
SENATE COMMITTEE ON HEALTH

Senator Dr. Susan Talamantes Eggman, Chair

BILL NO: AB 719
AUTHOR: Boerner
VERSION: June 26, 2023
HEARING DATE: July 5, 2023
CONSULTANT: Jen Flory

SUBJECT: Medi-Cal: nonmedical and nonemergency medical transportation

SUMMARY: Requires the Department of Health Care Services (DHCS) to require Medi-Cal managed care plans to contract with public paratransit service operators for the purpose of establishing reimbursement rates for nonemergency medical transportation (NEMT) and nonmedical transportation (NMT) trips provided by a public paratransit service operator. Requires the rates reimbursed by the managed care plan to be based on the DHCS's fee-for-service rates for NEMT and NMT services that do not include fixed-route transportation service.

Existing law:

- 1) Establishes the Medi-Cal program, administered by DHCS, under which low-income individuals are eligible for medical coverage. [WIC §14000, et seq.]
- 2) Establishes a schedule of benefits under the Medi-Cal program, which includes benefits required under federal law and benefits provided at state option but for which federal financial participation through Medicaid is available. The schedule of benefits includes NEMT and NMT for a beneficiary to obtain covered Medi-Cal services, subject to utilization controls. [WIC §14132]
- 3) Requires the coverage of NMT when a beneficiary attests that other currently available resources have been reasonably exhausted, and includes, at a minimum, round trip transportation by passenger car, taxicab, or any other form of public or private conveyance, and mileage reimbursement when conveyance is in a private vehicle arranged by the beneficiary and not through a transportation broker, bus passes, taxi vouchers, or train tickets. [WIC §14132]

This bill:

- 1) Requires DHCS to require Medi-Cal managed care plans to contract with public paratransit service operators for the purpose of establishing reimbursement rates for NEMT and NMT trips provided by a public paratransit service operator.
- 2) Requires the rates reimbursed by the managed care plan to the public paratransit service operator to be based on the DHCS's fee-for-service rates for NEMT and NMT services that do not include fixed-route transportation service. Makes a legislative finding that the reimbursement of the passenger's fare does not equal the fee-for-service rate.

FISCAL EFFECT: According to the Assembly Appropriations Committee, this bill has costs of an unknown amount, potentially in the low hundreds of thousands of dollars to DHCS to develop guidance and, possibly, promulgate a new regulation to implement this bill (General Fund and federal funds).

PRIOR VOTES:

Assembly Floor:	65 - 0
Assembly Appropriations Committee:	11 - 1
Assembly Health Committee:	11 - 0

COMMENTS:

- 1) *Author's statement.* According to the author, public transit operators provide NMT and NEMT for medically necessary Medi-Cal covered services, for which the transit operators are supposed to be reimbursed. AB 2394 (Garcia, Chapter 615, Statutes of 2016) built transportation costs into Medi-Cal managed care plan rates, but did not include a corresponding requirement to reimburse public transit operators. With no requirement or incentive to reimburse public transit operators for Medi-Cal transportation services that the plan is responsible to pay for, transit operators are often left with little recourse to recoup the costs for their services. This bill seeks to correct that by requiring Medi-Cal managed care plans, under the direction of DHCS, to contract with public transit operators for the purpose of establishing reimbursement rates for NMT and NEMT trips provided by a public transit operator.
- 2) *Medi-Cal transportation services.* Medi-Cal provides coverage for three different types of transportation. The first two, emergency medical transportation and NEMT, have long been recognized as Medi-Cal benefits. Prior to 2017, DHCS only provided guidance to cover NMT for children under age 21 through the federally-mandated Early and Periodic Screening, Diagnostic and Treatment benefit, and for dually eligible beneficiaries enrolled in the CalMediConnect demonstration project, which combined Medicare and Medi-Cal benefits in one health plan and operated in seven counties. CalMediConnect beneficiaries received up to 30 one-way trips per year with no co-payment. Because federal regulation had long required coverage of NMT, in 2016 AB 2394 added NMT to the Medi-Cal schedule of benefits with language stating that it should not be interpreted as adding a new benefit to the Medi-Cal program. It also specified that for Medi-Cal recipients enrolled in a Medi-Cal managed care plan, the plan would be responsible for providing the transportation services.
- 3) *NEMT.* NEMT is transportation by ambulance, litter van, wheelchair van, or by air to get to and from covered Medi-Cal services. NEMT is provided only in situations when the enrollee cannot utilize ordinary means of public or private transportation, such as bus, passenger car, or taxicab due to their medical, mental health, or physical condition. NEMT services are subject to prior written authorization by a licensed practitioner. The provider must submit a treatment authorization request (TAR) for the services that includes: (1) the purpose of the transportation; (2) the frequency of medical visits/trips or the inclusive dates of the requested transportation; and, (3) the medical, mental health, or physical condition that makes normal public or private transportation inadvisable. Once requests are approved, managed care plans are required to authorize the lowest cost type of NEMT that is adequate for the member's medical or mental health needs.
- 4) *NMT.* NMT is round trip transportation for beneficiaries to access covered Medi-Cal services by private car, cab, bus, taxi, train, or other forms of public or private transportation. NMT is available to travel to appointments or visits for medically necessary covered services; picking up drug prescriptions that cannot be mailed directly to the enrollee; picking up medical supplies like prosthetics, orthotics, and other equipment; or for visiting a sick child in the hospital. Enrollees using NMT can use a wheelchair but must be able to walk or otherwise get themselves from place to place without assistance from the driver. Enrollees

using NMT services must attest, typically over the phone, that other available transportation resources have been reasonably exhausted. Unlike for NEMT, a provider's authorization and signature is not required for NMT authorization. The NMT requested must be the least costly method of transportation that meets the enrollee's needs.

- 5) *Changes to NEMT and NMT services since AB 2394.* After the passage of AB 2394, DHCS began requiring Medi-Cal managed care plans to provide all NEMT and NMT services. According to a May 2022 guidance published by DHCS, this includes transportation to services that the plan does not cover, such as transportation needed for carved out mental health services provided by a county mental health plan or to pick up prescriptions (outpatient prescriptions are provided through DHCS's Medi-Cal Rx, not the managed care plan). According to California Transit Association, a co-sponsor of this bill, before the enactment of AB 2394, Medi-Cal directly reimbursed transit agencies for covered transportation services. However since the responsibility was transferred to managed care plans, and plans do not appear required to reimburse transit providers, plans are placed under little to no pressure at all to partner with transportation providers. The California Transit Association states that for some agencies, this transportation reimbursement is a sizable revenue source, providing hundreds of thousands to several millions of dollars that enable them to continue offering NMT and NEMT services, as well as maintain the other transportation services they provide.

According to an October 2020 California Health Care Foundation report on Medi-Cal's transportation benefit, for NMT in particular, most Medi-Cal managed care plans delegate the benefit to transportation brokers, which is similar to how the benefit is handled in other states. Additionally, the vast majority of NMT trips are provided by rideshare drivers such as Lyft and Uber. Data from three of the plans had rideshare trips accounting for 89% of the NMT trips, though that can vary by plan and over time. NEMT companies, by contrast, are required to be enrolled as Medi-Cal providers and the drivers must be credentialed which includes background checks, first aid/CPR certification, passenger assistance training, HIPAA compliance attestation, and among other required verifications. The report did find that Medi-Cal enrollees are still facing challenges in accessing the benefit, particularly in rural areas, or for riders with limited mobility who were given transportation in rideshare vehicles.

- 6) *Decline in transit ridership since COVID-19.* Lack of payment from Medi-Cal managed care providers is not the only financial strain on the state's public transit agencies. According to an April 5, 2023 article in CalMatters, statewide, monthly ridership dropped from 100 million in February 2019 to about 20 million in June 2020. As of June 2022, the numbers rebounded to about 60 million, but varied by region and transportation mode. Transit agencies across California are grappling with a "fiscal cliff" — a decline in revenue and the end of federal funding that has been a lifeline for the last three years. Without the state stepping in, they say they may have to cut service or increase fares.
- 7) *Prior legislation.* AB 2394 (Garcia, Chapter 615, Statutes of 2016) added NMT services to the Medi-Cal schedule of benefits while specifying that such services are not a new benefit.

AB 1231 (Wood of 2015), was substantially similar to AB 2394. Along with five other bills, *AB 1231 was vetoed by the Governor, who stated these bills unnecessarily codify certain existing health care benefits or require the expansion or development of new benefits and procedures in the Medi-Cal program. Taken together, these bills would require new spending*

at a time when there is considerable uncertainty in the funding of this program.

- 8) *Support.* Co-sponsor the California Transit Association writes since Medi-Cal transportation reimbursement is now included in the capitated rate a Medi-Cal managed care plan receives, if the customer does not notify their plan and submit a request, then transportation providers are responsible for acquiring reimbursement from the plan on their own. As a result, plans are placed under little to no pressure at all to partner with transportation providers because they can instead capture the transportation reimbursement funds. Co-sponsor San Diego Metropolitan Transit Agency writes that prior to AB 2394, their paratransit service, MTS Access, transported more than 500,000 customer trips annually. Approximately 200,000, or 40% of those trips, were determined to be eligible for Medi-Cal reimbursement under the transportation cost reimbursement program within Medi-Cal. The transit agency was partially reimbursed for these services under an agreement with the County of San Diego's Health and Human Services Agency and DHCS. MTS was receiving up to approximately \$3 million in revenue per year through this Medi-Cal transportation reimbursement. After the enactment of AB 2394, MTS was no longer compensated for Medi-Cal eligible access trips, even though MTS Access continued to provide transportation service for many of these customers, and for trips that would still be eligible for reimbursement. MTS has been unsuccessful in establishing working agreements directly with the managed care plans to ensure MTS receives reimbursement for these Medi-Cal eligible trips, which has caused them to lose millions of dollars that would normally have been reimbursed to MTS for providing Medi-Cal eligible transportation trips.
- 9) *Opposition.* The Local Health Plans of California write in opposition stating that this bill overreaches to impose a contracting mandate between Medi-Cal managed care plans and public transit operators without any clear benefit to Medi-Cal beneficiary access to care. This bill will drive significant increase in Medi-Cal managed care transportation costs, as it requires that plans reimburse public transit operators at Medi-Cal fee-for-service rates which are often higher than fair market value or above the rates charged to the general public for the same services. They state that it is not standard practice nor appropriate to mandate a contracting relationship with a specific entity, and similar mandates do not exist for other types of providers. The mandate to contract puts plans in a precarious position to be beholden to transportation agencies. This bill also does not consider valid reasons a plan may choose to not contract with a public transit operator including medical appropriateness, quality concerns or inability to comply with the requirements of Medi-Cal.
- 10) *Policy comment.* Federal Medicaid managed care regulations generally preclude states from directing a managed care plan's expenditures under their contracts; however, they do allow states to adopt a minimum fee schedule for network providers that provide a particular service under the contract. In this case, both the rate and the entity that the managed care plan must contract with would be dictated by the state, though the bill does not preclude managed care companies from using other entities as well. Such a requirement on a plan may require federal approval or a waiver. Public transit providers would also have to be enrolled Medi-Cal providers in order to contract with a managed care plan.
- 11) *Amendments.* The contents of this bill should be moved from the Medi-Cal schedule of benefits, where it currently resides, to Article 6.3 governing Medi-Cal managed care plans of the same chapter, as this is a contracting requirement, not a Medi-Cal benefit.

SUPPORT AND OPPOSITION:

Support: California Transit Association (co-sponsor)
San Diego Metropolitan Transit System (co-sponsor)
Access Services
Association of Regional Center Agencies
California Academy of Family Physicians
California Association for Coordinated Transportation
California Special Districts Association
Gold Coast Transit District
Monterey-Salinas Transit District
San Francisco Bay Area Rapid Transit District

Oppose: America's Health Insurance Plans
Association of California Life and Health Insurance Companies
California Association of Health Plans
Local Health Plans of California

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