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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

DMAP 96-2024

CHAPTER 410

OREGON HEALTH AUTHORITY

HEALTH SYSTEMS DIVISION: MEDICAL ASSISTANCE PROGRAMS

FILED

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: NEMT Rule Changes to Allow for the Fee-For-Service TNC Pilot to Start.

EFFECTIVE DATE: 06/01/2024 THROUGH 11/27/2024

AGENCY APPROVED DATE: 05/29/2024

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NEED FOR THE RULE(S):

The NEMT system in Oregon has faced several complex challenges in both access and quality of service for many years. These challenges directly impact Oregon Health Plan (OHP) members who rely on NEMT for their access to medical care. In 2022, the Oregon Health Authority (OHA) launched an internal NEMT workgroup to address NEMT challenges. One proposed solution that OHA researched and approved was the TNC Pilot. During the COVID-19 Public Health Emergency, OHA authorized NEMT brokerages to use TNCs when appropriate and reimburse OHP members when they book TNC rides if their NEMT ride fails to arrive timely. This authorization was set to expire December 31, 2023. Due to the delay in TNC Pilot implementation, OHA has extended this authorization through January 31, 2024.

New TNC FFS pilot program to evaluate the effectiveness of adding Transportation Network Companies (TNCs) into the NEMT structure with the goal of increasing access to NEMT and improving the quality of service, which in return is expected to improve access to healthcare overall. The TNC FFS pilot will run for the same length as the CCO TNC pilot and NEMT Brokerages will be allowed to utilize TNCs to address the significant gaps in NEMT service.

JUSTIFICATION OF TEMPORARY FILING:

- (1) The CCO TNC pilot has permanent rules and the has started. Some NEMT brokerages have both CCO and FFS entities. This filing needs to be filed now so that both CCO and FFS NEMT brokerages can do the TNC pilot and the FFS NEMT members are allowed to utilize the TNC services.
- (2) The groups that would suffer if the rule is not immediately filed are the CCO brokerages, FFS brokerages and the FFS OHP members.
- (3) There would be more burden on the NEMT CCO and FFS brokerages as most of these brokerages have both entities that operate together. The TNC pilot is being implemented to help the strain on NEMT brokerages, so if the FFS brokerages wait through a normal rule process, this would take more time and create a burden on the brokerages who could utilize the TNCs to alleviate driver shortages. It would also create more burden on the FFS OHP members who utilize FFS brokerages if they cannot utilize the FFS TNC when CCO OHP members are able to utilize a TNC.

(4) The temporary action would mitigate those consequences by aligning the CCO and FFS TNC pilot rules for CCOs and FFS brokerages who often have the same brokerages. Aligning the rules will mitigate having a pilot for CCO brokerage and no pilot for FFS brokerages, which will cause separate rules and barriers for members and brokerages.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Quarterly NEMT Performance Metrics submitted by the brokerages and their analyses by OHA. Research and consultations with other States' Medicaid Programs, consultations with NEMT Brokerages.

AMEND: 410-136-3020

RULE SUMMARY: TNC Pilot FFS Rules.

CHANGES TO RULE:

410-136-3020

General Requirements for NEMT ¶¶

(1) The Authority may enroll governmental transportation brokerages (local units of government) or other entities contracted with the Authority as a "contractor" to arrange rides. Transportation brokerages pay subcontractors for NEMT services. The Authority may limit the enrollment with transportation brokerages to units of local government; Transportation brokerages shall be enrolled as an Oregon Health Plan (OHP) provider and meet all requirements of OAR 410-120-1260 prior to delivering NEMT services or receiving payment. A governmental transportation brokerage signing the Provider Enrollment Agreement constitute agreement to comply with all applicable Authority OHP provider rules and federal and state laws and regulations.¶¶

(2) The actions described in this rule may not be delegated and must be performed by the brokerage contracted with the Authority. The brokerage shall:¶¶

(a) Prior authorize and pay subcontractors for the least costly but most appropriate mode of transport for the client's medical needs to and from an OHP covered medical service. The most appropriate and least costly ride may include requiring the client to share the ride with other clients;¶¶

(b) Verify that the client is obtaining OHP covered medical services in the client's local area;¶¶

(c) Verify the client's OHP eligibility and that the client's benefit package includes NEMT services on the scheduled date of service for the requested transport. The brokerage shall verify this through electronic eligibility information with the Authority Electronic Data Interchange (EDI);¶¶

(d) Assess the client's access to other means of transportation, such as driving their own car or getting a ride from a friend, family member or neighbor;¶¶

(e) Verify the client's attendance for continuing requests for rides if the medical provider could not affirm an appointment for a previous ride;¶¶

(f) Schedule a ride with an alternate subcontractor if the subcontractor originally assigned is unable to provide the ride; and¶¶

(g) Assign rides to the subcontractor based on an evaluation of several factors including, but not limited to:¶¶

(A) Cost;¶¶

(B) The client's need for appropriate equipment and transportation;¶¶

(C) Any factors related to a subcontractor's capabilities, availability, and past performance; and¶¶

(D) Any factors related to the brokerage's need to maintain sufficient service capacity to meet client needs.¶¶

(43) Pursuant to OAR 410-120-1210, Medical Assistance Benefit Packages and Delivery System, clients receiving the Qualified Medicare Beneficiary (QMB) only benefit package are not eligible for NEMT.¶¶

(54) The brokerage shall maintain records of prior authorization approval and denials of NEMT services. The brokerage shall also include the reasons for authorizing a ride:¶¶

(a) That is not cost effective or not based on the factors specified in section (2) of this rule;¶¶

(b) With more than two (2) attendants for an ambulance or stretcher car; or¶¶

(c) With more than one (1) attendant for a wheelchair van.¶¶

(65) The brokerage shall provide a ride to a client to fill prescription medication only in the following situation:¶¶

(a) The client needs to stop on the way home to fill or pick up prescribed medication related to the covered service for which the brokerage provided the ride;¶¶

(b) It is medically necessary to fill or pick up the medication immediately; and¶¶

(c) The pharmacy is located on the return route or is the closest pharmacy to the return route.¶¶

(76) The brokerage may provide a ride to a client to fill prescribed medication under the following situations:¶¶

(a) The brokerage asks the client if the prescription service is available through the Authority's contracted postal prescription service, and the client responds that it is not available through that source;¶¶

(b) The client has an urgent need to fill or pick up prescribed medication because the postal prescription service mailed the wrong medication, or the client has an unexpected problem caused by the medication; or¶¶

(c) The client is transient or without regular access to a mailbox. In this situation, the brokerage may evaluate the need on a case-by-case basis.¶¶

(87) The brokerage shall provide rides outside the brokerage's local service area as described in section (2)(b) of this rule, under the following circumstances:¶¶

(a) The client is receiving a covered service that is not available in the service or local area but is available in another area of the state;¶¶

(b) The client is receiving a covered service in California, Idaho, or Washington where the service location is no more than 75 miles from the Oregon border; or¶¶

(c) No local medical provider or facility ~~wish~~shall provide the covered services for the client.¶¶

(98) Brokerages may coordinate to provide a return ride to a client who receives a covered service outside the client's local area.¶¶

(109) Brokerages shall retroactively authorize and pay for NEMT services that have already occurred only when the brokerage could not prior authorize the service because the brokerage was closed, and the request for authorization is received by the brokerage within thirty (30) days of the date of service. The brokerage shall confirm with the medical provider that one of the following circumstances supported the ride:¶¶

(a) The client needed urgent medical care;¶¶

(b) The client required secured transport pursuant to OAR 410-136-3120, Secured Transports; or¶¶

(c) The client was in a hospital, and the hospital discharged or transferred the client.¶¶

(110) In addition to section (109) of this rule, a brokerage shall retroactively authorize NEMT services for ambulance transports when:¶¶

(a) An ambulance provider responds to an emergency call, but the client's medical condition does not warrant an emergency transport;¶¶

(b) The ambulance provider transports the client as a NEMT service; and¶¶

(c) The ambulance provider requests retroactive authorization within thirty (30) days of the NEMT date of service.¶¶

(121) Brokerages shall not authorize or pay subcontracted providers for rides outside their service areas based only on client preference or convenience.¶¶

(132) Brokerages shall provide toll-free call centers for clients to request rides. Brokerages shall have written policies and procedures regarding its NEMT services that include all the requirements in this rule. Brokerages shall meet all the following requirements pertaining to the brokerage's call center and scheduling of rides:¶¶

(a) The call center shall operate at a minimum Monday through Friday from 9:00 a.m. to 5:00 p.m., but the brokerage may close the call center on New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving, and Christmas. The Authority may approve, in writing, additional days of closure if the brokerage requests the closure at least thirty (30) days in advance.¶¶

(b) Brokerages shall make all reasonable efforts for clients to have access to available NEMT services twenty-four (24) hours a day. When the call center is closed, the brokerages shall provide a recording or answering service in at a minimum, English and Spanish, to refer the client directly to a subcontractor. If no subcontractor is available, the brokerage must provide clients with recorded information in at a minimum, English and Spanish, about service hours and how to reach emergency services by calling 911;¶¶

(c) The brokerage shall allow a client or their representative to schedule rides at least ninety (90) days in advance of the covered service;¶¶

(d) The brokerage shall allow a client or their representative to request multiple ride requests at one time;¶¶

(e) The brokerage shall develop and make all policies and procedures regarding its NEMT services available to clients either in a OHP Open Card Member Handbook or in a stand-alone document referred to as a "OHP Open Card NEMT rider guide" that meets the delivery and content specifications defined by the Authority. The brokerage's written policies and procedures regarding NEMT services must be shared to subcontractors and shall be available upon request to the Authority for review.¶¶

(f) Allow a client or their representative, including providers in accordance with OAR 410-172-0780, to schedule:¶¶

(A) NEMT services up to ninety (90) days in advance;¶¶

(B) Multiple NEMT services at one time for recurring appointments up to ninety (90) days in advance; and¶¶

(C) Same-day NEMT services.¶¶

(g) Comply with the following criteria for client drop-offs and pick-up protocols. A brokerage or subcontractors' drivers are not permitted to:¶¶

(A) Drop off a client at an appointment more than fifteen (15) minutes prior to the office or other facility opening for business unless requested by the client or, as applicable, the client's guardian, parent, or representative; and¶

(B) Pick up a client from an appointment more than fifteen (15) minutes after the office or facility closes for business unless the appointment is not reasonably expected to end within fifteen (15) minutes after closing, or as requested by the client, or as applicable, the client's guardian, parent, or representative.¶

(h) The brokerage shall provide to the client, or as applicable, the client's guardian, parent, or representative the name of subcontractor, or name and telephone number of the driver when available;¶

(i) The brokerage shall confirm the scheduled pick-up time and address with the client;¶

(j) The brokerage shall make reasonable efforts to arrange a ride requested on the day of the medical service when the service is:¶

(A) For an urgent medical condition; and¶

(B) Due to the urgency of the medical condition, the client scheduled an immediate medical appointment.¶

(143) The brokerage is not responsible for providing emergency medical transportation services. However, brokerages shall have procedures for referring clients requesting emergency medical transportation services to the appropriate emergency transportation resources and procedures for subcontractors per OAR 410-136-3040, Vehicle Equipment and Subcontractor Standards.¶

(154) The Authority shall collaborate with brokerages and CCOs to develop and conduct a statewide client NEMT satisfaction survey at least once every two years. The Authority may contract with one or more brokerages, or a third party, to conduct the survey. The Authority shall use the results of the survey to identify and address potential operational deficiencies and to identify and share successes in the NEMT program.¶

(165) Brokerages shall establish regional advisory groups consisting of representatives from the Authority, ODHS, Area Agencies on Aging, consumers, representatives of client advocacy groups from within the service or local area, brokerage subcontractors, and providers of NEMT ambulance services. The role of the group includes, but is not limited to:¶

(a) Assisting in monitoring and evaluating the NEMT program; and¶

(b) Recommending potential policy or procedure changes and program improvements to brokerages and the Authority and assisting in prioritizing those changes and improvements.¶

(176) Brokerages shall have the discretion to use or not use Oregon Department of Human Services (ODHS)-approved volunteers. ODHS shall provide brokerages with a list of approved and trained volunteers. ODHS shall supervise the volunteers and assumes all liability for each volunteer as provided by law.¶

(187) Brokerages or their subcontractors shall not bill eligible client for any NEMT service to and from a covered service or any transports where the Authority denies reimbursement. Brokerages or their subcontractors shall not collect payment from the client, or assign an unpaid claim to a collection agency, or similar entity pursuant to ORS 414.066.¶

(198) On a minimum of five percent of the ride requests, brokerages shall contact medical providers to verify appointments and that the appointments are for covered medical services.¶

(2019) Brokerages may purchase tickets for common carrier transportation, such as inter- or intra-city bus, train, or commercial airline when deemed cost effective and safe for the client.¶

(20) This rule applies only to the Authority's pilot project in effect for 2/16/2024 through 2/15/2025, which allows a FFS brokerage to continue utilizing a Transportation Network Company (TNC) to provide NEMT services to the FFS members when a TNC is the least costly, most appropriate option.¶

(21) Transportation network company (TNC) has the meaning found in ORS 742.520.¶

(22) A TNC must obtain a certification from the Oregon Health Authority to participate in the TNC Pilot Program as an NEMT provider. Certification for the TNC pilot program is obtained by submitting to HSD.QualityAssurance@odhsoha.oregon.gov the following documents:¶

(a) A document that identifies the process or policies the TNC follows and documents its compliance with the requirement that each driver has a valid driver license. The TNC must maintain records of their drivers participating in the TNC Pilot and share relevant information with the Authority when requested.¶

(b) A document that identifies the processes or policies the TNC follows and documents its compliance with the processes and policies, to ensure that proposed TNC pilot program drivers, employees, agents and contractors are not, as described in 42 CFR §438.610 (a) or (b):¶

(A) Excluded, suspended, or debarred, or otherwise excluded from participating in procurement or non-procurement activities under the Federal Acquisition Regulations or federal Executive Order No. 12549 or the implementation guidelines for federal Executive Order No. 12549; or¶

(B) Excluded from participation in any federal health care program under section 1128 or 1128A of the Social Security Act as described in 42 CFR 438.610.¶

(c) A document that identifies the process or policies that the TNC follows and documents its compliance with the processes and policies, to ensure that all TNC proposed pilot program drivers have not:¶

(A) Committed more than three (3) traffic violations under ORS 801.557 in the past three (3) years; or¶

- (B) Committed one (1) or more traffic crimes under ORS 801.545 within the past seven (7) years; or¶
(C) Have been convicted of Driving Under the Influence of Intoxicants under ORS 813.010 within the last seven (7) years.¶
(d) The TNC's policy for monitoring the driving records and criminal records of all its proposed TNC pilot program drivers, employees, agents, and contractors.¶
(e) The TNC's policy for compliance with federal and state regulatory requirements to ensure all OHP member information is protected in accordance with OAR 410-136-3280.¶
(f) Proof of insurance and policy compliant with ORS 742.520(1)(b).¶
(23) Upon receipt of the documents identified in subsection (22) of this rule, the application shall be reviewed and if all requirements are met, then the Authority shall issue a certificate of approval to participate in the TNC Pilot Program.¶
(a) Once certification is issued, a TNC certified to participate in the TNC Pilot Program shall be eligible to provide rides to OHP clients upon request from the Authority or a FFS brokerage.¶
(b) Rides authorized to be provided by a driver employed by or contracted with a certified TNC Pilot Program may only be utilized by a FFS brokerage or the Authority if:¶
(A) No NEMT driver who meets the requirements identified in OAR 410-136-3040 (NEMT Driver) accepts an NEMT brokerage request within twenty-four (24) hours of the scheduled ride time; or¶
(B) A previously scheduled NEMT Driver cancels the assigned ride within twenty-four (24) hours of the scheduled ride time and no other NEMT Driver accepts, within a reasonable period of time, the brokerage's new request for another NEMT Driver; or¶
(C) The previously scheduled NEMT Driver does not arrive at the pick-up location within fifteen (15) minutes after the scheduled pick-up time.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 414.065