL GUIDANCE IN THE GUIDANCE AND PROVIDES REASONABLE ADVANCED NOTICE TO AFFECTED TRANSPORTATION PROVIDERS, UNLESS IMMEDIATE ACTION IS REQUIRED TO PREVENT ONGOING FRAUD. IF THE STATE DEPARTMENT TAKES IMMEDIATE ACTION, THE ACTIONS MUST BE:

- (a) LIMITED IN SCOPE AND DURATION;
- (b) INCLUDE PROMPT WRITTEN NOTICE EXPLAINING THE CHANGE;
- (c) APPLIED PROSPECTIVELY TO THE EXTENT PERMITTED BY STATE AND FEDERAL LAW AND MUST NOT ALTER CLAIMS SUBMITTED PRIOR TO THE EFFECTIVE DATE OF THE INTERIM OPERATIONAL GUIDANCE, EXCEPT AS REQUIRED TO ADDRESS FRAUD, WASTE, OR ABUSE.

(19) THE STATE DEPARTMENT SHALL NOTIFY TRANSPORTATION PROVIDERS OF NEW BILLING OR DOCUMENTATION REQUIREMENTS OR SUBSTANTIVE CHANGES, WHETHER ISSUED BY RULE OR BY INTERIM GUIDANCE, AT LEAST THIRTY DAYS BEFORE THE CHANGES BECOME EFFECTIVE. FORMS, TEMPLATES, OR DOCUMENTATION THAT WAS VALID PRIOR TO THE EFFECTIVE DATE OF A NEW RULE CONTINUES TO BE VALID THROUGH ITS EXPIRATION OR UNTIL THE END OF THE NOTICE PERIOD, WHICHEVER IS LATER.

(20) NOTHING IN THIS SECTION ENTITLES A PROVIDER TO PAYMENT OR LIMITS THE STATE DEPARTMENT'S AUTHORITY TO DENY, RECOUP, OR ADJUST CLAIMS IN ACCORDANCE WITH STATE OR FEDERAL LAW.

(21) MATTERS OUTSIDE THE SCOPE OF THE BOARD OR THAT CANNOT BE RESOLVED AMONG BOARD MEMBERS MUST BE DIRECTED TO THE STATE DEPARTMENT.

SECTION 3. In Colorado Revised Statutes, **add 25.5-1-804** as follows:

25.5-1-804. State nonemergency transportation broker - transportation providers - repeal.

(1) (a) THE STATE DEPARTMENT MAY CONTRACT WITH A TRANSPORTATION BROKER.

(b) A TRANSPORTATION BROKER SHALL CREATE A PUBLICLY AVAILABLE CONTINGENCY PLAN TO ENSURE UNINTERRUPTED NEMT SERVICES IN THE EVENT THE TRANSPORTATION BROKER EXPERIENCES SYSTEM OUTAGES OR IS OTHERWISE UNABLE TO PERFORM REQUIRED FUNCTIONS. THE TRANSPORTATION BROKER SHALL SHARE THE CONTINGENCY PLAN WITH TRANSPORTATION PROVIDERS.

(c) IF THE STATE DEPARTMENT CONTRACTS WITH A TRANSPORTATION BROKER, THE STATE DEPARTMENT SHALL DESIGNATE REGIONS WITHIN THE STATE FOR IMPLEMENTATION OF A BROKERED NEMT PROGRAM.

(2) THE TRANSPORTATION BROKER SHALL IMPLEMENT A BROKERED NEMT PROGRAM ON A PHASED BASIS, ONE REGION AT A TIME, AND SHALL NOT BEGIN IMPLEMENTATION IN A SUBSEQUENT REGION UNTIL THE PROGRAM IS FULLY IMPLEMENTED IN THE PRIOR REGION. FOR PURPOSES OF THIS SECTION, A PROGRAM IS FULLY IMPLEMENTED IN A REGION WHEN:

(a) TECHNOLOGY SYSTEMS FOR SCHEDULING, ELIGIBILITY VERIFICATION, TRIP ASSIGNMENT, PROVIDER PAYMENT, AND CUSTOMER SUPPORT ARE FULLY OPERATIONAL;

(b) TRANSPORTATION PROVIDERS IN THE REGION ARE PROVIDED A REASONABLE OPPORTUNITY TO COMPLETE THE BROKER ONBOARDING PROCESS, INCLUDING PROVIDER TRAINING, SYSTEM ACCESS, AND REQUIRED VEHICLE AND DRIVER VERIFICATION;

(c) A SUFFICIENT NETWORK OF TRANSPORTATION PROVIDERS IS AVAILABLE TO MEET MEMBERS' MEDICAL NEEDS AND ENSURE TIMELY ACCESS TO NEMT SERVICES; AND

(d) THE STATE DEPARTMENT HAS VERIFIED THAT PROVIDER PAYMENT PROCESSES AND CUSTOMER SUPPORT FUNCTIONS OPERATE EFFECTIVELY.

(3) THE STATE DEPARTMENT AND TRANSPORTATION BROKER SHALL PROVIDE TIMELY NOTICE AND TECHNICAL ASSISTANCE TO TRANSPORTATION PROVIDERS REGARDING THE ONBOARDING PROCESS. PROVIDERS MAY CONTINUE TO COMPLETE ONBOARDING DURING THE IMPLEMENTATION PERIOD.

(4) FOR TRIPS ORIGINATING IN REGIONS THAT HAVE NOT YET BEEN DESIGNATED BY THE STATE DEPARTMENT FOR IMPLEMENTATION OF A BROKERED NEMT PROGRAM, TRANSPORTATION PROVIDERS MAY CONTINUE TO PROVIDE TRANSPORTATION SERVICES AND BILL THE STATE DEPARTMENT DIRECTLY. ONCE A REGION HAS BEEN DESIGNATED FOR IMPLEMENTATION OF A BROKERED NEMT PROGRAM, TRANSPORTATION SERVICES PROVIDED TO MEMBERS IN THAT REGION MUST BE SCHEDULED AND AUTHORIZED THROUGH THE TRANSPORTATION BROKER IN ACCORDANCE WITH STATE DEPARTMENT RULES.

(5) NOTHING IN THIS SECTION LIMITS MEMBER ACCESS TO TRANSPORTATION SERVICES OR CREATES SERVICE GAPS DURING IMPLEMENTATION OF A BROKERED PROGRAM.

(6) TRANSPORTATION PROVIDERS MAY COMMUNICATE WITH MEMBERS REGARDING TRANSPORTATION SERVICES, INCLUDING TRIP SCHEDULING, SERVICE DELIVERY, AND OPERATIONAL QUESTIONS. THE STATE DEPARTMENT AND BOARD SHALL DEVELOP POLICIES REGARDING WHEN AND HOW TRANSPORTATION PROVIDERS CAN COMMUNICATE WITH MEMBERS.

(7) THE STATE DEPARTMENT SHALL DEVELOP AND PROVIDE TRANSPORTATION PROVIDERS A PROVIDER COMMUNICATION TOOLKIT TO ASSIST TRANSPORTATION PROVIDERS IN DISCUSSING THE TRANSITION TO TRANSPORTATION BROKER CONTROL OR OTHER PROGRAM CHANGES. THE PROVIDER COMMUNICATION TOOLKIT MUST INCLUDE TALKING POINTS, SCRIPTS, AND GUIDANCE TO ENSURE ACCURATE AND CONSISTENT INFORMATION IS COMMUNICATED TO MEMBERS. THE STATE DEPARTMENT SHALL MAKE THE PROVIDER COMMUNICATION TOOLKIT AVAILABLE TO TRANSPORTATION PROVIDERS AT LEAST NINETY DAYS PRIOR TO THE IMPLEMENTATION OF A BROKERED NEMT PROGRAM IN THE REGION IN WHICH THE PROVIDER OPERATES.

(8) AT LEAST NINETY DAYS PRIOR TO THE IMPLEMENTATION OF A BROKERED NEMT PROGRAM IN A REGION, THE TRANSPORTATION BROKER, IN COORDINATION WITH THE STATE DEPARTMENT, SHALL PROVIDE TRAINING AND TECHNICAL SUPPORT TO TRANSPORTATION PROVIDERS THAT PROVIDE SERVICES IN THE REGION. THE STATE DEPARTMENT MAY EXTEND THE NINETY-DAY PERIOD AS NEEDED BASED ON PROVIDER READINESS OR DELAYS IN MATERIALS OR INSTRUCTION. THE TRANSPORTATION BROKER SHALL PROVIDE TRAINING AND TECHNICAL SUPPORT TO TRANSPORTATION PROVIDERS, WITH SUPPORT AND OVERSIGHT BY THE STATE DEPARTMENT.

(9) THE TRANSPORTATION BROKER SHALL PROVIDE ALL TRANSPORTATION PROVIDERS IN A BROKERED NEMT PROGRAM REGION WITH SOFTWARE TO FACILITATE NEMT SERVICES. THE TRANSPORTATION BROKER SHALL NOT REQUIRE TRANSPORTATION PROVIDERS TO PAY THE COST OF SOFTWARE LICENSING, IMPLEMENTATION, MAINTENANCE, UPGRADES, OR TRAINING.

(10) THE TRANSPORTATION BROKER MAY ENCOURAGE A MEMBER TO SCHEDULE TRANSPORTATION SERVICES AT LEAST TWO DAYS PRIOR TO THEIR REQUESTED TRANSPORTATION DATE. THE TRANSPORTATION BROKER SHALL ACCEPT AND MAKE REASONABLE EFFORTS TO FULFILL SAME-DAY AND NEXT-DAY TRANSPORTATION REQUESTS, INCLUDING REQUESTS FOR URGENT MEDICAL AND BEHAVIORAL HEALTH

OUTPATIENT, SPECIALTY, AND HOSPITAL VISITS; TIME-SENSITIVE IN-STATE AND OUT-OF-STATE TRANSFERS; AND DISCHARGES FROM HEALTH-CARE FACILITIES, WHEN FEASIBLE, AND SHALL NOT REQUIRE ADVANCED NOTICE THAT WOULD UNREASONABLY LIMIT ACCESS TO MEDICALLY NECESSARY SERVICES. THE TRANSPORTATION BROKER SHALL ALLOW MEMBERS TO SCHEDULE SINGLE AND RECURRING TRANSPORTATION SERVICES. THE TRANSPORTATION BROKER SHALL ALLOW MEMBERS, PRIOR TO THE REQUESTED TRANSPORTATION SERVICES, TO REQUEST A TRANSPORTATION PROVIDER OR REQUEST A DIFFERENT TRANSPORTATION PROVIDER. THE TRANSPORTATION BROKER SHALL NOT DIRECT MEMBERS AWAY FROM THEIR PREFERRED TRANSPORTATION PROVIDER. THE TRANSPORTATION BROKER SHALL DOCUMENT AND RETAIN ALL PROVIDER PREFERENCE REQUESTS FOR AUDIT PURPOSES. THE TRANSPORTATION BROKER MAY ONLY PROVIDE MEMBERS THE OPTION TO REQUEST A SPECIFIC PROVIDER AFTER ALL SERVICE REGIONS HAVE BEEN IMPLEMENTED. THE PROHIBITION ON DIRECTING MEMBERS AWAY FROM PREFERRED TRANSPORTATION PROVIDERS DOES NOT APPLY WHEN THE PROVIDER IS SUBJECT TO TRIP CAPS OR MARKET-SHARE RESTRICTIONS AS PART OF A CORRECTIVE ACTION PLAN PURSUANT TO SECTION 25.5-1-802 (11).

(11) A TRANSPORTATION BROKER, OR A TRANSPORTATION PROVIDER IF THERE IS NO TRANSPORTATION BROKER, SHALL VERIFY A MEMBER'S ELIGIBILITY FOR NEMT SERVICES IMMEDIATELY UPON A MEMBER'S REQUEST FOR NEMT TRANSPORTATION SERVICES USING REAL-TIME ACCESS TO THE STATE DEPARTMENT'S ELIGIBILITY SYSTEM. IF VERIFICATION CANNOT BE COMPLETED DUE TO SYSTEM ISSUES OR INCOMPLETE INFORMATION, THE TRANSPORTATION BROKER SHALL NOTIFY THE MEMBER AND THE STATE DEPARTMENT AS SOON AS PRACTICABLE AND TAKE ACTION TO RESOLVE THE ISSUE PROMPTLY. ONCE ELIGIBILITY IS VERIFIED, THE MEMBER IS IMMEDIATELY ELIGIBLE TO SCHEDULE TRIPS, IN ACCORDANCE WITH PROGRAM RULES.

(12) THE TRANSPORTATION BROKER SHALL ENSURE ALL TRANSPORTATION PROVIDERS MEET THE CREDENTIALING REQUIREMENTS ESTABLISHED BY STATE DEPARTMENT RULE. NOTHING IN THIS SUBSECTION (12) PROHIBITS A TRANSPORTATION BROKER FROM IMPOSING ADDITIONAL CREDENTIALING, TRAINING, OR SAFETY REQUIREMENTS NECESSARY TO ENSURE MEMBER SAFETY, PROGRAM INTEGRITY, OR QUALITY OF SERVICE.

(13)(a) THE TRANSPORTATION BROKER SHALL NOT OPERATE, OWN, OR CONTROL AN NEMT TRANSPORTATION PROVIDER THAT OPERATES IN COLORADO. THE TRANSPORTATION BROKER SHALL MAINTAIN POLICIES CONCERNING PREVENTING CONFLICTS OF INTEREST AND ENSURE THAT TRIP ASSIGNMENTS ARE MADE CONSISTENT WITH SAFETY, COMPLIANCE, AND OPERATIONAL STANDARDS. NOTHING IN THIS SUBSECTION (13) LIMITS PROVIDER PARTICIPATION OR IMPOSES TRIP CAPS.

(b) A TRANSPORTATION BROKER THAT ENTERED INTO A CONTRACT WITH THE STATE DEPARTMENT PRIOR TO JANUARY 1, 2026, TO PROVIDE TRANSPORTATION SERVICES AS A TRANSPORTATION PROVIDER MAY CONTINUE PROVIDING TRANSPORTATION SERVICES AS A TRANSPORTATION PROVIDER UNTIL SEPTEMBER 1, 2026. A TRANSPORTATION BROKER WHO HAS CONTRACTED WITH THE STATE DEPARTMENT TO PROVIDE TRANSPORTATION SERVICES AS A TRANSPORTATION PROVIDER AND WHOSE CONTRACT IS EXECUTED, AMENDED, OR RENEWED ON OR AFTER JANUARY 1, 2026, SHALL NOT OPERATE, OWN OR CONTROL AN NEMT

TRANSPORTATION PROVIDER THAT OPERATES IN COLORADO PURSUANT TO SUBSECTION (13)(a) OF THIS SECTION.

(c) SUBSECTION (13)(b) OF THIS SECTION AND THIS SUBSECTION (13)(c) ARE REPEALED, EFFECTIVE JANUARY 1, 2027.

(14) THE TRANSPORTATION BROKER, OR THE STATE DEPARTMENT IF THERE IS NO TRANSPORTATION BROKER, SHALL NOT RESTRICT THE NUMBER OF VEHICLES A TRANSPORTATION PROVIDER CAN UTILIZE OR RESTRICT THE AREAS WHERE OR TYPES OF SERVICES A TRANSPORTATION PROVIDER OPERATES.

(15) A TRANSPORTATION BROKER SHALL PROVIDE THEIR TRIP ASSIGNMENT RULES AND PROCEDURES TO THE STATE DEPARTMENT FOR APPROVAL. UPON APPROVAL, THE STATE DEPARTMENT SHALL MAKE THE TRANSPORTATION BROKER TRIP ASSIGNMENT RULES AND PROCEDURES PUBLICLY AVAILABLE ON THE STATE DEPARTMENT'S WEBSITE.

(16) TRANSPORTATION PROVIDERS HAVE SOLE AUTHORITY OVER DRIVER SCHEDULING, VEHICLE DISPATCHING, AND DRIVER MANAGEMENT.

(17) NEMT DRIVERS AND VEHICLES MUST MEET SAFETY, LICENSING, AND PROGRAM COMPLIANCE REQUIREMENTS. NEMT TRIPS CONDUCTED BY NONCOMPLIANT DRIVERS OR VEHICLES ARE NOT ELIGIBLE FOR REIMBURSEMENT.

(18) TO ENSURE CONTINUITY OF CARE, TRANSPORTATION PROVIDERS MAY BILL THE STATE DEPARTMENT DIRECTLY FOR COMPLIANT TRANSPORTATION SERVICES PROVIDED TO MEMBERS DURING THE IMPLEMENTATION OF A BROKERED NEMT PROGRAM IN A REGION OR IN THE EVENT OF TRANSPORTATION BROKER TERMINATION. DIRECT BILLING OUTSIDE OF THESE CIRCUMSTANCES IS NOT PERMITTED.

(19) (a) TRANSPORTATION NETWORK COMPANIES, AS DEFINED IN SECTION 40-10.1-602, MAY PROVIDE NEMT SERVICES IF:

(I) THE TRANSPORTATION PROVIDER ORIGINALLY ASSIGNED TO COMPLETE A TRIP IS UNABLE TO FULFILL THE ASSIGNMENT AND NO OTHER ENROLLED TRANSPORTATION PROVIDER IS AVAILABLE TO COMPLETE THE TRIP WITHIN THE TIME FRAME NECESSARY TO ENSURE THE MEMBER ARRIVES AT THEIR APPOINTMENT; OR

(II) NO TRANSPORTATION PROVIDER IS AVAILABLE TO SERVE THE MEMBER IN THE MEMBER'S COUNTY OR SERVICE AREA AT THE TIME THE TRIP IS REQUESTED.

(b) EACH USE OF A TRANSPORTATION NETWORK COMPANY IN ACCORDANCE WITH THIS SUBSECTION MUST BE DOCUMENTED BY THE TRANSPORTATION BROKER IN WRITING OR AN ELECTRONIC RECORDS, INCLUDING THE REASON FOR USING THE TRANSPORTATION NETWORK COMPANY, THE REASON A TRANSPORTATION PROVIDER WAS UNABLE TO COMPLETE THE TRIP, AND THE DATE AND TIME OF THE REQUEST. THE TRANSPORTATION BROKER SHALL MAKE THE DOCUMENTATION AVAILABLE TO THE STATE DEPARTMENT OR ITS DESIGNEE UPON REQUEST FOR AUDIT PURPOSES.

(c) THE TRANSPORTATION NETWORK COMPANY PROVIDING NEMT SERVICES MUST MEET THE DRIVER, VEHICLE, SAFETY, AND CREDENTIALING REQUIREMENTS ESTABLISHED BY THE STATE DEPARTMENT FOR TRANSPORTATION NETWORK COMPANIES PARTICIPATING IN THE NEMT PROGRAM, AS APPLICABLE.

(20) A LICENSED AMBULANCE SERVICE PROVIDER IS NOT SUBJECT TO THE REQUIREMENTS OF THIS SECTION.

SECTION 4. In Colorado Revised Statutes, add 25.5-1-805 as follows:

25.5-1-805. Medicaid member eligibility and verification.

(1) THE TRANSPORTATION BROKER, OR A TRANSPORTATION PROVIDER IF THERE IS NO BROKER, SHALL ENSURE DURING SCHEDULING THAT INDIVIDUALS WHO SIGN UP TO RECEIVE TRANSPORTATION SERVICES ARE MEMBERS WHO ARE ELIGIBLE TO RECEIVE NONEMERGENCY MEDICAL TRANSPORTATION SERVICES.

(2) THE MEMBER ELIGIBILITY VERIFICATION PROCESS MUST PROTECT MEMBER PRIVACY. MEMBER ELIGIBILITY VERIFICATION MUST NOT REQUIRE DISPLAYING A MEMBER IDENTIFICATION CARD ON CAMERA OR THE VIDEO RECORDING OF MEMBERS FOR ROUTINE BILLING PURPOSES. NOTHING IN THIS SUBSECTION (2) PROHIBITS THE USE OF VIDEO RECORDING FOR DRIVER OR MEMBER SAFETY, OPERATIONAL MONITORING, OR COMPLAINT RESOLUTION PURPOSES. THE STATE DEPARTMENT MAY REQUEST VIDEO RECORDINGS FOR PROGRAM INTEGRITY REVIEW WITHOUT ADVANCED NOTICE TO THE TRANSPORTATION PROVIDER, PROVIDED THAT REQUESTS ARE NARROWLY TAILORED TO SPECIFIC ISSUES UNDER REVIEW. THE USE OF VIDEO RECORDINGS MUST COMPLY WITH APPLICABLE PRIVACY AND CONFIDENTIALITY REQUIREMENTS. TRANSPORTATION PROVIDERS ARE NOT REQUIRED TO RETAIN OR PRODUCE VIDEO RECORDINGS BEYOND THE STANDARD RETENTION PERIOD ESTABLISHED IN THEIR OPERATING PROCEDURES. ABSENCE OF VIDEO RECORDINGS OUTSIDE A RETENTION PERIOD DOES NOT CONSTITUTE NONCOMPLIANCE, AND ADVERSE ACTION SHALL NOT BE TAKEN AGAINST A TRANSPORTATION PROVIDER ON THIS BASIS.

(3) IF A TRANSPORTATION PROVIDER PROVIDES SCHEDULED TRANSPORTATION SERVICES IN GOOD FAITH BASED ON INFORMATION PROVIDED BY A TRANSPORTATION BROKER OR THE STATE DEPARTMENT, THE STATE DEPARTMENT SHALL NOT DENY PAYMENT SOLELY BECAUSE THE BROKER OR THE STATE DEPARTMENT LATER DETERMINES THAT THE MEMBER'S ELIGIBILITY OR TRIP INFORMATION WAS INACCURATE, IF:

(a) THE PROVIDER HAD NO KNOWLEDGE OF THE INACCURACY AT THE TIME OF SERVICE; AND

(b) THE PROVIDER FOLLOWED ALL APPLICABLE RULES, PROCEDURES, AND DOCUMENTATION REQUIREMENTS FOR CLAIM SUBMISSION.

(4) NOTHING IN THIS SECTION ALTERS OR SUPERSEDES FEDERAL MEDICAID REQUIREMENTS. IF IT IS LATER DETERMINED THAT A MEMBER WAS NOT ELIGIBLE FOR MEDICAID AT THE TIME OF SERVICE, THE STATE DEPARTMENT MAY BE REQUIRED TO

ADJUST OR RETRACT PAYMENT, EVEN IF THE PROVIDER RENDERED SERVICES IN GOOD FAITH.

(5) THE STATE DEPARTMENT SHALL PROVIDE TRANSPORTATION PROVIDERS WITH ACCESS TO ELIGIBILITY VERIFICATION TOOLS VIA THE TRANSPORTATION BROKER OR OTHER AUTHORIZED SYSTEMS TO REDUCE THE LIKELIHOOD OF INELIGIBLE TRIPS.

SECTION 5. In Colorado Revised Statutes, **add 25.5-1-806** as follows:

25.5-1-806. Nonemergency medical transportation provider and broker audits - reporting.

(1) THE STATE DEPARTMENT SHALL, SUBJECT TO AVAILABLE APPROPRIATIONS, AUDIT TRANSPORTATION PROVIDERS TO ENSURE REIMBURSEMENT IS MADE ONLY FOR TRIPS PERFORMED BY CREDENTIALLED DRIVERS OPERATING CREDENTIALLED VEHICLES PURSUANT TO THE RULES ADOPTED PURSUANT TO SECTION 25.5-1-802.

(2) THE STATE DEPARTMENT MAY USE DATA ANALYTICS, COMPLAINTS BY MEMBERS, AND OTHER PROGRAM INTEGRITY INDICATORS TO PRIORITIZE WHICH TRANSPORTATION PROVIDERS TO AUDIT. THE STATE DEPARTMENT IS NOT REQUIRED TO ANNUALLY PERFORM AUDITS BUT MUST PERFORM AUDITS AS RESOURCES ALLOW. AN AUDIT OF A TRANSPORTATION PROVIDER MAY INCLUDE A REVIEW OF THE FOLLOWING, AS THEY RELATE TO THE PROVIDER:

- (a) CLAIMS SUBMITTED;
- (b) THE PROVIDER'S POLICIES AND PROCEDURES;
- (c) DRIVER AND VEHICLE CREDENTIALS;
- (d) COMPLIANCE WITH STATE DEPARTMENT AND BROKER REQUIREMENTS;
- (e) TRIP RECORDS;
- (f) MEMBER GRIEVANCES, COMPLAINTS, AND INCIDENTS, INCLUDING THEIR RESOLUTION; OR
- (g) OTHER DATA NECESSARY TO EVALUATE SAFETY, TIMELINESS, AND QUALITY OF THE SERVICES PROVIDED BY THE PROVIDER.

(3) THE STATE DEPARTMENT SHALL, SUBJECT TO AVAILABLE APPROPRIATIONS, CONDUCT AUDITS OF EACH TRANSPORTATION BROKER AT LEAST ANNUALLY. THE DEPARTMENT MAY USE THIRD-PARTY CONTRACTORS TO CONDUCT AUDITS OF TRANSPORTATION BROKERS. AN AUDIT OF A TRANSPORTATION BROKER MAY INCLUDE A REVIEW OF THE BROKER'S:

- (a) POLICIES AND PROCEDURES;
- (b) TRIP DISTRIBUTION AMONG TRANSPORTATION PROVIDERS, INCLUDING ANALYSIS BY GEOGRAPHY AND TRIP TYPE;

(c) COMPLIANCE WITH PROHIBITIONS ON TRIP CAPS ESTABLISHED IN STATE DEPARTMENT RULE;

(d) COMPLIANCE WITH DRIVER, VEHICLE, AND PROVIDER CREDENTIALING REQUIREMENTS ESTABLISHED IN STATE DEPARTMENT RULE; AND

(e) RESPONSE TO MEMBER REQUESTS FOR SPECIFIC TRANSPORTATION PROVIDERS, INCLUDING WHETHER THEY WERE HONORED AND, IF NOT, THE REASON FOR DENIAL.

SECTION 6. In Colorado Revised Statutes, 25.5-5-102, **amend** (1)(m); and **add** (1)(n), (3), (4), (5), and (6) as follows:

25.5-5-102. Basic services for the categorically needy - mandated services.

(1) Subject to the provisions of subsection (2) of this section and section 25.5-4-104, the program for the categorically needy must include the following services as mandated and defined by federal law:

(m) Federally qualified health centers; AND

(n) NONEMERGENCY MEDICAL TRANSPORTATION SERVICES, AS REQUIRED BY 42 U.S.C. SEC. 1396a (a)(4)(A).

(3) THE STATE DEPARTMENT SHALL CLASSIFY NONEMERGENCY MEDICAL TRANSPORTATION EXPENDITURES AS MEDICAL SERVICES FOR ALL ELIGIBLE POPULATIONS AND SERVICES.

(4) THE STATE DEPARTMENT SHALL, TO THE EXTENT PERMITTED BY FEDERAL LAW, ENSURE THAT ALL ELIGIBLE NONEMERGENCY MEDICAL TRANSPORTATION EXPENDITURES CLASSIFIED AS MEDICAL SERVICES RECEIVE AVAILABLE FEDERAL FINANCIAL PARTICIPATION.

(5) ON NOVEMBER 1, 2026, AND NOVEMBER 1, 2027, THE STATE DEPARTMENT SHALL SUBMIT A REPORT TO THE JOINT BUDGET COMMITTEE AND THE COLORADO HEALTHCARE AFFORDABILITY AND SUSTAINABILITY ENTERPRISE BOARD ABOUT STATE SAVINGS EXPECTED OR RECEIVED AS A RESULT OF CLASSIFYING NONEMERGENCY MEDICAL TRANSPORTATION AS A MEDICAL SERVICE. THE REPORT MUST INCLUDE, AT A MINIMUM:

(a) THE TOTAL AMOUNT OF NONEMERGENCY MEDICAL TRANSPORTATION EXPENDITURES CLASSIFIED AS MEDICAL SERVICES;

(b) THE FEDERAL FINANCIAL PARTICIPATION AS A RESULT OF THE CLASSIFICATION;

(c) A DESCRIPTION OF ACTIONS TAKEN TO IMPLEMENT SUBSECTION (3) OF THIS SECTION, INCLUDING STATE PLAN AMENDMENTS, WAIVERS, OR PROGRAM CHANGES;

(d) IDENTIFICATION OF REMAINING NONEMERGENCY MEDICAL TRANSPORTATION EXPENDITURES NOT YET CLASSIFIED AS MEDICAL SERVICES AND THE BARRIERS TO THE CLASSIFICATION; AND

(e) RECOMMENDATIONS FOR ADDITIONAL STATUTORY OR ADMINISTRATIVE CHANGES NECESSARY TO MAXIMIZE FEDERAL FINANCIAL PARTICIPATION.

(6) SUBSECTION (5) OF THIS SECTION REPEALS, EFFECTIVE JANUARY 1, 2028.

SECTION 7. In Colorado Revised Statutes, 25.5-5-202, **amend** (1) introductory portion; and **repeal** (2) as follows:

25.5-5-202. Basic services for the categorically needy - optional services - repeal.

(1) ~~Subject to the provisions of subsection (2) of this section,~~ The following are services for which federal financial participation is available and that Colorado has selected to provide as optional services under the medical assistance program:

(2) ~~In addition to the services described in subsection (1) of this section and subject to continued federal financial participation, Colorado has selected to provide transportation services as an administrative cost.~~

SECTION 8. Appropriation - adjustments to 2026 long bill. (1) Except as provided in subsection (3) of this section, to implement this act, appropriations made in the annual general appropriation act for the 2026-27 state fiscal year to the department of health care policy and financing for medical and long-term care services for Medicaid eligible individuals are adjusted as follows:

(a) The general fund appropriation is decreased by \$76,639, which is subject to the "(M)" notation as defined in the annual general appropriation act for the same fiscal year; and

(b) The appropriation from the healthcare affordability and sustainability hospital provider fee cash fund created in section 25.5-4-402.4 (5)(a), C.R.S., is decreased by \$20,941,853.

(2) The decrease of the appropriations in subsection (1) of this section is based on the assumption that the anticipated amount of federal funds received for the 2025-26 state fiscal year by the department of health care policy and financing for medical and long-term care services for Medicaid eligible individuals will increase by \$21,018,492.

(3) Subsection (1) of this section does not require a reduction of an appropriation in the annual general appropriation act to the department of health care policy and financing for the 2026-27 state fiscal year for medical and long-term care services for Medicaid eligible individuals if:

(a) The amount of the general fund appropriation made is less than the amount of the adjustment required in subsection (1)(a) of this section;

(b) The amount of the appropriation from the healthcare affordability and sustainability hospital provider fee cash fund is less than the amount of the adjustment required in subsection (1)(b) of this section; or

(c) The annual general appropriation act for the 2026-27 state fiscal year does not include an appropriation to the department of health care policy and financing for medical and long-term care services for Medicaid eligible individuals.

SECTION 9. Effective date. This act takes effect July 1, 2026; except that section 8 of this act takes effect only if the annual general appropriation act for the 2026-27 state fiscal year becomes law, in which case section 8 takes effect upon the effective date of this act or of the annual general appropriation act for state fiscal year 2026-27, whichever is later.

SECTION 10. Safety clause. The general assembly finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for the support and maintenance of the departments of the state and state institutions.

Approved: June 4, 2026