



Nonemergency Medical Transportation

February 2015



Prepared by

The Minnesota Department of Transportation
395 John Ireland Boulevard
Saint Paul, Minnesota 55155-1899

Phone: 651-296-3000

Toll-Free: 1-800-657-3774

TTY, Voice or ASCII: 1-800-627-3529

To request this document in an alternative format

Please call 651-366-4718 or 1-800-657-3774 (Greater Minnesota). You may also send an email to ADArequest.dot@state.mn.us.

Contents

Contents	3
Legislative Request.....	4
Summary.....	5
Introduction.....	6
Nonemergency Medical Transportation	6
Recommendations	11
Statute and Rule Changes.....	11
Conclusion	16

Legislative Request

This report is issued to comply with Laws of Minnesota 2014, chapter 312, article 24, section 45, subdivision 4.

Subd. 4. **Report by commissioner of transportation.**

On or before February 1, 2015, the commissioner of transportation shall report to the chairs and ranking minority members of the senate and house of representatives committees and divisions with jurisdiction over transportation and human services concerning implementing the nonemergency medical transportation services provisions. The report must contain recommendations of the commissioner of transportation concerning statutes, session laws, and rules that must be amended, repealed, enacted, or adopted to implement the nonemergency medical transportation services provisions. The recommendations must include, without limitation, the amount of the fee that would be required to cover the costs of Department of Transportation supervision of inspection and certification, as well as any needed statutory, rulemaking, or other authority to be granted to the commissioner of transportation.

The cost of preparing this report is under \$5,000.

Summary

In 2010, the Legislative Audit Commission directed the Office of the Legislative Auditor to evaluate medical nonemergency transportation for medical assistance recipients under the state's fee-for-service system.¹ In Minnesota, the Department of Human Services oversees the nonemergency medical transportation program for medical assistance recipients covered by its fee-for-service system. One of the key recommendations of the report required DHS to present a proposal to the 2012 legislature creating a single administrative structure for providing nonemergency medical transportation to fee-for-service medical assistance recipients.² DHS was directed to establish a Nonemergency Medical Transportation Advisory Council to assist in consolidating access and special transportation services into one administrative structure.³

As part of the advisory council's proposal to the 2012 Legislature, the advisory council recommended the creation of a permanent nonemergency medical transportation advisory committee to advise DHS on policy matters related to nonemergency medical transportation. Membership on the advisory committee would include legislators, providers, transportation coordinators, counties, and representatives from state agencies.⁴

During the 2014 Legislative Session, the advisory committee proposed language to make all nonemergency medical transportation providers subject to MnDOT's rules and operating standards for special transportation services.

At the time of proposal, neither DHS nor the advisory committee had an accurate estimate of how many additional nonemergency medical transportation providers would be subject to MnDOT's rules and operating standards, thus making it difficult for MnDOT to prepare a meaningful fiscal note. As such, part of what passed during the 2014 session was language creating a variance process for new nonemergency medical transportation providers.⁵ MnDOT will use information from the variance applications to estimate, as required by the legislative report, the cost of MnDOT supervision of inspection and certification of nonemergency medical transportation vehicles and providers.

¹Office of the Legislative Auditor, [Medical Nonemergency Transportation Evaluation Report, 1](#). The OLA evaluation did not assess how the Minnesota Department of Transportation performed its certification responsibilities related to special transportation providers.

² *Ibid*, 32.

³ Department of Human Services, *Non-Emergency Medical Transportation Report*, January 2012, 1.

⁴ [Minnesota Statutes 2012, 256B.0625, subd. 18\(c\) and 18\(d\)](#). The MnDOT representative on the NEMT Advisory Committee works in the transit office which does not directly regulate special transportation services.

⁵ See [Laws of Minnesota 2014, chapter 312, article 24, section 45](#). The variance is intended for providers who wish to provide NEMT services and who aren't already certified by MnDOT as of July 1, 2014.

Introduction

Nonemergency Medical Transportation

Overview

In the 1970s, the Legislature created special transportation services as a cost-effective option for transporting the elderly and disabled to and from medical facilities in nonemergency situations. The commissioner of transportation was directed to adopt standards for the operation of vehicles used to provide special transportation service to protect the health and safety of the individuals using that service. State law requires MnDOT to set and enforce standards regarding driver qualifications and training requirements, appropriate vehicle safety equipment, inspection and maintenance of vehicles, and minimum insurance requirements.⁶

MnDOT's Rules and Operating Standards for Special Transportation Services

The Minnesota Department of Transportation first adopted rules setting operating standards for special transportation services in 1981. The rules for special transportation services provided standards for driver qualifications and training, the equipping and maintaining of vehicles, vehicle inspections, and minimum insurance requirements. The law requires that certain providers of special transportation services comply with the standards and obtain an annual certificate of compliance from the commissioner of transportation.⁷

In 1987, the legislature received complaints that the operating standards did not give adequate direction to providers of special transportation services. In addition, there were charges that drivers occasionally operated vehicles in an unsafe manner. The legislature amended section 174.30 in 1987 and increased the commissioner's responsibilities with respect to the inspection of vehicles and certification of special transportation services.

The rules were updated in 1992 and again in 2004. In proposing amendments in 1992, the commissioner considered the impact of the rules on small businesses as the vast majority of special transportation providers at that time were "small businesses" as defined by law.⁸ Of the 204 STS providers with a current MnDOT certificate of compliance, 133 providers have five or fewer vehicles and would undoubtedly meet the definition of a "small business."⁹ In developing and amending the rules, the commissioner was also guided by the following language:

⁶ See [Laws of Minnesota 1979, Chapter 1, Section 28](#) and [Minnesota Statutes 2014 174.30, subdivision 2](#).

⁷ The standards only apply to providers who receive grants or other financial assistance from either the state or federal government to provide the service. The operating standards do not apply to special transportation provided by: (1) a common carrier operating on fixed routes and schedules; (2) a volunteer driver using a private automobile; (3) a school bus as defined in section 169.011, subd. 71; or (4) an emergency ambulance regulated under chapter 144. [Minnesota Statutes 2014, 174.30, subd. 1\(a\)](#).

⁸ Minnesota Statutes 1992, 14.115, subd. 1. (Repealed 1995 chapter 233 article 2 section 57).

⁹ [Minnesota Statutes 2014, 645.445, subd. 2](#).

“The commissioner, as far as practicable, consistent with the purpose of the standards, shall avoid adoption of standards that unduly restrict any public or private entity from providing special transportation service because of the administrative or other cost of compliance.”¹⁰

Department of Human Services—Medical Transportation Services Program and Role

The federal government requires states to provide Medicaid recipients with nonemergency medical transportation using the least expensive type of appropriate transportation. Although transportation services are federally mandated, states have wide latitude in how to administer services. In Minnesota, the DHS oversees the state’s public assistance health care program and uses two separate categories of nonemergency medical transportation covered by medical assistance: access and special. Although access and special transportation share the same goal—to transport medical assistance recipients to and from medical appointments—they differ in terms of recipient eligibility, program administration and types of transportation available.

“Access” transportation is available to all medical assistance recipients. DHS defines access transportation to include:

- vehicles owned by recipients, family, friends, and volunteers
- public transit
- private or nonprofit taxi-style vehicles¹¹

Counties are primarily responsible for access transportation, and they vary widely in how they administer the program and the types of transportation available in their communities. The counties are not required to report the number of Access Transportation Service providers in each county, so the total number of ATS providers in the state is unknown. Historically, access transportation providers have not been subject to MnDOT’s rules and operating standards.

“Special” transportation is only available to medical assistance recipients who have a physical or mental impairment which prohibits them from safely using access transportation. MnDOT certification is a requirement of being an eligible Special Transportation Service provider through DHS. Special transportation drivers must provide certain “driver-assisted services,” including helping recipients into and out of medical facilities.¹² Since 2005, DHS has contracted with a vendor to conduct level of need assessments to determine whether medical assistance recipients are eligible for STS. Transportation providers submit bills directly to DHS for reimbursement.

¹⁰ [Minnesota Statutes 2014, 174.30, subd. 2\(a\).](#)

¹¹ Office of the Legislative Auditor, [Medical Nonemergency Transportation Evaluation Report, 5](#). The term “taxi-style vehicle” refers to cars and vans operated by private companies, nonprofit groups, or public agencies.

¹² [Minnesota Statutes 2014, 256B.0625, subd. 17\(f\).](#)

Office of the Legislative Auditor Report and Recommendations

In fiscal year 2010, Minnesota spent about \$38 million on nonemergency medical transportation for medical assistance recipients covered by the state's fee-for-service system.¹³ Over the last several years, the state's approach for providing transportation assistance to recipients served by its fee-for-service system has frequently changed, and in 2010, the Legislative Audit Commission directed the Office of the Legislative Auditor to evaluate nonemergency medical transportation.

In its February 2011 report, the Office of the Legislative Auditor noted that Minnesota has two separate administrative structures for nonemergency medical transportation, "access" and "special," which are redundant and confusing.¹⁴ The Legislature made many changes to the nonemergency medical transportation program over the last decade, but DHS has not significantly changed its special transportation rules since 1987.¹⁵

One of the report's key recommendations was that the legislature should require DHS, with input from interested parties, to present a proposal to the 2012 Legislature creating a single administrative structure for nonemergency medical transportation.¹⁶ The OLA found consolidating access and special transportation into a single administrative structure would lessen confusion, enhance coordination and improve accountability.¹⁷

Nonemergency Medical Transportation Advisory Committee

The legislatively created Nonemergency Medical Transportation Advisory Council recommended the creation of a permanent Nonemergency Medical Transportation Advisory Committee. Initially, the advisory committee was responsible for advising the commissioner of human services and making recommendations on:

- The development of, and periodic updates to a policy manual for nonemergency medical transportation services;
- Policies to prevent waste, fraud and abuse, and to improve the efficiency of the nonemergency medical transportation system
- Other issues identified in the 2011 evaluation report by the Office of the Legislative Auditor on medical nonemergency transportation.¹⁸

The NEMT program is governed by a policy manual developed by the NEMT Advisory Committee. However, it is unclear whether MnDOT is subject to the policy manual, nor is there authority given to MnDOT to enforce any of the provisions in the manual.

¹³ Office of the Legislative Auditor, [Medical Nonemergency Transportation Evaluation Report, 13.](#)

¹⁴ *Ibid*, 19.

¹⁵ *Ibid*, 21.

¹⁶ *Ibid*, 32.

¹⁷ *Ibid*, 33.

¹⁸ [Minnesota Statutes 2013, 256B.0625, subd. 18c\(b\).](#)

In 2014, Minn. Statutes section 256B.0625, subds. 18c and 18d were amended regarding the duties, membership, and expiration date of the nonemergency medical transportation advisory committee.¹⁹

New Language

During the 2014 Legislative Session, the NEMT Advisory Committee sponsored a bill authored by Senator Sheran and Representative Norton. The language passed and states, in part,

“‘Nonemergency medical transportation service’ means motor vehicle transportation provided by a public or private person that serves Minnesota health care program beneficiaries who do not require ambulance service, as defined in section 144E.001, subdivision 3, to obtain covered medical services. Nonemergency medical transportation service includes, but is not limited to, special transportation service, defined in section 174.29, subdivision 1.”²⁰

“All nonemergency medical transportation providers must comply with the operating standards for special transportation service as defined in sections 174.29 to 174.30 and Minnesota Rules, chapter 8840...”²¹ or apply for a variance through the DHS.

As of January 6, 2015, DHS received variance applications for 11 additional providers for a total of 780 vehicles and 842 drivers. The information regarding new NEMT providers received on the variance applications serves as an estimate for the purposes of this report. It should be noted that the variance application cannot predict fluctuations in provider or vehicle numbers. Additionally, although the variances are set to expire Feb. 1, 2016, there is no set date at which point DHS will no longer accept applications, meaning the results may continue to change.

¹⁹ [Laws of Minnesota 2014, chapter 312, article 24, sections 30-31.](#)

²⁰ [Minnesota Statutes 2014, 256B.0625, subdivision 17\(a\)](#)

²¹ [Minnesota Statutes 2014, 256B.0625, subdivision 17\(c\)](#)

MnDOT Special Transportation Services Program

“Special transportation service” means motor vehicle transportation provided on a regular basis by a public or private entity or person that is designed exclusively or primarily to serve individuals who are elderly or disabled and who are unable to use regular means of transportation but do not require ambulance service, as defined in section 144E.001, subdivision 3.²²

An individual interested in providing special transportation services must first submit an application for a certificate of compliance to MnDOT.²³ A person can’t provide special transportation service without a current annual certificate of compliance issued by the commissioner [of transportation]. No vehicle may be used to provide special transportation service until it has been inspected and displays a valid decal.²⁴

As of Jan. 6, 2015, there are 204 providers and 2,293 vehicles with active MnDOT issued STS certificates.

The commissioner will inspect or provide for the inspection of each vehicle at least annually, and may conduct random, unannounced inspections, and may inspect a vehicle upon receipt of a complaint about the condition of the vehicle or its equipment.²⁵ MnDOT has nine inspectors who are trained and certified to perform STS vehicle inspections and provider audits. Six of the nine inspectors spend approximately 25 percent of their time on STS-related work and three of the nine inspectors spend approximately 50 percent of their time on STS-related work.

When a provider is found in violation of the rules and the violation is not likely to cause a breakdown or accident, the provider must be given an opportunity to correct the violation. After 15 days, the commissioner may conduct an inspection to determine whether the violation has been corrected. If the violation has not been corrected, there are several enforcement options MnDOT can take against the provider depending on the nature of the violation, including suspension, revocation or cancellation.²⁶ The current ratings given for MnDOT inspections are satisfactory, conditional and unsatisfactory. The ratings have improved over the past several years to a point where a satisfactory rating has been given in the mid-to-high 90th percentile to all providers reviewed.

²² [Minnesota Statutes 2014, 174.29, subdivision 1](#) and [Minnesota Rules, Part 8840.5100, subpart 17](#).

²³ [Minnesota Rules, Parts 8840.5400](#) and [8840.5500](#).

²⁴ [Minnesota Rules, Part 8840.5400, subp. 1](#).

²⁵ [Minnesota Statutes 2014, 174.30, subd. 4\(a\)](#) and [Minnesota Rules, Part 8840.5700, subp. 1](#).

²⁶ [Minnesota Rules, Part 8840.5800](#).

Recommendations

The language in the legislative request requires the commissioner of transportation to provide the legislature with recommendations regarding:

- statute and rule changes
- the amount of the fee needed to cover the costs of the program
- any rulemaking or other authority.

Statute and Rule Changes

In its report, the Office of the Legislative Auditor noted that separate special transportation arrangements have been in place in Minnesota for more than three decades. The report further noted that moving to a consolidated structure would not be easy, would require careful planning, and because the definition of special transportation is used in other parts of state law, any statutory changes would need to be examined to prevent unintended consequences.²⁷

The commissioner of transportation reviewed Minnesota statutes regarding special transportation and Minnesota Rules Chapter 8840, and identified several places where there are potential inconsistencies as the respective statute or rule would apply to NEMT providers. It is our recommendation that the legislature determine if it is appropriate for NEMT providers, who transport medical assistance recipients, to be subject to rules designed to protect the elderly and disabled, and do not account for the differences in ridership between the MnDOT and DHS programs.

- [Minn. Statutes section 256B.0625, subd. 18e](#)
This statute states in part, “In coordination with the Department of Transportation, the commissioner [of human services] shall develop and authorize a Web-based single administrative structure and assessment tool, which must operate 24 hours a day, seven days a week, to facilitate the enrollee assessment process for nonemergency medical transportation services.” The policy manual states that MnDOT will have a NEMT portal on its website.

MnDOT has not been consulted on this matter and as such does not know what a “NEMT portal” entails. MnDOT will work with DHS to gather more information regarding this issue, specifically addressing the timeframe and estimated costs. The commissioner is willing to put a hyperlink on MnDOT’s STS Webpage that would link users to DHS’s NEMT Webpage.

²⁷ Office of the Legislative Auditor, [Medical Nonemergency Transportation Evaluation Report, 33](#)

- [Minn. Rules, Part 8840.5100, subp. 5a](#) **Definitions**

“Driver” means a person who transports passengers in special transportation service vehicles, but who is not a volunteer driver. A volunteer driver is one who transports passengers in a private automobile, and is not subject to the direction or control of a provider. (emphasis added).

The NEMT Policy Manual states in part that this policy [manual] is to establish driver and vehicle guidelines for nonemergency medical transportation providers. This policy does not apply to a volunteer driver using a private automobile.

MnDOT’s understanding is that NEMT relies heavily on volunteer drivers, especially in outstate areas. If volunteer drivers use his/her own vehicle, and if he/she is at the direction or control of a provider (i.e. being assigned rides), he/she would not be a volunteer driver under MnDOT rules and would be subject to all the rules and operating standards. There are providers who use volunteer drivers, and assign the volunteers rides, but allow the volunteer to decline an assignment. Whether the ability to decline an assignment makes a volunteer driver no longer subject to the direction or control of a provider is unclear and in need of interpretation. Losing volunteer drivers because a driver does not want to be subject to the rules and operating standards could be an unintended consequence that the commissioner of transportation recommends the legislature avoid.

- [Minnesota Rules, Part 8840.5400](#) **Certificate of Compliance**

No vehicle may be used to provide special transportation service until it has been inspected as required by part 8840.5700 and Minnesota Statutes, section 299A.14. In order for MnDOT to be able to inspect 730 new vehicles, it would require either a phase-in plan or a session law to allow extra time for inspections past the date of enactment.

- [Minn. Rules, Part 8840.5450](#) **Restrictions on Name and Description of Service**

A special transportation service provider subject to Minn. Statutes, section 174.30, shall not use, in its name or in advertisements or information describing the service, the words “medical,” “emergency,” “life support,” “ambulance,” or other forms of those words or any other similar words that offer, suggest, or imply the availability of ambulance service.

If a nonemergency medical transportation provider used the words or variations of the “medical” or “emergency” in its name, the provider would be in violation of this rule part. The commissioner recommends that the legislature determine whether this rule part should be repealed or if nonemergency medical transportation providers should be exempt from this provision.

- [Minn. Rules, Part 8840.5900](#) **Driver Qualifications**

Before using or hiring a driver to provide special transportation service, a provider must ensure the driver meets all of the qualifications in this rule part. The policy manual states that protected mode drivers must have a “DOT NEMT driver certification.” Under the existing rules and operating standards, MnDOT does not certify drivers. MnDOT certifies that

vehicles are safe to use for special transportation service, and that providers are following the rules and standards they are held to. MnDOT does not have any authority to enforce the DOT NEMT driver certification provision.

The NEMT committee would like to see strengthened driver qualification requirements, and may seek to use DHS's background studies unit to do so.

- **[Minn. Rules, Part 8840.5910](#) Driver and Attendant Training Requirement**

Both drivers and attendants must attend certain required training. Subjecting all NEMT providers to this rule creates two potential problems.

1. The DHS variance applications indicate that there will be 842 new drivers subject to this rule. Currently there are issues with access to certified trainers in outstate Minnesota who provide the training required under this rule. Providers who are unable to complete the required training within the designated timeframe will be unable to provide transportation services or will have to request a variance from MnDOT's Office of Freight and Commercial Vehicle Operations²⁸.
2. One of the modes of transport covered by the policy manual is "Protected Transport," which is provided to clients who received a pre-screening deeming other forms of transportation as inappropriate and who require enhanced driver assistance.²⁹ The policy manual requires protected transport drivers to complete an additional eight hours every three years of NEMT protected transport policy and procedures training and mental illnesses and de-escalation methods for crisis situations training. This type of training is not required by existing MnDOT STS rules. MnDOT does not have any authority to enforce these provisions.

- **[Minn. Rules, Part 8840.5925](#) Vehicle Equipment**

This rule details the equipment that must be present in each STS vehicle. The requirements in this rule vary from some of the requirements in the policy manual. Protected transport vehicles must have a safety lock and glass or Plexiglas separator with the ability for the driver to communicate with the passenger. Protected transport vehicles must have a videotape or digital video recorder. Neither of these features is required by the existing MnDOT STS rules. MnDOT does not have any authority to enforce these provisions.

²⁸ [Minnesota Rules, Part 8840.6300 details the process and legal requirements of a variance.](#)

²⁹ Department of Human Services, Temporary Policy Manual: Nonemergency Medical Transportation.

Fee

MnDOT is required to include in this report a recommendation for “the amount of the fee that would be required to cover the costs of Department of Transportation supervision of inspection and certification...” The information used for the purpose of estimating the fee needed to cover the costs of MnDOT inspection and certification is tenuous.

Under Minn. Statutes section 174.30, MnDOT is required to inspect every STS vehicle and conduct a safety evaluation of each provider at least once each year. STS providers currently pay no fee for inspections or credentials.

If MnDOT were given the responsibility of inspecting every vehicle used to provide nonemergency medical transportation and evaluating every provider each year, the fee needed to cover the cost could be determined by calculating how many additional inspectors are needed to do the work and then divide the total amount of employee costs (salary, benefits, MnDOT vehicle, etc.) by the number of vehicles. For example, using the numbers from the variance applications, MnDOT would need to hire one additional FTE.³⁰ The classification of employee required to do this work is a Transportation Program Specialist 2. The salary range for a TPS 2 is \$40,883-\$59,633 and midrange with benefits is \$64,350. In addition to the salary, there is a cost of approximately \$7,000 per employee for miscellaneous work items such as uniform, cell phone, computer, printer, training, out-state travel, etc. Each employee would need a MnDOT vehicle which costs approximately \$31,115.70 (\$28,000, plus \$3,115.70, the cost for the 800MHz two-way radio).³¹ Depending on the salary amount, the per vehicle inspection fee for a pool of 780 vehicles would be approximately \$90 to \$115.

It is our recommendation that the legislature determine whether NEMT providers should pay a fee or if they should be treated like current STS providers and pay no fee. If the legislature determines NEMT providers should pay a fee, language for an appropriation and authorizing MnDOT to charge a fee would be needed.

Additionally, the commissioner recommends the legislature consider whether charging a fee would be in conflict with language in Minn. Statutes section 174.30 which states “The commissioner, as far as practicable, consistent with the purpose of the standards, shall avoid adoption of standards that unduly restrict any public or private entity from providing special transportation service because of the administrative or other cost of compliance.”

Rulemaking Authority

Depending on the extent and substance of changes required, MnDOT may need additional rulemaking authority to write rules that specifically apply to providers of nonemergency medical transportation. The commissioner recommends the legislature consider the possible implications of two separate sets of rules as there are providers who transport medical assistance recipients and non-medical assistance recipients and may do so at the same time or in the same day and would be

³⁰ 780 vehicles is roughly one-third of the vehicles that have a current MnDOT issued certificate of compliance. MnDOT currently has approximately three FTEs performing STS-related work.

³¹ The costs for miscellaneous items and a MnDOT vehicle are incurred roughly every five years and as such have been prorated in the fee calculation.

subject to both sets of rules. Being subject to two sets of rules could be challenging for the providers and also from an enforcement standpoint.

Conclusion

The Minnesota Department of Transportation is responsible for regulating special transportation providers and vehicles through a yearly certification and inspection program. MnDOT uses the definition of STS found in statute and rule to determine whether the rules and operating standards apply to a given carrier. This determination is independent of the DHS's reimbursement and provider enrollment determinations and DHS may certainly make STS certification by MnDOT a requirement to be eligible as an STS provider.

The issue is there are an unknown number of providers who have been regulated by the counties, and not subject to MnDOT rules and operating standards, who, according to recent changes in DHS statutes, are now subject to the existing STS rules and operating standards. Trying to mesh the two programs will necessarily involve statutory and rule changes, or policy decisions to avoid unintended consequences.