

# Medicaid and Transportation for Older Adults

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## Justice in Aging

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources. Since 1972, Justice in Aging has focused primarily on populations that have traditionally lacked legal protection, such as women, people of color, LGBT individuals, and people with limited English proficiency.

## Introduction

As soon as Ms. Martinez finishes scheduling an appointment with her cardiologist, she picks up her phone to call Caring Rides, a local transportation vendor, responsible for providing her transportation to and from her medical appointments. As someone approaching 80 years old, on both Medicare and Medicaid and without a car of her own, Ms. Martinez breathes a sigh of relief knowing that Caring Rides is available to take her where she needs to go, and Medicaid will pay for the trips through a broker model. Without Caring Rides, living in a rural community, Ms. Martinez would be hard pressed to get to her medical appointments. When someone on the Caring Rides hotline picks up, she confirms her identity with the representative and requests transportation that will accommodate her wheelchair. They log her appointment and promise to dispatch a driver.

On the day of her 11 a.m. cardiology appointment, Ms. Martinez waits patiently by the door for her ride. She starts to get impatient as the time approaches 10:45, knowing it will take more than 15 minutes to get to her specialist. She calls Caring Rides again. After 10 minutes on hold, a representative tells her that the car they've dispatched is on its way but is tied up finishing up another ride. The Caring Rides car eventually arrives at 11:20 a.m. To her surprise, Caring Rides had dispatched a sedan that cannot accommodate her wheelchair. The entire experience leaves Ms. Martinez frustrated and unable to access her cardiology appointment.

Ms. Martinez's experience is not unique. As the number of older adults continues to grow, so does the older adult population's reliance on transportation as a means to access medical services, especially for low-income seniors. Although transportation to medical services is sometimes a Medicaid-reimbursable service, older adults like Ms. Martinez encounter difficulties accessing the transportation they need. This issue brief covers the basics of non-emergency medical transportation<sup>1</sup> for older adults under the Medicaid program by examining the relevant rules, describing different types of transportation available through Medicaid, and offers tips for legal services advocates who are helping clients navigate transportation challenges.

## Section 1: Why Transportation Matters

Older adults need transportation to medical services. Vision or cognitive decline as well as physical changes compromise older adults' ability to drive or use public transportation. More than 50% of non-drivers over 65 and older stay at home,<sup>2</sup> and this dynamic may cause social isolation and prevent access to needed long-term services and supports that keep older adults in the community.

Access to transportation may be particularly important for certain communities of older adults, like women

1 Non-emergency medical transportation refers to transportation for medical services in a non-emergency context.

2 AARP, *Enhancing Mobility Options for Older Americans* (2004), available at: [apta.com/resources/reportsandpublications/Documents/enhancing\\_options.pdf](https://www.aarp.org/resources/reportsandpublications/Documents/enhancing_options.pdf).

and seniors of color. Among women older than 75, nearly 40% do not drive.<sup>3</sup> Meanwhile, a survey from Iowa provides strong evidence that people of color on Iowa's Medicaid program were much more likely to have an unmet care need due to lack of transportation—83% higher for blacks and 31% for Hispanics.<sup>4</sup>

Research also highlights that transportation services are particularly critical for older adults accessing behavioral health services, specialist visits, and adult day health care (ADHC) services, among others.<sup>5</sup> Many of these types of services, like ADHC, are imperative for the well-being of low income older adults.

## Section 2: Medicaid Rules and Regulations Regarding Transportation

Non-emergency transportation services are not included in the list of mandatory Medicaid benefits enshrined in statute. However, they are required by federal regulation. These regulations require state Medicaid plans to ensure necessary transportation for recipients to and from providers and to describe the methods that the state Medicaid agency will use to meet this requirement.<sup>6</sup> Further regulations require that transportation include expenses for transportation and other related travel expenses determined to be necessary by the state Medicaid agency to secure medical examinations and treatments for a Medicaid beneficiary.<sup>7</sup> States are required to provide transportation to and from services for individuals who receive Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) services.<sup>8</sup>

States have significant discretion in how they structure and administer transportation benefits. They have to decide whether to offer transportation as an administrative expense, an optional medical service, or both.<sup>9</sup> When offered as an administrative expense, the freedom of choice rule does not apply, so states can restrict beneficiaries to certain transportation providers. As an optional medical service, only providers whom the state can render payment to as a direct vendor can participate, and beneficiaries have the right to receive transportation from any Medicaid provider.<sup>10</sup> In 2005, as a result of amendments to the Medicaid statute, many states increasingly began using a third-party brokerage firm to coordinate transportation for beneficiaries through a capitated payment system.<sup>11</sup> These brokerage models allow states to waive typical Medicaid requirements of comparability, statewide-ness, and freedom of choice while still claiming transportation as a medical expense and accessing the state's regular Federal Medical Assistance Percentage (FMAP).<sup>12</sup>

As a result, some 39 states across the country utilize the broker model in some capacity, while some state Medicaid agencies contract directly with transportation providers through a fee-for-service delivery model, and still others may contract with managed care entities to cover transportation services for beneficiaries.

States may further require that beneficiaries have an “unmet transportation need” in order to qualify for non-emergency transportation. The exact test to determine unmet need will depend on state law, but states may, for example, require that the beneficiary demonstrate not having a valid driver's license, not having a working vehicle available in the household, being unable to travel or wait for services alone, or having a physical, cognitive, mental, or developmental limitation.<sup>13</sup>

3 Fay Gordon, Medicaid Non-Emergency Medical Transportation: An Overlooked Lifeline for Older Adults, Justice in Aging, (October 2016), n. 8, available at: [justiceinaging.org/wp-content/uploads/2016/11/NEMT-Medicaid-Transportation.pdf](https://justiceinaging.org/wp-content/uploads/2016/11/NEMT-Medicaid-Transportation.pdf).

4 Abbi Coursolle, David Machledt, and Catherine McKee, Current Issues in NEMT, National Health Law Program, (Nov. 2016), available at: [healthlaw.org/about/staff/abbi-coursolle/all-publications/current-issuesNEMT#.WgHPdmhSyUk](https://healthlaw.org/about/staff/abbi-coursolle/all-publications/current-issuesNEMT#.WgHPdmhSyUk).

5 MaryBeth Musemici and Robin Rudowitz, Medicaid Non-Emergency Medical Transportation: Overview and Key Issues in Medicaid Expansion Waivers, Kaiser Family Foundation, (February 2016), n. 15, available at: [kff.org/medicaid/issue-brief/medicaid-non-emergency-medical-transportation-overview-and-key-issues-in-medicicaid-expansion-waivers](https://kff.org/medicaid/issue-brief/medicaid-non-emergency-medical-transportation-overview-and-key-issues-in-medicicaid-expansion-waivers).

6 42 C.F.R. sec. 431.53.

7 42 C.F.R. sec. 440.170(a).

8 42 C.F.R. sec. 441.56(a).

9 CMS, State Medicaid Manual, sec. 2113.

10 42 C.F.R. sec. 440.170(a)(2).

11 Gordon, *supra*, note 2.

12 *Id.*; see also Musemici and Rudowitz, *supra*, note 4.

13 CMS, Medicaid Non-Emergency Transportation Booklet for Providers, available at: [cms.gov/medicare-medicicaid-coordination/](https://cms.gov/medicare-medicicaid-coordination/)

Advocates assisting older adults with Medicaid managed care plans should also become familiar with the plan's transportation requirements. Transportation and managed care is discussed in detail in Section 4.

### Section 3: Types of Transportation

Many types of transportation are potentially available under Medicaid. Indeed, one of the problems in the example of Ms. Martinez is that the transportation company did not send the appropriate mode of transportation to pick her up. Advocates should be well versed in the types of transportation that Medicaid can cover.

Non-emergency transportation services can include transport via wheelchair vans, taxis, cars, vans, stretcher cars, transit passes and tickets, public bus, subway, secured transportation, and sometimes even mileage reimbursement for private conveyance by a friend or family member. This list is not exhaustive, and as technology continues to change the ways people use transportation, recently some rideshare technology companies have announced partnerships with large Medicaid transportation brokers, so there may be a trend of ridesharing transportation through Medicaid in the future.<sup>14</sup>

Advocates should note that some states may draw a distinction between non-emergency medical transportation (NEMT) and non-medical transportation (NMT), the distinction being that the former is a *medical* mode of transportation (e.g. litter van or wheelchair van) and the latter being a non-medical mode of transportation (e.g. private conveyance or bus). Both refer to transport to access a medical service. The umbrella term of “non-emergency medical transportation” for purposes of Medicaid reimbursement includes both transit by medical and non-medical modes and is therefore in contrast to emergency medical transportation.<sup>15</sup>

### Section 4: Transportation, Dual Eligibles, and Managed Care

Although Medicare generally does not pay for non-emergency medical transportation, Medicare Advantage plans (Medicare Part C) may offer additional services or expanded coverage. Dual eligibles enrolled in a Medicare Advantage plan should inquire with their plan about non-emergency medical transportation options offered by the plan to in-network providers by reviewing their member handbook or asking member services. As Medicaid is a payer of last resort, dual eligibles may be expected to exhaust any transportation services available to them, if any, under their Medicare Advantage plan *before* Medicaid will reimburse for non-emergency transportation. Similarly, dual eligibles who enroll in Medicare-Medicaid Plans (MMPs) that combine Medicare and Medicaid benefits under one health plan may find that their MMP offers supplemental transportation to medical services. Supplemental transportation is often considered an additional benefit in the MMP and covers transportation in addition to the Medicaid-provided NEMT. Advocates navigating transportation to medical services for dual eligibles should make sure to check to see if the MMP offers transportation services by looking at their MMP member handbook or calling the member services hotline.

As an increasing number of states adopt managed care delivery systems for Medicaid, older adults may find that their non-emergency medical transportation is provided through their Medicaid managed care plan. Although the rules governing transportation are generally the same whether in fee-for-service or managed care, there are some potential considerations that may be more relevant in Medicaid managed care plans. For example, some services are carved out from managed care. In other words, even though they are still Medicaid services, they are not provided under the plan and instead continue to be delivered in fee-for-service. Advocates should

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[fraud-prevention/medicaid-integrity-education/downloads/nemt-booklet.pdf](https://www.fraud-prevention/medicaid-integrity-education/downloads/nemt-booklet.pdf).

14 Healthcare IT News, Lyft, Logisticare partner to expand access for Medicare, Medicaid, elderly patients, (Feb. 9, 2017), available at: [healthcareitnews.com/news/lyft-logisticare-partner-expand-access-medicare-medicaid-elderly-patients](https://www.healthcareitnews.com/news/lyft-logisticare-partner-expand-access-medicare-medicaid-elderly-patients); Huffington Post, Lyft, Uber Increasingly Offering Medical Transportation Services, (Aug. 7, 2017, updated Aug. 30, 2017), available at: [huffingtonpost.com/entry/lyft-uber-non-emergency-medical-transport-us\\_598885c9e4b09a4d1ec68784](https://www.huffingtonpost.com/entry/lyft-uber-non-emergency-medical-transport-us_598885c9e4b09a4d1ec68784).

15 Note that for purposes of this issue brief, we do not explicitly examine *emergency* medical transportation in this context. For example, if a beneficiary has a heart attack or is seriously injured in a car accident, she may need to be taken to the emergency room via ambulance or medical flight. Emergency transportation should be considered a separate type of transportation for which different rules and regulations govern and is not the main point of focus for this brief.

make sure to inquire, if the managed care organization (MCO) is providing non-emergency transportation, whether that includes carved out services. Examples of common Medicaid services older adults rely on that may be carved out include: specialty mental health services, oral health, and “ancillary” services like therapy. Whether a Medicaid managed care plan will cover transportation to these services will depend on the plan’s benefit package and how it treats carved-out services. Again, advocates should check their clients’ member handbooks or inquire with member services.

## Section 5: Recommendations and Troubleshooting Tips for Advocates

Two of the most frequent issues that advocates face while helping older adults navigate non-emergency medical transportation are: (1) drivers show up late or fail to show up at all, and (2) transportation companies dispatch the wrong type of vehicle for the older adult. Both of these problems are present in the introductory hypothetical with Ms. Martinez.

### Late drivers

The effects of late or absent drivers and attempting to transport the beneficiary in an inappropriate vehicle jeopardize access to the underlying medical service for which the transportation was originally arranged. The problem can be further complicated by drivers with ride schedules accommodating multiple beneficiaries.

The broker model introduces other challenges as it adds at least one middle person (the broker, but often times the transportation company as well) between the older adult and either the Medicaid agency or the Medicaid plan. Advocates may feel stuck trying to figure out who is responsible for ensuring that the transportation company sends the right vehicle—the company, the Medicaid plan, or the contracted transportation broker. Regardless, per federal regulations, **Medicaid** is responsible for ensuring access without regard to local traffic conditions and other complicating factors. Advocates should continue to hold transportation companies responsible for ensuring this type of access. Unfortunately, several courts have found that some of the regulations governing non-emergency transportation do not provide a private right of action under 42 U.S.C. sec. 1983. As such, judicial enforcement in this context may be limited.<sup>16</sup> Community Catalyst is working to track non-emergency medical transportation challenges across the country. Advocates who continue to experience difficulties with non-emergency medical transportation for their clients should contact [Rachelle Brill](#) at Community Catalyst to share their stories.

### PRACTICE TIP

When assisting an older adult with a problematic transportation provider, remember that Medicaid is responsible for ensuring access to transportation assistance. Assist clients with filing complaints or grievances with their Medicaid managed care plan (if applicable). If your state has a Medicaid-Medicare ombudsman program or other statewide entity monitoring Medicaid providers, report the problematic provider to them.

### Transportation models

Setting problems aside, navigating transportation can be further complicated by both the various models of transportation delivery and by the increasing presence of managed care. Each broker or plan may have slightly different policies and procedures; for example, one plan might require two days advance notice before a scheduled appointment to arrange transportation while another may require four days. In order to organize all the transportation policies, advocates should consider compiling pertinent information in chart form.<sup>17</sup> Advocates working with clients in managed care should also assist the client with filing complaints

16 Coursolle, et. al, supra, note 3 at n.8, citing *Harris v. James*, 127 F.3d 993, 1112 (11<sup>th</sup> Cir. 1997); *Avila v. Smith*, No. 2:05-CV-309, 2006 WL 1519420, at \*6 (D. Vt. May 26, 2006).

17 See, for example, a spreadsheet from Michigan documenting transportation policies by health plan, available at: [michigan.gov/documents/mdch/2014\\_Info\\_2-attachment\\_Contacts\\_Transportation\\_spreadsheet\\_446925\\_7.pdf](http://michigan.gov/documents/mdch/2014_Info_2-attachment_Contacts_Transportation_spreadsheet_446925_7.pdf).

and grievances with the managed care plan, using the plan as an additional enforcement lever. As older adults may have limited knowledge regarding the transportation services system as benefits, advocates should also consider working with local health plans and Medicaid agencies to encourage them to develop beneficiary-facing education materials and partner on a distribution plan.<sup>18</sup>

## PRACTICE TIP

In addition to assisting clients file complaints against problematic transportation providers (see above), work with local managed care plans and state agencies to develop educational materials to help beneficiaries understand the transportation benefit and their rights.

## Conclusion

Non-emergency medical transportation under the Medicaid program is critical for low-income older adults, allowing them to access needed services and age in the community. Delivery of NEMT can be complicated by the various modes of transportation and the different models through which NEMT is administered. Meanwhile, beneficiaries can experience problems with late or absent drivers and with getting the appropriate form of transportation. Advocates must remain vigilant and work with Medicaid plans, brokers, transportation companies, and others to ensure older adults have access to this critical service.

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**Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at [ConsultNCLER@acl.hhs.gov](mailto:ConsultNCLER@acl.hhs.gov).**

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18 See, for example, the following brochure on NEMT from the Michigan Developmental Disabilities Council, available at: [michigan.gov/documents/mdch/Non\\_Emergency\\_Medical\\_Transport\\_final\\_508541\\_7.pdf](http://michigan.gov/documents/mdch/Non_Emergency_Medical_Transport_final_508541_7.pdf); see also the flyer from California's Department of Healthcare Services describing different types of transportation available in the Medicaid program, available at: [calduals.org/wp-content/uploads/2014/01/NEMTvsNMT-12.30.13\\_finalclean.pdf](http://calduals.org/wp-content/uploads/2014/01/NEMTvsNMT-12.30.13_finalclean.pdf).