

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 302

INTRODUCER: Rules Committee, Health Policy Committee and Senator Brandes

SUBJECT: Nonemergency Medical Transportation Services

DATE: April 22, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Williams</u>	<u>Brown</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Favorable</u>
3.	<u>Williams</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 302 authorizes a transportation network company under contract with a Medicaid managed care plan, a transportation broker under contract with a Medicaid managed care plan, a transportation broker under direct contract with the Agency for Health Care Administration (AHCA), or a transportation network company that receives referrals from a transportation broker contracting with Medicaid managed care plans or the AHCA to provide Medicaid nonemergency transportation services to a Medicaid recipient, subject to compliance with requirements of the AHCA.

The bill directs the AHCA to update any regulations, policies, and other guidance, including the Non-Emergency Transportation Services Coverage Policy handbook, as necessary, to reflect this authorization by October 1, 2019.

The bill provides that transportation network companies (TNCs) and TNC drivers and prospective drivers must undergo a background screening pursuant to s. 435.03, F.S., or functionally equivalent procedures, as determined by the AHCA.

The bill stipulates that its provisions may not be construed to:

- Expand or limit the existing transportation benefit provided to Medicaid recipients or to require a Medicaid managed care plan to contract with a transportation network company or a transportation broker.

- Exempt any person, firm, corporation, association, or governmental entity that engages in the business or service of basic life support or advanced life support transportation from licensure requirements provided in s. 401.25, F.S.

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

The effective date of the bill is July 1, 2019.

II. Present Situation:

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.

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 1966.¹

Florida Medicaid Program

The Florida Medicaid program is a partnership between the federal and state governments. Each state operates its own Medicaid program under a state plan approved by the federal Centers for Medicare & Medicaid Services (CMS). The state plan outlines Medicaid eligibility standards, policies, and reimbursement methodologies.

Florida Medicaid is administered by the Agency for Health Care Administration (AHCA) and financed with federal and state funds. 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.²

Eligibility for Florida Medicaid is based on several factors, including age, household or individual income, and assets. State Medicaid payment guidelines are provided in s. 409.903, F.S., (Mandatory Payments for Eligible Persons) and s. 409.904, F.S., (Optional Payments for Eligible Persons). Minimum coverage thresholds are established in federal law for certain population groups, such as children or pregnant women.

¹ See 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 3, 2019).

² 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/execsummary.pdf> (last visited March 3, 2019).

Services are not eligible for federal matching funds under Medicaid unless they are authorized by the federal government. Section 409.905, F.S., specifies mandatory Medicaid services, which are required by the federal government, while s. 409.906, F.S., specifies optional services that the state has chosen to cover in its Medicaid program. Among the mandatory services included in s. 409.905, F.S., are Medicaid transportation services. Subsection (12) of this section reads:

The agency shall ensure that appropriate transportation services are available for a Medicaid recipient in need of transport to a qualified Medicaid provider for medically necessary and Medicaid-compensable services, provided a client's ability to choose a specific transportation provider shall be limited to those options resulting from policies established by the agency to meet the fiscal limitations of the General Appropriations Act. The agency may pay for transportation and other related travel expenses as necessary only if these services are not otherwise available.

Under the coverage policies (also known as handbooks) separately adopted in rule by the AHCA, both emergency transportation services³ and non-emergency transportation (NET) services⁴ are covered when they meet specified criteria. Each of the handbooks consistently addresses: introductory details relating to service description, legal authority, definitions; recipient and provider eligibility; coverage information; exclusions; required documentation; authorization requirements; and reimbursement guidance.

As part of the implementation of Statewide Medicaid Managed Care (SMMC) in 2011, the Florida Medicaid program incorporated into managed care contracts the provision of NET services. As specified in s. 409.973, F.S., "transportation to access covered services" is one of the benefits managed care plans are required to provide under SMMC.

Approximately 80 percent of the enrollees in Florida Medicaid have their NET services provided as part of their managed care service coverage. The remainder of the Medicaid enrollees receive NET services that are paid for by the AHCA on a fee-for-service basis.

The AHCA has a federal waiver that allows for selective contracting with transportation brokers to provide NET 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.⁵

The AHCA published a notice in the Florida Administrative Register (FAR) for a rule change for Rule 59G-4.330 specific to NET services, on June 6, 2018, with a workshop held on June 22, 2018, and a deadline for submission of any comments on June 25, 2018. The proposed amendment would update the policy to specify that transportation network companies are

³ See Rule 59G-4.015, F.A.C.; Medicaid Emergency Transportation Services Coverage Policy (October 2016), available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-07441> (last visited March 3, 2019).

⁴ Rule 59G-4.330, F.A.C.; Medicaid NET Coverage Policy available at http://www.fdhc.state.fl.us/medicaid/review/Specific/59G-4.330_NET_Coverage_Policy_Adoption.pdf (last visited March 3, 2019).

⁵ Agency for Health Care Administration, *Senate Bill 302 Analysis* (January 23, 2019)(on file with the Senate Committee on Health Policy).

eligible to render Medicaid non-emergency transportation services. To date, no follow-up information has appeared in the FAR.⁶

The AHCA indicates that the only additional requirement that it would impose beyond what is specified in s. 627.748, F.S., would be to require that TNC drivers undergo FDLE Level I background screening requirements, as that is required for Medicaid providers per s. 409.907, F.S.

Transportation Brokers

Currently, the AHCA and managed care plans participating in the SMMC program contract directly with transportation brokers to coordinate and reimburse for NET services. A transportation broker is a company that subcontracts with NET 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.⁷

Nonemergency Medical Transportation Services

Section 316.87, F.S., created in 2016, is specific to nonemergency medical transportation services. The provision prohibits a county that has licensed or issued a permit to a provider of nonemergency medical transportation services from requiring the provider to use a vehicle larger than needed to transport the number of passengers or that is inconsistent with the medical condition of the individuals receiving the service. This section is not applicable to procurement, contracting, or provision of paratransit services, directly or indirectly, by a county or an authority, pursuant to the Americans with Disabilities Act of 1990, as amended.

Transportation Network Companies

Transportation network companies (TNCs) are regulated under s. 627.748, F.S. Transportation network companies use smartphone technology to connect individuals who want to ride with private drivers for a fee.

In addition to definitions of relevant terms, s. 627.748, F.S., contains provisions regarding exclusions, a requirement for agent designation, fare transparency, identification requirements for vehicles and drivers, electronic receipts, insurance requirements specific to the company and drivers, including related disclosures and exclusions, limitations on TNCs, zero tolerance for driver drug or alcohol use, specific driver requirements, prohibited driver and company conduct, nondiscrimination and accessibility requirements, recordkeeping, and a prohibition on local preemption.

⁶ See <https://www.flrules.org/gateway/RuleNo.asp?id=59G-4.330> (last visited March 3, 2019).

⁷ Id.

Emergency Medical Services (EMS) and Certificates of Public Convenience and Necessity (COPCN)

Chapter 401, F.S., relates to medical telecommunications and transportation. Part III of ch. 401, F.S., consisting of ss. 401.2101-401.465, F.S., is specific to medical transportation services and provides for the regulation of emergency medical services by the Department of Health (DOH), including the licensure of EMS service entities, the certification of the staff employed by those services, and the permitting of vehicles used by the staff in those services—whether for Basic Life Support (BLS), Advanced Life Support (ALS), and Air Ambulance Services (AAS). As indicated on the DOH website, at present, the department is responsible for the licensure and oversight of over 60,000 Emergency Medical technicians and paramedics, 270+ advanced and basic life support agencies, and over 4,500 EMS vehicles.⁸

In addition to the state requirements for licensure of EMS services, the statute provides that county governments also have a responsibility in the licensure of EMS service entities. Section 401.25, F.S., relating to licensure as a BLS or an ALS EMS service, includes, among other standards, the requirement for the issuance of a Certificate of Public Convenience and Necessity by the county in which the service will operate. Section 401.25(2)(d), F.S., requires the department to issue a license to any applicant which has obtained a certificate of public convenience and necessity from each county in which the applicant will operate.

Section 401.25(6), F.S., authorizes counties to adopt ordinances that provide reasonable standards for certificates of public convenience and necessity for basic or advanced life support services and air ambulance services, and, in so doing, to consider state guidelines, recommendations of the local or regional trauma agency created under ch. 395, F.S., and the recommendations of municipalities within its jurisdiction.

Similar to s. 401.25, F.S., specific to ALS and BLS EMS entities, s. 401.251, F.S., is specific to those entities seeking to provide air ambulance services. Among the licensure requirements, paragraph (4)(b) stipulates that an air ambulance service that uses rotary-winged aircraft in conjunction with another emergency medical service must meet the provisions of s. 401.251, F.S., and must separate basic life support and advanced life support requirements unique to air ambulance operations as is required by rules of the department. Section 401.251, F.S., also subjects the air ambulance service to the provisions of s. 401.25, F.S., relating to a certificate of public convenience and necessity. However, an air ambulance service may operate in any county under the terms of mutual aid agreements.

In addition to the applicable statutory provisions, the DOH has adopted and enforces rules under chapter 64J-1, Florida Administrative Code (F.A.C.), specific to EMS regulation. Rule 64J-1.001, F.A.C., defines a “certificate of public convenience and necessity” as “a written statement or document, issued by the governing board of a county, granting permission for an applicant or licensee to provide services authorized by a license issued under chapter 401, part III, F.S., for the benefit of the population of that county or the benefit of the population of some geographic area of that county. No COPCN from one county may interfere with the prerogatives asserted by another county regarding COPCN.”

⁸ See <http://www.floridahealth.gov/licensing-and-regulation/ems-system/index.html> (last visited March 4, 2019).

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 316.87, F.S., relating to nonemergency transportation services. A new subsection (2) is added to this section of statute to authorize a transportation network company under contract with a Medicaid managed care plan, a transportation broker under contract with a Medicaid managed care plan, a transportation broker under direct contract with the AHCA, or a transportation network company that receives referrals from a transportation broker contracting with Medicaid managed care plans or the AHCA to provide Medicaid nonemergency transportation services to a Medicaid recipient, subject to compliance with requirements of the AHCA.

Transportation network company drivers and prospective drivers must undergo background screening pursuant to s. 435.03, F.S., or functionally equivalent procedures, as determined by the AHCA.

The bill directs the AHCA to update any regulations, policies, and other guidance, including the Non-Emergency Transportation Services Coverage Policy handbook, as necessary to reflect this authorization by October 1, 2019.

The bill stipulates that requirements for transportation network companies and transportation network company drivers may not exceed requirements for transportation network companies imposed under s. 627.748, F.S., except as necessary to conform to federal Medicaid transportation requirements administered by the AHCA.

The bill stipulates that its provisions may not be construed to:

- Expand or limit the existing transportation benefit provided to Medicaid recipients or to require a Medicaid managed care plan to contract with a transportation network company or a transportation broker.
- Exempt any person, firm, corporation, association, or governmental entity that engages in the business or service of basic life support or advanced life support transportation from licensure requirements provided in s. 401.25, F.S.

The AHCA indicates that it is not aware of any other state Medicaid programs that reimburse NET services provided by TNCs.⁹

Section 2 of the bill provides for a July 1, 2019, effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁹ *Supra* note 5.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Affected transportation providers may benefit financially from potential flexibility provided for Medicaid managed care plans to contract with such providers. Individuals in need of Medicaid nonemergency transportation services may benefit from having additional options. TNCs would have the opportunity to compete with existing transportation providers such as taxis to provide services to Medicaid recipients.

C. Government Sector Impact:

The bill does not appear to have a fiscal impact on state or local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Agency for Health Care Administration might have difficulty meeting the time constraints of the requirement on lines 50-53 of the bill to update its existing regulations, policies, and other guidance, including the nonemergency transportation services policy handbook, by October 1, 2019.¹⁰

VIII. Statutes Affected:

This bill substantially amends sections 316.87 and 401.25 of the Florida Statutes.

¹⁰ Id.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Rules on April 23, 2019:

The CS/CS:

- Makes clarifying and stylistic edits, and re-structures but maintains existing provisions.
- Specifies background screening requirements for transportation network company drivers and prospective drivers, under s. 435.03, F.S., or functionally equivalent procedures.
- Deletes a proposed addition to s. 401.25, F.S., relating to regulation of Emergency Medical Services ambulance services by the Department of Health, and provides a cross-reference to such regulation.

CS by Health Policy on February 19, 2019:

The CS:

- Adds to the list of those entities that may provide nonemergency transportation services a transportation network company that receives referrals from a transportation broker contracting with Medicaid managed care plans or the Agency for Health Care Administration (AHCA);
- Directs the AHCA to update any regulations, policies, and other guidance necessary, not just the Non-emergency Transportation Services Coverage Policy as was required by the underlying bill; and
- Amends s. 401.25, F.S., relating to Department of Health Emergency Medical Services licensure of basic life support providers and advanced life support providers and creates a new subsection (8) of that section to authorize a Medicaid managed care plan that administers nonemergency Medicaid transportation benefits, a plan's subcontracted transportation broker, or a transportation broker that administers the nonemergency Medicaid transportation benefit under contract with the AHCA, to engage a licensed basic life support or a licensed advanced life support ambulance for the provision of nonemergency Medicaid transportation in permitted ambulances in any county without first obtaining a Certificate of Public Convenience and Necessity, as would otherwise be required under paragraph (2)(d) of that section.

- B. **Amendments:**

None.