

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 411 Nonemergency Medical Transportation Services
SPONSOR(S): Health Market Reform Subcommittee, Perez
TIED BILLS: **IDEN./SIM. BILLS:** SB 302

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--------------------------------------|---------------------|---------|--|
| 1) Health Market Reform Subcommittee | 12 Y, 0 N, As CS | Royal | Crosier |
| 2) Health & Human Services Committee | 17 Y, 0 N | Royal | Calamas |

SUMMARY ANALYSIS

Medicaid is a health care safety net for low-income Floridians. Medicaid is a partnership of the federal and state governments established to provide coverage for health services for eligible persons. The program is administered by the Agency for Health Care Administration (AHCA) and financed by federal and state funds.

The structure of each state's Medicaid program varies and what states must pay for is largely determined by the federal government, as a condition of receiving federal funds. Federal law sets the amount, scope, and duration of services offered in the program, among other requirements. The federal government sets the minimum mandatory populations to be included in every state Medicaid program. The federal government also sets the minimum mandatory benefits to be covered in every state Medicaid program. These benefits include Medicaid transportation services.

Non-emergency medical transportation (NEMT) includes transportation services offered to health care consumers who face barriers getting to their medical appointments. Depending on the recipient's individual needs, NEMT services can range from taxis, city buses to air ambulances equipped for advanced life support.

A transportation network company (TNC) is a transportation entity that uses a digital network to connect an individual with a private driver for a fee.

The bill allows a transportation network company to provide NEMT to Medicaid patients if:

- The transportation network company is under contract with a Medicaid managed care plan.
- The transportation network company is under contract with a transportation broker that is under contract with a Medicaid managed care plan or the Agency for Health Care Administration.
- It receives referrals from a transportation broker contracted with a Medicaid managed care plan or the Agency for Health Care Administration.

The bill states that requirements for TNCs providing NEMT may not exceed those imposed under s. 627.748, which governs TNCs, except as necessary to conform with state and federal Medicaid requirements. The bill also requires AHCA, by October 1, 2019, to update the Florida Medicaid Non-Emergency Transportation Services Coverage Policy to reflect the policies set forth in the bill.

The bill has no fiscal impact upon state or local governments.

The bill provides an effective date of July 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Non-Emergency Medical Transportation (NEMT) Services

Non-emergency medical transportation (NEMT) includes transportation services offered to health care consumers who face barriers getting to their medical appointments. Those barriers can include not having a valid driver's license, not having a working vehicle in the household, being unable to travel or wait for services alone, or having a physical, cognitive, mental, or developmental limitation.¹

NEMT services are usually intended for medical appointments or other forms of non-emergent care. NEMT is widely known to serve Medicaid beneficiaries. Transportation services were established by the federal government as required Medicaid benefits when the Medicaid program was established at the national level in 1966.²

Florida Medicaid Program

Medicaid is a health care safety net for low-income Floridians. Medicaid is a partnership of the federal and state governments established to provide coverage for health services for eligible persons. The program is administered by the Agency for Health Care Administration (AHCA) and financed by federal and state funds. AHCA delegates certain functions to other state agencies, including the Department of Children and Families (DCF), the Department of Health, the Agency for Persons with Disabilities, and the Department of Elderly Affairs (DOEA). Just under four million Floridians are currently enrolled in Medicaid, and the program's estimated expenditures for the 2019-2020 state fiscal year are \$28.2 billion.³

The structure of each state's Medicaid program varies and what states must pay for is largely determined by the federal government, as a condition of receiving federal funds.⁴ Federal law sets the amount, scope, and duration of services offered in the program, among other requirements. The federal government sets the minimum mandatory populations to be included in every state Medicaid program. The federal government also sets the minimum mandatory benefits to be covered in every state Medicaid program. These benefits include Medicaid transportation services.⁵

The Statewide Managed Care program (SMMC) requires AHCA to competitively procure contracts with managed care plans in 11 regions of the state to provide comprehensive Medicaid coverage for most Medicaid program enrollees.

Medicaid Transportation Services

Transportation to covered services is one of the benefits managed care plans are required to provide under SMMC.⁶ Florida Medicaid provides NEMT services to eligible recipients of all ages for the purpose of accessing Medicaid-covered services. Depending on the recipient's individual needs, NEMT

¹ What is Non-Emergency Medical Transportation, Patient Access?: available at <https://patientengagementhit.com/news/what-is-non-emergency-medical-transportation-patient-access> (last visited March 9, 2019).

² Id.

³ See Social Security Estimating Conference, Medicaid Caseloads and Expenditures, November 19, 2018, and December 10, 2018, Executive Summary available at <http://edr.state.fl.us/Content/conferences/medicaid/execssummary.pdf> (last visited March 9, 2019).

⁴ Title 42 U.S.C. §§ 1396-1396w-5; Title 42 C.F.R. Part 430-456 (§§ 430.0-456.725) (2016).

⁵ s. 409.905, F.S.

⁶ s. 409.973, F.S.

services can range from taxis, city buses to air ambulances equipped for advanced life support. The services transport recipients to and from appointments, hospitals, and other medically necessary services. NEMT services are also available to transport recipients to receive services outside of their region or state.⁷

Vehicles utilized for NEMT services vary greatly. Recipients who are either wheelchair bound or bedridden require special vans, while those who require medical management or assistance need air or ground ambulances. Recipients who do not need special assistance may use public transportation or taxis. Florida Medicaid allows for the following providers under the NEMT benefit as long as they meet all applicable licensure and regulatory requirements.⁸

- Commercial airline
- Ground ambulance subcontracted for use as stretcher vans
- Ground and air ambulances
- Mass transit and public transportation systems
- Medical vehicles (wheelchair or stretcher vans)
- Multi-load passenger van
- Private vehicle
- Private non-profit agencies
- Taxi

Aside from reimbursing for recipients' transportation, the NEMT benefit also covers transporting an escort (e.g., parent, guardian, or authorized representative) and lodging expenses for trips out-of-state or region. NEMT is applicable to any Medicaid covered service, and the number of trips is not restricted.⁹

Florida Medicaid requires that vehicles and drivers must meet certain requirements to be eligible to transport Medicaid recipients.¹⁰ These include completing background screening requirements¹¹, maintaining clean interiors, ensuring regular engine maintenance, and having adequate storage space and seating.¹² Drivers must complete a Florida Department of Law Enforcement (FDLE) Level I background screening¹³, but do not need to undergo a Level II background screening like other Medicaid providers.¹⁴ This is due to their classification as a non-traditional provider under the federal Health Insurance Portability and Accountability Act.¹⁵

FDLE's background screening includes a search of the following databases¹⁶:

- The Florida Computerized Criminal History Central Repository for Florida arrests (state check).
- The Florida Computerized Criminal History Central Repository for Florida arrests and the national criminal history database at the FBI for federal arrests and arrests from other states (state and national check).
- The Florida Crime Information Center for warrants and domestic violence injunctions (warrant files check).

⁷ Agency for Health Care Administration, *Senate Bill 302 Analysis* (January 23, 2019)(on file with the Health Market Reform Subcommittee).

⁸ Rule 59G-4330, F.A.C. Florida Medicaid Non-Emergency Transportation Services Coverage Policy; Id.

⁹ Supra, FN 7.

¹⁰ Rule 59G-4330, F.A.C. Florida Medicaid Non-Emergency Transportation Services Coverage Policy.

¹¹ Title 42 Code of Federal Regulations section 455.434 and section 409.907, F.S.

¹² Supra, FN 7.

¹³ S. 435.04(2), F.S.

¹⁴ Supra, FN 7.

¹⁵ Id.

¹⁶ Florida Department of Law Enforcement, *VECHS Program - Frequently Asked Questions, Definitions*, available at <http://www.fdle.state.fl.us/Background-Checks/VECHS-FAQs/Definitions.aspx> (last viewed March 11, 2019).

The following offenses are disqualifying offenses under a Level I background screening:

- Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.
- Section 394.4593, relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
- Section 415.111, relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.
- Section 777.04, relating to attempts, solicitation, and conspiracy to commit an offense listed in this subsection.
- Section 782.04, relating to murder.
- Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.
- Section 782.071, relating to vehicular homicide.
- Section 782.09, relating to killing of an unborn child by injury to the mother.
- Chapter 784, relating to assault, battery, and culpable negligence, if the offense was a felony.
- Section 784.011, relating to assault, if the victim of the offense was a minor.
- Section 784.03, relating to battery, if the victim of the offense was a minor.
- Section 787.01, relating to kidnapping.
- Section 787.02, relating to false imprisonment.
- Section 787.025, relating to luring or enticing a child.
- Section 787.04(2), relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings.
- Section 787.04(3), relating to carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person.
- Section 790.115(1), relating to exhibiting firearms or weapons within 1,000 feet of a school.
- Section 790.115(2)(b), relating to possessing an electric weapon or device, destructive device, or other weapon on school property.
- Section 794.011, relating to sexual battery.
- Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.
- Section 794.05, relating to unlawful sexual activity with certain minors.
- Chapter 796, relating to prostitution.
- Section 798.02, relating to lewd and lascivious behavior.
- Chapter 800, relating to lewdness and indecent exposure.
- Section 806.01, relating to arson.
- Section 810.02, relating to burglary.
- Section 810.14, relating to voyeurism, if the offense is a felony.
- Section 810.145, relating to video voyeurism, if the offense is a felony.
- Chapter 812, relating to theft, robbery, and related crimes, if the offense is a felony.
- Section 817.563, relating to fraudulent sale of controlled substances, only if the offense was a felony.
- Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
- Section 825.103, relating to exploitation of an elderly person or disabled adult, if the offense was a felony.
- Section 826.04, relating to incest.
- Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.
- Section 827.04, relating to contributing to the delinquency or dependency of a child. Former s. 827.05, relating to negligent treatment of children.
- Section 827.071, relating to sexual performance by a child.
- Section 843.01, relating to resisting arrest with violence.

- Section 843.025, relating to depriving a law enforcement, correctional, or correctional probation officer means of protection or communication.
- Section 843.12, relating to aiding in an escape.
- Section 843.13, relating to aiding in the escape of juvenile inmates in correctional institutions.
- Chapter 847, relating to obscene literature.

Transportation Brokers

AHCA has a federal waiver that allows for selective contracting with transportation brokers to provide NEMT services to Medicaid recipients not enrolled in managed care plans. To provide this benefit to such recipients, the AHCA has contracted with two transportation brokers.¹⁷

AHCA and managed care plans participating in the SMMC program contract directly with transportation brokers to coordinate and reimburse for NEMT services. A transportation broker is a company that subcontracts with NEMT providers throughout the state to schedule, monitor, and pay for transportation services. The Medicaid transportation brokers ensure that drivers have completed background screening and drug screening requirements and that they meet all other state and federal Medicaid requirements related to transportation services. They also ensure that vehicles meet all requirements and that each recipient receives the appropriate mode of transportation.¹⁸

Transportation Network Companies

A transportation network company (TNC) uses a digital network to connect an individual with a private driver for a fee.¹⁹

Florida law requires TNC drivers to undergo a local and national criminal background check that includes:

- A search of the Multi-State/Multi-Jurisdiction Criminal Records Locator or other similar commercial nationwide database with validation of any records through primary source search; and
- A search of the National Sex Offender Public Website maintained by the United States Department of Justice; and
- A driving history research report for the applicant.

Florida law prohibits a TNC from authorizing an individual to act as a TNC driver on its digital network if the background check reveals that the individual:

- Has been convicted, within the past 5 years, of:
 - A felony;
 - A misdemeanor for driving under the influence of drugs or alcohol, for reckless driving, for hit and run, or for fleeing or attempting to elude a law enforcement officer; or
 - A misdemeanor for a violent offense or sexual battery, or a crime of lewdness or indecent exposure under chapter 800;
- Has been convicted, within the past 3 years, of driving with a suspended or revoked license;
- Is a match in the National Sex Offender Public Website maintained by the United States Department of Justice;
- Does not possess a valid driver license; or
- Does not possess proof of registration for the motor vehicle used to provide prearranged rides.

¹⁷ Supra, FN 7.

¹⁸ Id.

¹⁹ s. 627.748, F.S.

Effect of the bill

The bill allows a transportation network company to provide NEMT to Medicaid patients if:

- The transportation network company is under contract with a Medicaid managed care plan.
- The transportation network company is under contract with a transportation broker that is under contract with a Medicaid managed care plan or the Agency for Health Care Administration.
- It receives referrals from a transportation broker contracted with a Medicaid managed care plan or the Agency for Health Care Administration.

The bill states that requirements for TNCs providing NEMT may not exceed those imposed under s. 627.748, F.S., which governs TNCs, except as necessary to conform with state and federal Medicaid requirements. This allows AHCA to require drivers for TNCs providing NEMT to comply with the Level I background screening requirements for Medicaid NEMT providers.

The bill also requires AHCA, by October 1, 2019, to update the Florida Medicaid Non-Emergency Transportation Services Coverage Policy handbook to reflect the policies set forth in the bill.

The bill provides an effective date of July 1, 2019.

B. SECTION DIRECTORY:

Section 1: Amends s. 316.87, F.S., relating to nonemergency medical transportation services.

Section 2: Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

TNCs would have the opportunity to compete with existing transportation providers to provide services to Medicaid recipients.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

AHCA has sufficient rulemaking authority to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2019, the Health Market Reform Subcommittee adopted an amendment and reported HB 411 favorably as amended. The amendment:

- Allows a transportation network company to provide non-emergency medical transportation to Medicaid patients if:
 - The transportation network company is under contract with a Medicaid managed care plan.
 - The transportation network company is under contract with a transportation broker that is under contract with a Medicaid managed care plan or the Agency for Health Care Administration.
 - It receives referrals from a transportation broker contracted with a Medicaid managed care plan or the Agency for Health Care Administration.
- Subjects transportation network companies that seek to provide non-emergency medical transportation to Medicaid patients to federal and state Medicaid requirements.

The analysis is drafted to the bill as amended by the Health Market Reform Subcommittee.