

SUMMARY OF EXPRESS TERMS

These proposed regulatory amendments implement and incorporate specific aspects of two Medicaid Redesign Team (MRT) II recommendations: (1) Medicaid participation in an Emergency Triage, Treat and Transport (ET3) model Medicare demonstration program, which provides an alternative to hospital emergency department care for Medicaid beneficiaries otherwise transported to the hospital; and (2) contracting with a transportation management broker to provide cost effective nonemergency transportation to Medicaid beneficiaries. In addition, these proposed amendments include transportation network companies in the list of transportation services authorized in the Medicaid program. Specifically, the amendments provide and incorporate:

1. Payment standards for emergency ambulance services provided by ET3 model participants that either treat a Medicaid beneficiary in place, and/or transport a Medicaid beneficiary to an alternative nonhospital destination such as a primary care physician office or urgent care clinic;
2. Changes in the Medicaid transportation program which will occur when nonemergency transportation services are provided and managed by one or more transportation management brokers;
3. Maintenance of certain aspects of the current prior authorization and payment standards that are needed during the transition to one or more transportation management brokers, including forms required from ordering practitioners which are currently set forth in the Medicaid Transportation Manual;
4. Removal of out-of-date references to the old transportation program operated in conjunction with local social services districts; and

5. An amended definition of transportation services and conforming amendment in the payment section of the regulation.

Pursuant to the authority vested in the Commissioner of Health by section 201(1)(v) of the Public Health Law and section 365-h of the Social Services Law, Part 505 of Title 18 (Social Services) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to be effective upon publication of the Notice of Adoption in the New York State Register, by amending section 505.10 to read as follows:

505.10 Transportation for medical care and services.

(a) Scope and purpose. This section describes the department's policy concerning payment for transportation services provided to medical assistance (MA) recipients, the standards to be used in determining when the MA program will pay for transportation, and the prior authorization process required for obtaining such payment. Generally, payment will be made only upon prior authorization for transportation services provided to an eligible MA recipient. Prior authorization will be granted by the prior authorization official only when payment for transportation expenses is essential in order for an eligible MA recipient to obtain necessary medical care and services which may be paid for under the MA program.

(b) Definitions.

(1) Ambulance means a motor vehicle, aircraft, boat or other form of transportation designed and equipped to provide emergency medical services during transit.

(2) Ambulance service means any entity, as defined in section 3001 of the Public Health Law, which is engaged in the provision of emergency medical services and the transportation of sick, disabled or injured persons by motor vehicle, aircraft, boat or other form of transportation to or from facilities providing hospital services and which is currently certified or registered by the Department of Health as an ambulance service.

(3) Ambulette or [invalid coach] paratransit vehicle means a special-purpose vehicle, designed and equipped to provide nonemergency transport, that has wheelchair-carrying capacity, stretcher-carrying capacity, or the ability to carry disabled individuals.

(4) Ambulette service means an individual, partnership, association, corporation, or any other legal entity which transports [the invalid, infirm or] disabled individuals by ambulette to or from facilities which provide medical care. An ambulette service provides [the invalid, infirm or] disabled individuals with personal assistance as defined in this subdivision.

(5) Common medical marketing area means the geographic area from which a community customarily obtains its medical care and services.

(6) Community means either the State, a portion of the State, a city or a particular classification of the population, such as all persons 65 years of age and older.

(7) Conditional liability means that the prior authorization official is responsible for making payment only for transportation services which are provided to MA-eligible individuals in accordance with the requirements of this Title.

(8) Day treatment program or continuing treatment program means a planned combination of diagnostic, treatment and rehabilitative services certified by the Office [of Mental Retardation and] for People with Developmental Disabilities or the Office of Mental Health.

(9) Department established [rate] fee means the [rate] fee for any given mode of transportation which the department has determined will ensure the efficient provision of appropriate transportation to MA recipients in order for the recipients to obtain necessary medical care or services.

(10) Emergency ambulance transportation means the provision of ambulance transportation for the purpose of obtaining hospital services for an MA recipient who suffers from severe, life-threatening or potentially disabling conditions which require the provision of emergency medical services while the recipient is being transported.

(11) Emergency medical services means the provision of initial urgent medical care including, but not limited to, the treatment of trauma, burns, and respiratory, circulatory and obstetrical emergencies.

(12) Emergency triage, treat and transport (ET3) model means an innovative payment and service delivery model established by the United States Department of Health and Human Services to lower costs and improve quality of care to Medicare beneficiaries by requiring ambulance service suppliers selected by the Center for Medicare and Medicaid Innovation (CMMI), or successor agency or office, to partner with qualified health care practitioners to

deliver treatment in place and/or transport to alternative destination sites, such as primary care physician offices or urgent care clinics.

(13) Locally prevailing [rate] fee means a [rate] fee for a given mode of transportation which is established by a transit or transportation authority or commission empowered to establish [rates] fees for public transportation, a municipality, or a third-party payor, and which is charged to all persons using that mode of transportation in a given community.

[(13) Locally established rate means the rate for any given mode of transportation which the social services official has determined will ensure the efficient provision of appropriate transportation for MA recipients in order for the recipients to obtain necessary medical care or services.]

(14) Nonemergency ambulance transportation means the provision of ambulance transportation for the purpose of obtaining necessary medical care or services to an MA recipient whose medical condition requires transportation by an ambulance service.

(15) New York State Medicaid payment system means an automated system, such as eMedNY, used to process Medicaid fee-for-service claims submitted by Medicaid enrolled providers for services provided to Medicaid beneficiaries.

(16) Ordering practitioner means the MA recipient's attending physician or other medical practitioner who has not been excluded from enrollment in the MA program and who is requesting transportation on behalf of the MA recipient in order that the MA recipient may

obtain medical care or services which are covered under the MA program. The ordering practitioner is responsible for initially determining when a specific mode of transportation to a particular medical care or service is medically necessary.

[(16)] (17) Personal assistance means the provision of physical assistance by a provider of [ambulette] transportation services [or the providers employee] to an MA recipient for the purpose of assuring safe access to and from the recipient's place of residence, [ambulette] vehicle and MA covered health service provider's place of business. Personal assistance is the rendering of physical assistance to the recipient in walking, climbing or descending stairs, ramps, curbs or other obstacles; opening or closing doors; accessing [an ambulette] a vehicle; and the moving of wheelchairs or other items of medical equipment and the removal of obstacles as necessary to assure the safe movement of the recipient. In providing personal assistance, the provider or the provider's employee will physically assist the recipient which shall include touching, or, if the recipient prefers not to be touched, guiding the recipient in such close proximity that the provider of services will be able to prevent any potential injury due to a sudden loss of steadiness or balance. A recipient who can walk to and from a vehicle, his or her home, and a place of medical services without such assistance is deemed not to require personal assistance.

[(17)] (18) Prior authorization means a prior authorization official's determination that payment for a specific mode of transportation is essential in order for an MA recipient to obtain necessary medical care and services and that the prior authorization official accepts conditional liability for payment of the recipient's transportation costs.

[(18)] (19) Prior authorization official means the department, [a social services district, or their designated agents] the transportation manager or the transportation management broker, or such other entity under contract with, or specifically permitted by, the Department of Health, as applicable.

(20) Service Agreement means an agreement between a vendor and a transportation management broker that includes, but is not limited to, vendor service standards and fees to be established and paid by the transportation management broker for the provision of non-emergency transportation services to MA recipients.

[(19)] (21) Transportation attendant means any individual authorized by the prior authorization official to assist the MA recipient in receiving safe transportation.

[(20)] (22) Transportation expenses means:

- (i) the costs of transportation services; and
- (ii) the costs of outside meals and lodging incurred when going to and returning from a provider of medical care and services when distance and travel time require these costs.

(23) Transportation management broker or brokers means the entity or entities with which the commissioner contracts to cost-effectively administer non-emergency transportation services to MA recipients in accordance with Social Services Law section 365-h(4)(b).

(24) Transportation manager or managers means the entity or entities with which the commissioner contracts to manage transportation services provided to MA recipients in accordance with Social Services Law section 365-h(4)(a).

[(21)] (25) Transportation services means:

(i) transportation by ambulance, ambulette or [invalid coach] paratransit vehicle, taxicab/livery, transportation network company/high-volume for-hire services vehicle (TNC), common carrier or other means appropriate to the MA recipient's medical condition; and

(ii) a transportation attendant to accompany the MA recipient, if necessary. Such services may include the transportation attendant's transportation, meals, lodging and salary; however, no salary will be paid to a transportation attendant who is a member of the MA recipient's family.

[(22)] (26) Undue financial hardship means transportation expenses which the MA recipient cannot be expected to meet from monthly income or from available resources. Such transportation expenses may include those of a recurring nature or major one-time costs.

[(23)] (27) Value-based payment means an additional fee for certain transportation services determined by the department that may be paid to vendors that achieve certain quality and/or efficiency targets established by the department or a transportation management broker.

(28) Vendor means a lawfully authorized provider of transportation services who is [either] enrolled in the MA program pursuant to Part 504 of this Title [or] and authorized to receive payment for transportation services directly from [a social services district or other agent

designated by the department] the New York State Medicaid payment system or pursuant to a service agreement with a transportation management broker, as applicable. The term vendor does not mean an MA recipient or other individual who transports an MA recipient by means of a private vehicle.

(c) Ambulette and nonemergency ambulance transportation.

(1) Who may order. Only those practitioners, facilities or programs listed in [paragraph (d)(4)] paragraphs (d)(7) and (8) of this section may order or submit an order on behalf of a practitioner for ambulette or nonemergency ambulance transportation services. All requests for ambulette and nonemergency ambulance transportation must include a written form verifying MA transportation abilities as specified by the department.

(2) Criteria for ordering ambulette transportation. Ambulette transportation may be ordered if any one of the following conditions exist:

(i) the recipient needs to be transported in a recumbent position and the ambulette service ordered has stretcher-carrying capacity;

(ii) the recipient is wheelchair bound and is unable to use a taxi, livery service, bus or private vehicle;

(iii) the recipient has a disabling physical condition which requires the use of a walker [or], crutches, or other mobility assistive equipment, and is unable to use a taxi, livery service, bus or private vehicle;

(iv) the recipient has a disabling physical condition other than one described in subparagraph (iii) of this paragraph or a disabling mental condition, either of which requires the personal assistance provided by an ambulette service, and the ordering practitioner certifies, in a manner [designated] approved by the department, that the recipient cannot be transported by a taxi, livery service, bus or private vehicle and requires transportation by ambulette service; or

(v) an otherwise ambulatory recipient [requires] receives radiation therapy, chemotherapy, [or] dialysis treatment, or other ongoing needs for chronic care treatment, which results in a disabling physical condition after treatment and renders the recipient unable to access transportation [without the personal assistance provided by an ambulette service] by taxi, livery service, TNC, bus or private vehicle.

(3) Criteria for ordering nonemergency ambulance transportation. Nonemergency ambulance transportation may be ordered when the recipient is in need of [services] medical treatment or medical monitoring while being transported to a provider of medical services which can only be administered by a NYS certified emergency medical technician (or higher level of certification), who is an employee or volunteer member of an ambulance service.

(4) Recordkeeping. The ordering practitioner must note in the recipient's patient record the condition which justifies the practitioner's ordering of ambulette or nonemergency ambulance services and maintain a copy of the completed form required by paragraph (1) of this subdivision.

(5) Audit and claim review. An ordering practitioner, or a facility or program submitting an order on the practitioner's behalf, which does not comply with this subdivision may be subjected to monetary claims and/or program sanctions as provided in section 504.8(a) of this Title.

(d) Prior authorization.

(1) Generally, prior authorization must be obtained before transportation expenses are incurred. Prior authorization is not required for emergency ambulance transportation or Medicare approved transportation by an ambulance service provided to an MA [eligible person] recipient who is also eligible for Medicare part B payments. If transportation services are provided in accordance with paragraph (e)(7) of this section, the individualized education program or interim or final individualized family services plan of an MA [eligible person]recipient will qualify as the prior authorization required by this subdivision.

(2) Requests for prior authorization may be made by the MA recipient, his or her representative, or an ordering practitioner.

(3) The recipient, his or her representative, or ordering practitioner must make the request in the manner required by the prior authorization official and the department.

(4) In instances when the MA recipient's condition requires transportation by a method other than the least expensive method available in the geographic area, the MA recipient's ordering practitioner must complete and submit to the prior authorization official a written form verifying

MA transportation abilities as specified by the department and published by the prior authorization official.

(5) In instances when the MA recipient's condition requires MA covered specialized medical care or services that are not available within the MA recipient's common medical marketing area, the MA recipient's ordering practitioner must complete and submit to the prior authorization official a written form for transportation outside the common medical marketing area as specified by the department and published by the prior authorization official. If additional information is necessary, the prior authorization official may also require the submission of a letter of medical necessity from the ordering practitioner before making a determination to approve or deny transportation.

(6) Ordering practitioners shall complete and submit all required forms and letters at no cost to the MA recipient, the department, or the prior authorization official.

(7) A request for prior authorization for nonemergency ambulance transportation must be supported by the written order of an ordering practitioner who is the MA recipient's attending physician, physician's assistant or nurse practitioner.

(8) A request for prior authorization for transportation by ambulette or [invalid coach] paratransit vehicle must be supported by the written order of an ordering practitioner who is the MA recipient's attending physician, physician's assistant, nurse practitioner, dentist, optometrist, podiatrist or other type of medical practitioner [designated by the district and] approved by the department.

(9) A diagnostic and treatment center, hospital, nursing home, intermediate care facility, long-term home health care program, or home and community-based services waiver program, or managed care program may submit an order for ambulette or nonemergency ambulance transportation services on behalf of the ordering practitioner.

[(5)] (10) Each [social services district] prior authorization official must inform [applicants for and] recipients of MA of the need for prior authorization in order for transportation expenses to be paid under the MA program and of the procedures for obtaining such prior authorization.

[(6)] (11) The prior authorization official may approve or deny a request for prior authorization[,] or require the ordering practitioner to submit additional information before the request is approved or denied.

[(7)] (12) The prior authorization official must use the following criteria in determining whether to authorize payment of transportation expenses in accordance with this subdivision [(d) of this section]:

(i) when the MA recipient can be transported to necessary medical care or services by use of private vehicle or by means of mass transportation which are used by the MA recipient for the usual activities of daily living, prior authorization for payment for [such transportation expenses] ambulette, TNC, taxi or livery services may be denied;

(ii) when the MA recipient needs multiple visits or treatments within a short period of time and the MA recipient would suffer undue financial hardship if required to make payment for the

transportation to such visits or treatments, prior authorization for payment for such transportation expenses may be [granted] approved for a means of transportation ordinarily used by the MA recipient for the usual activities of daily living;

(iii) when the nature and severity of the MA recipient's illness necessitates a mode of transportation other than that ordinarily used by the MA recipient, prior authorization for such a mode of transportation may be [granted] approved;

(iv) when the geographic locations of the MA recipient and the provider of medical care and services are such that the usual mode of transportation is inappropriate, prior authorization for another mode of transportation may be [granted] approved;

(v) when the distance to be traveled necessitates a large transportation expense and undue financial hardship to the MA recipient, prior authorization for payment for the MA recipient's usual mode of transportation may be [granted] approved;

(vi) when the medical care and services needed are available within the common medical marketing area of the MA recipient's community, prior authorization for payment of transportation expenses to such medical care and services outside the common medical marketing area may be denied;

(vii) when the need to continue a regimen of medical care or service with a specific provider necessitates travel which is outside the MA recipient's common medical marketing area, notwithstanding the fact that the medical care or service is available within the common medical

marketing area, prior authorization for payment of transportation expenses to such medical care and services outside the common medical marketing area may be [granted] approved; and

(viii) when there are any other circumstances which are unique to the MA recipient and which the prior authorization official determines have an effect on the need for payment of transportation expenses, prior authorization for payment for such transportation expenses may be [granted] approved.

(e) Payment.

(1) Payment for transportation expenses will be made only when transportation expenses have been prior authorized except for emergency ambulance transportation or Medicare approved transportation by an ambulance service provided to an MA recipient [-eligible person] who is also eligible for Medicare part B payments or in other instances determined by the department, such as during a declared state of emergency.

(2) Payment for transportation expenses will be made only to the vendor of transportation services, to the MA recipient or to an individual providing transportation services on behalf of the MA recipient.

(3) Payment will be made only for the least expensive available mode of transportation suitable to the MA recipient's needs, as determined by the prior authorization official.

(4) [Payment] Except for fees and value-based payments established by a transportation management broker set forth in a service agreement, payment to vendors for transportation

services must not exceed the lower of the department established [rate] fee, [the locally established rate,] the locally prevailing [rate] fee, or the [rate] fee charged to the public, by the most direct route for the mode of transportation used[. However]; provided however, payment may be made in excess of the locally prevailing [rate] fee or the [rate] fee charged to the public when Federal financial participation in the MA payment for transportation services is available and such payment is necessary to assure the transportation service.

(5) Payment to vendors will be made only where an MA recipient is actually being transported in the vehicle.

(6) In order to receive payment for services provided to an MA recipient, a vendor must be lawfully authorized to provide transportation services on the date the services are rendered. A vendor of transportation services is lawfully authorized to provide such services if it meets the following standards:

(i) ambulance services must be certified [or registered] by the Department of Health and comply with all requirements of that department;

(ii) ambulette services must be authorized by the Department of Transportation. Ambulette drivers must be qualified under article 19-A of the Vehicle and Traffic Law. Ambulette services and their drivers must comply with all requirements of the Department of Transportation and the Department of Motor Vehicles or have a statement in writing from the appropriate department or departments verifying that the ambulette services or their drivers are exempt from such

requirements[. In addition, ambulette services operating in New York City must be licensed by the New York City Taxi and Limousine Commission];

(iii) taxicab or livery services must comply with all requirements of the local municipality concerning the operation of taxicab or livery service in that municipality and with all requirements of the Department of Motor Vehicles and TNCs must be licensed pursuant to Article 44-B of the Vehicle and Traffic Law or Subchapter 59D or Chapter 59 of Title 35 of the Rules of the City of New York; and

(iv) vendors which provide transportation to day treatment or continuing treatment programs must be authorized by the Department of Transportation. Drivers for such vendors must be qualified under article 19-A of the Vehicle and Traffic Law. Such vendors and their drivers must comply with all requirements of the Department of Transportation and the Department of Motor Vehicles or have a statement in writing from the appropriate department or departments verifying that the vendors or their drivers are exempt from such requirements.

(7) Payment is available for transportation services provided in order for the recipient to receive an MA covered service if the recipient receives such service (other than transportation services) at school or off of the school premises and both the covered service and transportation service are included in the recipient's individualized education plan. Payment is available for transportation services provided in order for the recipient, or the recipient's family member or significant other to receive an MA covered service if both the covered service and transportation service are included in the recipient's interim or final individualized family services plan. For

purposes of this section, a significant other is a person who substitutes for the recipient's family, interacts regularly with the recipient, and affects directly the recipient's developmental status.

Reimbursement for such services must be made in accordance with the provider agreement.

(8) Payment to a provider of ambulette services will only be made for services documented in contemporaneous records in accordance with section 504.3 of this Title. Documentation must include:

(i) the recipient's name and MA identification number;

(ii) the origination of the trip;

(iii) the destination of the trip;

(iv) the date and time of service; and

(v) the name of the driver transporting the recipient.

(9) Payment will not be made for transportation services when:

(i) the transportation services are ordinarily made available to other persons in the community without charge; however, payment may be made under such circumstances when Federal financial participation in the MA payment for transportation services is available;

(ii) the transportation services are provided by a medical facility and the costs are included in the facility's MA rate;

(iii) a vendor is not actually transporting an MA recipient;

(iv) the MA recipient has access to and can make use of transportation, such as a private vehicle or mass transportation, which the recipient ordinarily uses for the usual activities of daily living unless prior authorization has been granted by the prior authorization official.

(f) Medical transportation plans and [rate] fee schedules.

[(1)] The department [may either] shall establish [rate] fee schedules at which transportation services can be assured [or delegate such authority to the social services district.

(2) As directed by the department, each social services district must prepare and submit for department approval a medical transportation plan which provides for essential transportation of MA recipients to and from medical care and services which may be paid for under the MA program and the rate schedules to be used by the district. The department will approve a transportation plan if it finds that the plan satisfactorily demonstrates that appropriate modes of transportation are available to MA recipients in the social services district and that the rates of payment for transportation are adequate to ensure the availability of transportation to and from medically necessary care and services which can be paid for under the MA program.

(i) Amendments to transportation plans or changes to rate schedules must be submitted at least 60 days prior to the effective date of the amendment. The department may permit a shorter notification period in circumstances where the department has adequate time to review the proposed amendment prior to its effective date. Factors which will be considered in determining whether to shorten the notification period include, but are not limited to, the complexity of the proposed amendment and the number and complexity of any other proposed amendments which

the department is reviewing when the request is made. The department may also waive the notification period at the request of the social services district where a waiver would permit more efficient and effective administration of the MA program.

(ii) Plans, rate schedules or amendments may not be implemented without departmental approval.

(iii) The transportation rate schedules submitted for approval must be complete and contain the current department established rates, the locally established rates, or the locally prevailing rates for each transportation service for which the district is required to pay.

(3) Failure to obtain the approval required by this subdivision may result in the social services district being denied Federal and State reimbursement for the expenses related to transporting MA recipients to providers of medical care or services.]; provided, however, such fees shall not apply to non-emergency transportation services provided by a vendor in accordance with a service agreement with a transportation management broker. In addition, the following shall apply:

[(4) On] (1) Upon request, a vendor of transportation services must submit pertinent cost data, which is available to the vendor, to the department or the transportation management broker [or the social services district]. The department [or the social services district] may not require a certified cost document if providing such certification will result in additional expense to the vendor. Failure to comply with the requirements of this paragraph may result in the vendor's

termination from participation in the MA program, either directly or through a transportation management broker.

[(5)] (2) The department [or each social services district for which payment of transportation services is made through the Medicaid Management Information System (MMIS)] or transportation management broker, as applicable, must adhere to the following requirements in establishing [payment rates] fees with vendors of transportation services:

(i) The department [or the social services district] must select at least one of the following:

(a) a [flat-rate] flat fee for all transportation services provided;

(b) a base [rate] fee for all transportation services provided, plus a mileage charge;

(c) a [flat-rate] flat fee for transportation services within specified areas; or

(d) a mileage [rate] fee based on distance.

(ii) The department [or the social services district] may establish with vendors a reduced [rate] fee for any of the following:

(a) transportation of additional persons;

(b) transportation of persons traveling to and from day treatment or continuing treatment programs; and

(c) transportation of persons for purposes of obtaining regularly recurring medical care and services.

(iii) The department [or the social services district] may establish an additional [rate] fee for any of the following:

(a) other transportation costs, limited to the costs of meals, lodging and transportation attendants[. Such costs must be approved by the department before the social services district may establish the additional rate; and];

(b) bridge and road tolls; and

(c) value-based payments.

[(6) Rates established by the department will be deemed part of all applicable social services district medical transportation plans.]

(g) On or after October 1, 2020 and subject to federal financial participation, MA payments will be made to ambulance service vendors that participate in an ET3 model as follows:

(1) In order to participate in this model for MA payment purposes, an ambulance service vendor shall submit:

(i) a copy of its ET3 application as submitted to CMMI;

(ii) a copy of the approval letter from CMMI; and

(iii) any other documentation deemed necessary by the department to confirm Medicare ET3 payments are being made to the vendor.

(2) The department established fees for services provided under an ET3 model, which may include value-based payments, shall be for:

- (i) transport to an alternative non-hospital destination, a base fee plus a mileage charge; and
- (ii) treatment in place without transport, a base fee without a mileage charge.

(3) Ambulance service vendors receiving MA payments in accordance with this subdivision shall submit to the department copies of all reports provided to CMMI during the course of the Medicare demonstration.

(4) Medicaid payments under the ET3 model will continue only for the duration of the Medicare demonstration approved by CMMI and will be terminated when either the demonstration period expires or upon termination of Medicare participation by CMMI at any time for any reason.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Social Services Law § 365-h broadly governs the provision and reimbursement of transportation costs in the Medicaid program. The Commissioner of Health (Commissioner) is responsible for prior authorization of transportation provided to Medicaid beneficiaries and for limiting coverage to transportation that is medically necessary and appropriate to obtain Medicaid covered services.

Social Services Law § 365-h(2) requires the Commissioner to use appropriate and economical resources in meeting the demand for transportation. Under this authority, the Commissioner may implement Medicaid participation in an Emergency Triage, Treat and Transport (ET3) model Medicare demonstration program and add transportation network companies (TNCs) as resources to meet demand for high quality transportation services.

Social Services Law § 365-h(4)(b) authorizes the Commissioner to contract with one or more transportation management brokers to provide cost-effective nonemergency transportation to Medicaid beneficiaries for periods on and after April 1, 2021. Under this contract, the transportation management broker will be responsible for establishing fees to reimburse enrolled Medicaid transportation providers.

Public Health Law § 201(1)(v) requires the Department of Health (Department) to act as the single State agency for Medicaid with the responsibility to supervise the plan required by

Title XIX of the federal Social Security Act and to adopt regulations as may be necessary to implement this plan.

Legislative Objectives:

The legislative objective is to provide a statutory framework under which the Commissioner is authorized to establish and implement standards for the provision and payment of Medicaid transportation, including (1) the ET3 model, which provides cost-effective emergency ambulance services to Medicaid beneficiaries by reimbursing treatment in place and/or transport to an alternative nonhospital destination, (2) authority to contract with a transportation management broker to implement the cost-effective delivery of nonemergency transportation to Medicaid beneficiaries, and (3) additional transportation resources, such as TNCs, to meet demand for high quality transportation services.

Needs and Benefits:

These regulatory amendments are needed to add TNCs to the list of transportation services authorized in the Medicaid program and implement and incorporate specific aspects of two Medicaid Redesign Team (MRT) II recommendations: (1) Medicaid participation in an ET3 model Medicare demonstration program, which provides an alternative to hospital emergency department care for Medicaid beneficiaries otherwise transported to the hospital, and (2) contracting with a transportation management broker to provide cost effective nonemergency transportation to Medicaid beneficiaries.

These amendments authorize Medicaid transportation services to be provided by licensed TNCs; provide payment standards for emergency ambulance services provided by ET3 model participants that either treat a Medicaid beneficiary in place and/or transport a Medicaid beneficiary to an alternative nonhospital destination such as a primary care physician office or urgent care clinic; and incorporate changes in the Medicaid transportation program which will occur when nonemergency transportation services are provided and managed by one or more transportation management brokers while maintaining the provisions applicable to the current system.

Costs to Regulated Parties:

There are no costs imposed on regulated parties by these regulations because the amendments simply add TNCs to the list of authorized transportation services in the Medicaid program, provide Medicaid payment standards for emergency ambulance service providers that participate in an ET3 model, and incorporate Medicaid transportation program changes related to implementation of the transportation management broker.

Costs to the Administering Agencies, the State, and Local Governments:

Costs to administering agencies and the State associated with these amendments will be covered by existing State budget appropriations and anticipated federal financial participation. There are no costs imposed on local governments by these regulations because the amendments simply add TNCs to the list of authorized transportation services in the Medicaid program, provide Medicaid payment standards for emergency ambulance service providers that participate

in an ET3 model and incorporate Medicaid transportation program changes related to implementation of the transportation management broker.

Local Government Mandates:

The proposed regulations do not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

The proposed regulations impose minimal paperwork requirements on regulated parties that participate in an ET3 model demonstration program by requiring copies of applications and reports submitted to CMMI for Medicare purposes.

Duplication:

There are no other State or Federal requirements that duplicate, overlap, or conflict with the statute and the proposed regulations.

Alternatives:

As part of the MRT II deliberation process in making its recommendations to the Legislature regarding cost effective improvements to the Medicaid transportation program, the Department considered the alternatives of neither contracting with a transportation management broker to provide nonemergency transportation to Medicaid beneficiaries, nor participating in an ET3 model Medicare demonstration program. However, since both initiatives had the potential

to improve quality of care to Medicaid beneficiaries while creating a more efficient system for providing transportation, the Department supported the MRT II recommendations, and therefore, decided to propose the necessary amendments to 18 NYCRR § 505.10 to implement each of them. With regard to adding transportation network companies (TNCs) to the list of providers set forth in the definition of “transportation services” at 10 NYCRR section 505.10(b)(25), the Department considered adding these providers without a regulatory amendment under the current taxi/livery category of provider. However, TNC services are authorized under Article 44-B of the Vehicle and Traffic law and are not, in fact, the same as taxi/livery services. Therefore, for clarity and accuracy, the Department proposes this amendment to add TNCs to the definition of “transportation services.”

Federal Standards:

There are no minimum Federal standards regarding this subject.

Compliance Schedule:

These amendments shall be effective upon publication of the Notice of Adoption in the New York State Register.

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**STATEMENT IN LIEU OF
REGULATORY FLEXIBILITY ANALYSIS**

No regulatory flexibility analysis is required pursuant to section 202-b(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose any new reporting, record keeping or other compliance requirements on small businesses or local governments.

Cure Period:

Chapter 524 of the Laws of 2011 requires agencies to include a “cure period” or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one was not included. This regulation creates no new penalty or sanction. Hence, a cure period is not necessary.

STATEMENT IN LIEU OF
RURAL AREA FLEXIBILITY ANALYSIS

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on rural areas, and it does not impose any new reporting, record keeping or other compliance requirements on public or private entities in rural areas.

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

No job impact statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have an adverse impact on jobs and employment opportunities.