

**Guidance Issued By DODD Regarding Non-Medical Transportation  
Provided by an Operator of Commercial Vehicles**

**Introduction**

As a part of their review of the county board cost reports, the Auditor of State (AOS) may review claims for non-medical transportation services. Many county boards use a third party, which can be a public or private entity, to provide non-medical transportation. If the third party's transportation services are also available for use by the general public and a commercial vehicle is used, then the non-medical transportation should be billed as commercial transportation. "Available for use by the general public" means that any member of the public can access the service directly and does not have to go through a contract with another party. A commercial vehicle means buses, livery vehicles, and taxicabs that are available for public use. This guidance is directed to county boards that use these operators (public or private) of commercial vehicles. In the remainder of the document, these providers will be referred to as "operators".

All Medicaid services, including non-medical transportation, are paid at the lesser of the usual and customary fare or the state rate (OAC 5123:2-9-06(I)); however, since no state rate exists for non-medical transportation by operators exists, the usual and customary fare is the only rate available to be paid. This contributes to the additional level of review by the AOS for this particular service arrangement.

If the rate the operator is charging to the county board through the service contract, which is expected to be the rate the county board is billing to Medicaid, is more than what the operator is charging for the general public, the AOS will, in their review, look for two things: 1) is the service provided different from what is available to the general public and 2) if the service is different, is the rate charged for that different service reasonable in accordance with 2 CFR Part 200 Subpart E (formerly 2 CFR Part 225 aka OMB Circular A-87, (reasonable cost principles) and CMS Publication 15-1 (prudent buyer principles).

This guidance provides ways for county boards to determine if the service provided is different from what the general public receives. In order for the county board to be charged a higher rate than that charged to the general public, the services received must be different than those provided to the general public. As part of the review, the Auditor of State will review the contract that the county board has with the third party, so it is important that the contract is clear about what services are being provided and what services are provided that are not available to the general public. The guidance also includes suggestions for contract language.

This guidance also identifies acceptable ways for the county board to demonstrate that the contracted rate is reasonable in accordance with Medicaid requirements.

**Discussion**

- 1. Is the service different from what is available to the general public?**

Having a billing arrangement between the county board and local operator as the only distinguishable feature does not make it a different service.

Some examples of how the service provided under the contract between the county board and operator could be different than the service provided by the operator to the general public include, but are not limited to:

1. There is a “guarantee” of a ride on a set route at a set time.
2. The county board requires documentation to support Medicaid billing.
3. The county board requires the driver to receive special DD training.
4. The driver is obligated to ensure the consumer reaches a prearranged destination.
5. The general public is on the bus only because the county board has agreed to this because it is efficient (e.g., the general public is traveling on the same route as the consumer) and it doesn’t disrupt the route for the consumer.
6. It is “through door” or door-to-door with driver assistance.
7. The transit agency deviates from its established routes or expands the geographic area to accommodate picking up people with DD.
8. Other factors with documentation.

## **2. Reasonable Costs**

The county boards must also demonstrate that what is paid to the operator is reasonable. Generally, when a county board provides non-medical transportation through operators, the costs incurred are reasonable if they are comparable with marketplace prices for similar services or provide for a total guaranteed cost equal to or less than a board’s current cost for such services (CMS Manual 2135.3).<sup>1</sup>

DODD highly recommends that the best way to determine if costs are comparable with marketplace prices for similar services is to engage in a request for proposal (RFP) process, even if there is only one vendor who can provide the service. If in using a RFP process, the county board only receives a single proposal, the county board should compare the proposal with what the actual cost would be for the

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<sup>1</sup> Throughout this memo, we rely on various provisions of section 2135 of CMS Publication 15-1. Section 2135 contains federal guidelines on the reasonableness of costs incurred by Medicare providers, such as hospitals, that purchase management and administrative support services from outside parties. We realize that section 2135 does not pertain directly to the purchase of transportation services. Nevertheless, we believe that the guidelines it contains provide useful insights into the test of reasonableness that CMS would expect county boards to employ when they contract with transit agencies for non-medical transportation.

county board to provide the service and also compare the proposal with rates paid by other vendors of the operator within the same county or, if applicable, in other counties. If the sole proposal is higher than the county board's expectations after its comparison review, the county board should attempt to negotiate a lower rate with the operator. The county board should document the effort it made to negotiate with the operator to lower the rate, whether or not the negotiation is successful. If the county board receives more than one proposal, it should select the lowest and best proposal. If the lowest cost proposal is not chosen, the county board should document the reason(s) for choosing a higher cost proposal.

### **3. Documentation and efforts to achieve reasonable cost**

Records must be available, which will support the reasonableness of the cost of non-medical transportation purchased from an operator. Such support could include some or all of the following:

1. A copy of the contract and any amendments.
2. An analysis showing the efforts of the county board to comply with the prudent buyer principle guidelines in assessing its needs, establishing the goals to be attained, evaluation of the available alternatives, and choosing the terms of the contract. Prior to issuing a RFP, negotiating, or entering into a contract, a county board should first project and analyze what the actual costs would be for the county board to provide non-medical transportation itself, per trip or per mile.
3. Detailed identification of the services actually received during the period of the contract.
4. Any other documentation available such as visit or contact reports, minutes of county board or committee meetings, evaluations, cost/benefit analyses, etc., which would support the receipt of services and substantiate the attainment of the goals and objectives which are desired and the reasonableness of the rates paid.

If the county board ends up using multiple operators for non-medical transportation, and pays different rates to these operators, the county board needs to document the difference in the services provided by these operators to justify the different rates. For example, the operator with the higher rate may provide after hours or emergency transportation, provide trips for a single individual as opposed or in addition to group trips, may transport over a rural part of the county compared to an urban setting, or provide transportation outside the area provided by another operator.

### **4. Contract Language**

The language in the contract should be specific and describe the services that will be provided. The contract should state whether or not the general public will be in the vehicle, too. The dollar amount in the contract should spell out what specific services are being purchased with the different rate.

### **5. Service Code to be Billed for Medicaid Reimbursement**

A county board cannot bill Medicaid more than the rate identified in the contract with an operator. For example, a county board cannot bill Medicaid \$19 if the contract states \$14.

For non-medical transportation, the amount that is billed is dependent on the type of vehicle that is used and whether or not it is a commercial vehicle available for use by the general public. For county boards that have contracted with an operator for non-medical transportation, the county board should use the following codes for billing purposes: ATT/FTT/STT. This is true for a public or private operator of commercial vehicles.

When contracting with multiple operators, the county board should submit claims for services provided by each operator at its respective actual contract rate. Averaging contract rates or other alternative billing methodologies are not permitted.

#### **6. Purchases of Bus Passes**

Medicaid should only be billed the actual cost of the bus pass. Bus passes do not guarantee service. There is no evidence that the transportation service was provided or that this is a special service (i.e. door-to-door). Additional administrative costs charged by the transit agency for bus passes should not be billed to Medicaid.