

GOVERNOR'S VETO  
AB 719 (Boerner)  
As Enrolled September 14, 2023  
2/3 vote

## SUMMARY

Requires Medi-Cal managed care plans to contract with and reimburse public paratransit service operators for covered nonemergency medical transportation and nonmedical transportation services.

### *Senate Amendments*

- 1) Narrow this bill to apply only to paratransit services.
- 2) Explicitly condition implementation on federal approval and the availability of federal financial participation

### **Governor's Veto Message**

This bill would require Medi-Cal managed care plans that provide nonemergency or nonmedical transportation to contract with public paratransit service operators for the purpose of establishing reimbursement rates, if federal approvals are obtained.

I support efforts to encourage more public paratransit service operators to enroll as nonmedical transportation providers in Medi-Cal, which is permitted under existing law. It would be beneficial to have more options for nonmedical transportation in the Medi-Cal system. This bill takes a different approach, however, requiring the Department of Health Care Services (DHCS) to pursue a series of federal approvals that are not currently allowable under federal guidance. It would not be prudent to use state resources for this purpose.

## COMMENTS

- 1) *Medi-Cal Transportation Coverage.* Medi-Cal is California's safety net health care program, covering about one-third of the state's population. Medi-Cal covers a comprehensive set of health benefits. Pursuant to federal regulation, Medi-Cal also covers both medical and nonmedical transportation that is needed in order to access other covered benefits.

Medical transportation can be on an emergency or non-emergency basis:

- a) Emergency medical transportation is provided when necessary to obtain program covered benefits when the beneficiary's condition is acute and severe, necessitating immediate medical diagnosis and treatment in order to prevent death or disability. Such transportation does not require prior authorization and is always by ambulance.
- b) Nonemergency medical transportation trips (NEMT) is provided when necessary to obtain program covered medical services and when the beneficiary's medical and physical condition is such that transport by ordinary means of private or public conveyance is medically contraindicated. This type of medical transportation is subject to prior authorization. Each authorization request for such transportation must be accompanied by either a prescription or order signed by a physician, dentist, or podiatrist,

which describes the medical reasons necessitating the use of NEMT. Authorization is granted only for the lowest cost type of medical transport that is adequate for the patient's medical needs and is available to transport the patient at the time transportation is required. NEMT is specialized transportation by ambulance, litter van, and wheelchair van services.

In contrast, the state has defined nonmedical medical transportation (NMT) as the transportation of members to access covered services by passenger car, taxicabs, or other forms of public or private conveyances.

- 2) *Other State Medicaid Programs.* According to a Kaiser Family Foundation issue brief, "Medicaid Non-Emergency Medical Transportation: Overview and Key Issues in Medicaid Expansion Waivers," state Medicaid agencies have considerable latitude in how they administer NEMT/NMT benefits. Most states use third-party brokerage firms to coordinate transportation for beneficiaries in return for a capitated payment, while some states deliver services directly via FFS reimbursements, and still others rely on a mix of capitated brokerage, direct delivery, and public transit voucher programs as appropriate based on geographic and beneficiary needs. States may also contract with managed care plans to provide transportation for their enrollees.

According to the Medicaid and Children's Health Insurance Program Payment and Access Commission (MacPAC), a federal entity that tracks and advises on Medicaid policy, use of public transportation for NEMT/NMT purposes varies considerably across states and even within states as public transportation is not available in all areas. MacPAC indicates although the scope of the benefit varies by state, NEMT/NMT generally covers a broad range of transportation services including trips in taxis, buses, vans, and personal vehicles belonging to beneficiaries and their family or friends.

- 3) *Federal Americans with Disabilities Act (ADA) requirements.* Independent of Medi-Cal, the federal ADA obligates transit agencies to ensure that their policies and practices do not discriminate against individuals with disabilities. This includes offering so-called demand-responsive services such as dial-a-ride and paratransit services that are comparable to the level of service provided to individuals without disabilities who use the fixed route system.
- 4) *Experience of California Transit Agencies.* According to the California Transit Association (CTA), cosponsor of this bill, public transit operators provide both NMT and NEMT to Medi-Cal managed care plan enrollees to access medically necessary Medi-Cal covered services, such as travel to appointments for medically necessary covered services; picking up drug prescriptions that cannot be mailed directly to the enrollee; or, picking up medical supplies like prosthetics, orthotics, and other equipment.

According to the CTA, before the enactment of AB 2394 (Garcia), Chapter 615, Statutes of 2016, which specified managed care plans were responsible for providing NMT to their beneficiaries, Medi-Cal directly reimbursed transit agencies for covered transportation services. However, the CTA asserts, 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. CTA indicates, for some agencies, transportation reimbursement has been a sizable revenue source, providing hundreds of thousands to several millions of dollars that enable them to continue offering

NMT and NEMT services. Without it, CTA explains, agencies absorb the costs of these services, which may impact other services.

According to recent reporting, public transit ridership in California has not recovered since plummeting during the pandemic. Transit agencies have been experiencing a drop in ridership and revenue. Combined with the end of federal aid, many transit agencies expect that without additional public subsidies, they will need to impose higher fares and/or service cuts. Transit agencies that are more reliant on revenue collected from passenger fares to fund operations are at higher financial risk.

The role of public transit agencies is unique. From a fiscal perspective, there are significant public subsidies inherent in the public transit system. Transit agencies also have independent mandates to ensure the availability of nondiscriminatory transportation. This distinguishes these agencies from private providers such as taxis or Uber, and may, as this bill's sponsors suggest, undermine the ability of these agencies to negotiate and reach contractual agreements with plans because, by definition, these agencies must provide requested services pursuant to federal requirements, regardless of another payer's responsibility to cover the service.

- 5) *Department of Health Care Services (DHCS) Guidance.* On May 18, 2022, DHCS issued All Plan Letter (APL) 22-008 to provide Medi-Cal managed care health plans with guidance regarding NEMT and NMT services. Although it seems reasonable to infer the least costly method would at times be the public transit agency, the APL does not specifically address availability of public transit for Medi-Cal beneficiaries or specify whether the plan has a responsibility to contract with or reimburse transit agencies.

### **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. The author asserts that 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, the author states, 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 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.

### **Arguments in Support**

Transit agencies and advocates support this bill to ensure transit agencies can be reimbursed for providing covered services that Medi-Cal managed care plans are financially responsible to provide. One supporter, Gold Coast Transit District (GCTD), indicates prior to 2016, it worked collaboratively with the County of Ventura to secure Medi-Cal reimbursement which, at its peak, provided approximately \$300,000 annually to help GCTD's paratransit system provide Medi-Cal eligible transportation to individuals. Under current local practices in Ventura County, the plan uses a private transportation broker to provide trips, and does not currently have a process to accept reimbursement requests from the public transportation providers who provide similar services.

### Arguments in Opposition

Opponents, including the California Association of Health Plans, the Association of California Life and Health Insurance Companies, and America's Health Insurance Plans, write to oppose this bill as one of 23 bills mandating coverage or restricting cost-sharing and utilization management. These opposing organizations urge legislators to consider the cumulative impacts that these mandates may have on premiums and access to coverage. Local Health Plans of California (LHPC) opposes this bill, stating this bill overreaches in imposing a contracting mandate between Medi-Cal managed care plans and public transit operators without any clear benefit to Medi-Cal beneficiary access to care. Additionally, LHPC notes, 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 FFS rates which are often higher than fair market value.

### FISCAL COMMENTS

According to the Senate Appropriations Committee, unknown ongoing costs, likely hundreds of thousands, to DHCS for state administration (General Fund and federal funds).

### VOTES

#### ASM HEALTH: 11-0-4

**YES:** Wood, Aguiar-Curry, Arambula, Boerner Horvath, Wendy Carrillo, Maienschein, McCarty, Rodriguez, Santiago, Villapudua, Weber

**ABS, ABST OR NV:** Waldron, Flora, Vince Fong, Joe Patterson

#### ASM APPROPRIATIONS: 11-1-4

**YES:** Holden, Bryan, Calderon, Wendy Carrillo, Mike Fong, Hart, Lowenthal, Papan, Pellerin, Weber, Ortega

**NO:** Megan Dahle

**ABS, ABST OR NV:** Dixon, Mathis, Robert Rivas, Sanchez

#### ASSEMBLY FLOOR: 65-0-15

**YES:** Addis, Aguiar-Curry, Alvarez, Arambula, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Juan Carrillo, Wendy Carrillo, Cervantes, Connolly, Davies, Dixon, Mike Fong, Friedman, Gabriel, Garcia, Gipson, Grayson, Haney, Hart, Holden, Irwin, Jackson, Jones-Sawyer, Kalra, Lee, Low, Lowenthal, Maienschein, McCarty, McKinnor, Muratsuchi, Stephanie Nguyen, Ortega, Pacheco, Papan, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Santiago, Schiavo, Soria, Ta, Ting, Valencia, Villapudua, Ward, Weber, Wicks, Wilson, Wood, Zbur, Rendon

**ABS, ABST OR NV:** Alanis, Chen, Megan Dahle, Essayli, Flora, Vince Fong, Gallagher, Hoover, Lackey, Mathis, Jim Patterson, Joe Patterson, Sanchez, Waldron, Wallis

#### SENATE FLOOR: 39-0-1

**YES:** Allen, Alvarado-Gil, Archuleta, Ashby, Atkins, Becker, Blakespear, Bradford, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hurtado, Jones, Laird, Limón, McGuire, Menjivar, Min, Newman, Nguyen, Niello, Ochoa Bogh, Padilla, Portantino, Roth, Rubio, Seyarto, Skinner, Smallwood-Cuevas, Stern, Umberg, Wahab, Wiener, Wilk

**ABS, ABST OR NV:** Caballero

**ASSEMBLY FLOOR: 77-0-3**

**YES:** Addis, Aguiar-Curry, Alanis, Alvarez, Arambula, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Juan Carrillo, Wendy Carrillo, Cervantes, Chen, Connolly, Megan Dahle, Davies, Dixon, Flora, Mike Fong, Vince Fong, Friedman, Gabriel, Gallagher, Garcia, Gipson, Grayson, Haney, Hart, Holden, Hoover, Irwin, Jackson, Jones-Sawyer, Kalra, Lee, Low, Lowenthal, Maienschein, Mathis, McCarty, McKinnor, Muratsuchi, Stephanie Nguyen, Ortega, Pacheco, Papan, Jim Patterson, Joe Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Rendon, Reyes, Luz Rivas, Rodriguez, Blanca Rubio, Santiago, Schiavo, Soria, Ta, Ting, Valencia, Villapudua, Waldron, Wallis, Ward, Weber, Wicks, Wilson, Wood, Zbur, Robert Rivas

**ABS, ABST OR NV:** Essayli, Lackey, Sanchez

**UPDATED**

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