

## **BILL ANALYSIS**

Senate Research Center

H.B. 1576  
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Health & Human Services  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Concerns have been raised about a reported gap in transportation services provided under the state Medicaid program in situations where a recipient's need for transportation to and from a health care service appointment cannot be met due to difficulties in scheduling the transportation within the required time frame. H.B. 1576 seeks to provide for a more efficient model for the delivery of certain nonmedical transportation services through the inclusion of Transportation Network Companies (TNCs) in the Texas Medical Transportation Program (MTP)—a regional, managed transportation program administered by the Health and Human Services Commission.

The bill also creates a new defined category of nonmedical transportation services (NMT) that will be made available under the Texas Medicaid managed care program and reimbursed through managed care organization (MCO) capitation rates. Under the new delivery model, MCOs would be able to schedule transportation for patients in instances where they are unable to give advance notice, including the onset of a sudden illness or when a patient is discharged from the hospital early.

Finally, H.B. 1576 establishes a provider participation safety net program to provide support for ground transport emergency medical services delivered to Texas Medicaid clients.

H.B. 1576 amends current law relating to the delivery of certain medical transportation services, including under Medicaid and certain other health and human services programs; imposes a mandatory payment; and authorizes an administrative penalty.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 3 (Section 531.024142), SECTION 8 (Section 773.310, Government Code), and SECTION 9 (Section 32.080, Human Resources Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 531.02414(a), Government Code, by amending Subdivision (1) and adding Subdivisions (1-a) and (3), as follows:

(1) Defines "medical transportation program" to mean the program that provides nonemergency transportation services, rather than nonemergency services to and from covered health benefit services based on medical necessity, to recipients under Medicaid, the children with special health care needs program, and the transportation for indigent cancer patients program, who have no other means of transportation.

(1-a) Defines "nonemergency transportation service."

(3) Defines "transportation network company."

SECTION 2. Amends Section 531.02414, Government Code, by amending Subsection (f) and adding Subsections (i), (j), (k), (l), and (m), as follows:

(f) Makes a nonsubstantive change. Requires the Health and Human Services Commission (HHSC), except as provided by Subsection (j), to require compliance with the rules adopted under Subsection (e) (relating to requiring the executive commissioner of HHSC to adopt certain rules to ensure the safe and efficient provision of nonemergency transportation services under the medical transportation program by regional contracted brokers and subcontractors of regional contracted brokers) in any contract entered into with a regional contracted broker to provide nonemergency transportation services under the medical transportation program.

(i) Prohibits emergency medical services personnel and emergency medical services vehicles, as those terms are defined by Section 773.003 (Definitions), Health and Safety Code, from providing nonemergency transportation services under the medical transportation program.

(j) Authorizes a regional contracted broker to subcontract with a transportation network company to provide services under this section (Administration and Operation of Medical Transportation Program). Provides that a rule or other requirement adopted by the executive commissioner of HHSC (executive commissioner) under Subsection (e) does not apply to the subcontracted transportation network company or a motor vehicle operator who is part of the company's network.

(k) Authorizes HHSC or a regional contracted broker that subcontracts with a transportation network company under Subsection (j) to require the transportation network company or a motor vehicle operator who provides services under this section to be periodically screened against the list of excluded individuals and entities maintained by the Office of Inspector General of the United States Department of Health and Human Services (HHS).

(l) Provides that, notwithstanding any other law, a motor vehicle operator who is part of the network of a transportation network company that subcontracts with a regional contracted broker under Subsection (j) and who satisfies the driver requirements in Section 2402.107 (Driver Requirements), Occupations Code, is qualified to provide services under this section. Prohibits HHSC and the regional contracted broker from imposing any additional requirements on a motor vehicle operator who satisfies the driver requirements in Section 2402.107, Occupations Code, to provide services under this section.

(m) Authorizes a motor vehicle operator who provides services under this section, for purposes of this section and notwithstanding Section 2402.111(a)(2)(A) (relating to requiring a transportation network company to, for each motor vehicle used by a driver to provide digitally prearranged rides through the company's digital networks, confirm the vehicle has four doors), Occupations Code, to use a wheelchair-accessible vehicle equipped with a lift or ramp that is capable of transporting passengers using a fixed-frame wheelchair in the cabin of the vehicle if the vehicle otherwise meets the requirements of Section 2402.111 (Vehicle Requirements), Occupations Code.

SECTION 3. Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.024142, as follows:

Sec. 531.024142. NONMEDICAL TRANSPORTATION SERVICES UNDER MEDICAID. (a) Defines "managed care organization," "nonmedical transportation service," "transportation network company," and "transportation vendor" for purposes of this section.

(b) Requires the executive commissioner to adopt rules regarding the manner in which nonmedical transportation services are authorized to be arranged and provided.

(c) Requires the rules to require a managed care organization to create a process to:

(1) verify that a passenger is eligible to receive nonmedical transportation services;

(2) ensure that nonmedical transportation services are provided only to and from covered health care services in areas in which a transportation network company operates;

(3) refer a Medicaid recipient enrolled in a managed care plan offered by the managed care organization to the medical transportation program described by Section 531.02414 if:

(A) by rule the managed care organization is not responsible for providing transportation services; or

(B) the recipient requires an accessible or specialized vehicle that is not available through a transportation vendor; and

(4) ensure the timely delivery of nonmedical transportation services to a Medicaid recipient, including by setting reasonable service response goals.

(d) Prohibits a rule adopted in accordance with Subsection (c)(4) from penalizing a managed care organization that contracts with a transportation vendor under this section if the vendor is unable to provide nonmedical transportation services to a Medicaid recipient after the managed care organization has made a specific request for those services.

(e) Requires the rules to require a transportation vendor to, before permitting a motor vehicle operator to provide nonmedical transportation services:

(1) confirm that the operator:

(A) is at least 18 years of age;

(B) maintains a valid driver's license issued by this state, another state, or the District of Columbia; and

(C) possesses proof of registration and automobile financial responsibility for each motor vehicle to be used to provide nonmedical transportation services.

(2) conduct, or cause to be conducted, a local, state, and national criminal background check for the operator that includes the use of:

(A) a commercial multistate and multijurisdiction criminal records locator or other similar commercial nationwide database; and

(B) the national sex offender public website maintained by the United States Department of Justice (DOJ) or a successor agency;

(3) confirm that any vehicle to be used to provide nonmedical transportation services:

(A) meets the applicable requirements of Chapter 548 (Compulsory Inspection of Vehicles), Transportation Code; and

(B) except as provided by Subsection (j), has at least four doors; and

(4) obtain and review the operator's driving record.

(f) Prohibits the rules from permitting a motor vehicle operator to provide nonmedical transportation services if the operator:

(1) has been convicted in the three-year period preceding the issue date of the driving record obtained under Subsection (e)(4) of:

(A) more than three offenses classified by the Department of Public Safety of the State of Texas as moving violations; or

(B) one or more of the following offenses:

(i) fleeing or attempting to elude a police officer under Section 545.421 (Fleeing or Attempting to Elude Police Officer; Offense), Transportation Code;

(ii) reckless driving under Section 545.401 (Reckless Driving; Offense), Transportation Code;

(iii) driving without a valid driver's license under Section 521.025 (License to Be Carried and Exhibited on Demand; Criminal Penalty), Transportation Code; or

(iv) driving with an invalid driver's license under Section 521.457 (Driving While License Invalid), Transportation Code;

(2) has been convicted in the preceding seven-year period of any of the following:

(A) driving while intoxicated under Section 49.04 (Driving While Intoxicated) or 49.045 (Driving While Intoxicated With Child Passenger), Penal Code;

(B) use of a motor vehicle to commit a felony;

(C) a felony crime involving property damage;

(D) fraud;

(E) theft;

(F) an act of violence; or

(G) an act of terrorism; or

(3) is found to be registered in the national sex offender public website maintained by DOJ or a successor agency.

(g) Prohibits HHSC from requiring:

(1) a motor vehicle operator to enroll as a Medicaid provider to provide nonmedical transportation services; or

(2) a managed care organization to credential a motor vehicle operator to provide nonmedical transportation services.

(h) Authorizes HHSC or a managed care organization that contracts with a transportation vendor to require the transportation vendor or a motor vehicle operator who provides services under this section to be periodically screened

against the list of excluded individuals and entities maintained by the Office of Inspector General of HHS.

(i) Provides that, notwithstanding any other law, a motor vehicle operator who is part of a transportation network company's network and who satisfies the driver requirements in Section 2402.107, Occupations Code, is qualified to provide nonmedical transportation services. Prohibits HHSC and a managed care organization from imposing any additional requirements on a motor vehicle operator who satisfies the driver requirements in Section 2402.107, Occupations Code, to provide nonmedical transportation services.

(j) Authorizes a motor vehicle operator who provides services under this section, for purposes of this section and notwithstanding Section 2402.111(a)(2)(A), Occupations Code, to use a wheelchair-accessible vehicle equipped with a lift or ramp that is capable of transporting passengers using a fixed-frame wheelchair in the cabin of the vehicle if the vehicle otherwise meets the requirements of Section 2402.111, Occupations Code.

SECTION 4. Amends Section 533.00257(a), Government Code, by adding Subdivision (2-a) to define "transportation network company."

SECTION 5. Amends Section 533.00257, Government Code, by amending Subsections (d) and (g) and adding Subsections (k), (l), (m), and (n), as follows:

(d) Makes a nonsubstantive change. Requires a managed transportation organization that participates in the medical transportation program, except as provided by Subsections (k) and (m), to attempt to contract with medical transportation providers that meet certain standards.

(g) Makes a nonsubstantive change. Requires HHSC, except as provided by Subsections (k) and (m), to require that managed transportation organizations and providers participating in the medical transportation program meet minimum quality and efficiency measures as determined by HHSC.

(k) Authorizes a managed transportation organization to subcontract with a transportation network company to provide services under this section (Delivery of Medical Transportation Program Services). Provides that a rule or other requirement adopted by the executive commissioner under this section or Section 531.02414 does not apply to the subcontracted transportation network company or a motor vehicle operator who is part of the company's network. Prohibits HHSC or the managed transportation organization from requiring a motor vehicle operator who is part of the subcontracted transportation network company's network to enroll as a Medicaid provider to provide services under this section.

(l) Authorizes HHSC or a managed transportation organization that subcontracts with a transportation network company under Subsection (k) to require the transportation network company or a motor vehicle operator who provides services under this section to be periodically screened against the list of excluded individuals and entities maintained by the Office of Inspector General of HHS.

(m) Provides that, notwithstanding any other law, a motor vehicle operator who is part of the network of a transportation network company that subcontracts with a managed transportation organization under Subsection (k) and who satisfies the driver requirements in Section 2402.107, Occupations Code, is qualified to provide services under this section. Prohibits HHSC and the managed transportation organization from imposing any additional requirements on a motor vehicle operator who satisfies the driver requirements in Section 2402.107, Occupations Code, to provide services under this section.

(n) Authorizes a motor vehicle operator who provides services under this section, for purposes of this section and notwithstanding Section 2402.111(a)(2)(A), Occupations Code, to use a wheelchair-accessible vehicle equipped with a lift or ramp that is capable of transporting passengers using a fixed-frame wheelchair in the cabin of the vehicle if the vehicle otherwise meets the requirements of Section 2402.111, Occupations Code.

SECTION 6. Amends Subchapter A, Chapter 533, Government Code, by adding Section 533.00259, as follows:

Sec. 533.00259. DELIVERY OF NONMEDICAL TRANSPORTATION SERVICES. (a) Defines "nonmedical transportation service" and "transportation vendor" for purposes of this section.

(b) Requires HHSC to:

(1) not later than January 1, 2020, designate at least four managed care service areas, two of which are required to be urban service areas, and require each managed care organization that contracts with HHSC to provide health care services to recipients in those areas to arrange for the provision of nonmedical transportation services;

(2) not later than July 1, 2020, designate at least eight managed care service areas, four of which are required to be urban service areas, and require each managed care organization that contracts with HHSC to provide health care services to recipients in those areas to arrange for the provision of nonmedical transportation services; and

(3) not later than January 1, 2021, require each managed care organization that contracts with HHSC to provide health care services to recipients to arrange for the provision of nonmedical transportation services.

(b-1) Authorizes a managed care organization to contract with a transportation vendor or other third party to arrange for the provision of nonmedical transportation services. Requires a third party, if a managed care organization contracts with a third party that is not a transportation vendor to arrange for the provision of nonmedical transportation services, to contract with a transportation vendor to deliver the nonmedical transportation services.

(c) Requires a managed care organization that contracts with a transportation vendor or other third party to arrange for the provision of nonmedical transportation services to ensure the effective sharing and integration of service coordination, service authorization, and utilization management data between the managed care organization and the transportation vendor or third party.

(d) Prohibits a managed care organization from requiring:

(1) a motor vehicle operator to enroll as a Medicaid provider to provide nonmedical transportation services; or

(2) the credentialing of a motor vehicle operator to provide nonmedical transportation services.

(e) Authorizes a motor vehicle operator who provides services under this section, for purposes of this section and notwithstanding Section 2402.111(a)(2)(A), Occupations Code, to use a wheelchair-accessible vehicle equipped with a lift or ramp that is capable of transporting passengers using a fixed-frame wheelchair in the cabin of the vehicle if the vehicle otherwise meets the requirements of Section 2402.111, Occupations Code.

SECTION 7. Amends Section 773.003, Health and Safety Code, by adding Subdivision (5) to define "commission" as HHSC.

SECTION 8. Amends Chapter 773, Health and Safety Code, by adding Subchapter J, as follows:

**SUBCHAPTER J. TEXAS AMBULANCE RESPONSE SAFETY NET PROGRAM**

Sec. 773.301. **PURPOSE.** Provides that the purpose of this subchapter is to authorize HHSC to establish and administer the Texas ambulance response safety net program as a self-funded ground ambulance service provider participation program for ground ambulance service providers in accordance with this subchapter.

Sec. 773.302. **DEFINITIONS.** Defines "average commercial rate" and "net patient revenue" for purposes of this subchapter.

Sec. 773.303. **APPLICABILITY.** (a) Provides that this subchapter applies only to a ground ambulance service provider that is:

- (1) an emergency medical services provider as defined by Section 773.003 and licensed under this chapter (Emergency Medical Services);
- (2) a nonpublic, nonfederal provider of ground ambulance services; and
- (3) a participant in the state Medicaid program.

(b) Provides that this subchapter does not apply to:

- (1) an entity that provides only nonemergency ground ambulance services;
- (2) a state or local governmental entity that provides ground ambulance services; or
- (3) an entity that is required to hold a license under Section 773.045(b) (relating to providing that a rotor or fixed-wing aircraft and staff based in this state and used to transport a patient by stretcher and that holds itself out as an air ambulance service is required to be licensed by DSHS).

(c) Prohibits the executive commissioner from modifying the applicability of this subchapter in an effort to comply with the requirements of 42 C.F.R. Section 433.68.

Sec. 773.304. **MANDATORY PAYMENTS BASED ON NET PATIENT REVENUE.**

(a) Requires HHSC, except as otherwise provided by this subchapter, to require an annual mandatory payment to be assessed on each ground ambulance service provider's net patient revenue related to the provision of emergency ground ambulance services. Provides that the mandatory payment is to be collected quarterly. Requires HHSC to update the amount of the mandatory payment at least annually.

(b) Requires HHSC to uniformly and consistently impose the mandatory payment on each ground ambulance service provider and use the same formula for each provider in calculating the mandatory payment.

(c) Prohibits the total amount of all mandatory payments for the state fiscal year in which the mandatory payments are imposed from exceeding:

- (1) the state portion, excluding any federal financial participation, of the cost of reimbursement enhancements provided in this subchapter that are directly attributable to reimbursements to ground ambulance service providers; or

(2) an amount equal to six percent of the net operating revenue of all ground ambulance service providers for the provision of emergency ground ambulance services, or an amount otherwise permitted by federal law, provided that the maximum mandatory payment for a provider in any year is prohibited from exceeding the provider's net patient revenue, as reported by the provider, subject to Section 773.306(b).

(d) Requires HHSC, subject to the maximum amount prescribed by Subsection (c), to set the mandatory payment in an amount that in the aggregate generates sufficient revenue to cover the administrative expenses of HHSC for activities under this subchapter.

(e) Requires HHSC, not later than the 30th day before the end of each quarter, to issue to each ground ambulance service provider a notice of the amount of the mandatory payment required to be paid by the provider in the next quarter.

(f) Prohibits a ground ambulance service provider from adding a mandatory payment required under this subchapter as a surcharge to a patient or a third-party payor.

(g) Requires a ground ambulance service provider to make mandatory payments only in the manner provided by this subchapter.

**Sec. 773.305. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS.**

(a) Requires HHSC, subject to Subsection (b), to collect a mandatory payment required under this subchapter.

(b) Requires HHSC to contract for the assessment and collection of mandatory payments under this subchapter.

**Sec. 773.306. REPORT; INSPECTION OF RECORDS.** (a) Requires HHSC to require a ground ambulance service provider to submit a report at least annually, but not more than quarterly, that includes information necessary to assist HHSC in making a determination on mandatory payments under this subchapter.

(b) Authorizes the executive commissioner to audit or inspect the records of a ground ambulance service provider to the extent necessary to ensure the accuracy of any data submitted to HHSC under this subchapter.

**Sec. 773.307. FAILURE TO SUBMIT TIMELY OR ACCURATE REPORT OR PAYMENT; AUDIT; ADMINISTRATIVE PROCEDURE.** (a) Authorizes HHSC to assess a reasonable penalty against a ground ambulance service provider, not to exceed 15 percent of the quarterly portion of the provider's mandatory payment, for failure to timely submit the quarterly portion of a mandatory payment or a report required under this subchapter.

(b) Authorizes HHSC, if a ground ambulance service provider submits an inaccurate report required under this subchapter, to conduct an audit of the provider's records and to require the provider to pay the cost of any audit expenses and related hearings.

(c) Provides that a penalty assessed under this section is in addition to any other penalties and remedies applicable under state or federal law.

(d) Authorizes HHSC, if a ground ambulance service provider refuses to submit a quarterly portion of a mandatory payment, to suspend all Medicaid payments to the provider until:

(1) the provider submits the quarterly portion of the mandatory payment and any associated penalties; or

(2) the provider and HHSC reach a negotiated settlement.

Sec. 773.308. TEXAS AMBULANCE RESPONSE SAFETY NET TRUST FUND. (a) Provides that the Texas ambulance response safety net trust fund is established as a trust fund to be held by the comptroller of public accounts of the State of Texas outside the state treasury and administered by HHSC as trustee.

(b) Provides that the trust fund consists of:

(1) all revenue from the mandatory payments required by this subchapter, including any administrative penalties and any interest attributable to delinquent payments; and

(2) the earnings of the fund.

(c) Authorizes money deposited to the trust fund to be used only to:

(1) provide reimbursements for ground ambulance services delivered to Medicaid recipients under a fee-for-service arrangement by a ground ambulance service provider to which this subchapter applies based on the provider's average commercial rate, including reimbursement enhancements to the statewide dollar amount rate used to reimburse ground ambulance service providers;

(2) pay the administrative expenses of HHSC solely for activities under this subchapter; and

(3) refund a portion of a mandatory payment collected in error from a provider.

(d) Requires all revenue from the mandatory payments required by this subchapter to be deposited in the trust fund.

(e) Prohibits money in the trust fund from being used to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111–148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111–152).

Sec. 773.309. INVALIDITY; FEDERAL FUNDS. Requires HHSC to stop collection of the mandatory payment and, not later than the 30th day after the date collection is stopped, return to each ground ambulance service provider, in proportion to the total amount paid by each provider compared to the total amount paid by all providers, any unspent money deposited to the credit of the trust fund, if:

(1) any provision of or procedure under this subchapter is held invalid by a final court order that is not subject to appeal;

(2) HHSC determines that the imposition of the mandatory payment and the expenditure of amounts collected as prescribed by this subchapter will not entitle the state to receive federal matching funds under the Medicaid program or will be inconsistent with the objectives described by Section 537.002(b)(7) (relating to requiring a certain waiver to be designed to allow flexibility in the use of state funds used to obtain federal matching funds, including allowing the use of intergovernmental transfers, certified public expenditures, costs not otherwise matchable, or other funds and funding mechanisms to obtain federal matching funds), Government Code; or

(3) HHSC determines that the amount of the mandatory payments collected would exceed the amount paid in increased Medicaid fee-for-service reimbursement

rates for services provided to individuals who are dually eligible for Medicaid and Medicare.

Sec. 773.310. RULES. Requires the executive commissioner to adopt rules necessary to implement this subchapter.

SECTION 9. Amends Subchapter B, Chapter 32, Human Resources Code, by adding Section 32.080, as follows:

Sec. 32.080. ENHANCED PAYMENT MODEL FOR CERTAIN AMBULANCE PROVIDERS. (a) Requires the executive commissioner, in consultation with ambulance providers, by rule to establish an enhanced payment model for reimbursing non-state operated public ambulance providers who provide ground emergency medical transportation services to recipients of medical assistance. Requires the enhanced payment model to be implemented under the Medicaid fee-for-service delivery model through supplemental payments and the Medicaid managed care delivery model through an enhanced reimbursement or payment rate.

(b) Prohibits HHSC from using general revenue to reimburse non-state operated public ambulance providers under or administer the enhanced payment model.

(c) Requires reimbursements made under the enhanced payment model to be:

(1) in addition to money appropriated to HHSC for reimbursing non-state operated public ambulance providers; and

(2) provided in a manner that maximizes the availability of federal money.

(d) Authorizes HHSC, under the enhanced payment model, to:

(1) receive and spend money from an intergovernmental transfer on:

(A) reimbursing non-state operated public ambulance providers; and

(B) covering the cost of establishing and administering the enhanced payment model; and

(2) as necessary, certify that reimbursements made under the enhanced payment model are public funds eligible for federal financial participation in accordance with the requirements of 42 C.F.R. Section 433.51.

SECTION 10. Requires the executive commissioner, as soon as practicable after the effective date of this Act, to establish the amount of the initial mandatory payment imposed under Subchapter J, Chapter 773, Health and Safety Code, as added by this Act, based on available net patient revenue information.

SECTION 11. Requires a state agency affected by any provision of this Act, if before implementing the state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, to request the waiver or authorization and:

(1) for a provision of Subchapter J, Chapter 773, Health and Safety Code, as added by this Act, to delay implementing that provision, including the collection of a mandatory payment, until the waiver or authorization is granted and begin implementing the provision on the date the waiver or authorization is granted; and

(2) for any other provision, authorizes the agency to delay implementing the provision until the waiver or authorization is granted.

SECTION 12. Requires the executive commissioner, as soon as practicable after the effective date of this Act, to adopt rules as necessary to implement the changes in law made by this Act.

SECTION 13. Effective date: upon passage or September 1, 2019.