

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Iowa Administrative Code.

This amendment provides clarification about services provided under the nonemergency medical transportation (NEMT) program. The amendment also identifies the conditions and limitations of the program. These clarifications are intended to assist the contracted NEMT broker to provide management and oversight of the NEMT program.

The number of NEMT trips has grown by 76 percent since October 2010. There has also been a big shift in the types of trips being taken by Medicaid members. The two primary types of trips reimbursed under NEMT are mileage reimbursement and provider rides. During the period from October 2009 to December 2010, approximately 73 percent of the trips reimbursed under NEMT were classified as mileage reimbursement trips. The percentage of mileage reimbursement trips during the recent period from January to March 2013 shows a significant reduction in mileage reimbursement trips to 46 percent. As a direct result, there has been a significant increase in the number of provider rides, which are, in turn, much more expensive. The goal of this amendment is to clarify administrative rules and implement changes to the program to continue to meet member needs while ensuring that the NEMT program remains cost-effective.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1161C** on October 30, 2013.

The Department received comments from two respondents. The comments and the corresponding Department responses are as follows:

Comment #1: Paragraph 78.13(1)“a” states, “Consistent with the member’s needs and subject to the limitations and restrictions set forth in this rule, subject to the advance approval of the broker, such transportation may include:” Is there a definition and process to determine “member needs”?

Department Response #1: The Department is not providing a definition of “member’s needs” because the term is incapable of being defined in a way that would apply to all members in all potential circumstances. Rather, application of the provision depends on the facts and circumstances in individual cases.

Comment #2: Subparagraph 78.13(1)“a”(4) states, “Public transportation when public transportation is reasonably available and the member’s condition does not preclude its use.” Are there time frames and expectations associated with being “reasonably available”?

Department Response #2: “Reasonably available” would depend on the circumstances in individual cases. For instance, a patient’s working vehicle might not be “reasonably available” to a patient who just underwent eye surgery. Therefore, whether or not transportation is reasonably available is based on the facts of individual cases.

Comment #3: Paragraph 78.13(2)“d” states, “Transportation of family members to visit or participate in therapy when the member is hospitalized or institutionalized.” Should there be an exception to this exclusion for situations such as parents of premature babies or mothers bringing breast milk to hospitalized children? The ability for a family member to secure transportation on his/her own is likely to be much more difficult over an extended period of time.

Department Response #3: The Department believes that exceptions to this rule such as transportation of “parents of premature babies or mothers bringing breast milk to hospitalized children” would overwhelm the rule. The rule is intended to limit transportation to transportation of the member and, if necessary, an escort, per federal requirements.

Comment #4: Paragraph 78.13(3)“g” states, “Member scheduling obligations. Members who require a ride will need to schedule medical appointments on days the transportation provider sends a shuttle to facilitate the provision of the most economical nonemergency medical transportation available, subject

to reasonable medical exceptions.” It is very important that the availability of the specific provider be included as a reasonable medical exception, particularly in cases where an ongoing relationship exists and/or special expertise or experience resides with the specific provider.

Department Response #4: This comment does not take issue with the proposed rule; rather, the comment goes to the implementation of that rule, specifically, as it relates to the availability of the specific provider or physician. Members, or their representatives, may request a medical exception to the prescheduled shuttle route transportation based on the availability of the specific physician or specialist for appointments on the day(s) of the shuttle route days/times. The broker may contact the physician’s office to verify the exception request.

Comment #5: This is a paper of rules in progress; similar wording is in older rules as well. Rule 441—78.13(249A) states that the most economical transportation appropriate to the needs of the member is to be used. TMS (Iowa Medicaid’s nonemergency medical transportation broker) rules that the shortest possible distance, regardless of its economy, is to be used for mileage reimbursement. The respondent stated that the example given was if a gravel road is the shortest distance, that is what TMS will use in its calculations. It is rather clear that this would not be economical. TMS needs to update its policies to comply with this.

Department Response #5: This comment does not take issue with the proposed rule, which provides that the most economical transportation appropriate to the needs of the member is to be used. Rather, the comment goes to the implementation of that rule. The Department has discussed the implementation issue raised with the transportation broker and supports the broker’s use of the shortest route for mileage reimbursement. If a member believes that a longer route is actually more economical for any reason, the member is free to take the longer route and keep the savings.

No changes were made to this amendment as the result of the comments received from respondents. This amendment is identical to that published under Notice of Intended Action.

The Council on Human Services adopted this amendment on December 11, 2013.

This amendment does not provide for waivers in specified situations because the brokerage system will apply to all Medicaid members who are eligible to receive nonemergency medical transportation services. However, requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, there is a potential impact to private sector jobs. The current broker employs 24 full-time staff in Iowa and has contracts with 69 transportation providers in and around Iowa.

This amendment is intended to implement Iowa Code section 249A.4.

This amendment will become effective March 1, 2014.

The following amendment is adopted.

Rescind rule 441—78.13(249A) and adopt the following new rule in lieu thereof:

**441—78.13(249A) Nonemergency medical transportation.** The department makes available nonemergency medical transportation through a transportation brokerage. Medicaid members who are eligible for full Medicaid benefits and need transportation services so that they can receive Medicaid-covered services from providers enrolled with the Iowa Medicaid program may obtain transportation services consistent with this rule.

**78.13(1) Covered services.** Nonemergency medical transportation services available are limited to:

a. The most economical transportation appropriate to the needs of the member, provided to members eligible for nonemergency transportation when those members need transportation to providers enrolled in the Iowa Medicaid program for the receipt of goods or services covered by the Iowa Medicaid program. Consistent with the member’s needs and subject to the limitations and restrictions set forth in this rule, subject to the advance approval of the broker, such transportation may include:

- (1) Mileage reimbursement to the member, if the member is the driver.
- (2) Mileage reimbursement to a volunteer or other responsible person, if the volunteer or other responsible person is the driver.

- (3) Taxi service.
- (4) Public transportation when public transportation is reasonably available and the member's condition does not preclude its use.
- (5) Wheelchair and stretcher vans.
- (6) Airfare costs when the most appropriate mode of transport is by air, based on the member's medical condition.
  - b.* Reimbursement for costs of the member's meals necessary during periods of transportation and medical treatment.
  - c.* Reimbursement of lodging expenses incurred by the member during periods of transportation and medical treatment.
  - d.* Reimbursement of car rental costs incurred by the member during periods of transportation and medical treatment.
  - e.* Reimbursement of a medically necessary escort's travel expenses when an escort is required because of the member's needs.

**78.13(2) Exclusions.** Nonemergency medical transportation is not available through the Iowa Medicaid program for:

- a.* Transportation to obtain services not covered by Iowa Medicaid;
- b.* Transportation to providers that are not enrolled in Iowa Medicaid;
- c.* Transportation for members residing in nursing facilities or ICF/ID facilities when such facilities provide the transportation (i.e., within 30 miles, one way, of the facility);
- d.* Transportation of family members to visit or participate in therapy when the member is hospitalized or institutionalized;
- e.* Transportation to durable medical equipment providers when such providers offer a delivery service that can be accessed at no cost to the member, unless the equipment requires a fitting that cannot be provided without transporting the member;
- f.* Reimbursement to HCBS and Medicaid providers for transportation provided as part of other covered services, such as personal care, home health, and supported community living services;
- g.* Transportation to a pharmacy that provides a free delivery service, with the exception of new prescription fills that are otherwise not available to the patient in the absence of nonemergency medical transportation services; and
- h.* Emergency transportation.

**78.13(3) Conditions and limitations on covered services.** Nonemergency medical transportation services are subject to the following limitations and conditions:

*a. Member request.* When a member needs nonemergency transportation to receive medical care provided by the Iowa Medicaid program, the member must contact the broker with as much advance notice as possible, but not more than 30 days' advance notice.

(1) Generally, the member must contact the broker at least two business days in advance of the member's appointment to schedule the transportation. For purposes of calculating the two-business-day notice obligation, the advance notice includes the day of the medical appointment but not the day of the telephone call.

(2) If the member's nonemergency transportation needs make the provision of two business days' notice impossible because of the member's urgent transportation need, the member must provide as much advance notice as is possible before the transportation need so that the broker can appropriately schedule the most economical form of transportation for the member. Urgent transportation needs are limited to unscheduled episodic situations in which there is no immediate threat to life or limb but which require that the broker schedule transportation with less than two business days' notice. Examples of urgent trips include, but are not limited to:

- 1. Postsurgical or medical follow-up care specified by a health care provider;
- 2. Unexpected preoperative appointments;
- 3. Hospital discharges;
- 4. Appointments for new medical conditions or tests; and
- 5. Dialysis.

*b. No free transportation alternatives available.* Member transportation through the nonemergency medical transportation broker is not available to the member when the member is capable of securing the member's own transportation at no cost to the member (e.g., free-gas voucher programs).

*c. No member transportation alternatives available.* Members who have their own transportation available to them are required to use their own vehicle and seek mileage reimbursement. For purposes of determining whether or not the member has the member's own transportation that is available to the member, the broker shall take into consideration:

- (1) Whether the member owns a vehicle;
- (2) Whether a member-owned vehicle is in working mechanical order and is licensed;
- (3) Whether the member has a valid driver's license and auto insurance;
- (4) Whether the member is unable to drive because of age, physical condition, cognitive impairment, or developmental limitations; and
- (5) Whether friends or family are available to transport the member to the member's medical appointment and receive mileage reimbursement.

*d. Limitations on reimbursement for meals.* Reimbursement for costs of members' meals necessary during periods of transportation and medical treatment is limited to situations in which:

- (1) The transportation being provided spans the entire meal period;
- (2) The one-way distance to or from the medical appointment is more than 50 miles;
- (3) The meal is necessary to satisfy the needs of the member or medically necessary escort; and
- (4) The meal reimbursement is limited to the subsistence allowance amounts applicable to state officers and state employees pursuant to Iowa Administrative Code rule 11—41.6(8A) and is supported by detailed receipts.

*e. Limitations on reimbursement for lodging expenses.* Reimbursement of lodging expenses incurred by members during periods of transportation and medical treatment is limited to reasonable reimbursement for expenses incurred by the member or the medically necessary escort, or both, during a nonemergency trip provided by the broker when the one-way distance to or from the medical appointment is more than 50 miles, supported by detailed receipts, and required for treatment.

*f. Closest medical provider.* Nonemergency medical transportation will only be provided to members to the closest qualified and enrolled Medicaid provider unless:

- (1) The difference between the closest qualified and enrolled Medicaid provider and the enrolled provider requested by the member is less than 10 miles one way; or
- (2) The additional cost of transportation to the enrolled provider requested by the member is medically justified based on:
  1. The member's previous relationship with the requested provider; or
  2. The member's prior experience with the requested provider; or
  3. The requested provider's special expertise or experience; or
  4. A referral requiring the member to be seen by the requested provider.

*g. Member scheduling obligations.* Members who require a ride will need to schedule medical appointments on days the transportation provider sends a shuttle to facilitate the provision of the most economical nonemergency medical transportation available, subject to reasonable medical exceptions.

*h. Abusive behavior.* Members who are abusive or inappropriate may be restricted by the department to only receiving mileage reimbursement. Such restricted members will be responsible for finding their own way to their medical appointments.

**78.13(4) Grievance procedure.** The broker shall establish an internal grievance procedure for members and transportation providers.

*a.* Members may appeal to the department pursuant to 441—Chapter 7 as an "aggrieved person."

*b.* Transportation providers.

(1) Consent for state fair hearing.

1. Transportation providers that are contracted with the broker and are in good standing with the broker may request a state fair hearing only for disputes regarding payment of claims, specifically,

disputes concerning the denial of a claim or reduction in payment, and only when acting on behalf of the member.

2. The transportation provider requesting such a state fair hearing must have the prior, express, signed written consent of the member or the member's lawfully appointed guardian in order to request such a hearing. Notwithstanding any contrary provision in 441—Chapter 7, no state fair hearing will be granted unless the transportation provider submits a document providing such member approval with the request for a state fair hearing.

3. The document must specifically inform the member that protected health information (PHI) may be discussed at the hearing and may be made public in the course of the hearing and subsequent administrative and judicial proceedings. The document must contain language that indicates the knowledge of the potential for PHI to become public and that the member knowingly, voluntarily and intelligently consents to the network provider's bringing the state fair hearing on the member's behalf.

(2) For all transportation provider grievances not addressed by paragraph 78.13(4)“b,” the grievance process shall end with binding arbitration, with a designee of the Iowa Medicaid enterprise as arbitrator.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/14.