

410-136-3000

Responsibility for Providing Non-emergent Medical Transportation

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(1) The Oregon Health Authority (OHA) shall provide non-emergent medical transportation (NEMT) for eligible clients who receive their Oregon Health Plan (OHP) covered medical services on a fee-for-service basis or are ~~members-clients~~ enrolled in ~~prepaid health plans (PHP) or~~ coordinated care organizations (CCO). The Authority shall cease providing this service to a client enrolled in a CCO ~~enrollees when after the date the client is enrolled in a CCO. The CCO shall provide and coordinate~~ ~~CCOs provide~~ the service to their enrollees on and after the date of the client's enrollment in the CCO pursuant to section (2) of this rule.

(2) When a CCO begins providing NEMT services for its enrollees, the Authority shall provide NEMT services in the CCO's service area only to clients not enrolled in a CCO: ~~for health care services:~~

(a) The Authority may not pay for services covered by a CCO; reimbursement is a matter between the CCO and its transportation brokerage and subcontractor. Reimbursement is a matter between the CCO and its contracted brokerage and transportation providers.

(b) For clients enrolled in a CCO ~~responsible for NEMT~~, the transportation provider must coordinate all transportation services with the client's transportation brokerage or CCO prior to providing services.

(3) The requirements in OAR 410-136-3000–410-136-3360 apply to NEMT services for which the Authority is responsible pursuant to this rule.

(4) A brokerage may request that the Authority delay responsibility for reimbursement to clients pursuant to OAR 410-136-3240, Client Reimbursed Mileage, Meals and Lodging, until a CCO in the brokerage's service area assumes NEMT services for the CCO's ~~enrollees~~ enrolled client. The Authority must approve to delay this responsibility which must not exceed 14 days. The delay of the brokerage's responsibility also includes reimbursing clients in the fee-for-service delivery system.

(5) OAR 410-136-3040, Vehicle Equipment and Subcontractor Standards and 410-136-3120, Secured Transports do not apply to ambulance providers, ambulance vehicles, or ambulance personnel that are licensed and regulated by ORS Chapter 682 and OAR chapter 333, divisions 250, 255, 260 and 265, whether providing ambulance or stretcher transports.

(6) The following definitions specifically apply to OAR 410, division 136. This rule does not include an exhaustive list of Division acronyms and definitions. For more information of any terms not defined in this rule, see Oregon Health Plan (OHP) program OAR 410-141-3500 Acronyms and Definitions; 410-120-0000 Acronyms and Definitions; 309-032-0860; 410-200-0015 General Definitions; and any appropriate governing acronyms and definitions in the Department of Human Services (Department) chapter 411, 413, or 461 administrative rules; or contact the Division. For purposes of the rules OAR 410-136-3000 through 410-136-3360:

(a) "Brokerage" means a governmental transportation brokerage (local unit of government) or other entities enrolled by and contracted with the Authority, to arrange rides and pay subcontractors for NEMT services;

(b) "Client" means an individual eligible to receive OHP health services on the date of service and who resides in the Service Area;

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(c) "Covered service" means medically necessary and appropriate health services and items described in ORS Chapter 414 and applicable administrative rules and the Prioritized List of Health Services above the funding line set by the legislature, consistent with OAR Chapter 410 division 120;

(d) "Electronic Data Interchange (EDI)" means the exchange of business documents from application to application in a federally mandated format or, if no federal standard has been promulgated, using bulk transmission processes and other formats as the Authority designates for EDI transactions consistent with OAR Chapter 410 division 120;

(e) "Local area" means an area within the accepted community standard and includes the client's metropolitan area, city, or town of residence;

(f) "Member" means an Oregon Health Plan (OHP) client enrolled with a coordinated care organization (CCO);

(g) "Non-Emergent Medical Transportation Services (NEMT)" means transportation to or from a source of covered service, that does not involve a sudden, unexpected occurrence which creates a medical crisis requiring emergency medical services as defined in OAR 410-120-0000 and requiring immediate transportation to a site, usually a hospital, where appropriate emergency medical care is available.

(h) "Provider" means a public Agency, non-profit company, for-profit company, or an individual with whom a brokerage subcontracts with to provide rides.

(i) "Ride" means to drive the client to and from Oregon Health Plan (OHP) covered services.

(j) "service area" means the geographic area within which the Regional Brokerage agreed under contract with the Authority to provide Rides as a service through the contractor's Call Center;

(k) "Subcontractor" means the provider, individual or entity, with which the brokerage executes a contract ~~or employs to drive the client to and from Oregon Health Plan (OHP) covered services.~~

(l) "The Authority" means the Oregon Health Authority (OHA);

(m) "Volunteer" (for the purposes of NEMT) means an individual selected, trained and under the supervision of the ODHS who is providing services on behalf of the ODHS in a non-paid capacity except for incidental expense reimbursement under the ODHS Volunteer Program authorized by ORS 409.360.

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410-136-3010  
Coordinated Care Organizations

(1) The Authority contracts with Coordinated Care Organizations (CCOs) to provide medical services for ~~individuals-clients~~ receiving ~~Division of Medical Assistance Programs (Division)~~, Title XIX and Title XXI services for the purpose of providing integrated and coordinated care services across physical health, dental health, and non-emergent medical transportation (NEMT). ~~See also~~ OAR chapter 410, division 120 ~~(General Rules) including OAR 410-120-1210 describes services through CCOs, and division 141 (Oregon Health Plan rules) including OAR 410-141-3920 through OAR 410-141-3965 describes NEMT requirements through CCOs for definitions and responsibilities and OAR 410-120-1210(4) (Division of Medical Assistance Programs and Delivery Systems) for a description of how individuals receive services through CCOs.~~

(2) ~~For clients enrolled in a CCO, NEMT services are included in the budget provided to a CCO by~~ ~~When~~ the Authority, ~~provides a CCO with a global budget that includes funds to provide NEMT services for its members,~~ ~~It~~ the CCO shall provide NEMT services to its enrolled members.

~~(3) The Authority may not pay for services a CCO covers for its members. Reimbursement is a matter between the CCO and its transportation providers.~~

(4) For members-clients enrolled in a CCO, all transportation services must be coordinated through the member's CCO or the CCO's designated transportation provider, ~~if any~~, prior to receiving services.

410-136-3020

General Requirements for NEMT

(1) The Authority may enroll governmental transportation brokerages (local units of government) or other entities to arrange rides and pay subcontractors for NEMT services. The Authority may limit the enrollment with brokerages to units of local government; ~~Governmental transportation brokerages shall be enrolled as an 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) For purposes of the rules (OAR 410-136-3000 through 410-136-3360), "subcontractor" means the individual or entity with which the brokerage subcontracts or employs to drive the client to and from OHP covered medical services.~~

~~(23) The actions described in this rule may not be delegated and must be performed by the brokerage contracted with OHA.~~ 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; ~~"Local area" means an area within the accepted community standard and includes the client's metropolitan area, city, or town of residence;~~

(c) Verify the client's OHP eligibility and that the client's benefit package includes NEMT services on the scheduled date of service that the transport is requested. 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;

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

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

(4) Pursuant to OAR 410-120-1210, Medical Assistance Benefit Packages and Delivery System, clients receiving the following benefit packages are not eligible for NEMT:

~~(a) Citizenship Waived Medical (CWM); and~~

**Commented [MMM4]:** Remove entirely? As of July 1, 2023 QMB is the only benefit package not eligible for NEMT.

~~(ab)~~ Qualified Medicare Beneficiary (QMB) only.

(5) 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 ~~(23)~~ of this rule;

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

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

(6) 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 medical 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.

(7) 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.

(8) The brokerage shall provide rides outside the brokerage's local service area, as described in section (2)(b) of this rule ~~Table 136-3380~~, under the following circumstances:

(a) The client is receiving an ~~OHP~~ covered ~~medical~~ 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 will provide ~~OHP~~ the covered ~~medical~~ services for the client.

(9) Brokerages may coordinate to provide a return ride to a client who receives ~~medical~~ a covered services outside the client's local area.

(10) 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 30 days of the date of service. The brokerage ~~also must shall~~ confirm with the medical provider that one of the following circumstances supported the ride:

(a) The ~~eligible~~ client needed urgent medical care;

(b) The ~~eligible~~ 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.

(11) ~~Notwithstanding~~ section (10) 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 30 days of the NEMT date of service.

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

(13) 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. ~~The following~~ Brokerages shall meet all the following requirements pertaining to the brokerage's call center and scheduling of rides:

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(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 4, Labor Day, Thanksgiving, and Christmas. The Authority may approve, in writing, additional days of closure if the brokerage requests the closure at least 30 days in advance.

(b) Brokerages shall make all reasonable efforts for clients to have access to available NEMT services 24 hours a day. When the call center is closed, the brokerages shall provide a recording or answering service to refer the client directly to a subcontractor. If no subcontractor is available, the brokerage must provide clients with recorded information 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 90 days in advance of the ~~medical-covered~~ service; ~~and~~

(d) The brokerage shall allow a client or their representative to request multiple ride requests at one time. Brokerages shall provide the name and telephone number of the driver or subcontractor to the client and confirm the scheduled pick-up time and address with the client;

(e) The brokerage shall develop ~~procedures~~ 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 "NEMT rider guide" that meets the delivery and content specifications as defined by the Authority. The brokerage's written policies and procedures regarding NEMT services shall provide, without limitation, for the following:

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

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

(B) Multiple NEMT services at one time for recurring appointments up to 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 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 15 minutes after the office or facility closes for business unless the appointment is not reasonably expected to end within 15 minutes after closing, or as requested by the client, or as applicable, the client's guardian, parent, or representative.

(h) brokerages shall provide the name and telephone number of the driver or subcontractor to the client, or as applicable, the client's guardian, parent, or representative, and confirm the scheduled pick-up time and address with the client.

(i) The brokerage shall make reasonable efforts to arrange a ride requested on the day of the medical service when the ~~medical~~ 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.

(14) 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.

(15) 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.

(16) 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.

(17) Brokerages shall have the discretion to use or not use 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.

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

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



(20) 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.

410-136-3040

Vehicle Equipment and Subcontractor Standards

(1) Brokerages shall require all subcontractors, providers, and drivers to maintain their vehicles for the comfort and safety of the clients. The vehicles shall meet the following requirements:

(a) The interior of the vehicle shall be clean;

(b) The subcontractor, provider, or driver shall not smoke, aerosolize or vaporize an inhalant or permit smoking, aerosolizing or vaporizing of an inhalant in the vehicle at any time; and

(c) The subcontractor, provider, or driver shall comply with appropriate local, state, and federal transportation safety standards regarding passenger safety and comfort. The vehicle shall include, but is not limited to, the following safety equipment:

(A) Safety belts for all passengers if the vehicle is legally required to provide safety belts;

(B) A first aid kit;

(C) A fire extinguisher;

(D) Roadside reflective or warning devices;

(E) A flashlight;

(F) Tire traction devices when appropriate;

(G) Disposable gloves; and

(H) All equipment necessary to transport clients using wheelchairs or stretchers in accordance with the Americans with Disabilities Act of 1990 (as amended) (ADA), Section 504 of the Rehabilitation Act of 1973, and Oregon Revised Statute 659A.103 if the subcontractor-, provider, or driver uses the vehicle for these modes of transport.

(2) The subcontractor, provider, and driver shall follow a preventative maintenance schedule that incorporates at least ~~all of~~ the maintenance recommended by the vehicle manufacturer. The vehicle must be in good operating condition and shall include, but is not limited to:

(a) Side and rear view mirrors;

(b) Working A-horn; ~~and~~

(c) Working turn signals;

(d) Working headlights;

(e) Working taillights; and

(f) Working windshield wipers.

(3) Brokerages and subcontractors shall have and maintain records of inspection and compliance with the safety equipment and preventative maintenance requirements in (1) and (2) of this rule. All records shall be made available upon request for audit or review.

(4) Brokerages shall require the subcontractors' providers, call-center employees, and drivers to receive and successfully complete training on their job duties, roles, and responsibilities, including but not limited to:

(a) Understanding NEMT services in general, reporting forms, vehicle operation, requirements for reporting of suspected fraud, ~~and~~ abuse, or waste by any provider or client and the protections afforded to those who report FWA under applicable whistleblower laws in section 1902(a)(68) of the Social Security Act, reporting and the geographic area in which subcontractors will provide service. Training shall be completed at the time of hire or contracting and at least annually thereafter;

(b) Requiring the subcontractors' drivers to complete the National Safety Council Defensive Driving course or an equivalent course within six months of the date of hire and at least every three years thereafter;

(c) Requiring the subcontractors' drivers to complete Red Cross-approved First Aid, Cardiopulmonary Resuscitation and blood spill procedures courses or equivalent courses within six months of the date of hire and to maintain the certification as a condition of employment;

(d) Requiring the subcontractors' drivers to complete the Passenger Service and Safety course or an equivalent course within six months of the date of hire and at least every three years thereafter;

(e) Understanding established procedures for subcontractors and the subcontractors' drivers in the event that the client needs emergency care during the ride; and

(f) If providing ground or air ambulance services, verifying that the Authority has licensed the subcontractor to operate ground or air ambulance. If the subcontractor is located in a contiguous state and regularly provides rides to OHP eligible clients, the brokerage must ensure that both the Authority and the contiguous state have licensed the subcontractor.

(5) Brokerages shall require ~~the following when hiring~~ a subcontractor meet all the requirements of the Chapter 410 division 136 rules at all times to be eligible to receive payment, including but not limited to the following for each of subcontractors' drivers:

(a) The subcontractor's shall require each driver ~~must~~ have a valid Oregon DMV-issued drivers license. Brokerages and subcontractors shall require drivers have current license and registration prior to

providing an NEMT service. –The driver’s license must be the class of license, with any required endorsements, that permits the subcontractor’s driver to legally operate the vehicle for which they are hired to drive per ORS Chapter 807 and OAR chapter 735, division 062, or the applicable statutes of other states; and

(b) The subcontractor’s’ drivers whether directly employed by the subcontractor or under contract must pass a criminal background check in accordance with ORS 181.534 and 181.537 and OAR chapter 257, division 10, at the time of hire or contracting or if the brokerage is a mass transit district formed under ORS Chapter 267, the subcontractor’s drivers must pass a criminal background check in accordance with ORS 267.237 and the mass transit district’s background check policies. The brokerage or subcontractor must maintain records of background check results for each driver and may perform a background check at any time while the driver is employed or contracted. A driver who does not successfully pass a background check is not eligible to provide rides or receive payment by the brokerage or subcontractor.~~The brokerage may request an exception to this requirement in writing to the Authority, but only the Authority may grant the exception. Approval of the exception is dependent upon when the crime occurred, the nature of the offense, and any other circumstances to ensure that the client is not at risk of harm from the subcontractor. If approved, the Authority shall document the approval within 30 days of the request.~~

(5) For authorized out-of-state NEMT services described in OAR 410-136-3080, in which the subcontractor solely performs work in the other state and for which the brokerage has no oversight authority, the brokerage is not responsible for requiring that the subcontractor’s vehicle and the subcontractor’s standards meet the requirements set forth in this rule.

410-136-3060

Insurance Requirements

(1) Brokerages must obtain and maintain general and automobile liability coverage for personal injury and death in accordance with ORS 30.271, Limitations on Liability of State for Personal Injury and Death.

(2) Brokerages must obtain and maintain general and automobile liability coverage for property damage and destruction in accordance with ORS 30.273, Limitations on Liability of Public Bodies for Property Damage or Destruction.

(3) The liability coverage required by sections (1) and (2) of this rule shall include the State of Oregon, Oregon Health Authority and its divisions, officers, employees, and agents as additional insureds but only as related to the brokerages' NEMT services.

(4) In lieu of purchasing liability coverage under sections (1) and (2) of this rule, the Authority may authorize a brokerage to establish and maintain a Self-Insurance Reserve Fund. The following apply to requirements of the fund:

(a) The Authority shall establish the fund at \$1 million through the fixed rate for rides established in OAR 410-136-3200, Reimbursement and Accounting for all Modes of Transport;

(b) The fund shall comply with OMB Circular 87;

(c) If the brokerage subsequently terminates its enrollment with the state as a Medicaid provider, the brokerage shall refund the Authority the balance of any monies in the fund within two years from the termination of its enrollment or at the conclusion of any claim or litigation related to the brokerage's NEMT services for eligible clients;

(d) Once funded, the fund shall be maintained at an amount not less than \$1 million through the fixed rate for rides established in OAR 410-136-3200, Reimbursement and Accounting for all Modes of Transport;

(e) The Authority shall reconcile the fund amount during the annual cost settlement process pursuant to OAR 410-136-3200, Reimbursement and Accounting for all Modes of Transport, and shall increase or decrease the fixed rate for rides to maintain the \$1 million fund amount; and

(f) The brokerage shall maintain a separate account for the fund.

(5) Brokerages and their subcontractors that employ workers as defined in ORS 656.027 shall comply with 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under 656.126(2). Brokerages shall require each of their subcontractors to comply with this requirement.

(6) In lieu of purchasing workers' compensation insurance coverage as required by section (5), a brokerage may self-insure for ~~all of~~ its subject workers. The Authority shall not fund this reserve and shall only reimburse the brokerage for costs of self-insurance in the event of a claim arising from the brokerage's NEMT services to eligible clients.

(7) Brokerages and their subcontractors shall furnish proof of liability coverage and insurance to the Authority upon request.

410-136-3080

Out-of-State Transportation

(1) "Out-of-state transportation" means transportation to or from any location outside Oregon, with the exception of contiguous areas up to 75 miles outside the Oregon border.

(2) The brokerage shall arrange rides and pay for out-of-state transportation, as defined in section (1) of this rule, to and from an out-of-state OHP covered medical service when:

(a) The brokerage confirms that the Authority authorized the out-of-state OHP covered medical service per OAR 410-120-1180, Medical Assistance Benefits: Out-of-State Services; or the Prepaid Health Plan (PHP)—CCO authorized the out-of-state OHP covered medical service per OAR 410-141-3930 Transportation: Out-of-Service Area and Out-of-State Transportation; and OAR 410-120-1180, Medical Assistance Benefits: Out-of-State Services; and

(b) The client is eligible for transportation services per OAR 410-136-3020, General Requirements for NEMT.

(3) The brokerage shall arrange for and pay for the most appropriate mode of transportation, and necessary travel to and from an airport or other departure location within Oregon, for out-of-state travel approved by the Authority.

(a) The brokerage may utilize any procurement method and criteria to purchase airline tickets, and any necessary travel to and from an airport or other departure location within Oregon, subject only to least expensive mode of transportation that meets the non-emergent medical needs of the client.

~~(4)~~ Brokerages shall not arrange or pay for:

(a) A client's return from any foreign country to any location within the United States for the client to obtain medical care because the care is not available in the foreign country;

(b) A client's return to Oregon from another state when the client was not in the other state to obtain authorized medical services or treatments.

(5) Emergency medical services as defined in OAR 410-120-0000 are authorized services for a client traveling outside Oregon.

410-136-3100

Attendants for Child Transports

(1) This rule applies to NEMT for children ~~12 years of age and under~~ ~~under 12 years of age~~ who are eligible for NEMT services to and from OHP covered medical services. The rule also applies to children and young adults with special physical or developmental needs, regardless of age, hereafter referred to as “child” or “children.”

(2) Parents or legal guardians must provide an attendant to accompany the children while traveling to and from medical appointments except when:

(a) The driver is a DHS volunteer, DHS employee or an Authority employee;

(b) The child requires secured transport per OAR 410-136-3120, Secured Transports; or

(c) An ambulance subcontractor transports the child for NEMT services, and the brokerage reimburses the ambulance subcontractor at the ambulance transport rate.

(3) Attendants are required for NEMT ambulance transports when the brokerage uses an ambulance to provide wheelchair or stretcher car or van rides.

(4) ODHS shall establish and administer written guidelines for children in the department’s custody, including written guidelines for volunteer drivers. If ODHS’s requirements or administrative rules differ from this rule, ODHS’s requirements or administrative rules take precedence.

(5) An attendant may be the mother, father, stepmother, stepfather, grandparent or legal guardian of the child. The attendant also may be any adult that the parent or legal guardian authorizes to be an attendant. An attendant also may be a brother, sister, stepbrother or stepsister of the child, as long as the attendant is at least 18 years of age, and the parent or legal guardian authorizes it. An attendant also may be a behavioral health personal care attendant allowed to accompany the client in accordance with OAR 410-172-0780.

(6) Brokerages or their subcontractors may require the child’s parent or legal guardian to provide written authorization for an attendant other than themselves to accompany the child.

(7) Brokerages or their subcontractors shall not bill additional charges for a child’s attendant.

(8) The attendant must accompany the child from the pick-up location to the destination and on the return trip. The attendant must also remain with the child during their appointment. Another person shall not accompany the attendant unless the parent or legal guardian authorizes it or unless the other person is an eligible child traveling to the same location for a medical appointment.



(9) The parent, guardian or adult caregiver for the child shall provide and install child safety seats as required by state law. The subcontractor shall not transport a child if a parent or legal guardian fails to provide a child safety seat that complies with state law.

410-136-3120

Secured Transports

(1) "Secured transport" means NEMT services for the involuntary transport of clients who are in danger of harming themselves or others. Secured transports are allowable when:

(a) The brokerage verified that the subcontractor has met the requirements of the secured transport protocol pursuant to OAR 309-033-0200 through 309-033-0970, and, therefore, the subcontractor is able to transport the client who is in crisis or at immediate risk of harming themselves or others due to mental or emotional problems or substance abuse; and

(b) The transport is to a Medicaid enrolled facility that the Authority recognizes as being able to treat the immediate medical or behavioral health care needs of the client in crisis.

(2) One additional attendant may accompany the client at no additional charge when medically appropriate, such as to administer medications, etc. in-route, or to satisfy legal requirements, including, but not limited to when a parent, legal guardian or escort is required during transport.

(3) The brokerage shall authorize transports to and from OHP covered medical services for an eligible client when the court orders the medical service with the following exceptions:

(a) The client is in the custody of or under the legal jurisdiction of any law enforcement agency;

(b) The client is an inmate of a public institution as defined in OAR 461-135-0950, Eligibility for Inmates; or

(c) The Authority has suspended the client's OHP eligibility pursuant to ORS 414.420 or 414.424.

(4) The brokerage shall assume that a client returning to their place of residence is no longer in crisis or at immediate risk of harming themselves or others, and is, therefore, able to use non-secured transportation. In the event that a secured transport is medically appropriate to return a client to their place of residence, the brokerage shall obtain written documentation, signed by the treating medical professional, stating the circumstances that required secured transport. The brokerage shall retain the documentation and a copy of the order in their record for the Authority to review.

(5) The brokerage shall not approve or pay for secured medical transport provided to a person going to or from a court hearing or to or from a commitment hearing.

410-136-3140

Transports of Clients Changing Hospitals or Other Facilities

(1) Brokerages shall arrange and pay for transporting an eligible client who has had a change in condition, noted in the client's DHS care plan, resulting in a need for a new service setting with a lower or higher level of care. This includes clients who are changing levels of care between their community-based care settings or between institutional and community-based settings. The client's DHS worker must request the ride.

(2) Brokerages shall not arrange or pay for:

(a) The transport or return of an inpatient client from an admitting hospital to another hospital (or facility) for diagnostic or other short-term services when the patient will return to the admitting hospital within the first 24-hours of admission. The subcontractor shall bill the admitting hospital directly for these transports;

(b) The transport of a client receiving long-term care service in their home or residing in a long-term care facility for the sole purpose of shopping for another long-term care facility, even if the client is looking for a new facility to receive a lower or higher level of care;

(c) The transport of a client moving from one type of facility to a facility of the same type, such as from an adult foster home to another adult foster home; and

(d) The transport of a client who is relocating to another state, unless the transport is to receive an OHP covered medical service pursuant to OAR 410-136-3080, Out-of-State Transportation.

410-136-3160

Ground and Air Ambulance Transports

(1) Transporting a client via ambulance is required when a medical facility or provider states the client's medical condition requires the presence of a health care professional during the emergency or non-emergency transport. This includes neonatal transports.

(2) For NEMT services, the brokerage shall authorize the transport.

(3) Brokerages shall provide ambulance or stretcher transports with a medical technician when:

(a) A client's medical condition requires a stretcher;

(b) The length of transport would require a personal care attendant; and

(c) The client does not have an attendant who can assist with personal care during the ride.

(4) Emergency ambulance transportation is required when a client's medical condition is an emergency pursuant to OAR 410-120-0000, Acronyms and Definitions. The ambulance must transport the client to the nearest appropriate facility able to meet the client's medical needs. Brokerages do not arrange emergency transportation.

(5) The following apply to air-ambulance NEMT services:

(a) The brokerage shall approve air-ambulance NEMT only when another mode of transportation would further jeopardize or compromise the client's medical condition due to:

(A) The length of time required to transport the client by ground-ambulance;

(B) Current road conditions preclude the use of ground transportation; or

(C) Ground-ambulance is not available.

(b) Notwithstanding section (4) (a) of this rule, the brokerage may grant air-ambulance transportation if it determines the transportation is cost effective. The brokerage shall document how air-ambulance is more cost effective than ground transportation.

(c) The brokerage must obtain a written recommendation from the client's medical provider indicating medical appropriateness before authorizing air-ambulance transportation.

Commented [MMM6]: Language suggestion to replace?

410-136-3180

Reimbursement for Ground and Air Ambulance Transports

(1) The following applies to how the Authority shall reimburse providers of NEMT ground and air ambulance services that brokerages arrange for eligible clients. This applies to clients receiving services through the fee-for-service delivery system, ~~a PHP~~ or a CCO.

(2) Brokerages shall submit documentation to the Authority stating the brokerage authorized the transportation. The documentation also shall inform the Authority to reimburse at the Authority's base rate or another amount the brokerage specifies. Ambulance providers shall bill the Authority for payment of authorized rides.

(3) If brokerage does not specify another amount, the Authority's reimbursement shall include:

(a) The base rate established in the Authority's fee schedule posted on the OHP Web page at [www.oregon.gov/OHA/HSD/OHP/Pages/Fee-Schedule.aspx](http://www.oregon.gov/OHA/HSD/OHP/Pages/Fee-Schedule.aspx). The base rate for NEMT ground and air ambulances includes:

(A) Any procedures or services provided, all medications, non-reusable supplies or oxygen and all direct or indirect costs. "Indirect costs" include general operating costs, personnel costs, neonatal intensive care teams employed by the ambulance subcontractor, use of reusable equipment and any other miscellaneous medical items or special handling that may be required in the course of transport;

(B) The first ten miles for ground ambulance transports; and

(C) Mileage for air ambulance transports.

(b) A modified base rate for each additional client, according to OAR 410-136-3220, Brokerage Reimbursements to Subcontractors, if applicable;

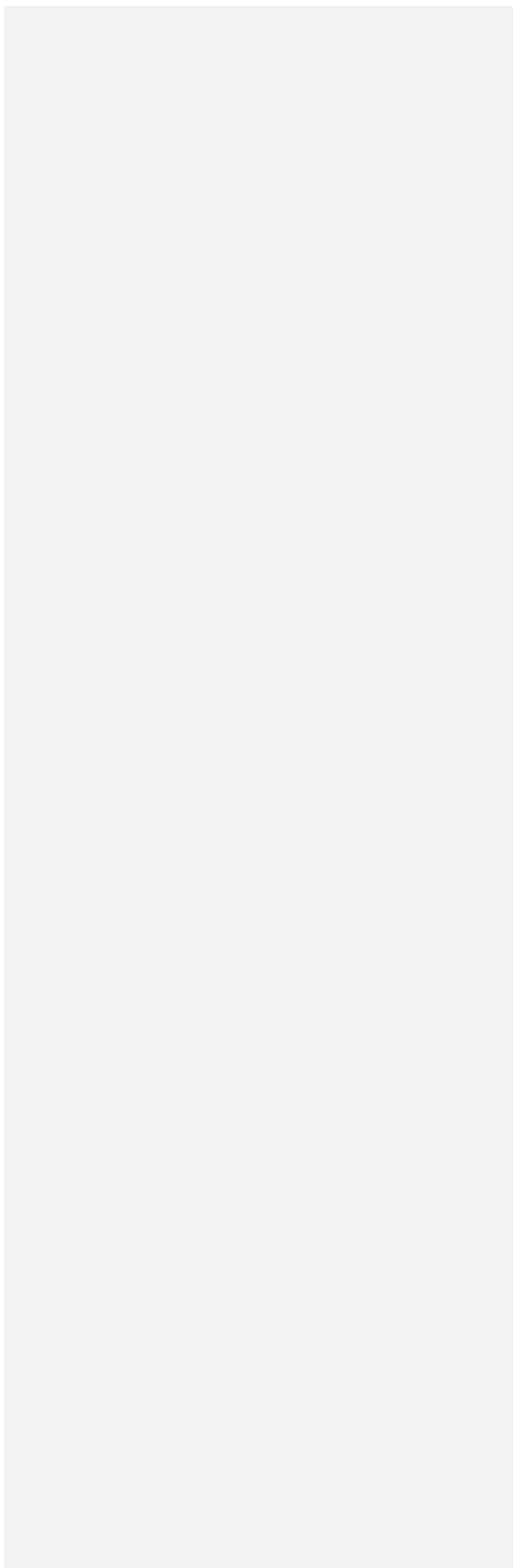
(c) Payment for an extra attendant, if applicable; and

(d) Compensation for service or care provided at the scene when the client did not require transport, if applicable.

(4) Reimbursement outlined in section (3) [of this rule](#) also applies to the Authority's reimbursements to providers of emergency ground or air ambulance services for clients who receive services through the fee-for-service delivery system.

~~(5) A PHP is responsible for reimbursement to providers of emergency ground or air ambulance for clients who are PHP members.~~

~~(5)~~ A CCO is responsible for reimbursement to providers of emergency ground or air ambulance for clients who are CCO enrollees.



410-136-3200

Reimbursement and Accounting for all Modes of Transports

(1) The following applies to the rate the Authority pays brokerages:

(a) The Authority shall calculate and pay a brokerage a fixed rate for rides based on the following formula: Direct costs plus indirect costs divided by the number of projected monthly rides. "Direct costs" are transportation costs plus administrative costs;

(b) The Authority shall notify the brokerages of their specific ride rates; and

(c) The Authority ~~and the brokerages~~ shall assess any needed modifications to this rate:

(A) Quarterly;

(B) When the Authority changes any program affecting eligibility or scope; or

(C) If other factors impact the brokerage's cost of delivering service.

(2) Brokerages shall account for costs and expenses of NEMT services to OHP FFS clients separate from any other services the brokerage provides. Brokerages shall require all subcontractors to account for costs and expense for NEMT services separate from any other services the subcontractors provide. Brokerages shall use and require all subcontractors to adopt generally accepted accounting principles or accounting standards or cost principles required by federal or state laws, rules, or regulations.

(3) The Authority shall reimburse brokerages ~~after they submit for valid~~ claims data files submitted to the Authority, using the standardized electronic billing format prescribed by the Authority. All brokerages' professional claims for transportation services shall include a HIPAA-compliant, CMS-defined 2-digit POS code to indicate the type of transportation service used and have the required combination of modifier and procedure code. All required billing information must be included on the claim for the additional client. Medicaid is always the payer of last resort. If a client has Medicare or third-party insurance, the brokerages shall bill these insurers before billing the Authority.

(4) The Authority ~~and brokerages~~ shall conduct an annual cost settlement to review brokerages costs and expenses and determine any overpayment or underpayment for costs the brokerage incurred for covered NEMT services for eligible clients. The following applies to the Authority's cost settlement process:

(a) The Authority shall request cost and expense settlement information from the brokerages 6 months after the end of the fiscal year. The request shall include ~~a~~ file(s) detailing the brokerages claims, a template for the brokerages to submit their cost and expenses settlement information and instructions for completing the template. The Authority uses MMIS to create file(s) detailing the brokerages claims data for the applicable procedure codes per NEMT provider;

(b) Brokerages shall submit the requested information, certified by a Certified Public Accountant, and complete the template provided by the Authority within 90 days of receiving the Authority's request;

(c) The Authority shall verify the reported costs and expenses and notify the brokerages in writing of the Authority's determination;

(d) Brokerages shall comply with the allowable cost requirements established by the Authority;

~~(e)~~ If the Authority's determination results in an adjustment ~~to the cost settlement information the brokerages submitted~~, the brokerages may request an appeal pursuant to OAR 410-120-1560 through 410-120-~~16700~~, pertaining to provider appeals.

(f) The brokerage shall refund the amount of the overpayment determined by the Authority within 60 days or as specified by the Authority in its written notice to the brokerage.

(g) (f) Payment by the Authority does not restrict or limit the Authority or any state or federal oversight entity's right to review or audit before or after the payment is made to a brokerage. Payments may be denied or subject to recovery by the Authority if medical review, audit, or other post-payment review of the supplemental payment or the claim upon the basis a supplemental payment was issued determines the service was not provided in accordance with applicable rules, by an eligible NEMT provider, or does not meet the criteria for quality of care or medical appropriateness of the care or payment.

(5) To be eligible for payment brokerages and subcontractors must meet all of the requirements in Chapter 410 division 136 rules and Chapter 410 division 120 rules. The Authority shall pay for covered services the brokerage authorized and provided in good faith, including mailing transit passes to clients. The Authority shall use the rate in effect on the day of the transport or the mailing date of the transit passes. For the purpose of this rule "Good faith" means:

(a) The brokerage verified client eligibility on the date of service or the date of mailing the transit passes, using the Authority's eligibility information; or

(b) The client eligibility information was inconsistent or not available, and the brokerage used the most recent client information available immediately before the time of service or mailing of transit passes.

(6) Each brokerage may establish a working capital reserve with funds the Authority provides. The following applies to any established working capital reserve:

(a) The working capital reserve shall represent 30 days of cash expenses for normal operating purposes. The Authority may base the reserve on a time other than 30 days if circumstances warrant the change;

(b) The Authority shall calculate the reserve amount as part of the annual cost settlement for the most recent past fiscal year;



(c) The Authority shall base the reserve amount on an average of six months of operating expenses that the brokerage reports in its monthly NEMT financial reports. However, the Authority may base the reserve amount on more or less than six months of expenses when a six-month average does not reflect an accurate accounting of expenses;

(d) Brokerages shall maintain a separate account for the reserve funds; and

(e) The Authority may require the brokerage to return any funds in excess of the amount the Authority calculated, or the Authority may decrease the ride rate to reduce the reserves. If the Authority requires the brokerage to return the excess funds, the brokerage shall do so within 45 days of receipt of the Authority notification.

410-136-3220

#### Brokerage Reimbursements to Subcontractors

(1) Brokerages shall reimburse their NEMT subcontractors for the most cost-effective route from point of origin to point of destination that most benefits the client's condition.

(2) Brokerages shall establish a base rate with its subcontractors. "Base rate" for all modes of transportation except ground and air ambulance means the rate the brokerage and its subcontractors agree on for each mode of transportation.

(3) If a subcontractor uses an ambulance as a stretcher car or van, the brokerage shall reimburse the subcontractor using the base rate for stretcher cars or vans.

(4) Notwithstanding section (3) of this rule, brokerages shall pay ambulance subcontractors at the ambulance rate instead of the stretcher car or van rate when the transport exceeds two hours, necessitating a health care professional to care for the client during the ride.

Commented [MMM7]: Language suggestion to replace?

(5) Brokerages shall not reimburse their subcontractors for waiting for clients to get to the vehicle or for assisting clients to get in or out of a vehicle.

(6) Brokerages may reimburse their subcontractors for waiting time:

(a) In special situations, such as when the subcontractor has to wait for a client who is using the subcontractor's gurney and cannot transfer to a gurney at a medical facility; or

(b) Because of a medical issue during the ride, such as:

(A) The client is nauseous or is vomiting after dialysis or chemotherapy; or

(B) The client needs to stop to get prescription medication or medical supplies related to the medical service.

(7) Brokerages shall reimburse their subcontractors at the base rate for ambulatory vehicles if the subcontractor provides a ride to an ambulatory client in a non-ambulatory vehicle.

(8) Brokerages may authorize a subcontractor to transport a non-ambulatory client in an ambulatory vehicle if the vehicle can accommodate and transport the client and if allowed by local ordinance. The brokerage shall reimburse its subcontractor at the non-ambulatory vehicle rate.

(9) The wheelchair base rate applies to the transport of a client with a reclining wheelchair; wheelchairs do not qualify as stretchers or gurneys.

(10) The following applies to reimbursement for deceased clients:

(a) If a client dies before the subcontractor arrives at the scene, the brokerage shall not reimburse its subcontractors; or

(b) If a client dies after the transport begins but before reaching the destination, the brokerage's payment is limited to the base rate for the mode of transportation and mileage. For ambulance transports, the payment also would include costs for an extra attendant, if applicable.

(11) Brokerages may authorize shared-ride transports of two or more clients at the same time when the shared-ride transports are allowable under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

(12) Brokerages shall reimburse subcontractors:

(a) At the full base rate for the first client and one-half the base rate for each additional client when all of these clients need the same mode of transportation, such as by wheelchair van; or

(b) At the full base rate for the client with the need for the highest mode of transportation and one-half the base rate of the appropriate mode of transportation for each additional client. This applies when the additional client needs a less costly mode of transportation than the first client. For example, the first client needs an ambulance, but the additional client needs a less costly wheelchair van.

(13) When transporting two or more clients at the same time, brokerages shall pay subcontractors only from the first pickup point to the final destination under the following circumstances:

(a) The clients have a single pick up point but different destinations;

(b) The clients have different pick up points but a single destination; or

(c) The clients have different pick up points and different destinations.

(14) Brokerages shall reimburse subcontractors only for actual miles traveled, regardless of the number of clients transported.

(15) A brokerage shall not reimburse a subcontractor if:

(a) A county or city ordinance prohibits any charging for services identified in the medical transportation services administrative rules; or

(b) The subcontractor does not charge the public for such services.

(16) In accordance with costs and expenses reporting described in OAR 410-136-3200 a brokerage may require the subcontractor to provide documents and records to support the costs and expense that the brokerage must report to OHA.

410-136-3240

Client Reimbursed Mileage, Meals and Lodging

(1) The brokerage must prior authorize a client's mileage, meals, and lodging to an OHP covered medical service in order for the client to qualify for reimbursement. If the brokerage prior authorized the travel costs, a client may request reimbursement up to 45 days after the travel.

(2) The client must return any documentation the brokerage requires before receiving reimbursement. Documentation required shall include a receipt for lodging.

(3) ~~A client must be reimbursed within 14 days of the brokerage receiving the reimbursement request. The brokerage may hold reimbursements under the amount of \$10 until the client's reimbursement reaches \$10.~~

(a) A brokerage may hold reimbursements under the amount of \$10 until the client's reimbursement reaches \$10; or

(b) A brokerage must issue the client a notice within 14 days if the client reimbursement is denied for any reason. If the client reimbursement request is incomplete the brokerage shall take an additional 14 days to assist the client in completing the submission.

(4) Brokerages shall reimburse clients for meals when a client, with or without an attendant, travels a minimum of four hours round-trip out of their local area. The travel, however, must span the following meal times:

(a) For a breakfast allowance, the travel must begin before 6 a.m.;

(b) For a lunch allowance, the travel must span the entire period from 11:30 a.m. through 1:30 p.m.; and

(c) For a dinner allowance, the travel must end after 6:30 p.m.

(5) Brokerages shall reimburse for meals at the Authority's allowable rate.

(6) Brokerages shall not reimburse clients for meals that a hospital or other medical facility provides.

(7) Brokerages shall reimburse clients for lodging when:

(a) A client would otherwise be required to begin travel before 5 a.m. in order to reach a scheduled appointment;

(b) Travel from a scheduled appointment would end after 9 p.m.; or

(c) The client's health care provider documents a medical need.

(8) Brokerages shall reimburse for lodging at the Authority's allowable rate or the actual cost of the lodging, whichever is less.

(9) Brokerages shall reimburse for meals or lodging for only one attendant, which may be a parent, to accompany the client if medically necessary but only if:

(a) The client is a minor child and unable to travel without an attendant;

(b) The client's attending physician provides a signed statement indicating the reason an attendant must travel with the client;

(c) The client is mentally or physically unable to reach his or her medical appointment without assistance; or

(d) The client is or would be unable to return home without assistance after the treatment or service.

(10) The brokerage shall not reimburse for the attendant's time or services.

(11) If a client's health care provider admits the client for inpatient care, an attendant is no longer medically necessary because the facility provides all necessary services for the client. Therefore, the attendant is no longer eligible for lodging and travel expenses. The brokerage shall reimburse for meals and lodging for the attendant's transportation home. However, the brokerage may pay for the attendant's meals and lodging if it is more cost effective for the attendant to remain near the client to accompany the client on the return trip as allowed by section (12).

(12) Upon the client's release from inpatient care, if the attendant is medically necessary based on one of the conditions or circumstances listed in section (9), the brokerage shall reimburse for the attendant to return to the inpatient facility to accompany the client on the return trip. This only applies if the brokerage prior authorizes the attendant's travel.

(13) Brokerages shall not reimburse for mileage, meals, and lodging for an attendant visiting an inpatient client unless the physician provides a signed statement of the medical need. This exclusion includes, but is not limited to, parents of minors, breastfeeding mothers, and spouses.

(14) The state shall recover overpayments made to a client. Overpayments occur when the brokerage paid the client:

(a) For mileage, meals, and lodging, and another resource also paid:

(A) The client or;

(B) The ride, meal, or lodging provider directly;

(b) Directly to travel to medical appointments, and the client did not use the money for that purpose, did not attend the appointment, or shared the ride with another client whom the brokerage also directly paid;

(c) For common carrier or public transportation tickets or passes, and the client sold or otherwise transferred the tickets or passes to another person.

(15) If a person or entity other than the client or the minor client's parent or legal guardian provides the ride, the brokerage may reimburse the person or entity that provided the ride. However, the client or the minor client's parent or legal guardian must approve in writing of the reimbursement.

410-136-3260

Modifications Based on Client Circumstances

(1) A client may request modification of NEMT services when the NEMT driver:

(a) Threatens to harm the client or others in the vehicle;

(b) Drives or engages in other behavior that places the client or others in the vehicle at risk of harm; or

(c) Presents a direct threat to the client or others in the vehicle.

(2) A brokerages may ~~modify impose reasonable modifications on~~ NEMT services when the client:

(a) Is threatening harm to the driver or others in the vehicle;

(b) Presents a direct threat to the driver or others in the vehicle;

(c) Has a health condition that creates health or safety concerns to the driver or others in the vehicle;

(d) ~~Has Engages in other~~ behaviors or circumstances that place the driver or others in the vehicle at risk of harm;

(e) Frequently does not show up for scheduled rides;

(f) Frequently cancels the ride on the day of the scheduled ride time;

(g) ~~Has Engages in~~ behaviors that cause local medical providers or facilities to refuse to provide further services without ~~imposing-modifying~~ indications NEMT services; or

(h) Has special needs that require special accommodations.

(2) For the purposes of this rule, "direct threat" means a significant risk to the health or safety of others and which:

(a) Cannot be eliminated or reduced to an acceptable level through the provision of auxiliary aids and services or through reasonably modifying policies, practices, or processes; and

(b) Is identified through an individual assessment that relies on current medical evidence or the best available objective evidence which shows:

(A) The nature, duration, and severity of the risk;

(B) The probability that a potential injury will actually occur; and

(C) Whether reasonable modification of policies, practices, or processes will lower or eliminate the risk.

(3) Reasonable modifications include, but are not limited to requiring the client to:

- (a) Use a specific transportation subcontractor;
- (b) Travel with an attendant;
- (c) Use public transportation where available;
- (d) Drive themselves or locate someone to drive them and receive mileage reimbursement; or
- (e) Confirm the ride with the brokerage on the day of or the day before the scheduled ride.

(43) Before requiring any modifications, the brokerage shall talk with the client about the reason for imposing a modification, explore modifications that are appropriate to the needs of the client and that address the health and safety concerns of the brokerages. The brokerage or client may include the client's worker, ~~PHP~~ or CCO in the discussion. The client may include other individuals in the discussion.

(5) Responses to requests for modification or auxiliary aids based on disability or other protected class status under state or federal rule or law must comply with the Americans with Disabilities Act and all other applicable state and federal laws and rules.

(6) Brokerages may not modify NEMT services under this rule unless the modification is permitted under this rule or required in order to accommodate a disability requiring modification or auxiliary aid.

(74) Brokerages may not make a reasonable modification based on the criteria in section (1)(a)-(g) above that results in a denial of NEMT services to a client and must make all reasonable efforts to offer an appropriate alternative to meet the client's needs under the circumstances.

(8) Brokerages shall draft policies and procedures that ensure the safety of all passengers in NEMT vehicles which shall include, without limitation, policies and procedures that comply with this rule. Brokerages shall provide its passenger safety policy and procedures to its NEMT subcontractors and require the NEMT subcontractors to implement and follow such policies and procedures. Brokerages shall include passenger safety policy and procedures in their member handbooks and posted on their websites.



410-136-3280

Client Rights and Confidentiality

(1) Brokerages shall treat all information gathered on the client as privileged and confidential communications. The brokerage shall apply confidentiality policies to all requests for information from outside sources. Nothing prohibits the disclosure of information in summaries, statistical reports or other forms as long as the document does not identify particular individuals and cannot lead to the identification of individuals. Brokerages and any subcontractors may share information as necessary to serve the client effectively. The brokerage shall not divulge the information without the written consent of the client, the responsible parent of a minor child or the client's legal guardian. The use or disclosure of information is limited to persons directly ~~connected to the administrative~~ ing of NEMT services.

(2) Brokerages ~~or~~ and their subcontractors shall comply with OAR 943-014-0300 through 943-014-0320 pertaining to access control if the Authority grants them access to any secure computer system or information asset.

~~(3)~~ Brokerages and their subcontractors shall comply with the Authority's non-discrimination and modification rules found at OAR 943-005-0000 to 943-005-0070.

~~(4)~~ The brokerage shall not deny or allow subcontractors to deny any client NEMT services based on race, color, sex, gender, gender identity, gender presentation, sexual orientation, religion, national origin, creed, marital status, age, health status or the presence of any sensory, mental, intellectual, developmental, IQ score, or physical disability.

~~(5)~~ Brokerages must treat clients and require subcontractors and all drivers to treat clients in accordance with OAR 410-120-1855, Client Rights and Responsibilities.

~~(6)~~ The brokerages shall have educational materials available for clients on its NEMT services. The Authority must first approve the materials and document the approval in writing. Subcontractors shall use Authority approved NEMT education materials.

~~(7)~~ As required by 42 CFR 431, a brokerage shall follow OAR 410-120-18~~5560~~ and through 410-120-1865 pertaining to contested case hearings when it denies a ride, with the following exceptions:

(a) The brokerage must immediately provide a secondary review by another employee when the initial screener denies a ride; and

(b) The brokerage must mail a notice of action to a client denied a ride within 72 hours of denying a ride explaining why the client's ride has been denied and hearing rights to appeal the denial.

~~(8)~~ The brokerages shall reinstate a denied service consistent with 42 CFR 431.231 in the following circumstances:

(a) if action is taken without the advance notice required;

(b) if a beneficiary requests a hearing within 10 days after the date of action, or if determined action had resulted from other than the application of Federal or State law or policy; or

(c) if a beneficiary's whereabouts become known during a time they are eligible for services.

(9) Brokerages must have and maintain documentation pertaining to all authorization and denial of services. Upon the Authority's request, brokerages shall provide documentation pertaining to discovery for ~~or any~~ investigation, ~~or foref~~ contested case hearings pursuant to OAR 410-120-1360.

~~(10)~~ Brokerages shall provide documentation pertaining to discovery for or investigation of contested case hearings when the client, the responsible parent of a minor child or the client's legal guardian requests the documentation. The brokerage shall provide the documentation to the client's legal representative upon written consent from the client, the responsible parent of a minor child or the client's legal guardian.

(11) Brokerages shall have and maintain policies and procedures which shall include, without limitation, policies and procedures that comply with this rule. Brokerages shall provide its client rights and responsibilities policy and procedures to its NEMT subcontractors and require the NEMT subcontractors to implement and follow such policies and procedures. Brokerages shall include client rights and responsibilities policy and procedures in their member handbooks and posted on their websites. Brokerages shall review subcontractors for compliance with its client rights and responsibilities policies and procedures at least annually.

**Commented [TM8]:** recommend HSD consider adding language to clarify that the brokerage is responsible for monitoring/review of its subcontractors compliance.

410-136-3300

Reports and Documentation

(1) Brokerages shall maintain documentation of rides denied and rides provided to clients. This documentation shall include, but is not limited, to:

(a) The name of the client and the person requesting the ride on behalf of the client, if applicable;

(b) The client's OHP medical care identification number;

(c) The date and time of the request for transportation;

(d) The mode of transport authorized for the client and a justification for authorizing a mode of transport that is not reasonably understandable;

(e) The location for picking-up the client and the destination;

(f) The medical reason for the appointment;

(g) The availability of other transportation resources and the justification for authorizing a ride when the client has other resources;

(h) The subcontractor assigned to give the ride and the date and time the brokerage notified the subcontractor of the assignment;

(i) The name of the employee who approved a ride and the name of the driver for the ride, as applicable; and

(j) In the case of a denial of a ride:

(A) The name of the employee who denied a ride;

(B) The name of the employee who performed the secondary review before denying the ride;

(C) The reason for the denial and the applicable ~~Oregon administrative rule~~OAR that supports the denial;

(D) The date on the notice of action the brokerage mailed to the client;

(E) Documentation on the brokerage's review, resolution, or disposition of the matter, if applicable, including the reason for the decision and the date of the resolution or disposition; and

(F) Notations of oral and written communications with the client and documentation of the outcome of any appeal of a denied service.

(2) The brokerage shall retain the documentation on denials of rides for three calendar years, even if the brokerage is no longer a Medicaid enrolled provider before the end of the three years. The Authority may request this information at any time during the three year retention period.

(3) The brokerage shall maintain service and billing files organized by subcontractor that justify the number of transports and with cross references to actual rides and specific clients. The record keeping system developed and maintained by brokerages and their subcontractors shall include sufficient detail and clarity to permit internal and external review to validate claim submissions and to assure NEMT services are provided consistent with the documented needs of the client. Brokerages information for actual rides shall include the date, mode of transport, the driver's first and last name, driver's current drivers license number.

(4) The brokerages shall report monthly on estimated revenue and expenses that affect the balance of the working capital reserve amount. The report must contain the following costs as they pertain to providing NEMT services:

(a) Sub-totals of administrative expenses, including:

(A) Salaries and wages of the brokerage's employees;

(B) Payroll related expenses for the brokerage's employees;

(C) Other employee related expenses, such as recruitment and advertising;

(D) Computer hardware and software purchased, leased or licensed;

(E) Office supplies such as stamps, paper or printing;

(F) Non-computer related equipment purchased, leased or licensed;

(G) Telephone;

(H) Administrative support and other indirect charges;

(I) Education and training;

(J) Building expenses such as leases, rents, security, janitorial services and repairs that retain the property's operating condition but do not add to the permanent value of the property;

(K) Subcontractor identification and drug testing, such as fingerprinting and drug analysis;

(L) Legal expense not related to the Authority, such as attorney fees; fines or penalties;

(M) Indirect expenses, such as accounting, human resources, risk management or insurance;

- (N) Sub-contracts for operations or temporary employees;
- (O) Required driver training, if applicable;
- (P) The client satisfaction survey, if applicable;
- (Q) Software maintenance, if applicable; and
- (R) Details of other administrative expenses not specified above.
- (b) The number and costs of the following:
  - (A) Stretcher car rides;
  - (B) Wheelchair rides;
  - (C) Ambulatory rides;
  - (D) Secured transports;
  - (E) Bus tickets;
  - (F) Bus passes;
  - (G) NEMT ambulance transports;
  - (H) Reimbursements to clients; and
  - (I) Commercial transports.
- (c) The amount of credits to subcontractors.
- (d) Information on the brokerage's working capital reserve, including:
  - (A) The Authority-calculated working capital reserve;
  - (B) The estimated working capital reserve as of the beginning of the fiscal year;
  - (C) The estimated working capital reserve as of this report; and
  - (D) The difference between [above](#) sub-sections (B) and (C) [of this rule](#).
  - (5) The financial reports must show the number of rides that volunteer drivers provide.

(6) Brokerages must submit the financial report required in Section (4) of this rule within 45 days of the end of the reporting month.

(7) Brokerages shall submit a cost allocation plan that includes anticipated expenses, certified by the brokerage's Chief Financial Officer, to the Authority no later than April 1 of each year for the upcoming fiscal year.

(8) Brokerages must report monthly on data that meets the delivery and content specifications as defined by the Authority.

(a) monthly data for quality assurance must include at minimum the following:

(A) Driver Cancellations reported as a numeric value of the total number of times within the reporting period that a driver cancels a ride less than 24 hours in advance, resulting in client not receiving scheduled ride;

(B) Driver No-Shows reported as a numeric value of the total number of times within the reporting period that a driver was not at pick up location as pre-arranged resulting in client not receiving scheduled ride;

(C) Client Cancellations reported as a numeric value of total number of times within the reporting period that a clients cancel a ride less than 24 hours in advance;

(D) Client No-Shows reported as a numeric value of the total number of times within the reporting period that a client was not at pick up location as pre-arranged, after the allowed 15-minute window of time, resulting in a ride cancellation;

(E) Late Rides reported as a numeric value of the total number of rides within the reporting period where driver arrived 15 minutes or more past scheduled pick-up time.

(F) Rides scheduled reported as a numeric value of the total number of rides scheduled in the reporting period regardless of whether driver/member no-show or cancelled.

(G) Rides denied reported as a numeric value of the total number of rides denied by brokerage during the reporting period.

(b) Brokerages must submit monthly data quality assurance report to the Authority no later than 45 days after the end of each month within each calendar year.

(10) Brokerages must maintain written policies and procedures outlining the activities of NEMT services for ongoing monitoring, evaluation, and improvement of the quality and appropriateness of NEMT services, and with procedures for processes.

(11) Brokerages must submit written policies and procedures to the Authority no later than December 1 of each year for the upcoming calendar year.

(12) Brokerages must develop and conduct a client satisfaction survey, including at minimum the following:

(a) processes for conducting client satisfaction surveys at least annually;

(b) satisfaction surveys must be sent to, and collected from, a minimum of five percent of all clients who scheduled NEMT rides.

(c) submit completed client satisfaction survey results to the Authority, at least annually, for review of results to identify potential areas of enhancement or improvement within the program.

(13) Brokerages must maintain a log of all OHA Client grievances, complaints that are referred by brokerage to the Authority, and of which brokerage receives notice from subcontractors or the Authority. The log shall identify at minimum:

(a) client name;

(b) date of the grievance;

(c) the allegation or grievance;

(d) resolution; and

(e) date of resolution.

(14~~9~~) The Authority may request, and the brokerage shall provide, other reports or information not specified in sections ~~(1 through 11), (3), (4) and (6)~~ of this rule. OHA has the right to request all NEMT documentation, information, reports, phone call recordings, grievances or other complaints submitted, policies and procedures, systems, facilities that provide or otherwise relate to NEMT services for purposes of determining compliance.

410-136-3320  
Audits

(1) The Authority, the Oregon Secretary of State Audits Division, the Oregon Department of Justice, Medicaid Fraud Control Unit (MFCU) and the federal government may audit the brokerage's ~~or~~ and its subcontractor's records at least annually. When the Authority determines that an overpayment has been made to a brokerage, the amount of overpayment is subject to recovery. The audit shall include, but is not limited to, the following areas:

(a) Financial status;

(b) Performance and quality of the service;

(c) Efficiency and effectiveness of the program's operation; and

(d) The relationship between the funds provided by the Authority and the amounts expended by brokerages or billed by subcontractors and that the use of funds is reasonable and necessary to provide quality service.

(2) The Authority or its designee, the Oregon Secretary of State Audits Division, the ~~Oregon Department of Justice~~ MFCU, and the federal government may review the brokerage's, ~~or~~ subcontractor's or provider's or driver's records whenever necessary to verify delivery of service, financial and operational status, and compliance with ~~Oregon administrative rules~~ OARs or to investigate unresolved questions of fact or suspected overpayment. Claim payment may be denied or subject to recovery if medical review, audit, or other post-payment review determines the NEMT service was not provided in accordance with applicable Chapter 410 division 120 and division 136 rules or does not meet the criteria for quality of care or medical appropriateness of the care or payment.

(3) As specified by 42 CFR 455.17, brokerages, subcontractors, providers and drivers shall promptly report to the Authority any suspected fraud, abuse, or waste of NEMT services. The Brokerage shall cooperate and require all subcontractors to cooperate in good faith and allow access to all records and its subcontractors and provider's records to allow federal and state agencies to perform investigations and audits of suspected fraud, abuse, or waste. The brokerages and any subcontractor shall immediately allow access to inspect the premises, physical facilities, and equipment where Medicaid-related activities or work is conducted.

(4) If the Authority determines there exists a credible allegation of fraud or abuse the Authority may take the actions necessary including but not limited to suspending or terminating a brokerage, subcontractor, provider, or driver from participation in the medical assistance programs, suspending payments or seeking recovery of payments made, or imposing other sanctions provided under state law or regulations. When directed by the Authority, the brokerages shall immediately suspend payments to a subcontractor, provider, or driver for which the State determines there is a credible allegation of fraud in accordance with 42 CFR § 455.23.

(5) Brokerages shall not execute contracts with or pay for NEMT services provided by subcontractors, providers or drivers who are currently suspended, debarred, or otherwise excluded from participating in



Medicaid, Medicare, CHIP, or who have been convicted of a felony or misdemeanor related to a crime or violation of Title XVIII, XIX, XXI, or XX of the Social Security Act or related laws. The brokerage shall immediately notify the Authority when it identifies an excluded provider (individuals or entities).

(6) Brokerages are prohibited from notifying or otherwise discussing any Authority or federal agencies investigation with any person(s) who are the subject of the investigation or taking any action against the person(s) or entity, such as termination of employment or contract, without the written permission of the Authority or MFCU while the investigation is on going.

(7) Brokerages or subcontractors that are currently subject to sanction by the Authority or the brokerage or subcontractor, a person with ownership or control of the brokerage or subcontractor, or a brokerage's or subcontractor's managing employee is excluded, sanctioned or suspended by the federal government or another state from Medicare or Medicaid participation the brokerage or subcontractor is not eligible for enrollment, consistent with OAR 410-120-1400, except when the Agency determines good cause exists, in accordance with 42 CFR 455.23.

~~and subcontractors shall report to the Authority any suspected fraud or abuse of NEMT services. If the suspected fraud or abuse is subcontractor related, and the brokerage or the Authority determines the subcontractor has committed fraud, the brokerage shall immediately terminate its subcontract.~~

410-136-3340

Brokerage Service Areas

(1) Brokerages enrolled with the Authority shall arrange and pay for NEMT services to all eligible clients in the counties shown in [Table 136-3340](#).

(2) OHP clients shall use only the brokerages available in their county of residence unless they have permission from their local brokerage to use another brokerage.

(3) Nothing in this rule precludes brokerages from coordinating to provide rides to clients in another brokerage if it would be more cost effective or provide better service for the client.

[ED. NOTE: Tables referenced ~~is are~~ available from the ~~agency~~[Oregon Health Authority \(OHA\) and on the Authority's website.](#)]

410-136-3360

Discontinuation of Brokerage as Enrolled Provider

(1) A brokerage may discontinue being an enrolled provider for NEMT services only with notice to the Authority. The following establishes the requirements for notice:

(a) If the reason is for the brokerage's convenience: The effective date must be at least 90 days after the brokerage sends written notice; and (ii) the effective date must be on the first calendar date of the month ;

(b) The brokerage must provide 45 days advance written notice if the brokerage does not obtain funding, appropriations and other expenditure authorizations from its governing body, federal, state or other sources sufficient to permit the brokerage to satisfy its requirements pursuant to these rules (OAR 410-136-3000 through 410-136-3360);

(c) Immediately upon written notice if the Oregon Legislative Assembly, the federal government or a court interprets, modifies or changes Oregon statutes or federal laws, regulations or guidelines in such a way that the brokerage immediately has no authority to satisfy the requirements of these rules.

(2) The Authority may discontinue allowing a brokerage to provide NEMT services as an enrolled provider only with notice to the brokerage. The following establishes the requirements for notice:

(a) If the reason is for the Authority's convenience:

(A) The effective date must be at least 90 days after the Authority sends written notice; and

(B) the effective date must be on the first calendar date of a month.

(b) The Authority must provide 45 days advance written notice if the Authority does not obtain funding, appropriations and other expenditure authorizations from its governing body, federal, state or other sources sufficient to meet its payment obligations pursuant to OAR 410-136-3200, Reimbursement and Accounting for all Modes of Transportation.

(c) Immediately upon written notice if the Oregon Legislative Assembly, the federal government or a court interprets, modifies or changes Oregon statutes or federal laws, regulations or guidelines in such a way that the Authority immediately has no authority to provide NEMT services pursuant to these rules.

(d) Immediately upon written notice to the brokerage if the Oregon Legislative Assembly or Emergency Board reduces the Authority's expenditure authorization, resulting in the following:

(A) The Authority cannot meet its payment obligations pursuant to OAR 410-136-3200, Reimbursement and Accounting for all Modes of Transportation; and

(B) The effective date for the reduction in expenditure authorization is less than 45 days from the date the Legislative Assembly or Emergency Board takes the action.

(e) Immediately upon written notice to the brokerage if a law or regulation requires a brokerage to have any license or certificate, and the license or certificate is denied, revoked, suspended, not renewed or changed in such a way that brokerage no longer meets requirements to deliver NEMT services. The Authority may only exercise this right with respect to the particular service impacted by the loss of the licensure or certification.

(f) Immediately upon written notice to the brokerage, if the Authority determines the brokerage or any of its subcontractors, have endangered or are endangering the health or safety of a client or others.

