

Mobility Action Plan Phase I Implementation Study

Assessing Human Service Transportation Coordination in California: A Legal and Regulatory Analysis

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INTRODUCTION

The intent of the California Legislature, as expressed in the Social Service Transportation Improvement Act is “to improve transportation service required by social service recipients by promoting the consolidation of social service transportation services” and thereby providing “more effective and cost efficient use of scarce resource dollars.”¹ To better accomplish this objective, the California Department of Transportation (Caltrans) Division of Mass Transportation (DMT), in 2006, oversaw the development of a Mobility Action Plan (MAP).

In keeping with its mission to “Improve Mobility Across California”, Caltrans seeks to develop and promote multiple modes of transportation, including mass transit as a meaningful alternative to automobiles. DMT administers State and Federal grant programs that provide funding for operating assistance and capital improvement programs for predominantly local transit agencies. The state-local partnership that arises from this relationship also creates a state technical assistance role in areas such as interagency coordination, where DMT seeks to assist local agencies to provide services in the most efficient and cost-effective way possible. The 2006 MAP led to the current Phase I Improvement Study, overseen by the MAP PAC.

The Mobility Action Plan Project Advisory Committee, or MAP PAC, is an embodiment of the state-local partnership DMT works best with. On the state side, Caltrans is joined by partners from the Health and Human Service Agency including a co-chair from the Department of Aging and representatives from the Department of Developmental Services and the Department of Social Services. Local representatives include members representing transit providers, human services organizations, consumers, advocates for the transportation disadvantaged, paratransit contractors, providers of human service transportation services and consultants whose specialty is coordination of services. Out of the wide diversity of views represented on the MAP PAC, Caltrans hopes to achieve findings that are technically sound and a consensus on findings and recommendations. To that end, the MAP PAC and its legislative subcommittee played a critical role in formulating this analysis.

Goal 2 of the MAP is “to address restrictive and duplicative laws, regulations and programs related to human services transportation-funding programs.” Thus, a necessary task of the consultant study work scope is to identify state and federal restrictive and duplicative laws and regulations that impede coordination and submit findings and recommendations addressing them to the Caltrans project manager. That is the purpose and goal of this report.

I. Study Overview

Under the direction of Caltrans Division of Mass Transportation (DMT), guided by the Mobility Action Plan Project Advisory Committee (MAP PAC) and in association with Judith Norman-Transportation Consultant (JNTC), the National Conference of State Legislatures (NCSL) researched and subsequently analyzed the relevant provisions of the United States Code, the Code of Federal Regulations, the California State Constitution, applicable California Codes, the California Code of Regulations and relevant case law to identify state and federal laws and

regulations related to human services transportation coordination programs. The research and analysis was conducted for the purpose of identifying restrictive or duplicative laws as required by the contract work scope.

The work process to date and subsequent recommendations relative to the work effort are discussed in detail below.

II. Methodology

NCSL's work activities conducted in development of this draft report included the following:

1. Legislative research, identification and compilation of the relevant federal and California statutes pertaining to human services transportation coordination in California;
2. Presentations, discussions and interviews with DMT, the MAP PAC and other study stakeholders related to the background and description of these statutes; and
3. Preliminary identification and analysis of issues that may present regulatory and/or legal obstacles to improved human services transportation coordination in California.

During the process described above, a variety of issues related to key statutes surfaced that necessitate examination relative to their potential impacts on human service transportation coordination in California.

This initial draft report focuses only on coordination of human service transportation programs administered by Caltrans (an agency of the Business, Transportation and Housing Agency) DMT and the California Health and Human Services Agency (CHHS). Specifically, under the CHHS, this includes programs of the Department of Health Care Services (which administers the Medi-Cal program) and the California Department of Aging.

Based on the issue analysis, a final report will be drafted later this year presenting recommended modifications and/or revisions to key statutes and acts. This report will serve to provide guidance and recommendations for actions/processes to remove impediments to improved human service transportation coordination.

NCSL's research results were presented (via briefing papers and power point presentations) at meetings of the MAP PAC and are available on the DMT web page for this project, <http://www.dot.ca.gov/hq/MassTrans/Interagency-Coordination.htm>. (See "Meeting Presentation" links associated with individual meetings.)

EXECUTIVE SUMMARY (TO BE ADDED AT A LATER DATE.)

Mobility Action Plan (MAP) Phase I Implementation Study

Assessing Human Service Transportation Coordination in California: An Analysis of Legal and Regulatory Obstacles

BACKGROUND AND HISTORY OF RELEVANT STATUTES AND REGULATIONS

A growing number of transportation-disadvantaged people in the United States—those with an age-related condition, disability, or who are poor—face immobility because they cannot access the most common mode of transportation—a car. This has created a need for specialized transportation services, in part, as a consequence of the societal shift from caring for those with disabilities and age-related conditions in institutions to individualized care in communities. To address these needs, many federal, state and local agencies provide, administer or support a wide variety of human service transportation programs. These programs serve rural and urban communities, indigent populations, veterans, people with disabilities, seniors and Medicaid recipients.

The large number, diversity and dispersion of specialized transportation programs across many agencies potentially can create ineffective and inefficient service and problems such as duplication of service, underutilization of resources, inconsistent service, gaps in service, inconsistent safety standards and customer inconvenience. To combat these problems, government agencies, human service organizations and transportation planners have advocated improved program coordination. All 50 states and the District of Columbia show evidence of activity to coordinate human services transportation and some success in doing so through a variety of approaches. A starting point is identification of existing laws that may impede more effective coordination. This section identifies specific federal statutes relative to coordination and relevant statutes and regulations in California.

A. Federal Statutes

This section discusses several key laws, and President George W. Bush's Executive Order related to coordination and describes relevant federal acts that have a tie to California programs for transportation under DMT and CHHS. Appendix B shows a matrix of the relevant federal and state laws.

I. George W. Bush, Executive Order on Human Service Transportation Coordination, EO #13330, February 2004

In February 2004, President Bush signed Executive Order 13330 which expanded the existing Coordinating Council on Access and Mobility (CCAM) by creating the Interagency Transportation Coordinating Council on Access and Mobility. Ten federal agencies were directed to join. The order requires the council to eliminate duplication and overlapping federal programs and improve coordination of federally supported transportation services. The council also must facilitate, within existing resources, access to the most appropriate, cost-effective transportation services, encourage enhanced customer access to the variety of transportation resources available, and formulate and implement administrative, policy and procedural mechanisms that enhance transportation services. This order was a response to a U.S. Government Accountability Office report identifying coordination obstacles between the over 60 federal human service transportation programs.² The order jump-started federal efforts to overcome barriers to coordination and began a more focused effort to help states and local agencies improve coordination, which is managed under a Federal Transit Administration (FTA) umbrella called the “United We Ride” Program.³

Presidential executive orders (as opposed to executive orders issued by state Governors) are legally binding directives to federal agencies. Executive orders are generally used to direct federal agencies and officials as their agencies implement congressionally-established law. While the executive order on coordination has no direct legal affect on state statutory law, it has affected how federal agencies run their grant programs and how they are implemented at the state level. Thus, the executive order alone does not directly require states to utilize coordination, but certain federal funding programs do require evidence of coordination before grants are awarded. These are discussed below.

Recently the CCAM announced that they are going to conduct a national dialogue to "develop new ideas in transportation access for people with disabilities, older adults and persons of limited incomes."⁴ The dialogue will last from November 2 - 13, 2009, and all suggestions will help inform the work of the CCAM of future policy decisions and for their strategic plan.⁵

II. SAFETEA-LU, 49 USCA § 5310, 5316, 5317

In 2005, Congress passed the highway funding reauthorization bill, known as the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU). The bill authorized \$286.5 billion in federal funding for federal aid highway, transit and safety programs through 2009 and granted \$295 billion in contract authority. The bill increased the average annual federal funding to states for highway projects by 30.3 percent above the amount in the previous transportation bill and for transit funding to states by approximately 45 percent. SAFETEA-LU authorized \$241 billion for highways and \$52.6 billion for transit programs and reauthorized several programs that serve the transportation disadvantaged. Two key changes in SAFETEA-LU were the requirement for locally developed coordination plans in order to be eligible for certain grants and allowing funding from non-DOT programs to be used to meet matching requirements for transportation services supported under Sections 5310, 5316, and 5317 of the act.

Reauthorized in SAFETEA-LU was the **Transportation for Elderly Persons and Persons with Disabilities Act**⁶ (49 U.S.C 5310), which was originally enacted in 1975 and has been important in filling gaps in the transportation of the elderly and the disabled not covered by the Americans with Disabilities Act (ADA).⁷ The 5310 statute declares as national policy, that elderly persons and individuals with disabilities have the same right to access transportation services as other persons, and authorizes federal capital assistance grants to meet the special needs of elderly persons and persons with disabilities where public mass transportation services are unavailable, insufficient or inappropriate.

The 5310 program is administered by the Federal Transit Administration (FTA) and provides formula funding to states to assist private nonprofit groups in meeting the transportation needs of the elderly and persons with disabilities when the needed transportation service is unavailable, insufficient, or inappropriate.⁸ Funds are divided up based on each state's share of population for these groups of people.

Funds are obligated based on an annual program of projects included in a statewide grant application each state prepares and submits to FTA. Eligible activities are capital expenses that support transportation to meet the special needs of older adults and persons with disabilities, "pilot project" operating expenses in certain states and state administrative expenses. The state agency ensures that local applicants and project activities are eligible and in compliance

with federal requirements, that private not-for-profit transportation providers have an opportunity to participate as feasible, and that the program provides for coordination of federally-assisted transportation services, including coordination of funding from other federal sources. Once FTA approves the application, funds are available for state administration of its program and for allocation to individual sub-recipients within the state.

States (Caltrans acts on behalf of California) are direct recipients. Eligible sub-recipients are private non-profit organizations, governmental authorities where no non-profit organizations are available to provide service and governmental authorities approved to coordinate services. The state also certifies that projects are derived from coordinated plans, monitors local projects, and oversees project audit and closeout

The **Job Access and Reverse Commute (JARC)**⁹ program (Section 5316), reauthorized by SAFETEA-LU and originally enacted in 1998, addressed the employment transportation challenges of low-income individuals and welfare recipients. Many entry-level jobs are located in suburban areas, while low-income or welfare recipients live in inner city or urban areas, resulting in employment access difficulties.¹⁰ Many entry-level jobs require the employees to work at night or on weekends when transportation options are reduced or nonexistent.¹¹ Employment-related trips can be complicated for low-income persons, involving multiple stops for multiple purposes, such as changing modes of transportation or dropping children off at childcare or at school.¹²

To assist in these situations, JARC funds can be used to subsidize the cost of adding additional bus, train, carpool and van routes; subsidizing the cost of the purchase of a nonprofit van or bus for taking eligible recipients to and from work; or, for aiding the creation of transit service to and from suburban employment. States, local governments, nonprofit organizations, and local transportation providers can apply for funding through the JARC program. Eligible activities include capital planning and operating expenses for projects that transport low income individuals to and from jobs and activities related to employment, and for reverse commute projects.

Projects must be competitively selected from locally developed coordinated public transit-human services transportation plans. The competitive selection process is to be conducted by a "Designated Recipient" (an entity designated by the state governor, responsible local officials, and publicly owned operators of public transportation) or any agency acting on behalf of a Designated Recipient in urbanized areas with a population over 200,000.¹³ In California, Caltrans is the designated recipient for rural and small urban agencies and large urban areas have local designees. SAFETEA-LU changed the way program funds were allocated from a discretionary approach to a formula, and with a 20 percent set-aside for rural areas.

A related effort is the **New Freedom Program** (49 U.S.C.A. § 5317), newly created by SAFETEA-LU.¹⁴ The impetus for this program came out of President Bush's Executive Order 13217 (2004), which, in addition to the provisions described above, states that "[t]he United States is committed to community-based alternatives for individuals with disabilities and recognizes that such services advance the best interests of the United States" and directs the federal government to assist states and localities to swiftly implement the decision of the United States Supreme Court in *Olmstead v. L.C.*¹⁵ The order instructs six federal agencies to "evaluate the policies, programs, statutes and regulations of their respective agencies to determine whether any should be revised or modified to improve the availability of community-based services for qualified individuals with disabilities." Even though the Department of

Transportation was not mentioned in the order, it joined the implementation effort, along with Veterans Affairs, the Small Business Administration, and the Office of Personnel Management.

The New Freedom formula grant program provides additional tools to overcome existing barriers facing Americans with disabilities who seek integration into the work force and full participation in society. New Freedom funds new public transportation services and alternatives beyond those required by the Americans with Disabilities Act (ADA).

Eligible recipients include private nonprofit organizations, state or local governmental authorities, and operators of public transportation services including private operators. Activities that could be funded under the program include, but are not limited to:

- Purchasing vehicles and supporting accessible taxi, ride-sharing, and vanpooling programs; including staff training, administration, and maintenance,
- Providing paratransit services beyond minimum requirements (3/4 mile to either side of a fixed route), including for routes that run seasonally,
- Making accessibility improvements to transit and intermodal stations not designated as key stations.
- Supporting voucher programs for transportation services offered by human service providers.
- Supporting mobility management and coordination programs impacting public transportation providers and human service agencies providing transportation. These activities are considered a capital cost and are defined as short-range planning and management activities.¹⁶

The FTA has changed the New Freedom program to fund fixed route or demand responsive transportation services, provided that:¹⁷

1. The service is identified in the locally developed, coordinated public transit-human services transportation plan;
2. The service is designed to meet the needs of individuals with disabilities;
3. The service removes barriers to transportation and assists persons with disabilities with transportation;
4. The service was not operational on August 10, 2005, and did not have an identified funding source as of August 10, 2005, as evidenced by inclusion in the Transportation Improvement Program (TIP) or the State Transportation Improvement Program (STIP); and
5. The service is not designed to allow an agency to meet its obligations under the ADA or the DOT ADA implementing regulations.

On June 18, 2009 The House of Representatives Transportation and Infrastructure Committee Chairman James Oberstar (D-MN) and Ranking Member John Mica (R-FL) announced their outline for the next surface transportation authorization.¹⁸ The new authorization would combine the Job Access and Reverse Commute, New Freedom Initiative and Elderly and Disabled Program, into a single initiative called the Coordinated Access and Mobility program or CAMP. The program would distribute 60 percent of funds to designated recipients in large urban areas, 20 percent to small urban areas and 20 percent to rural areas, under a single application. Under section 5310, a large urban area must conduct a competitive area wide solicitation process and the small urban and rural areas must conduct a competitive statewide

solicitation process. CAMP institutes performance measures that would hold grantees accountable by requiring the submittal of annual plans and establishes minimum programmatic allocations that each recipient must make if they fail to meet performance goals of the program. The FTA can withhold individual project approval for recipients if they fail to submit an annual plan that provides for the achievement of performance targets.

III. Americans with Disabilities Act of 1990 (ADA)

The Americans with Disabilities Act of 1990¹⁹ gives civil rights protections to individuals with disabilities similar to protections given to individuals on the basis of race, national origin, sex, age, and religion. It guarantees equal opportunity for individuals with disabilities to access public accommodations, to compete for employment opportunities, to use transportation facilities, state and local government services and telecommunications.

Title I of the act prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against persons with disabilities, including job applicants, in all employment practices. An individual is considered to have a disability if he or she has a physical or mental impairment that substantially limits one or more major life activities, has a record of impairment, or is regarded as having an impairment. Employers with 15 or more employees are required to comply with the act's requirements.

Title II of the act prohibits discrimination against individuals with disabilities in all programs, activities, and services of public entities. It applies to all state and local governments, their departments and agencies, and any other instrumentalities or special purpose districts of state or local governments. This includes public and private entities that provide public transportation. In regards to private entities, the act provides that "no individual shall be discriminated against on the basis of disability in the ...enjoyment of ... public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce."²⁰

Title II requires public entities:

- To purchase or lease new buses, rapid rail vehicles and new light rail vehicles for regular transit services that are readily accessible to and usable by persons with disabilities, including those who use wheelchairs.
- That provide fixed route service to also provide paratransit and other special transportation services to persons with disabilities, including those who use wheelchairs. The service has to be comparable to regular transit services for persons without disabilities, or is comparable in response time to regular transit services provided to persons without disabilities.
- To provide paratransit and special transportation services within their service areas.
- That purchase or lease new vehicles for a public demand responsive transit service ensure that these vehicles are readily accessible to and usable by persons with disabilities, including those who use wheelchairs.

Title II requires private entities primarily involved in fixed route transportation:

- That purchase or lease a new vehicle (other than an automobile, a van with a seating capacity of less than 8 passengers, including the driver, or an over-the-road bus) ensure that the vehicle is accessible and usable by persons with disabilities, including those who use wheelchairs.
- An over-the-road bus company that has a fixed route that purchases or leases new vehicles must ensure that they are accessible, ensure that half of their fleet is accessible by October 2006, and ensure that their entire fleet is accessible by October 2012.²¹ Small over-the-road bus companies that provide a fixed route must ensure each new vehicle purchased is accessible or provide equivalent service to passengers with disabilities.²²

Title II requires private entities primarily involved in *demand responsive transportation*:

- That purchase or lease a new vehicle (other than an automobile, a van with a seating capacity of less than 16 passengers, including the driver, or an over-the-road bus) ensures that the vehicle is accessible and usable by persons with disabilities, including those who use wheelchairs.
- Exception: Compliance is not required if the new vehicle is to be used for demand response services, and the company provides an equal level of service to the disabled as they do the general public.
- An over-the-road bus company must provide service in an accessible bus to passengers with disabilities on a 48-hour advance notice basis. Small over-the-road bus companies must provide accessible service to passengers with disabilities on a 48-hour advance notice basis, but are not required to fundamentally alter reservation practices or displace other passengers in order to meet these requirements.²³

IV. Older Americans Act (OAA)

The OAA²⁴ was enacted in 1965 to promote the well being of older adults and help them remain independent in their homes and communities. To achieve its purpose, the OAA set up a federal program to distribute funds to states using a formula based on the state's share of people over 60. In the act's infancy, its primary focus was on organizing and delivering community-based services by coordinating with state level agencies. Yet, as the population of older Americans has continued to grow, the primary focus of the programs funded by the act has shifted to a broad community based long-term care structure including senior centers, volunteer programs and recreational activities. All people over 60 are eligible to participate, but states are required to target those with the "greatest social or economic need," since funding levels restrict the number of people who can be served.²⁵ The OAA also established the Administration on Aging (AoA), within the Department of Health and Human Services, which works to bring awareness to other federal agencies, organizations, groups, and the public about the contribution that older Americans made to the nation, and alert them to their needs.

The OAA consists of seven extensive titles that incorporate a series of formula-based and discretionary grants that are administered by the AoA²⁶. Transportation is directly funded under Title III-B and Title IV.²⁷

Title III-B is the primary source of transportation funding under the OAA. It provides grants to states for transportation services "to facilitate access to supportive services or nutrition

services," and services provided by an area agency on aging (AAA) in conjunction with local transportation service providers (or other transportation agencies) that results in better transportation services to older individuals.²⁸ Title III-B also provides grants to local AAAs for "Senior Opportunities and Services," which helps meet the needs of low-income older individuals for "referral service to health (including mental health), employment, housing, legal, consumer, transportation, and other services."²⁹

Title IV allows the AoA to issue "grants or contracts to nonprofit organizations to improve transportation services for older individuals."³⁰ The nonprofit organization has to use the funds to carry out demonstration projects or provide technical assistance to local transit providers, AAAs, senior centers, and local senior support groups to encourage use of local transportation systems by older individuals. Demonstration projects can include improving access to transportation services, developing techniques to improve access to transportation services, preparing information on transportation options and resources, developing best practice models for providing comprehensive integrated transportation services, or providing special services to link older individuals to transportation services.³¹

In California, the Older Californians Act requires local area agencies on aging to operate in compliance with the OAA and create a plan that details how to provide better services to the elderly through improved transportation, referral, outreach, and advocating.³² Also known as the Mello-Granlund Older Californians Act (AB 2800, 1996), it moved the principal focus for the delivery of services from the state to the local level. There are 33 area agencies on aging designated by the California Department of Aging as the local planning services agencies. A bill currently under consideration by the California Assembly would require the local agency on aging to incorporate the Elder Economic Security Standard Index (EESI).³³ The bill would require the local AAA to identify which elders live at or below that index, which "measures how much income is needed for a senior with a given life situation and geographic location to adequately meet his or her basic needs – without public or private assistance."³⁴

VI. Medi-Cal and the Medicaid Transportation Program

Medicaid is a federal-state partnership that was created in by Congress in 1965 (Title XIX of the Social Security Act)³⁵ to finance health care for the nation's low-income persons. Medicaid is an optional program, where states can choose to participate; however all 50 states and territories participate and administer their own Medicaid programs. Today, Medicaid has evolved to become three programs in one: 1) A health financing program for low-income parents (mostly women) and children; 2) A health financing program for people with significant disabilities; and 3) A long-term care financing program for low-income elderly people. Without Medicaid, the majority of these people would be uninsured.³⁶

Transportation is important for Medicaid beneficiaries since most cannot procure it on their own. According to the Centers for Medicare and Medicaid Services (CMS) rule on Medicaid transportation, a state plan must "specify that the Medicaid agency will ensure necessary transportation for recipients to and from providers..." (emphasis added).³⁷ States have great flexibility in meeting the mandate of assuring medical transportation. To do so, states look to contracting with transportation providers, using public transportation, helping clients obtain transportation by coordinating with other programs, or providing reimbursement directly to clients for the services beneficiaries locate on their own.

*Medicaid Program Rule*³⁸

With the enactment of the Deficit Reduction Act of 2005 (DRA) states will no longer be required to obtain a section 1915(b) waiver to provide nonemergency medical transportation (NEMT). (This waiver allows the state to operate its Medicaid program without meeting requirements for statewideness, comparability of services, and freedom of choice of provider. This would allow states to mandate Medicaid enrollment into managed care, utilize a "central broker," use cost savings to provide additional services and limit the number of providers for services.)³⁹ Under the DRA, a state will be *allowed* to use a NEMT brokerage program when providing transportation as medical assistance under the state Medicaid plan, rather than having to get the waiver.⁴⁰ Therefore, the DRA gives states greater flexibility in facilitating the provision of nonemergency medical transportation. The broker uses public transit and its fare schedules, and uses trip verification for NEMT services.

The rule:

- Allows brokers to provide for transportation services that include wheelchair vans, taxis, stretcher cars, bus passes and bus tickets.⁴¹
- Allows the Secretary of Transportation to allow for the use of other forms of transportation, such as air transportation in states with significant rural populations and geographic distances.
- Creates a competitive bidding process for selecting the broker. The state has to evaluate the broker's experience, performance, references, resources, qualifications, and cost.
- Declares the contract between the broker and the state must include oversight procedures so that the state can monitor beneficiary access, complaints, and to ensure that the broker's personnel are licensed, qualified, competent and courteous.
- Requires that the broker must be an independent entity, in that the broker cannot provide transportation under a contract with the state. The broker also cannot refer or subcontract to another transportation provider with which it has a financial relationship.
 - A financial relationship includes any direct or indirect ownership or investment interest in the entity that furnishes designated health services and any compensation arrangement between such an entity and the physician or an immediate family member of the physician.
- Provides an exception for a non-governmental broker that provides transportation in a rural area where there is no other qualified provider available; when the necessary transportation provided by the non-governmental broker is so specialized that no other qualified provider is available; or when the availability of qualified providers other than the non-governmental broker is insufficient to meet the existing need.
- Provides that if a governmental entity is awarded the brokerage contract it can subcontract with a government-owned or controlled transportation provider if the broker:
 - Is a distinct governmental unit, and the contract could not include payment of costs other than those unique to the distinct brokerage function; and,

- The broker would have to document, after considering the specific transportation needs of the individual, that the government provider is the most appropriate, effective, and lowest cost alternative for each individual transportation service; document that for each trip, and the Medicaid program is paying no more than what the general public is charged.
- Gives the Secretary the authority to add any other medical care which can be covered by the state.

CMS has provided states with a letter containing guidance on these provisions and the implementation of the DRA, and an associated state plan amendment template for use by states to modify their Medicaid State plan if they choose to implement the option of using a transportation broker or brokers as spelled out by the rules above. The rule estimates that template takes 12 minutes to complete and costs \$50. Once approved, the state will not need to resubmit the template, unless it materially changes the brokerage program. As of the date of publication of this analysis, California does not have a NEMT brokerage program.

Summary

These statutes and regulations provide the basis for federal programs serving the transportation needs of the transportation disadvantaged. They are described here as background to the implementation of such programs at the state and local level in California.

B. California Statutes

The Transportation Development Act (TDA) and the Social Services Transportation Improvement Act (SSTIA) are the focal points of human service and public transportation consolidation and coordination in California. The acts both fund and support coordination efforts at the regional and local levels, and assist the transportation disadvantaged in both dense urban and sparse rural areas.

I. Social Services Transportation Improvement Act (SSTIA)⁴²

The Social Service Transportation Improvement Act (SSTIA) was enacted as AB 120 in 1979 to "improve transportation service required by social service recipients by promoting the consolidation of social service transportation services." By consolidating these services, the legislature hoped that transportation service providers would save by purchasing necessary equipment together in bulk; better train drivers to lower insurance and other costs; have an efficient centralized dispatching system; have a centralized maintenance system; have centralized administration of social service programs to eliminate duplication; and identify and consolidate existing funding sources for more effective and cost-efficient use.

The SSTIA required regional transportation planning agencies or a county transportation commission to adopt and submit an action plan that reflects the strengths of existing services, correcting deficiencies and maximizing transportation benefits possible through coordination and/or consolidation of services. The action plans had to include, but were not limited to, the following:

1. Designation of a consolidated transportation service agency (CTSA) within the geographic area of jurisdiction of the transportation planning agency. If improved coordination of all services was demonstrated within the geographic area, the action plan was permitted to designate more than a single agency as a CTSA.
2. Identification of the social service recipients to be served, of funds available for use by the consolidated or coordinated services, and an orderly strategy and schedule detailing the steps required to develop the financial program and management structure necessary to implement consolidated or coordinated services.
3. Measures to coordinate the social service transportation services with existing fixed-route service of public and private transportation providers.
4. Measures to ensure that the objectives of the action plan are consistent with the legislative intent of the SSTIA.⁴³

According to the CalAct e-book on CTSA:

The purpose of the Act was to improve the quality of transportation services to low mobility groups while achieving cost savings, lowered insurance premiums and more efficient use of vehicles and funding resources. The legislation took the middle course between absolutely mandating and simply facilitating the coordination of transportation services. Designation of CTSA and implementation of other aspects of the Act were

seen as a flexible mechanism to deal with the problem of inefficient and duplicative social service transportation programs that proliferated due to a dramatic increase in the number of social service programs offered by government agencies and private nonprofit organizations to meet their clients' mobility needs.⁴⁴

II. Transportation Development Act (TDA)⁴⁵

The foundation for state financial assistance to public transportation in California is provided by the Transportation Development Act enacted in 1971 declaring: "[p]ublic transportation is an essential component of the balanced transportation system which must be maintained and developed so as to permit the efficient and orderly movement of people and goods in the urban areas of the state..." and designed to "encourage maximum utilization of ...all the people of the state, including the elderly, the handicapped, the youth, and the citizens of limited means of the ability to freely utilize the systems."⁴⁶

The TDA consists of nine articles in the California Public Utilities Code, which makes it lengthy in both size and detail. The TDA provides funding to be allocated to transit and non-transit related purposes that comply with regional transportation plans. The TDA provides two funding sources: 1) Local Transportation Fund (LTF), which is derived from a ¼ cent of the general sales tax collected statewide; and, 2) State Transit Assistance fund (STA), which is derived from the statewide sales tax on gasoline and diesel fuel.

The transportation planning agency in each area of the state establishes the processes for filing, evaluates and prioritizes all claims for funding under TDA, and determines the allocations to competing claimants. A transportation planning agency is typically a council of governments, a metropolitan planning organization or a similar entity. All transit operators and city or county governments responsible for providing transit services in their area can file claims only for money that was apportioned to their area.

CTSAs (designated by the SSTIA) are funded under articles 4.5 and 6.5 of the TDA. Under article 4.5, five percent of the funds allocated to the transportation planning agencies may be requested by CTSAs for "community transit service," which has to be used to provide services to the elderly and the handicapped. Funds can be allocated from the transportation planning agency to the CTSA unless it finds that there are unmet transit needs in its jurisdiction. Article 4.5 also prohibits the use of funds so that a claimant does not receive a private gift of public funds, that is, TDA funds cannot be used to buy vehicles for a private agency. A TDA recipient also cannot file claims in excess of its capital costs, which would prevent a private CTSA from making a profit; however a public CTSA would only be restricted to the extent of its service contract.

Article 6.5 sets forth rules for funding both transportation planning and mass transit. Funds are generated by a combination, for the most part, of taxes on diesel fuel and both a tax and a sales tax on gasoline. Revenue from these taxes is deposited into the Public Transportation Account (PTA) of the state treasury from which funding is allocated to DMT and each county's transportation planning agency based on each county's ratio of population to the total population of the state and on its share of transit fare revenue. Half of the PTA funding allocated to DMT has to fund state transit programs, including CTSAs (among others).

The TDA also creates Social Services Transportation Advisory Councils.⁴⁷ The councils consist of:

- A potential transit user over age 60
- A potential transit user who is handicapped
- Two local social service providers for seniors
- Two local social service providers for the handicapped
- A local social service provider for persons of limited means
- Two representatives from the local CTSA

Each Social Services Transportation Advisory Council participates annually in the identification of unmet transit needs in its jurisdiction; annually reviews and recommends action to the transportation planning agency; and advises the transportation planning agency on any other major transit issues, including coordination and consolidation of specialized transportation services.

A TDA Working Group coordinated by DMT includes Caltrans representatives and transit stakeholders. Its mission is "to provide a forum, with balanced representation, where issues and concerns relating to the TDA can be identified and actions initiated to address those issues and concerns." The working group's intended deliverables are to create a mutual understanding of the TDA's laws and processes; provide improved communication and working relationship between the state and its regional partners; and, identify, explore, advocate, and implement program improvements. The working group has assisted DMT staff to update the TDA Handbook (also known as the "Purple Book"), the definitive resource concerning the TDA.

IDENTIFICATION AND ANALYSIS OF ISSUES

Following NCSL's legislative review, a number of issues surfaced during discussions at MAP PAC meetings, regional roundtable meetings, and stakeholder interviews conducted by members of the project team. These issues are discussed below.

I. The Effectiveness of the Unmet Needs Process

Issue

The unmet needs process prescribed by the TDA has been the subject of scrutiny in this study due to concern expressed by MAP PAC members and in stakeholder interviews of lack of uniform implementation across the state. Some MAP PAC members expressed concern that the TDA unmet needs process is subject to influence by transportation planning agencies that could move needed money away from local transit needs. Members were concerned that Article 8 of the TDA gives local officials too much power to define critical terms, such as "unmet needs" and "reasonable to meet" with limited means of recourse from the state if the definitions are too narrow, thereby possibly keeping needed funds away from transit.

Other MAP PAC members remarked that the process is established equitably in their counties, and still others said that, in counties they represent, all unmet needs would be reasonable to meet, so all TDA funds are expended on transit needs. The divergence of results from implementing the unmet needs process raises the question of whether TDA's legislative intent is being met. The legislative intent of the TDA is expressed extensively in sections 99220, 99221 and 99222. The essence of these sections is that the Legislature desires to improve public transportation services and encourage regional public transportation coordination.⁴⁸ Do the differing unmet needs results imply that the unmet needs process should be amended to allow for greater state oversight to better meet the legislative intent and if so how?

Background

The unmet needs process is set forth in Article 8 of the TDA.⁴⁹ It addresses primarily rural counties and the rural parts of more populated counties. The California Government Code⁵⁰ specifies that counties, cities, and transit districts in counties with a population of 500,000 or less (according to the 1970 census) can file requests for funding with transportation planning agencies for local streets and roads, pedestrian and bike projects, passenger rail service and capital improvements, and payments to entities that are under contract with a county, city, or transit district for public transportation or transportation services.⁵¹ If the county has a population over 500,000 it has to commit all of its TDA funding to transit. If the county now has a population greater than 500,000, but had less than that in 1970, it still has to go through the unmet needs process unless it's decided that all of the funds go to transit.⁵²

California Senate Bill 716, recently signed by the Governor, would significantly affect the unmet needs process in the state. The bill requires counties that had a population of less than 500,000 in 1970 but now have a population over that to appropriate their TDA Article 8 funds to transit needs only in their urban areas. The counties are still required to go through the unmet needs process for rural areas unless funding there is allocated to transit. The law exempts counties with a population of less than 100,000 and delays its application until July 1, 2014. The law also exempts Ventura County and requires it to submit "a report to the Legislature analyzing options

for organizing public mass transportation services in the county and for expenditure of revenues in the local transportation fund, along with a recommended legislative proposal"⁵³ by December 31, 2011. If the legislative proposal is not enacted by the 2011 - 2012 Regular Session, then the local transportation funds would be available solely for transit purposes.

Before making an allocation of TDA funds, the transportation planning agency has to consult with its Social Service Transportation Advisory Council (SSTAC); identify transit needs of the jurisdiction; and, identify unmet transit needs of the jurisdiction that are reasonable to meet. It must also hold at least one public hearing to solicit comments on any unmet transit needs that may exist.⁵⁴ It is the transportation planning agency's responsibility to define 'unmet needs' and 'reasonable to meet.'⁵⁵

To receive funding under the TDA a claimant must achieve a minimum farebox recovery ratio which is "a ratio of fare revenues to operating cost at least equal to the ratio it had during 1978/1979, or 20 percent if the claimant is in an urbanized area, or 10 percent if the claimant is in a non-urbanized area, whichever is greater."⁵⁶ If the claimant had a ratio greater than those requirements during 1978/1979 it is required to have a ratio larger than what it had during that time. A transportation planning agency *may* set their farebox recovery ratio to not less than 15 percent in a county with a population of 500,000 or less, if the operator provides services in an urbanized area (which also has to participate in the unmet transit need process) and the agency documents the reasons for lowering the requirement. Also, the transportation planning agency may set the farebox recovery ratio at any level they desire if the service is for the elderly or the handicapped. A claimant may receive a two year exemption for services provided to new areas or along new routes, and can also receive an exception for not meeting the farebox recovery requirement their first time. If the claimant fails to meet the farebox recovery requirement, its funding will be reduced by the amount its required fare revenues have fallen short of the standard.

Currently, the only option available to change a transportation planning agency's definitions is to either secure the agency's agreement to change them, to bring suit, or through engagement of the appeals process detailed in the TDA.⁵⁷

Ultimately, the transportation planning agency has to adopt a resolution that finds one of the following:⁵⁸

1. There were no unmet transit needs;
2. There were no unmet transit needs that are reasonable to meet; or
3. There are unmet transit needs, including needs that are reasonable to meet.

Unmet transit needs (including those that are reasonable to meet) are to be funded by TDA before any funding is provided for streets or roads. If there are no unmet transit needs or they are unreasonable, the transportation planning agency may allocate the funds to a county or city for streets or roads.⁵⁹ According to the statute, "the fact that an identified transit need cannot be fully met based on available resources shall not be the sole reason for finding that a transit need is not reasonable to meet. An agency's determination of needs that are reasonable to meet shall not be made by comparing unmet transit needs with the need for streets and roads."⁶⁰

The allocation to the transportation planning agency cannot exceed 50 percent of the amount required to meet the city or county's total expenditure for streets and roads.⁶¹ The 50 percent provision does not apply to cities or counties under contract for public transportation or for

transportation services for any group, to a city or county that has a population of less than 5,000, or for funds allocated for local streets and roads.⁶²

The decision to fund or not to fund an unmet transit need has to be filed within 30 days after the local agency makes its decision, or after the Business Transportation and Housing Agency Secretary has reviewed the decision pursuant to Section 99242, whichever is later.⁶³

DMT's role in the process is fairly minor. Once the process is complete, DMT requires the transportation planning agency to provide:⁶⁴

- A copy of the SSTAC hearing notice and proof of publication;
- A notice published 30 days before the hearing date;
- A resolution or minutes documenting the unmet needs definitions; and
- A resolution by the jurisdiction adopting its unmet transit needs findings.

If one or more of these steps is omitted, DMT requests that the step be completed or the process begins again.⁶⁵

Analysis

As noted, the unmet needs process prescribed by the TDA has been the subject of discussion and scrutiny in this study due to evidence provided by MAP PAC members and from stakeholder interviews that, although the process may have been followed, the results of the process have not been uniform across the state. Some in the transportation community see the unmet needs process as a mechanism for local officials who are less friendly to transit to narrowly define 'unmet needs' and 'reasonable to meet,' thereby potentially keeping funding away from legitimate transit needs. Others see it as a fair process in which local officials thoroughly take into account the transit needs of their communities and if they have the available funds, to meet those needs. Several counties even adopt a resolution that states that all unmet transit needs are reasonable to meet, thereby allowing all TDA funds to go to local transit needs.⁶⁶

Criticism of the unmet needs process revolves around the transportation planning agencies' ability to define 'unmet transit needs' and 'reasonable to meet,' and its sole discretion to decide whether or not a request meets the definition. As demonstrated by the varying length and brevity of the definitions in differing counties, the process also produces a great deal of unpredictability to transit operators as to whether they will receive additional funding, and gives county officials a great deal of latitude when deciding whether an unmet transit need is reasonable to meet.

Unmet needs definitions across the state vary in length and complexity.⁶⁷ For example, San Benito County defines unmet transit needs as follows:

"Unmet needs are defined as expressed or identified needs of a significant segment of the community for public transportation services to meet basic mobility needs which are not currently being met through existing transit services or other means of transportation. Included, at a minimum, are those public transportation or specialized services that are identified in the Regional Transportation Plan, Short Range Transit Plan and/or Transit Development Plan, which have not been implemented or funded."⁶⁸

San Benito County also imposes a threshold on what an unmet transit need is, and if the request fails to meet the criteria, it cannot be considered an unmet transit need. To pass the threshold and become an unmet transit need, the request has to 1) fill a gap in transit service or be in the Regional Transportation Plan; 2) have broad-based community support; 3) be a current, rather than a future need; and, 4) not be operational in nature, that is, a minor route change or bus stop change. The majority of California counties impose similar threshold criteria on an unmet need request.

On the other hand, another county concisely defines an unmet transit need as "...all essential requests by transit dependent persons for which there is no other available means of transportation."⁶⁹ Ventura County requires unmet transit needs to have substantial community input through the community meeting process, or be in the short range transportation plan, in ADA plans, in other area/local paratransit plans, in the regional transportation plan, and have not been implemented or funded.⁷⁰ In its report, Ventura County lists each request, determines whether it is an unmet transit need and then determines whether or not it is reasonable to meet. The needs that make it past the threshold to an unmet need have the backing of a great deal of people, and those that do not have a substantial backing are deemed not an unmet transit need. This has the possibility of denying valid requests that could be unrealized in the county. Valid requests may be dismissed because of insufficient support but should nevertheless be reviewed because a requester may not be aware of the requirement to show additional support, or might not be as politically savvy as another requester who can show greater support.

The reasonable to meet definition also varies across other counties; however, most counties impose a six to seven category review for each unmet transit need. For example, in Calaveras County, for an unmet transit need to be reasonable to meet it has to be 1) financially feasible; 2) cost effective; 3) have community acceptance; 4) be equitable; 5) have an impact on the entire transit system; 6) have operational feasibility; and 7) have a service provider available who will meet the unmet need. Another county briefly defines it as "[a]ny unmet transit need that can be met, in whole or in part, through the allocation of additional transit revenue and be operated in a cost-efficient and service-effective manner, without negatively impacting existing public and private transit options."⁷¹

The majority of counties also impose the farebox recovery ratio as a criterion to meet before the unmet transit need can be considered reasonable. Most requests for services cannot meet this requirement. Even though the farebox recovery ratio requirement has exceptions for new routes or services to new areas, an analysis of the unmet needs process in a number of counties shows that most requests are deemed not reasonable to meet because they cannot meet the required ratio. For example, in Madera County twenty four percent of its unmet needs requests were turned down because they could not meet the return ratio. This may seem like a low percentage but all of the requests were for adding a service or connecting two existing services.

The farebox requirement does eliminate less productive routes from consideration. For example, Madera County turned down a late night route to a casino because it would only recover 4%. Nevertheless, it seems to also dispose of new services or routes that could meet the farebox ratio requirement if given time.⁷² For instance, some residents in Chowchilla wanted a connecting route to Merced, but because the farebox recovery was only 4% and because the new route would also reduce the existing Chowchilla Area Transit Express ratio below 10% it was turned down.

The Legislature did not define 'unmet needs' or 'reasonable to meet,' but left that up to transportation planning agencies. A scan of unmet needs reports from around the state suggests that many unmet transit needs do not make it past the many 'reasonable to meet' criteria. For example, Calaveras County's FY2008 - FY2009 unmet needs analysis found 26 unmet transit needs, only two of which were judged reasonable to meet. These were an online request form for unmet needs and a schedule modification for buses to the government center in San Andreas. Only three out of the 24 that were found not reasonable to meet were not because of financial feasibility.⁷³ The county defines financial feasibility as 1) not causing an operator expenses in excess of the maximum allocated by the TDA, STA and other federal grants; 2) would allow the operator to meet the required farebox recovery ratio of 10%; and any transit expansion has to be monitored and evaluated after six months of operation.⁷⁴

Although the unmet needs process does not fund coordination projects directly⁷⁵ the process has an indirect affect on coordination's benefits to communities. Some unmet needs requests call for a connection between two or more transit agencies or for a stop near or at a local hospital, and of those seen in reports all have been turned down for financial feasibility reasons. Other requests call for expanded fixed route service (which would then increase paratransit service), improved service or better equipped buses for the handicapped or disabled. Financial feasibility is commonly cited because the 'reasonable to meet' definition includes a farebox recovery standard.

Access to meetings where unmet needs comments are heard is also an issue. A MAP PAC member said that some public meetings have been held after hours when bus service has stopped, thereby denying those reliant on the service the opportunity to have their opinions heard. To accommodate those who cannot attend meetings, many counties allow for submission of comments prior to the meeting so that their concerns are on the record.

Possible Solutions

1. **Set State TDA Article 8 Definitions.** The "unmet transit needs" and "reasonable to meet" definitions could be set by the state to fit current and future needs of transit. The legislature could also call for a study commission (the makeup determined by statute) to recommend definitions that are more explicit and to ensure little to no misuse at the local level. The definitions should be updated at regular intervals by a statewide working group to make sure that they are meeting the needs of both transit and streets and roads funding in the state.
2. **Set Parameters.** A step short of a legislative fix would be to help retain local control over the definitions. The Legislature could mandate that DMT set parameters on how the definitions should be formulated, thereby leaving some control to each individual transportation planning agency. The parameters could also set forth a legislative intent specifying goals for transit funding in the future, balancing the needs of roads and streets in the process.
3. **Revise Farebox Recovery Ratio.** The required farebox recovery ratio is difficult for many transit operators in rural areas to achieve, which ends up making many unmet transit needs unreasonable to meet. Therefore, instead of having a ratio that applies uniformly for all transit operators no matter their location, the legislature could create a waiver process to make sure that additional transportation funds are going to local transit needs. The waiver process could defer the farebox recovery requirement for three to five years so that the transit operator has time to meet the statutory requirement. This would be in addition to the

exemptions for services provided to new areas and along new routes. Alternatively the farebox recovery ratio could be relaxed if the route is connecting to another mode of transportation or to another geographic region. DMT could also encourage more RTPAs to adopt a resolution to set their own farebox recovery ratios for services provided to the elderly and disabled to make sure that local transit operators receive needed funding. Some MAP PAC members suggested that the farebox recovery ratio be separated for public transit and paratransit because as they are currently combined expensive paratransit services bring down the overall ratio below the standard.

4. **Create Local Appeals Process.** Currently the unmet needs appeals process allows a claimant to file a notification with the Business Transportation and Housing Agency Secretary who then conducts an investigation and evaluation into the claim.⁷⁶ The Secretary's finding in this process is final.⁷⁷ Instead of having the claim first sent to the Secretary for review there could be a local appeals process where the SSTAC or other body reviews the transportation planning agency's decisions. If either party is not satisfied with the outcome they would then have the option of appealing to the Secretary, whose decision would be final. Inserting a local step in the appeals process gives those with additional awareness of local problems and intricacies the ability to make a more knowledgeable decision about the claim. This would add additional credibility to the unmet transit needs process.
5. **Coordinate the Unmet Needs Process with the SAFETEA-LU Coordinated Plan.** MAP PAC members expressed concern that unmet needs arise in the coordinated plan, but those unmet needs often do not match the needs identified in the unmet transit needs process. Many coordinated plans in California were developed by the MPOs/RTPAs, which also sign off on the unmet needs process. The coordinating planning process looks at what it takes to coordinate services in a certain county/region while the unmet transit needs process looks at needs of individuals who want service. MPOs or RTPAs should look at deficiencies in their coordinated plans and match these with their unmet transit needs analyses. Uniting both would result in a more comprehensive look at the unmet transit needs in each county.
6. **Consider Requests that Cross Jurisdictional Boundaries.** The unmet transit needs process is not set up to deal with requests that coordinate services that cross jurisdictional boundaries. RTPAs or MPOs should be able to determine whether a request to connect two or more jurisdictions is an unmet need.
7. **Review the Obstacles the Unmet Needs Process Creates for Coordination.** A subcommittee in conjunction with the Transportation Development Act Working Group could be formed to study in more detail the affects (both positive and negative) the unmet transit needs process has on coordination efforts in the state. This report could take a more in-depth look than the MAP PAC *Legal and Regulatory Analysis*.
8. **Repeal the Unmet Needs Process, Create a Formula Program.** The TDA is still funding transit projects the same way as it was written in 1971 - over 38 years ago. Since then California has changed in many ways, but according to some observers its transit funding mechanism has not adapted with the needs those changes create. Therefore to provide more funding for both transit projects and the needs of streets and roads the state could switch over to a formula-based transit funding system that gives counties both predictability in transit funding and funds for streets and roads. Recently, the Legislative Analyst's Office (LAO) recommended that the Legislature create a predictable funding source since the

formula that funds the Surface Transportation Account (STA) can provide unpredictable levels of funding to transit operators.⁷⁸ Overall, the LAO suggests that the Legislature repeal the STA for the remainder of the current year and for the budget year, and that it create two statutory changes to the STA. One would be to "choose a specific funding level, based on some average of the previous years' funding amounts, and provide that amount each year," which would provide more certainty to transit operators. The second change would be "to tie the amount that an operator receives to specific, measurable outcomes of performance."⁷⁹ For example, "the Legislature could choose to reward operators that are increasing the cost-effectiveness of their operations."⁸⁰ Including performance measures into the distribution of funds would have the affect of encouraging other transit operators to improve their organizations.

II. The Viability of the Consolidated Transportation Service Agencies (CTSAs) to Serve Coordination Purposes

Issue

Are Consolidated Transportation Service Agencies (CTSAs) the right vehicle for increased coordination of human service transportation in California? "Consolidation" is related to but different than "coordination." Consolidation brings all functions under control of a single entity, while coordination brings two or more agencies together for joint conduct of one or many functions. CTSAs were envisioned by the California Legislature in 1979 to "improve transportation service required by social service recipients by promoting the consolidation of social service transportation services."⁸¹ The purpose of creating CTSAs was to have one agency in a geographic region that could combine administrative, operational and maintenance personnel, and attract additional funding with the help of local officials.⁸² Though CTSAs use the terminology "consolidation," which implies a single entity, CTSAs have increasingly been thought of in broader coordination terms. The CalAct *CTSA E-Book* states, "As imperfect as they may be, California's CTSA statutes already exist to advance the goals of coordination."⁸³ But is the vision of the original enacting legislation now limiting the broader concept of coordination?

Despite recognizing early on the benefits of consolidation and coordination and enacting a pioneering state law encouraging the coordination of social services transportation, broad implementation has been difficult and the benefits of coordination have only been partly realized in California. A complex and fragmented jurisdictional landscape with strong competing local authorities and an inconsistent state role has resulted in mixed outcomes and many in California are asking what can be done to improve the situation. Not every county or geographic region has set up a CTSA and a number that have done so, have been able to achieve only partial consolidation in the six areas identified in the law.⁸⁴ This differential implementation is a result of a "permissive rather than mandatory approach" and is the reason "in many jurisdictions, CTSAs could not overcome political and funding barriers necessary for full implementation."⁸⁵

CTSAs do not have the authority to either enforce or empower coordination efforts in the regions they represent. (CTSAs have some of the responsibilities that a transportation broker might have). A related issue is that of reporting. A former requirement of the SSTIA was for transportation planning agencies to report to DMT on the extent of social services transportation provided in their areas. This reporting requirement has since been eliminated for a variety of

reasons. A complaint heard relative to evaluating how CTSAs are working has been the lack of hard data that such reporting may have previously provided.

The key issue is whether CTSAs are viable entities to promote coordination of human service transportation as presently constituted. Or should the statutory framework of CTSAs be changed to mandate or incentivize local agency participation in coordination efforts while delegating additional authority to CTSAs in order to have a greater impact on coordination in California. Or is an entirely different approach indicated?

An additional question for resolution is: What type of reporting requirement would be useful, if any, in further encouraging coordination by collecting necessary data?

Background

Under the Social Services Transportation Improvement Act of 1979 (AB 120 or California Government Code § 15950 et seq.),⁸⁶ CTSAs were envisioned as single entities (or in certain rare cases, multiple entities) in a geographic area that could bring together certain shared functions of the manifold and diverse providers of social services transportation in a more efficient and cost-effective manner. These functions included purchasing of necessary equipment, training of drivers, dispatching, vehicle maintenance, certain administrative functions and funding.⁸⁷ Existing capabilities in administration, funding, and operating and maintenance personnel were to be utilized to the maximum extent possible.⁸⁸

As part of a social service transportation action plan, CTSAs may be designated within the geographic area of jurisdiction of a county transportation commission (CTC), a local transportation commission (LTC), a regional transportation planning agency (RTPA), or a metropolitan planning organization (MPO) to achieve the intended transportation coordination goals listed in the act. Currently, 53 CTSAs are designated in California.⁸⁹ The SSTIA required transportation planning agencies or a county transportation commission to adopt and submit an action plan that reflects the strengths of existing services, a plan to correct deficiencies and maximizing transportation benefits possible through coordination and/or consolidation of services.⁹⁰ Separate inventory reports of all existing public and private social service transportation services were required to be submitted by December 31, 1980.

The CalAct E-book on CTSAs sums up the legislative intent of the SSTIA and the CTSA concept as follows:

The purpose of the Act was to improve the quality of transportation services to low mobility groups while achieving cost savings, lowered insurance premiums and more efficient use of vehicles and funding resources. The legislation took the middle course between absolutely mandating and simply facilitating the coordination of transportation services. Designation of CTSAs and implementation of other aspects of the Act were seen as a flexible mechanism to deal with the problem of inefficient and duplicative social service transportation programs that proliferated due to a dramatic increase in the number of social service programs offered by government agencies and private nonprofit organizations to meet their clients' mobility needs.⁹¹

In addition, AB 120 originally contained a reporting requirement. Codified as Section 15973 of the Government Code, it was repealed in 2002 by AB 2647.⁹² The reporting section required

transportation planning agencies and county transportation commissions to prepare and submit a report to the state Director of Transportation on all existing social services transportation services in their respective geographic areas.

The report was required to contain: an inventory of all existing public and private social service transportation services, the amount of funds they use, and the number of people served; a statement on the service's drivers and management of the service; a summary of the average vehicle miles driven; a description of the background of the service in the community, and any other pertinent information about the service.

AB 2647 did away with numerous provisions requiring DMT to prepare and submit legislative oversight reports. According to the legislative analysis of the repeal bill, AB 2647, DMT asserted that the reports "served no useful purpose since other reports provide better information..."⁹³

Another reporting requirement was added in 1989 by SB 807 requiring RTPAs and CTCs to submit an inventory of social service transportation services and a service consolidation plan every four years and an action plan every two years. DMT was also required to submit to the Legislature and the Governor a biennial summary of the reports from the RTPAs and the county transportation commissions.⁹⁴ DMT received reports in 1990, 1992, 1994, and 2001, but these never generated inquiries or feedback from public entities or the Legislature. The legislative analysis also mentioned that most reporting agencies have a system in place (for example, advisory boards) that consider and take actions on issues related to defining unmet transit needs in their areas.

The legislative analysis further states:

"...it appears that the legislative intent is being met without a cumbersome information collection and reporting process and that the legislation [requiring detailed reporting] is of limited value. Furthermore, this bill would not affect the RTPAs and the county transportation commissions' obligation to collect the information on social service transportation services."⁹⁵

Analysis

Some MAP PAC members and study stakeholder questionnaire responses have expressed concerns that CTSAs are limited in their effectiveness because they do not have the ability to either enforce or encourage coordination in their geographic regions because there is not an enforcement or enticement mechanism in the SSTIA. The prior reporting requirement was seen as a weak enforcement mechanism and was repealed in 2002 because the reports provided limited value to the agencies that put them together and to the DMT. In addition, SSTIA contains an "opt-out" clause that allows a local provider of social service transportation to request an exemption from coordination or consolidation as required under the action plan from the "Director of Transportation."⁹⁶

Additionally, school districts are excused from participation in consolidation efforts.⁹⁷ Though coordination using school buses is a more challenging opportunity, true coordination would engage the schools and their large fleets of buses in some manner, so this is a shortcoming of the California statute. In fact, California has developed a "Utility Bus" designed to transport both students and people with disabilities and the elderly.⁹⁸

CTSAs are also limited by funding. Under TDA Article 4.5, a CTSA may make up to five percent of a county's local transportation fund available for "community transit service," but may compete against other claimants for these funds. CTSAs can also receive some federal funding under 5310, 5316 and 5317 programs administered by the state and also can receive funding for mobility management practices under section 5302.⁹⁹ According to CalAct's CTSA book, the amount of funding available to CTSAs remains a mystery, but, according to some MAP PAC members the number is not that large.¹⁰⁰ This limited amount of funding gives little incentive for the founding of new CTSAs in either areas of the state that have never had a CTSA or in those regions where a CTSA was abandoned. In addition, limited funding hampers a focus on coordination, as more pressing operational activities occupy the staff of the CTSA, which may ordinarily have a multiplicity of transportation provider-related functions.

Yet, CTSAs as presently constituted have been successful in fulfilling the legislative intent in many areas of California. Many rural CTSAs have been very active and have received funding to promote coordination. In addition, CTSAs in Sacramento, Los Angeles, and Santa Barbara have been cited as successfully providing a broad range of services.¹⁰¹

Given all the obstacles, CalAct explains how the more pragmatic and successful CTSA's have operated:

Without authority to require cooperation of local social service agencies, the more mature, fully-functioning CTSAs have developed strategies to promote, and explain the benefits of coordination and deliver it at the local level. Persistence, political savvy, and friendly persuasion have effectively served these CTSAs, some of which are direct recipients of federal operating and capital funding programs as well as local transportation sales tax revenues specifically for providing community transit to the transportation disadvantaged.¹⁰²

The passage of the ADA also created a disincentive for creation of CTSAs. The ADA required transit agencies with fixed route service to provide complimentary paratransit service within three-quarters of a mile of their fixed route services. According to a stakeholder, this ends up directing federal funding to transit agencies instead of CTSAs. Other stakeholders said that this is primarily an issue in the Bay Area, but not in other areas of the state.

Regarding reporting, discussions in MAP PAC meetings revolved around why the requirements were repealed, the usefulness of the reports and what, absent the reports, could be done to achieve desired accountability. Some members pointed out that regional agencies and counties still collect information on social service transportation. A local transportation provider spoke of the burden of completing required paperwork.

One participant brought up the relatively new requirement in SAFETEA-LU for a "Coordinated Public Transit-Human Services Transportation Plan." Starting in FY2007, projects funded through three programs reauthorized in SAFETEA-LU—Job Access and Reverse Commute (JARC) (Sec. 5316), New Freedom (Sec. 5317) and the Program for Elderly Individuals and Individuals with Disabilities (Sec. 5310)—must have been derived from a "locally developed, coordinated" plan.

In 2006, FTA issued guidance on what constitutes an acceptable plan. Plans must identify current transportation providers and services, discuss transportation needs of relevant populations, ascertain strategies to address those needs, and set implementation priorities

among activities and projects. Outreach efforts are required and the local plan must be adopted by a designated local entity. State departments of transportation, if they are the designated recipients of FTA funds, use local coordinated plans in making funding decisions. California's plans, created by the various agencies and providers seeking FTA funds through DMT, have been reviewed and will be summarized as part of this study.

Something of a consensus seemed to emerge that these coordinated planning documents may serve the purposes previously served by the AB 120 reporting requirements, and may in fact be more useful, as they are reviewed during grant application processes. The remaining issue, regardless of the fate of reporting, is how compiled information can be better used to advance coordination.

Possible Solutions

- 1. Examine Alternative Governance Structures to Promote Coordination.** Now is an opportune moment for California to take a step back and examine best practices in other states and compare what currently exists to more optimal arrangements. California is fragmented in its approach to coordination. Given the coming "senior tsunami," now is the moment to take a hard look at alternative governance structures for delivering transportation services. These may include a state agency coordinating council with an enforcement mechanism, strengthening the local coordination function and establishing a dedicated source of new funding. Enhanced CTSA's may well have a place in any new approach. A high-level commission including state legislators, upper management of key state agencies, transportation providers, users of human service transportation and a balanced representation of stakeholders should be appointed to take the MAP PAC deliberations to the next level. Legislation is likely required. The experience of other states may be useful in examining governance and funding, so profiles of the coordination programs in Florida, Washington and Wisconsin are included later in the report.
- 2. Add a Mobility Management Component to CTSAs.** Currently, where there are CTSAs they are said to be useful in promoting coordination by MAP PAC members, MAP survey participants, and stakeholders. Yet to bring about additional coordination in each CTSA jurisdiction, getting beyond a focus on day to day operational issues, a mobility manager position could be mandated and funded in each CTSA. As defined by the Federal Transit Administration, "mobility management is an approach to service development and management that focuses on individualized customer markets and involves establishing a variety of services tailored to meet the needs of those markets." A mobility management center could include providing public transportation, vanpooling, ride-share and demand-responsive services; technologies to increase travel options and traveler convenience; implementing a one-call system to provide information and access to all travel options; and, using traffic management strategies to improve service delivery and coordination of public transportation with infrastructure and land use planning. As an example, in its *Coordinated Plan Summary*, Los Angeles County calls for the creation of a mobility management center by creating a new unit within an existing agency/organization or creating a new separate organization established solely for mobility management purposes.
- 3. Other CTSA Reforms:**

- a. **Expand the Definition of CTSAs.** Presently, only a public agency, a transit operator, a private entity operating under a franchise or license and a nonprofit corporation are eligible to become a CTSA. This definition could be expanded to allow other human service companies or agencies to act as CTSAs. For instance, one stakeholder suggested that AAAs would make excellent CTSAs or even mobility management centers.
 - b. **Make the CTSA the Funding Source.** A MAP PAC member remarked that it would be difficult to put an enforcement mechanism into coordination legislation unless funding (for example section 5310, 5316 and 5317 funding) was directed through the CTSA.
 - c. **Require a CTSA in Every County.** It is not required that any county have a CTSA, which leads to a differential coordination impact across the state. Therefore it could be mandated that either every county or every region represented by a RTPA have a CTSA.
4. **Reinstate Reporting Requirement.** Some in the MAP PAC saw the reporting requirement as a way to encourage those who resisted coordination efforts to start the process because they were required to submit their action plan to the DMT. To bring back this accountability, the original reporting requirement could be reinstated with or without an enforcement mechanism. Providing an enforcement mechanism would help ensure that the reports are submitted, which would provide a clearer image of what is working and what is not in regards to coordination efforts in the state.
5. **SAFETEA-LU Coordinated Plans as the Reporting Mechanism.** The SAFETEA-LU coordinated plans could take the place of the reporting requirement since the plans are required to receive federal funding. To help transit operators write their plans DMT could issue guidance on what the plans should include. A plan template was suggested as a way of ensuring more money for services instead of producing documents. An Internet data base could house the plans for ease of accessibility. One negative to this idea is that not all are subject to this requirement, since it is only to qualify for federal funding in certain programs.

III. Nonemergency Transportation Issues

Issue

Non-emergency medical transportation (NEMT) for Medicaid beneficiaries in California is often described as one of the most restrictive programs in the country. As of 2005, over two-thirds of the state's Medi-Cal population was prohibited from using NEMT.¹⁰³ Medi-Cal's overall budget is around \$22 billion, less than \$100 million (about 0.4%) of which is spent on NEMT.¹⁰⁴

MAP PAC members have expressed concern about the state's NEMT regulations because they force those unable to secure transportation to forgo or miss needed and scheduled medical appointments. Study stakeholders say that the situation would greatly improve if public transportation providers in California were allowed to also provide NEMT. This poses the question: Should Medi-Cal's NEMT regulations be amended to include greater transportation eligibility to Medicaid beneficiaries while also allowing for greater access to different kinds of transportation methods?

Further, in regards to providing improved NEMT services, the recent CMS NEMT Medicaid brokerage rule has been cited by some MAP PAC members as a possible solution to California's NEMT problem. Other members have significant concerns about the rule's possible hindrance to coordination and other potential impacts on transportation providers in the State. The question is whether California should adopt a brokerage system to better coordinate its NEMT to ensure transportation of Medicaid beneficiaries?

Background

Medicaid regulations require each state plan to "ensure necessary transportation for recipients to and from providers;" and "describe the methods the agency will use to meet this requirement."¹⁰⁵ California assures the necessary transportation of Medi-Cal recipients by providing in the California Administrative Code that:

"Medical transportation services means the transportation of the sick, injured, invalid, convalescent, infirm or otherwise incapacitated persons by ambulances, litter vans or wheelchair vans licensed, operated, and equipped in accordance with applicable state or local statutes, ordinances or regulations. Medical transportation services *do not* include transportation of beneficiaries by *passenger car, taxicabs or other forms of public or private conveyances*" (emphasis added).¹⁰⁶

And:

"Ambulance, litter van and wheelchair van medical transportation services are covered when the beneficiary's medical and physical condition is such that transport by ordinary means of public or private conveyance is medically contraindicated [to make (a treatment or procedure) inadvisable¹⁰⁷], and transportation is required for the purpose of obtaining needed medical care."¹⁰⁸

These regulations allow only those who are the most severely disabled to take advantage of NEMT, and exclude all other Medicaid beneficiaries. In 1983, a group of Medi-Cal recipients sued the State claiming that the State plan violated the "assurance of transportation" requirement because it did not assure necessary transportation to *all* qualifying recipients.¹⁰⁹ The court agreed and ordered the State to amend and publish a complete plan that took into account all qualifying recipients.

Nevertheless, the court went on to note that the State was not required to furnish transportation or pay for it, and that "federal regulations advise and counsel in detail that options and priorities be established, and alternate means of transport, including voluntary assistance by others, be considered in adopting a state administrative transportation plan."¹¹⁰

To comply with the court order, the California Department of Health Services expanded upon the information about transportation options that Medi-Cal offices provide to county welfare and local Social Security offices.¹¹¹ The administrative codes cited above describing medical transportation have not been amended since the lawsuit.¹¹²

In other states, successful suits have revealed a lack of assurance of necessary transportation.¹¹³ All these cases were brought under 42 U.S.C. § 1983, which allows for any citizen to bring suit over a deprivation of civil rights under the color of any "statute, ordinance, regulation, custom, or usage."¹¹⁴ Nevertheless, Alabama and Vermont have recently been

successful in challenging a plaintiff's abilities to bring suit under this statute. In *Harris v. James*, the 11th Circuit Court of Appeals (which includes Alabama, where the suit was brought) ruled that "federal regulations alone cannot create enforceable rights under § 1983 and that while transportation may have been implied under the statute [42 CFR § 431.53], there was no clear statutory right to transportation."¹¹⁵ Under this reasoning, even though a "Medicaid agency may have an obligation to assure transportation only the Secretary of Health and Human Service can enforce it" because the interest is not implicit in the enforcing statute.¹¹⁶

In their policy brief on NEMT, the George Washington University authors speculate that the Deficit Reduction Act of 2005 (DRA) brokerage rule might have changed this problem by explicitly referring to the states' obligation to assure for the necessary transportation.¹¹⁷ Under current federal case law, only the Secretary of Health of Human Services can require California to comply with Medicaid's "assurance of necessary transportation" regulation.

Along with restricting the type of Medicaid beneficiary who can use NEMT, every beneficiary who needs NEMT must submit a treatment authorization request (TAR) to one of two Medi-Cal offices in the state for approval.¹¹⁸ The offices can accept, deny or modify the request. In addition to the TAR, Medi-Cal requires additional documentation from the provider, such as a prescription or order signed by the "physician, dentist or podiatrist that confirms the medical reasons necessitating the use of NEMT."¹¹⁹ If a Medicaid beneficiary has a chronic condition, he is required to submit a TAR yearly.

According to the California Legislative Analyst's Office (LAO), a provider would, ideally, obtain a TAR from Medi-Cal before transporting the recipient, instead of having the TAR evaluated after the service has been rendered. Because the process currently evaluates TARs after service has been rendered providers are left with uncertainty about reimbursement.¹²⁰ Also, most recipients of NEMT in California are dialysis patients or other clients with chronic conditions. In these cases the NEMT provider is more likely to make the effort to complete the TAR, since it's good for one year of service.¹²¹

The LAO also suggests the use of NEMT brokerage program¹²², which makes brokerages easier to establish because of the enactment of the Deficit Reduction Act of 2005 (DRA). Under the DRA states will not be required to obtain a section 1915(b) waiver to obtain non-emergency medical transportation. The DRA, gives states the *option* to use a non-emergency medical transportation brokerage program when providing transportation as medical assistance under each state's plan.¹²³ Therefore, the DRA gives states greater flexibility in providing NEMT (see provisions on page 10). CMS was careful not to offer a definition in the rule of what a broker or brokerage is, giving more flexibility to brokers to define their own businesses. However, according to Medicaid transportation experts, a NEMT broker could be defined as a business that accepts requests for medical transportation from Medicaid recipients, and from the information provided selects the most appropriate lowest cost service provider, then bills the state for whatever the contract terms are and pays providers in a timely fashion.¹²⁴

Before the medical transportation broker rule, if a state wanted to provide NEMT and be reimbursed under medical assistance it could not restrict a beneficiary's choice of transportation provider by contracting with a broker, nor could it provide services differently in different areas of the state without receiving a waiver under section 1915(b) of the Act. These waivers allow states to restrict freedom of choice providers, and selectively contract with brokers and to operate their programs differently in different areas of the state and still receive reimbursement at the medical service rate. Alternatively, a state does not have to request either a 1915(b)

waiver or amend its state Medicaid plan if it wishes to treat NEMT as an administrative cost, or treat it as a medical service without restricting Medicaid recipients' freedom to choose their own transportation provider.

Because both of California's Medicaid reimbursement rates are at 50 percent there has not been an incentive for the state to have a NEMT brokerage program. The passage of the American Recovery and Reinvestment Act of 2009 (ARRA) provided \$87 billion to states for state Medicaid assistance. One of the ways it assists California is by increasing its medical assistance reimbursement rate from 50 percent to 61.59 percent from October 1, 2008 through December 31, 2010.¹²⁵ The increase provides an incentive for the state (and other states at the 50 percent medical assistance rate) to implement a NEMT brokerage program.

Analysis

Some have surmised that California has promulgated its NEMT regulations to save funds. Because of these efforts, they theorize, the state's program is one of the most restrictive in the country. The program makes it difficult for Medicaid beneficiaries to receive needed rides to medical appointments, and restricts public transportation entities from providing trips in various regions in California. Today, the state's regulations governing its NEMT program are clearly a hindrance to coordination efforts in the state. With the restrictive regulations that keep most Medi-Cal beneficiaries off of NEMT, and making those eligible complete a TAR, coordination with other human service programs is virtually impossible.

The program also only allows the most severely ill and disabled to use NEMT, while, some say, denying other Medicaid beneficiaries their right to transportation to their providers. Further, those who fit into the state's definition are required to complete a TAR for every ride they receive, or they must have it filled out yearly if they have a chronic condition. This further reduces the number of beneficiaries taking NEMT rides because of the nuisance and difficulty in completing the TAR.

Against conventional understanding of Medi-Cal's NEMT regulations San Diego County's Metropolitan Transit System (MTS) and North County Transit District (NCTD) are transporting NEMT beneficiaries and getting reimbursed by the state. San Diego gets around the Medi-Cal regulations by partnering with the county's Health and Human Services Agency (HHSA) to work around the definition of "public conveyance." This is accomplished by isolating where NEMT patients are allowed to go, (Hospital/Medical Center or Regional Center Day Programs), not giving out bus passes, and providing rides on San Diego County's paratransit services to Medi-Cal beneficiaries only. This allows the HHSA to know exactly what the funds are being used for. Trips have to be documented beforehand so the HHSA knows what the trip was for. To date, no other county has worked with their HHSA to make NEMT available on public transportation. What makes San Diego County different is that their local HHSA is willing to work with the county's transit agencies to put NEMT riders on public transportation. Without the willingness of the HHSA the NCTD or the MTS this would not be able to get done.

In regards to the CMS brokerage rule, in response to concerns that have been raised about the possibility of it negatively impacting coordination efforts in the state (explained below), CMS asserted that the rule does not expressly mention coordination. CMS has said that Medicaid funds can only be used for Medicaid services given to approved beneficiaries, and that when managing a NEMT program, the state is required to follow Medicaid's guidelines regardless of whether it interferes with coordination efforts.

Other commenting agencies and organizations and study MAP PAC members worry that the brokerage rule will interfere with the 2004 Executive Order that created the Interagency Coordinating Council on Access and Mobility (CCAM), which stresses the importance of coordination of public transportation at the Federal level. CMS replied that the principles laid out in the Executive Order are suitable so long as they do not interfere with Medicaid's policies and rules. According to CMS "[t]he rule did not preclude state Medicaid agencies from participating in efforts to coordinate the use of transportation resources consistent with the guidance issued by the CCAM, as long as those coordination efforts recognize that the Medicaid's responsibility is limited to ensuring cost-effective transportation for beneficiaries to and from Medicaid providers."¹²⁶

Other issues raised relative to the brokerage program include a prohibition on transportation providers from acting as brokers, which effectively excludes many providers in the state who would be more than capable in the role. Some providers and transit advocates have expressed concerns that a brokerage program set up under this rule would result in the broker attempting to limit the number of rides it provides, thereby increasing brokerage company profits. Recognizing that the rule has only been in effect for about 8 months, it is too early to assess its impact on coordination or the provision of NEMT.

Possible Solutions

1. **Greater Access to Beneficiaries.** Medi-Cal is currently in violation of Medicaid's assurance of necessary transportation for every Medicaid recipient and has been since at least the 1983 *Bingham* decision. Therefore the legislature should mandate that Medi-Cal amend its regulations that restrict Medicaid beneficiary access to allow for greater access to Medicaid beneficiaries who currently do not fit within the state's current definition.
2. **Greater Access to Public Transportation.** Medi-Cal also does not allow for the reimbursement of NEMT trips on public transportation. Therefore if Medi-Cal regulations are amended to allow for greater access from Medicaid beneficiaries its regulations should also be amended to allow beneficiaries to use public transportation for NEMT trips. This could lessen the burden of added users on those who currently provide NEMT by directing clients to public transportation.
3. **Amend the TAR Process for NEMT Rides.** The TAR process is cumbersome for those able to use NEMT in California and for the medical providers who have to assist in submitting them. Medi-Cal should take note of the LAO's recommendation that the TAR process be amended so that it is less cumbersome and so that the paperwork is submitted prior to (not after) the NEMT ride is provided.
4. **Coordinate NEMT providers with Coordination Groups.** NEMT providers should be required or encouraged to participate in the coordination planning process and with other coordination groups. This would create a more comprehensive representation of the needs in each county/geographic region for the planning process, and would bring additional concepts and resources into the coordination process.
5. **Institute a Hybrid NEMT Brokerage.** LAO suggests that Medi-Cal implement a NEMT brokerage program to provide greater access to NEMT for Medi-Cal beneficiaries. California is currently being reimbursed at the medical service rate,¹²⁷ but to keep being reimbursed at

this rate the state will have to request another section 1915(b) waiver if the state wants to design its own brokerage. Nevertheless, this could be beneficial if Medi-Cal or the state wants to have a brokerage program that is different in any aspect from the CMS rule. One MAP PAC member suggested that CTSA's could become NEMT brokerages.

6. **Implement a Brokerage According to the CMS Rule.** Medi-Cal could avoid having to submit another section 1915(b) waiver and implement a brokerage program according to CMS's rule and continue to be reimbursed at the medical service rate.

IV. Insurance Issues that Hamper Coordination

Issue

MAP PAC meetings, stakeholder questionnaires, and the coordinated plan summaries have elicited concerns about the impacts of insurance and liability on agencies' and organizations' ability to coordinate in California. Insurance costs are high and the ability to coordinate is stifled due to the uncertainty of what agency/organization will bear the risk and/or loss of carrying another agency's clients.

Other transportation actions such as providing door-through-door services, crossing state lines, using volunteer drivers, mixing client populations and addressing insurance market stability can affect an ADA paratransit provider's insurance costs.¹²⁸

Background

Transit providers must have significant insurance coverage to ensure protection against liability inherent in providing transportation services. Unfortunately, providers are subject to the cyclical nature of the insurance market. When the market is "hard," premium prices are high, coverage is difficult to obtain, or nonexistent, which can force providers to cut back their services, or exit the market.

Insurance market intricacies also can negatively affect the services a paratransit operator can provide. Stakeholder responses to the study questionnaire show that providers find it difficult to share vehicles and maintenance, a key component of coordination, because of uncertainty about which company will be liable in case of an incident where injury or damages occur to people and property.

A key ingredient to the success of many special transportation programs is the use of volunteer drivers. Volunteers can significantly reduce costs by operating vehicles without compensation. Although some programs allow volunteers to operate vehicles owned by the agency or organization, in many programs volunteers drive clients in their own personal cars. Although some volunteers are compensated for their costs, many volunteers are responsible for vehicle maintenance, insurance premiums and other expenses. Volunteers also provide intangibles such as positive attitudes and personal connections to their clients.

Although volunteer drivers are an important asset, there are significant legal ambiguities about their use. The core concerns revolve around liability and insurance coverage. Across the country, practices vary. In many jurisdictions, program operators are unsure if they are liable for traffic incidents involving their volunteer drivers and whether they should correspondingly extend

their insurance coverage to compensate. In some places, volunteer drivers may be immune from liability. Other jurisdictions make drivers, and the organizations that use them, more vulnerable to civil lawsuits.

Analysis

Sharing vehicles reduces operating and capital costs and prevents underuse of resources (too many service providers could mean vehicles and other resources are not used to capacity).¹²⁹ The insurance problem here lies not with the insurance companies, but with structuring an agreement between two or more agencies to cover responsibility for damages that occur while an agency borrowing a vehicle has it in the borrower's possession.¹³⁰ According to the Community Transportation Association of America (CTAA), "...any claim will first be made on the insurance of the vehicle owner," and "...in the event of a loss, the vehicle owner's insurance will pay the claim first."¹³¹ To hold the borrower of the vehicle liable for the damages caused, the CTAA recommends either that: The vehicle owner have his insurance company assign the benefit of rights and remedies under a contract (subrogate) the loss to the second operator's insurance company, or have the vehicle owner of the second operator's insurance company cover any loss incurred while he or she is in control of the vehicle.¹³²

Another approach is for providers to engage in risk management techniques, which offer low-cost ways to reduce insurance costs for paratransit providers. Risk management is "...a structured process for reducing uncertainty about risks of accidental loss."¹³³ It involves a process of protecting assets and income by identifying all possible ways an accident or a loss can occur, then taking action to ensure the loss is as small as possible.¹³⁴ Every action a company takes is considered a possible risk, and steps are taken to mitigate those risks. Risk management can protect the transportation provider from severe financial loss due to forces beyond the provider's control and can do so at a set cost that does not fluctuate from year to year.¹³⁵ Premium costs are set by the underwriting process, and a provider's loss history will dictate the cost of premium. Therefore it is in the provider's best interest to take any possible action to reduce its exposure to high-risk activities.¹³⁶

In regards to volunteer drivers, ambiguities about civil liability can make it difficult for agencies and organizations that use volunteer drivers to obtain adequate insurance and manage long-term costs. Special transportation programs may need to enhance insurance coverage, and services could be significantly affected by the increased expenses. Additionally, uncertain risks can make it more difficult to recruit and retain volunteer drivers. New volunteers might be deterred by liability concerns or unwilling to pay substantially higher insurance premiums for the use of their personal vehicles.

The unknown risk of civil liability can significantly affect the ability to establish and maintain low-cost transportation programs for transportation-disadvantaged populations. Insurance companies may be reluctant to allow drivers and special transportation agencies and organizations to cover their volunteer activities with normal insurance policies. Anecdotally, organization officials in some jurisdictions have reported that volunteers were required to obtain special clauses or carry higher insurance amounts to cover the extra use of their personal vehicles for regular volunteer activities. Volunteers who operate regular routes or work for shared cost programs could be categorized by some insurance companies as "for-hire" drivers and be required to pay premiums similar to the much higher rates for taxi cab drivers.

In California, the state prohibits the issuance of auto insurance policies that expressly or by implication exclude coverage for the use of an automobile for the performance of volunteer services for a nonprofit or charitable organization or a governmental agency.¹³⁷

Possible Solutions

1. **Caltrans Guidance.** Some resources available to help decrease insurance costs are transit oriented nonprofit agencies and national transportation research groups that publish information on how to reduce transit insurance costs. One of the missing resources is the DMT, which could provide guidance and outreach to transit operators in the state on possible ways to reduce insurance related costs and ways to use volunteer drivers that comply with state law. Information on risk management could be shared.
2. **Study on Insurance Practices.** DMT could also initiate a study on how either transit operators in California or other states have reduced their insurance costs.

V. Crossing State Lines and Other Jurisdictional Issues

Issue

Input and feedback received during MAP PAC meetings and in stakeholder interviews included issues and challenges related to crossing city, county and state lines to provide service. Providers mention that boundaries restrict their ability to provide adequate service to their customers in target markets, as in many cases medical facilities are located altogether outside their city, county or state.

Background

In rural areas where paratransit services are provided, it may be more practical to take a client to a doctor or hospital across a state or county line instead of to one in-state. For example, in Modoc County one MAP PAC member indicated that sometimes it is necessary to take a client to a doctor's appointment in Reno, Nevada or in Oregon. Nevertheless, this is made difficult by restrictions imposed by insurance companies, and state and federal regulations.

Analysis

When a paratransit provider wants to cross state lines to pick-up or drop-off a client, two problems can occur. The first involves Federal Motor Carrier Safety Administration (FMCSA) and FTA regulations that govern interstate commerce and public transportation, respectively. The ICC Termination Act of 1995, which established the FMCSA,¹³⁸ repealed particular FTA provisions for 5307, 5310 and 5311 grantees, but the FMCSA did not notify its field offices about the changes.¹³⁹ The ICC Termination Act made a special provision for these grantees that crossed state lines¹⁴⁰, but the FMCSA did not convey these changes to its field offices resulting in confusion among those who insure these grantees that cross state lines.¹⁴¹

Further, the FMCSA does not recognize statewide and municipal insurance pools, which offer transit operators the ability to join a pool of similar organizations that fund each other's losses.¹⁴² Members contribute to the pool as they would pay premiums to an insurance

company, and the funds are used to pay for any loss caused by one of its members.¹⁴⁴ The pool usually manages its own administrative functions and claims management.¹⁴⁵ Insurance pools can provide some margin of cost savings because of their small size.¹⁴⁶ Their small size allows these pools to avoid some of the market forces that affect larger insurance companies;¹⁴⁷ however, if the pools costs are not structured properly, additional costs could be assessed. Therefore if paratransit grantees cross state lines and belong to an insurance pool, they must obtain private insurance for the fleet vehicles that make such trips.

The second problem involves the regulatory environment of the other state.¹⁴⁸ Since insurance is regulated at the state level and regulations may differ, a state into which the paratransit provider travels might have stricter regulations on price controls, for example. This could lower insurer profits. The insurance company also could perceive the trip as a risk that it will not insure. If the paratransit company then makes the trip, its claims could be denied or its coverage could be canceled.¹⁴⁹

Crossing county lines also poses a problem for some providers. Since local match requirements are derived from county resources, most counties do not want to subsidize other counties by providing trips to facilities in neighboring counties. To work around this problem San Francisco Bay Area counties and neighboring Inyo and Mono counties have entered into memorandums of understanding (MOUs) so that resources can be shared fairly.

[Further analysis on this issue is forthcoming].

Possible Solutions

1. **Caltrans Guidance.** DMT could follow the example of the counties mentioned above and issue guidance to transit operators in the state on how to execute mutually beneficial MOUs to avoid this problem.

VI. GOVERNANCE AND FUNDING ISSUES

The political backdrop of this study has been the ongoing and very difficult budget situation faced by the state of California. The economic downturn has reduced state revenue significantly and deep cuts have been implemented. Some good news came recently as previously approved cuts in public transportation funding have been rescinded by judicial order.

How will coordination fare during such times? With much difficulty, as squeezed funding must go for basic operational needs and some coordination activities having to go on the back burner. Stronger coordination efforts in other states may prove beneficial as an example of what California may want to consider to strengthen its coordination efforts.

This section profiles three states with strong funding and governance of human service transportation coordination. These include Florida, Washington and Wisconsin.

Coordinated Human Service Transportation State Examples

Florida, Washington and Wisconsin are three states with state-level coordination of human service transportation. These states each have a state-level commission or council that works in collaboration with—and in some cases funds—local coordination efforts. Florida’s model utilizes an independent state agency that has significant policy, planning and oversight

responsibilities, a dedicated funding source, the authority to contract for services and disburse funds, and the responsibility to report to the legislature and the governor. In Washington, a state-level interagency council provides a forum for interaction and collaboration and acts to advance coordination, partly by reporting to the legislature. Wisconsin established its state-level interagency council more recently, to develop a coordination model for the state; Wisconsin also encourages coordination through grant programs and by supporting local mobility managers. The characteristics, authority, funding and results for each state's coordination system are described below.

Florida

Program

Florida's well-established coordination system is intended to balance local flexibility with comprehensive state planning, policy and oversight¹⁵⁰. In the Florida model, an independent state agency, the Commission for the Transportation Disadvantaged (CTD), serves as the policy development and implementation agency for Florida's transportation disadvantaged program¹⁵¹. The legislature created the Commission in 1989 and made it responsible for the statewide coordination of transportation services for persons who are transportation-disadvantaged, defined as those who "because of physical or mental disability, income status, or age are unable to transport themselves or to purchase transportation and are, therefore, dependent upon others" for transportation, or children who are "handicapped, high-risk or at-risk."¹⁵² The goal of coordination is to "ensure the cost-effective provision of transportation by qualified community transportation coordinators or transportation operators for the transportation disadvantaged."¹⁵³

The CTD brings together multiple agencies and populations. It has seven voting members; at least five whom have significant business experience, at least two whom have a disability and use the transportation disadvantaged system, and at least one must be over 65 years of age. Ex officio non-voting advisors include representatives of the state agencies or departments for Children and Families, Elder Affairs, Health Care Administration, Persons with Disabilities, Transportation, Veterans Affairs and Workforce Innovation, as well as a county manager or administrator appointed by the Governor¹⁵⁴.

Florida's legislation clearly defines the roles of both state and local agencies (see figure 1). The state Commission selects a Metropolitan Planning Organization or other local entity to be the designated official planning agency, which, in turn, appoints and staffs a local Coordinating Board, the chair of which must be an elected official. The Coordinating Board serves as an advisory body in its service area. It identifies local service needs, provides guidance for service coordination, and recommends a community transportation coordinator (CTC) to the CTD. The CTD contracts directly with the CTCs, which are responsible for coordinating transportation services in each of Florida's 67 counties. CTCs receive state and federal funds and provide, contract for or broker transportation services. State agencies that fund transportation services ("purchasing agencies") buy trips from a CTC or are billed directly by service operators¹⁵⁵. One exception is the state Medicaid agency, which contracts directly with the CTD to manage the Medicaid non-emergency transportation program¹⁵⁶.

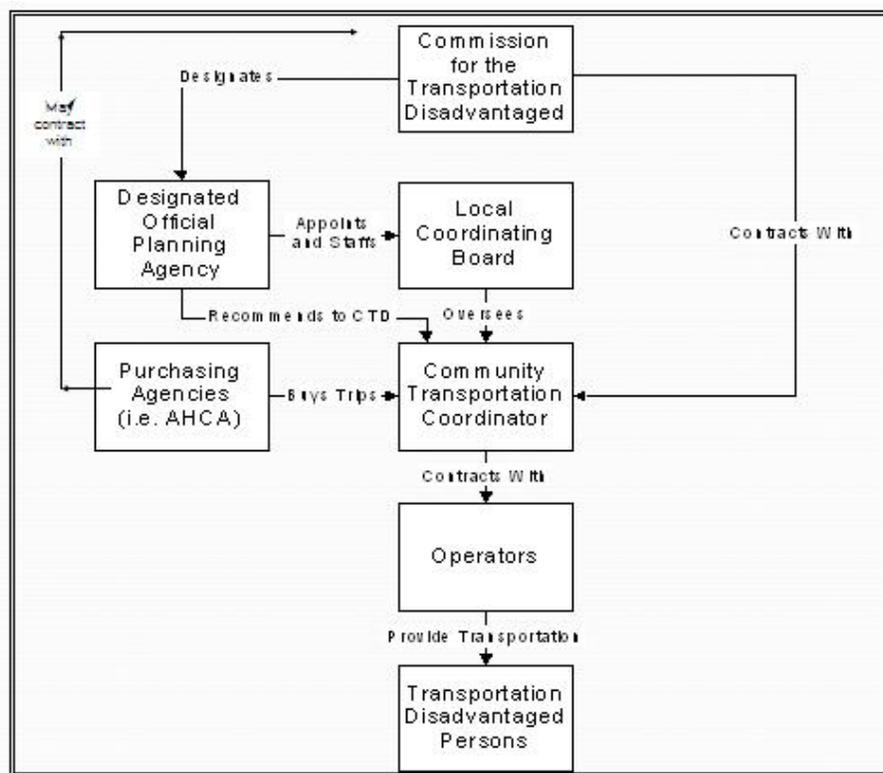


Figure 1: The roles of state and local entities in Florida’s transportation disadvantaged system¹⁵⁷.

State law gives the state Commission several other responsibilities besides designating planning agencies and contracting with CTCs. Among other duties, it must make annual reports to the governor and legislature, establish objectives and standards for transportation disadvantaged service provision, develop policies and procedures for coordinating state, local and federal funding, disburse funds and provide assistance to local agencies, and prepare a statewide five-year transportation plan that addresses coordination issues¹⁵⁸.

Authority

Legislation was first passed in 1979 requiring the coordination of state-funded programs that provide transportation to transportation-disadvantaged populations. In 1989, the law was amended to create the CTD and create the Transportation Disadvantaged Trust Fund. Florida's transportation disadvantaged program and the CTD are currently governed by Chapter 427.011-017, Florida Statutes, and Rule 41-2, Florida Administrative Code. The Transportation Disadvantaged Trust Fund, which provides for carrying out the responsibilities of the CTD, is established in Chapter 427.0159, Florida Statutes, and further outlined in Rule 41-2.013 and 41-2.014, Florida Administrative Code. For sources of revenue for the trust fund, see Chapters 320.02, 320.03, 320.0848, 320.204, 341.052 and 427.0159, Florida Statutes.

Funding

Florida has a dedicated funding source for transportation disadvantaged services and coordination: the Transportation Disadvantaged Trust Fund, administered by the CTD. The

trust fund is disbursed in two kinds of grants: 1) planning grants to local planning agencies for the purpose of local transportation disadvantaged planning and providing staff support to local Coordinating Boards¹⁵⁹, and 2) trip and equipment-related grants to CTCs to fund transportation services not otherwise sponsored by a government agency or program¹⁶⁰, including the purchase of capital equipment¹⁶¹. These latter grants fulfill the crucial role of filling a service gap for persons whose transportation needs are not met by any other program. The fund also covers the CTD's administrative expenses¹⁶².

The fund's estimated revenue for FY 2009 was over \$39 million¹⁶³. Over half of this revenue came from a \$1.50 registration fee for passenger vehicles and trucks weighing 5,000 pounds or less¹⁶⁴. The fund is also supported by 15 percent of the state's public transit block grant program¹⁶⁵ (28 percent of the fund's revenue in FY 2009)¹⁶⁶, voluntary dollar contributions made by motorists at the time of vehicle registration¹⁶⁷ (<1 percent)¹⁶⁸, a portion of temporary disabled parking permit fees¹⁶⁹ (<1 percent)¹⁷⁰ and a \$6 million per year direct transfer from the State Transportation Trust Fund (15 percent)¹⁷¹. Starting in 2011, an additional \$5 million per year will be transferred to the fund from the Highway Safety Operating Trust Fund, in part to make up for falling registration fee revenues¹⁷². State agencies that purchase transportation services may also pay into the TDTF for the administration of their funds by the CTD¹⁷³. Under 4 percent of TDTF revenue is spent on the CTD's operating expenses¹⁷⁴.

Of the \$361.7 million made available for transportation disadvantaged services in Florida in FY 2008, the TDTF provided just over 10 percent. Other sources of funding included fares, the federal Department of Transportation and other federal programs, and the state departments or agencies for Children and Families, Education, Elder Affairs, Health, Community Affairs, Juvenile Justice, and Workforce Innovation. The two largest contributors were local governments (48 percent) and the state Medicaid program (15 percent)¹⁷⁵.

Results

The Florida system won the FTA's State Leadership Award in 2004 and 2008 and has been recognized by the U.S. Department of Transportation and U.S. Department of Human Services as a "best practice" model¹⁷⁶.

Data for Florida's system indicate significant economic and social benefits. One study estimated the return on investment for Florida's transportation disadvantaged program at 835 percent, or \$8.35 for every \$1, in 2007¹⁷⁷. Further, the services are being used by the intended recipients. In FY 2008, 680,274 transportation disadvantaged persons statewide received over 50 million trips. A reported 6.5 million of those trips were provided by the Transportation Disadvantaged Trust Fund¹⁷⁸; these trips would not otherwise have been covered by any other program.

However, unmet need is still evident. In that same year, over 1 million trips were denied due to lack of funding, lack of vehicle availability or other reasons¹⁷⁹.

Washington

Program

Washington achieves coordination of human service transportation using a state-level, inter-agency council in collaboration with regional and local entities. The state's Agency Council on

Coordinated Transportation (ACCT), housed at the Department of Transportation, was created by the legislature in 1998. The statute established the Program for Agency Coordinated Transportation to facilitate a statewide approach to coordination and to support the development of community-based, coordinated transportation delivery systems, and created the ACCT to implement it¹⁸⁰. The ACCT's mission is to promote the coordination of special needs transportation, provide a forum for discussing issues and initiating change, provide oversight and direction to the state's coordination agenda, and report to the legislature to propose legislative remedies¹⁸¹.

Fourteen voting members serve on the ACCT, including representatives of the governor's office, regional and metropolitan planning organizations, counties, transportation providers, and the state agencies of Public Instruction, Transportation, Social and Health Services, and Veterans Affairs, as well as at least three consumers of special needs transportation services. Four non-voting members are state legislators¹⁸². The ACCT's purpose is to advance and improve accessibility to and coordination of transportation services statewide for persons with special transportation needs¹⁸³, defined as those persons, "including their personal attendants, who because of physical or mental disability, income status, or age are unable to transport themselves or purchase transportation."¹⁸⁴

Until 2007, the ACCT's mandated duties included: developing guidelines for, initiating, and supporting local planning of coordinated transportation; engaging in coordination pilot projects; developing guidelines for setting performance measures and evaluating performance; administering grant funds; developing standards for safety, driver training, and vehicles; providing models for processes and technology to support coordinated service delivery systems; acting as an information clearinghouse for best practices and experiences; and, advocating for coordination at the federal, state and local levels, including recommendations to the legislature¹⁸⁵.

When the legislature reauthorized the ACCT in 2007, it also amended the council's statutory duties. The ACCT must now adopt results-focused biennial work plans that identify and advocate for special needs transportation improvements. The work plans must also prioritize projects that identify and address barriers in laws, policies, and procedures. The ACCT is also charged to develop statewide guidelines for customer complaint processes, represent special transportation needs in state emergency and disaster preparedness planning, appoint a work group to engage federal representatives and agencies in an analysis of various federal requirements¹⁸⁶, and review and recommend certification of regional transportation planning organizations' four-year plans¹⁸⁷.

Concerned about the ACCT's effectiveness, in 2007 legislators authorized a study to examine special needs transportation coordination. The final Joint Transportation Committee report, published in 2009, found that the ACCT was underfunded and understaffed, needed performance measures to demonstrate accountability, should be given more authority to be more proactive in transportation planning, and needed amendments to its enabling legislation and bylaws to provide clearer guidance to members and staff¹⁸⁸.

In 2009, the legislature responded to the Joint Transportation Committee report with further legislative action. Among other amendments, this legislation creates local coordinating coalitions to advance local coordination and collaboration efforts, maximize efficiencies in special needs transportation programs, and advise the ACCT about special transportation needs and services in each region. Each coalition's members will represent public transit

agencies and other service providers, consumers, Medicaid brokers, social and human service programs, high school districts and the state Department of Veterans Affairs. Regional transportation planning organizations will provide staff support¹⁸⁹. The legislature also passed additional provisions relating to ACCT oversight of local coordinating coalitions, which were subsequently vetoed.

Authority

Washington's coordinated transportation program and the ACCT are governed by 47.06B.010–900, Washington Annotated Statutes, which were first passed in 1998 and amended in 1999, 2007 and 2009. According to the current law, the ACCT will sunset in 2011.

Funding

Funds from state and federal entities support the ACCT's activities. The Washington Department of Transportation leverages a state appropriation (\$381,000 for 2007–2009) to gain assistance from other sources, which for 2007–2009 included the FTA (\$975,763), a Community Transportation Association of America (CTAA) grant for technical assistance (\$200,000) and the state rural mobility grant program (\$87,500), for a total two-year budget of \$1.41 million¹⁹⁰. These funds cover the ACCT's administrative costs and help fund local coordination projects.

In 2006, interviews with ACCT stakeholders revealed a common view that the ACCT was underfunded and understaffed. Stakeholders expressed a desire for “sufficient, sustained and reliable funding for ACCT's internal operations, its grant-making abilities, and for special needs transportation services generally”¹⁹¹. The 2009 Joint Transportation Committee report also recommended providing the ACCT with adequate funding to support its mission¹⁹².

Overall, community providers of special needs transportation received \$19.6 million for operating and capital expenses in 2005. Sources included state (25 percent of operating revenues, 28 percent of capital), federal (11 percent of operating, 55 percent of capital) and local funds (13 percent of operating, 16 percent of capital), contracts (36 percent of operating), fares (11 percent of operating) and other (4 percent of operating, 1 percent of capital). The state Medicaid program spent another \$57.9 million in 2005 on brokered non-emergency medical transportation¹⁹³.

Results

In 2004, Washington's coordinated transportation effort won a national award from the FTA to recognize the state's progress in improving human service transportation for persons with special transportation needs¹⁹⁴. Persons with special transportation needs received over 4.75 million trips in Washington in 2005 from community providers and Medicaid-brokered services¹⁹⁵.

According to a 2005 report of the California State Transportation Task Team, Secretary of Transportation for Washington and then-chair of ACCT Paula Hammond attributed the ACCT's success in improving human services transportation to having incentives in place to implement a multi-agency coordination program that provides the basis for “cross-cutting accountability”. This process places pressure on each peer agency to “identify rule and policy changes that remove barriers to sharing customers and services.”¹⁹⁶

In 2009, however, the Joint Transportation Committee report named “silo” funding, system fragmentation, service duplication, lack of connectivity, inconsistent local coordination efforts and inconclusive pilot projects as persisting barriers to coordination¹⁹⁷. The report also found that the ACCT needed performance measures to be accountable¹⁹⁸.

Wisconsin

Program

In 2005, Wisconsin Governor Jim Doyle charged five state agencies to form the Interagency Council on Transportation Coordination (ICTC) to study human service transportation coordination in the state and develop a statewide coordination plan. ICTC members represent the state Departments of Transportation, Health Services, Veterans Affairs, Workforce Development and the Office of the Commissioner of Insurance¹⁹⁹, each of which includes transportation in its service programs²⁰⁰. The ICTC has a Stakeholder Advisory Committee (SAC) that advises the ICTC on statewide transportation needs and coordination opportunities and helps educate the public on the benefits of transportation coordination. SAC members include transportation consumers, advocacy organizations, tribal representatives, service providers and other partners. The goal of the ICTC is to create a “coordinated, accessible, affordable, dependable, and safe statewide system providing the best transportation services to transportation disadvantaged individuals in Wisconsin.”²⁰¹

Wisconsin has also encouraged coordination through funding relationships. The state’s financial and capital assistance programs for special needs transportation include 1) the Specialized Transportation Assistance Program for Counties, created in 1977 to provide assistance to counties for transportation services for older adults and persons with disabilities²⁰², and 2) the transportation employment and mobility program, now known as Wisconsin’s Employment Transportation Assistance Program (WETAP), created in 1981 as a system for coordinating employment-related transportation services for low-income workers²⁰³. Both programs require a demonstration of local coordination for projects to be eligible for funding²⁰⁴. A third program, the Elderly and Disabled Transportation Capital Assistance Program²⁰⁵, combines federal and state funds to provide capital assistance for specialized transit vehicles; the federal component has a coordination requirement²⁰⁶.

Another component of Wisconsin’s model is its 48 mobility managers, who develop and implement mobility management programs. These programs focus on delivering coordinated transportation services to persons with special transportation needs through a range of options and providers, and seek to improve special needs transportation through collaboration with public and private transportation providers and other community stakeholders at the local, regional or county level²⁰⁷. The state began building its system of mobility managers in 2007. The effort was funded by federal New Freedom grants—which support transportation services for persons with disabilities—as well as other state and federal resources. WisDOT also provides mobility management training and technical assistance²⁰⁸. Currently, mobility management is provided in 69 of the state’s 72 counties²⁰⁹.

The ICTC engaged in a recent effort to develop a model of human service transportation coordination for Wisconsin, including implementation strategies. The *Wisconsin Human Service*

Transportation Coordination Model final report was released in September 2008. The proposed model sets forth four strategies to advance state and local coordination²¹⁰:

- Strengthen ICTC as the lead entity for statewide coordination efforts, by making it a more permanent body with clear authority and stable support;
- Encourage county and/or regional coordination councils;
- Require county and/or regional coordination councils for federal and state funding; and,
- Encourage regionalization through incentives and rewards.

Authority

The ICTC was created by a directive of Governor Doyle in 2005.

Funding

The *Wisconsin Coordination Model* recommends independent, stable funding for the ICTC, which it currently lacks²¹¹. Funding for ICTC activities has come from several sources. A 2007 statewide conference on coordination was funded by WisDOT and conference registration fees. Then, the 2008 report was funded by a federal United We Ride grant and the state Department of Workforce Development Division of Vocational Rehabilitation. A United We Ride grant has also supported the costs of ongoing ICTC meetings and some costs for the SAC. The federal Rural Transportation Assistance Program (RTAP) is being considered as another possible resource for the future, though it has not yet been used. The ICTC does not directly fund any local coordination activities at this time. The ICTC is currently staffed by WisDOT and was previously co-staffed by the then-called Department of Health and Family Services²¹².

The 2008 report also found funding-related barriers and challenges to coordination. One such barrier is a fragmented transportation delivery system. Funding for human service transportation in Wisconsin—including local coordination activities—comes from many sources. These multiple funding streams have different reporting requirements, operations, guidance and restrictions on how funds may be used. This frequently results in multiple services that operate independently within a single county or region²¹³.

To illustrate, WisDOT currently administers ten programs that provide operating and capital assistance for public transportation; in 2006, \$183 million was available for this purpose, of which 11 percent was used to support specialized transit services accessible to older adults and persons with disabilities. State programs include the Specialized Transportation Assistance Program for Counties and the Elderly and Disabled Transportation Capital Assistance Program. Federal programs include the New Freedom grant program, which is one of the resources that has supported the development of statewide mobility management programs. The state's WETAP program also supports specialized transit and is funded by the federal Job Access and Reverse Commute (JARC) program, WisDOT's Transportation Employment and Mobility (TEAM) program, the state Department of Workforce Development's Employment Transit Assistance (ETA) program, and local matches. State agencies that fund human service transportation programs include the Departments of Health and Family Services, Veterans Affairs and Workforce Development. The state's largest resource for human service transportation is combined state and federal Medicaid, providing \$60 million annually²¹⁴.

Results

No data could be found relating either to the overall performance of human services transportation in Wisconsin, or to recent coordination activities.

Synthesis

All three states examined here—Florida, Washington and Wisconsin—have a state-level entity that has mechanisms for interacting with and supporting local coordination efforts. The Florida system has been recognized by the U.S. Department of Transportation and U.S. Department of Human Services as a "best practice" model²¹⁵. Both Washington and Wisconsin examined Florida's model in their recent reports on human service transportation coordination²¹⁶, to gain insight about best practices and possible coordination strategies.

Recommendations that appear in some form in both the Washington and Wisconsin reports, and which reflect best practices from the Florida model, include:

- Strengthening the state-level body with increased authority for statewide coordination, policy direction, and/or oversight
- Establishing or encouraging county, local, and/or regional coordinating councils and (for Washington) community access managers
- Providing adequate funding for coordination activities, perhaps by creating a new, dedicated funding source (as with Florida) or by combining existing programs

Overall, the recommendations suggest a bi-level oversight and coordination structure, with significant responsibilities at both the state and local, county or regional levels. Additionally, adequate, dedicated funding is required to support coordination activities and, as Florida demonstrates, can also fill service gaps for transportation disadvantaged persons whose service needs are not met by any other program.

One additional point that is apparent in the Florida and Washington examples. Effective legislative oversight is key to ensuring that legislative intent is followed in the agency implementation process. Broadly speaking, legislative oversight is the process by which a legislative body makes certain that state agencies are following the enabling statute and determining if associated programs could be run more cost-effectively. This is exercised in a variety of ways including conducting committee oversight hearings, requiring an annual agency report to the legislature, and non-partisan written evaluations by legislative program evaluation offices. In a number of states, including Florida and Washington, in-depth evaluations by program evaluation offices or study commissions have resulted in ongoing improvements in human service transportation coordination programs.

Appendix A

Mobility Action Plan Phase I Implementation Study

Outline of Final Report Assessing Human Service Transportation Coordination in California: An Analysis of Legal and Regulatory Obstacles National Conference of State Legislatures

September 1, 2009

[Background Note: In conjunction with JNTC, the National Conference of State Legislatures has been researching relevant provisions of the U.S Code, the Code of Federal Regulations, the California State Constitution, the applicable California Codes and the California Code of Regulations to identify state and federal laws and regulations related to human services transportation coordination programs. The objective is to identify restrictive and duplicative laws and regulations that impede transportation coordination and develop findings and recommendations to remove or mitigate impediments to coordination. The following framework will be used to organize the analysis.]

- VII. Background and history of the relevant statutes and acts.
 - a. Relevant Federal statutes--
 - i. Executive Order 13330
 - ii. SAFETEA-LU, Sec. 5310, 5316, 5317
 - iii. Americans with Disabilities Act
 - iv. Older Americans Act
 - v. Medi-Cal and the Medicaid Transportation Program
 - b. Relevant California statutes
 - i. Social Services Transportation Improvement Act
 - ii. Transportation Development Act
- VIII. Identification, statement of problem, background and analysis of issues surfaced through research, MAP PAC meetings, regional meeting and surveys.
 - i. Description of the "Unmet Needs" process and how implemented.
 - ii. The viability of CTSAs—their utility in coordination, how implemented, etc.
 - iii. Reporting issues—including the previous requirement for reporting to DMT and how the SAFETEA-LU coordination plans are currently used.
 - iv. Medi-Cal reimbursement rules and limitations that hinder coordination.
 - v. The new CMS brokerage rule and its potential implementation.
 - vi. Insurance issues that hinder coordination.
 - vii. Crossing state lines, other jurisdictional issues.
 - viii. Other issues that need additional development--

1. Funding, budget shortfalls, meeting ongoing needs, etc.
 2. Legislative oversight issues generally
 3. Information dissemination
- IX. Any recommended changes or revisions to the statutes and acts based on issue analysis
- a. Identification of statutory language and implementation practices that impede coordination between agencies and organizations involved in human services transportation.
 - b. Compare to selected other states, as appropriate.
 - c. Recommended changes to address each impediment identified. (Possibilities include a statewide coordinating council and various mobility management approaches.)
- X. Impacts to the Mobility Action Plan (MAP) study, if any
- a. Association of recommended changes to MAP
 - b. Suggested incorporation of changes into MAP, if appropriate
- XI. Practical and policy implications for incorporation into the Statewide Implementation Plan (SIP)
- a. To be determined
- XII. Appendices
- a. Matrix of relevant statutes including year, citation, title and purpose, description, and duplication and conflicting requirements with other laws, if any.
 - b. Glossary of terms

Prepared/revised by Jim Reed, NCSL, 9-1-09

CALIFORNIA COORDINATED HUMAN SERVICE TRANSPORTATION MATRIX

Appendix B

FEDERAL STATUTES:

Year	Statutory Citation	Title/Purpose	Description
1965	42 UCSA § 1396 et seq.	Medicaid	<p>Medicaid is a federal-state partnership that was created in by Congress in 1965 (Title XIX of the Social Security Act) to finance health care for the nation's poor people. Medicaid is an optional program, where states can choose to participate; however all 50 states and territories participate and administer their own Medicaid programs.</p> <p>Medicaid has evolved to become three programs in one: 1) A health financing program for low-income parents (mostly women) and children; 2) A health financing program for people with significant disabilities; and 3) A long-term care financing program for low-income elderly people.</p>
1978	42 USCA § 3030d	The Older Americans Act - Title III-B	Provides grants to states "to facilitate access to supportive services or nutrition services," and services provided by an area agency on aging in conjunction with local transportation service providers (or other transportation agencies) that result in better transportation services to older individuals."
1990	42 USCA § 1201 et seq.	The Americans with Disabilities Act of 1990	<p>Title I of the act prohibits private employers, state and local governments, employment agencies and labor unions from discriminating in all employment practices, which also includes job applicants.</p> <p>Title II prohibits public entities from discriminating against persons with disabilities in all programs, activities, and services of public entities. It also prohibits private entities from</p>

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			discriminating against persons with disabilities if they engage in public transportation. Details requirements for both public and private transportation agencies.
1991	49 CFR 37 et seq.	Transportation Services for Individuals with Disabilities	The FTA's rules interpreting and explaining how the ADA affects transporting those with disabilities.
1996	49 USCA § 5310	Capital and Training Assistance Program for Over-the Road Bus Accessibility	To make vehicles wheelchair accessible and training required by ADA
1996	49 USCA § 5310	Capital and Training Assistance Program for Elderly Persons and Persons with Disabilities	Assistance in purchasing vehicles, contract for services
2000	42 USCA § 3032e	The Older Americans Act - Technical Assistance Grants	Allows the Secretary of the AoA to issue grants or contracts to nonprofit organizations to improve transportation services for older individuals
2004	George W. Bush, <i>Executive Order on Human Service Transportation Coordination</i> , EO #13330, February 2004.		Expanded the Coordinating Council on Access and Mobility (CCAM) by creating the Interagency Transportation Coordinating Council on Access Mobility; requires the Council to eliminate duplicative and overlapping federal programs and improve the coordination of federally supported transportation.
2005	49 USCA § 5316	Jobs Access and Reverse Commute Program	Improves access to transportation services to employment and employment related activities for low-income individuals and welfare recipients; also transports residents of urbanized areas and non-urbanized areas for suburban related employment opportunities.
2005	49 USCA § 5317	New Freedom Program	Provides new public transportation services to overcome barriers that Americans with disabilities have seeking to participate in the workforce; federal grants would allow private nonprofit organizations, state or local governmental authorities, and operators of public

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			<p>transportation services to fund various activities.</p> <p>Expands the requirements under The Americans with Disabilities Act of 1990.</p>
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CALIFORNIA STATUTES:

Year	Statutory Citation	Title/Purpose	Description
1971	Cal. Public Utilities Code § 99220 et seq. (West 2008)	Transportation Development Act	<p>The Transportation Development Act consists of nine articles in the California Public Utilities Code, which makes it lengthy in both size and detail. Because of the size of the state, the public transportation system needs to be continually maintained and developed to allow for the efficient and orderly movement of people and goods. To that end, the TDA specifies in great detail how public transportation is to be funded by state resources.</p> <p>Declares that public transportation is an essential component to a balanced transportation system that needs to be continually maintained and developed; because public transportation is so important it should be designed to encourage use by the elderly, the handicapped, the youth, and those with limited means to freely use the system</p> <p>Provides funding to CTSA's created under the Social Service Transportation Improvement Act. See Cal. Public Utilities Code § 99275 et seq. (West 2008) and</p>
1971	Cal. Welfare and Institutions Code §§ 14132(i) and 14132(s) (West 2008)	Medi-Cal	<p>Medical transportation is one of the scheduled benefits covered under the code; in-home medical care services are covered for persons that require care for an extended period of time in a hospital at a cost that would be higher than in-</p>

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			home medical care
1971	Cal. Welfare and Institutions Code § 14133.56 (West 2008)	Medi-Cal	Transportation to and from dialysis treatment has to be approved for a period up to a year when the patient has received transportation services for the preceding twelve months; the request for transportation to and from dialysis treatment has to be supported by a physician's statement stating that the patient's condition is unlikely to improve.
1971	Cal. Welfare and Institutions Code § 14136.1 (West 2008)	Medi-Cal	A patient that requires continuous intravenous medication, medical monitoring, or observation during transportation to a medical facility has to be transported by an ambulance.
1971	Cal. Welfare and Institutions Code § 14136.3 (West 2008)	Medi-Cal	No authorization is required for nonemergency transportation when the patient is be transported from an acute hospital facility following a stay at an inpatient to a nursing facility or any immediate care facility for the developmentally disabled.
1976	Cal. Welfare and Institutions Code § 9400 (West 2008)	Local units on aging - Service Delivery Plans	Requires local area agency on aging agencies to operate in compliance with the OAA and create a plan that details how to provide better services to the elderly through improved transportation, referral, outreach, and advocating.
1976	Cal. Public Utilities Code § 99275 et seq. (West 2008)	Transportation Development Funding - Article 4.5 of the TDA	Transit agencies can file claims with a transportation planning agency for community transit services, including the disabled and for those who cannot use conventional transit services; requires transportation planning agencies to adopt criteria, rules, and regulations in order to be able to evaluate filed claims; details the findings the transportation planning agency has to find before granting the claim; requires the transit agency that received funds to submit an annual of audit of how the funds were spent.

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1979	Cal. Government Code § 15950 et seq. (West 2008)	Social Service Transportation Improvement Act	<p>Was enacted to improve transportation service of social service recipients by combining the purchase of necessary equipment; providing adequate training to drivers; having a centralized dispatching system; having a centralized maintenance system; and a centralized administration; so that all funding could be identified and consolidated. Required transportation planning agencies and county transportation commissions to create an action plan that designates either a transportation planning agency or a county transportation commission as the agency that will consolidate the transportation services in a certain geographic region. An action plan may designate more than one agency (or even multiple agencies) as consolidated transportation service agencies (CTSA) if it can be proved that it would improve the coordination of services in a geographic area.</p> <p>The Legislature repealed the requirement that requires transportation planning agencies and other agencies, on a regular basis, to report to the Director of Transportation relative to social services transportation services and related matters, and to prepare an inventory of services and an action plan for service consolidation.</p>
1980	Cal. Welfare and Institutions Code § 19460 (West 2008)	Rehabilitation Revolving Loan Guarantee Fund	<p>Can be used to guarantee loans made by eligible lenders to eligible persons for the purchase of funds, automobiles, and other equipment to facilitate the transportation of the disabled, and to assist employers with technology so employers can live more independently or engage in employment.</p>
1982	Cal. Public Utilities	Transportation Development	<p>Article 6.5 sets forth rules for</p>

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	Code § 99310 et seq. (West 2008)	Funding - Article 6.5 of the TDA	funding both transportation planning and mass transit purposes. The funds are derived from remaining revenues from the state retail sales tax, and have to be allocated to the each county's transportation planning agency, and are allocated based upon that county's ratio of the population of the area to the total population of the state.
1983	Cal. Education Code § 82305.6 (West 2008)	Transportation Costs for Disabled Students	Governing boards of community colleges district to waive the transportation costs for disabled students.
1986	Cal. Public Utilities Code § 99155 et seq. (West 2008)	Reduced fares for Medicare recipients	Every transit operator (whether publicly or privately funded) that offers reduced fares to senior citizens has to honor the federal Medicare identification card as sufficient identification in order to receive reduced fares; these transit operators also have to offer reduced fares to disabled persons and disabled veterans
1987	Cal. Public Utilities Code § 99238 (West 2008)	Social Services Transportation Advisory Council	Requires that each transportation planning agency establish a social services transportation advisory council for each county or counties under a joint powers agreement, which has to consist of certain types of representatives
1987	Cal. Public Utilities Code § 99238.5 (West 2008)	Citizen Participation Process	The Transportation Planning Agency then is required to set up a citizen participation process by using the Social Service Transportation Advisory Council. The process has to obtain input from the transit dependent and transit disadvantaged persons, including the elderly, handicapped, and persons of limited means. The council is required to meet at least once, with broad community participation.
1987	Cal. Revenue and Taxation Code § 10789 (West 2008)	License fee waiver for specialized transportation providers	Waives the license fee for vehicles that provides specialized transportation services to senior citizens and to the disabled for nonprofit organizations, public

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			benefit consolidated transportation service agencies.
1988	Cal. Government Code § 15984 (West 2008)	Technical Assistance to Paratransit Providers	Requires DMT to provide technical assistance to who want to explore coordination strategies, but lack the capability to implement and implement the strategies.
1996	Cal. Welfare and Institutions Code § 9400 (West 2008)	Mello-Granlund Older Californians Act	Local Units on Aging are required to operate in compliance with the Older Americans Act and its applicable regulations; the local units are required to create a plan that details how to provide better services to the elderly through improved transportation, referral, outreach, and advocating.
1996	Cal. Government Code § 66516.5 (West 2008)	Metropolitan Transportation Commission	Allows the Metropolitan Transportation Commission (MTC) to consult with regional transit coordinating councils to identify functions performed by public transit systems that could be consolidated to improve the efficiency of regional transit services, and recommend that those functions be consolidated and performed through inter-operator agreements or by one agency. The MTC may also improve service coordination and effectiveness in transit corridors by recommending improvements such as reduction of duplicative service and the institution of coordinated service across public transit system boundaries.
1996	Cal. Government Code § 14055 et seq. (West 2008)	Elderly and Disabled Persons Transportation Program	Persons with disabilities and elderly persons have the same rights to use mass transportation facilities and services; specifies a funding source.
1999	Cal. Welfare and Institutions Code § 9101.5 (West 2008)	Long Range Strategic Plan for an Aging California Population	Directs the University of California to study existing resources and the administrative structure that is available to address the needs of the state's aging population. The report had to detail its findings and recommendations, and advise any steps for implementation. The report was due to the Legislature

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			on January 1, 2002, and shall be periodically updated.
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Appendix C

MAP PAC WORKING GROUP BRIEFS

Summary of the Americans with Disabilities Act of 1990

**By Nicholas J. Farber, J.D.
National Conference of State Legislatures
December 29, 2008
Updated February 10, 2009**

The Americans with Disabilities Act of 1990 gives civil rights protections to individuals with disabilities similar to protections given to individuals on the basis of race, national origin, sex, age, and religion. It guarantees equal opportunity for individuals with disabilities to access public accommodations, to compete for employment opportunities, to use transportation facilities and state and local government services and telecommunications.

Title I of the act prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against persons with disabilities, including job applicants, in all employment practices. An individual is considered to have a disability if he or she has a physical or mental impairment that substantially limits one or more major life activities, has a record of an impairment, or is regarded as having an impairment. Employers with 15 or more employees are required to comply with the act's requirements.

Title II of the act prohibits discrimination against individuals with disabilities in all programs, activities, and services of public entities. It applies to all state and local governments, their departments and agencies, and any other instrumentalities or special purpose districts of state or local governments. This includes public and private entities that provide public transportation. In regards to private entities, the act provides that "no individual shall be discriminated against on the basis of disability in the ...enjoyment of ... public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce."

Title II requires public entities:

- That purchased or leased new buses, rapid rail vehicles, new light rail vehicles for regular transit services be readily accessible to and usable by persons with disabilities, including those who use wheelchairs.
- That provides fixed route service to also provide paratransit and other special transportation services to persons with disabilities, including those who use wheelchairs. The service has to be comparable to regular transit services for persons without disabilities, or is comparable in response time to regular transit services provided to persons without disabilities.
- To provide paratransit and special transportation services within their service area.

- That purchase or lease new vehicles for a public demand responsive transit service ensure that these vehicles are readily accessible to and usable by persons with disabilities, including those who use wheelchairs.

Title II requires private entities primarily involved in fixed route transportation:

- That purchase or lease a new vehicle (other than an automobile, a van with a seating capacity of less than 8 passengers, including the driver, or an over-the-road bus) ensure that the vehicle is accessible and usable by persons with disabilities, including those who use wheelchairs.

Title II requires private entities primarily involved in demand responsive transportation:

- That purchase or lease a new vehicle (other than an automobile, a van with a seating capacity of less than 8 passengers, including the driver, or an over-the-road bus) ensure that the vehicle is accessible and usable by persons with disabilities, including those who use wheelchairs.
 - Exception: Compliance isn't required if the new vehicle is to be used for demand response services, and the company provides an equal level of service to the disabled as they do the general public.

In 1991 the U.S. Department of Transportation (DOT)²¹⁷ published a rule to implement and explain the transit related provisions of the ADA. They provide that:

- A public entity operating a fixed route system has to provide a complementary paratransit or other special service to persons with disabilities. To qualify as complementary, the service has to:
 - Provide service within a width of three-fourths of mile on every side of each fixed route, so essentially it is a mile and a half boundary.
 - Provide paratransit service to any ADA eligible person at a specified time in response to that person's request made the previous day. Reservations can be taken by an agent or by a computer.
 - Charge a fare that does not exceed twice the fare that would be charged to a person paying a full fare at the similar time of day on the entity's fixed route.
 - Provide service during the same hours as the fixed route service.
- The public entity cannot:
 - Impose restrictions on the type of trip
 - Restrict the number of trips a person can take
 - Impose waiting lists for access to the service
 - Have a pattern or practice that significantly limits the availability of the service, e.g. untimely pickups, trip denials or missed trips, or trips with excessive lengths.
- A personal attendant, family member or a friend who is accompanying the disabled individual is allowed to ride with him/her.
- The public entity has to develop a process for establishing the eligibility of persons who are able to ride the paratransit service.

- Allow visitors (persons who do not reside in the entity's jurisdiction) to access the complementary service. The service has to be available to the visitor for any combination of 21 days during a 365 day period.

The New Freedom Program (49 USC § 5317) funds are available to public transportation service providers whose services go beyond those required by the ADA. ADA complementary paratransit services can be eligible for funding under the New Freedom program so long as the projects are new and go beyond the ADA.²¹⁸ "New" is defined as not operational as of August 10, 2005 or the project did not have an identified funding source before August 10, 2005.

Examples of new public transportation projects are:

- Travel training;
- Enhancing paratransit beyond ADA requirements (see below for details); and,
- Feeder services (transit service that provides access to commuter rail, commuter bus, intercity rail, and intercity bus stations).

Examples of going beyond the ADA are:

- Supporting new mobility management and coordination programs among public transportation providers and other human service agencies providing transportation;
- Purchasing vehicles to support new accessible taxi, ride sharing, and/or vanpooling programs;
- Supporting administration and expenses related to new voucher programs for transportation services offered by human service providers; and,
- Supporting new volunteer driver and aide programs.

Olmstead v. L.C., 527 U.S. 581 (1999)

In 1999 the U.S. Supreme Court interpreted Title II of the ADA to require states to place persons with mental disabilities in community settings rather than institutions if a qualified professional determines the placement is appropriate; the person does not oppose the placement; and, the state can reasonably accommodate the placement. In a 6-3 decision authored by Justice Ruth Bader Ginsburg the court ruled that unjustified segregation in institutions is discrimination because it perpetuates unwarranted assumptions that people with disabilities are incapable or unworthy of participating in community life, and because confinement in an institution severely curtails everyday life activities.

Title II provides that "[a] public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." This regulation requires states to offer community services to residents of institutions, when certain conditions are met. The conditions are that: (1) the residents could be appropriately served in the community, and (2) to serve the residents in a community setting would not fundamentally alter the state's service system or be an undue burden on the state.

The New Freedom Program is a direct consequence of the Olmstead decision. In 2001, President Bush signed Executive Order 13217, "Community-Based Alternatives for Individuals with Disabilities. The Executive Order states "The United States is committed to community-based alternatives for individuals with disabilities and recognizes that such services advance the

best interests of the United States" and calls upon the Federal government to assist States and localities to swiftly implement the decision of the United States Supreme Court in *Olmstead v. L.C.* The order directs six federal agencies to "evaluate the policies, programs, statutes and regulations of their respective agencies to determine whether any should be revised or modified to improve the availability of community-based services for qualified individuals with disabilities." Even though the Department of Transportation was not mentioned in the order, it joined the implementation effort, along with Veterans Affairs, the Small Business Administration, and the Office of Personnel Management.

Summary of Consolidated Transportation Service Agencies²¹⁹

By Nicholas J. Farber, J.D.

National Conference of State Legislatures

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Consolidated Transportation Services Agencies (CTSAs) are designated by county transportation commissions (CTCs), local transportation commissions (LTCs) regional transportation planning agencies (RTPAs), or metropolitan planning agencies (MPOs) under auspices of the Social Services Transportation Improvement Act (AB 120 or California Government Code § 15950 et seq.) to achieve the intended transportation coordination goals of that Act.

The Social Service Transportation Improvement Act (SSTIA) required transportation planning agencies or a county transportation commission to adopt and submit an action plan that reflect the strengths of existing services, correcting deficiencies and maximizing transportation benefits possible through coordination and/or consolidation of services. The Action Plans had to include, but were not limited to, the following:

1. The designation of a consolidated transportation service agency (CTSA) within the geographic area of jurisdiction of the transportation planning agency. If improved coordination of all services was demonstrated within the geographic area, the Action Plan was permitted to designate more than a single agency as a CTSA.
2. An identification of the social service recipients to be served, of funds available for use by the consolidated or coordinated services, and an orderly strategy and schedule detailing the steps required to develop the financial program and management structure necessary to implement consolidated or coordinated services.
3. Measures to coordinate the social service transportation services with existing fixed-route service of public and private transportation providers.
4. Measures to ensure that the objectives of the Action Plan are consistent with the legislative intent of Section 15951.

Each CTSA shall be an entity other than the transportation planning agency and shall be one of the following: a) a public agency including a city, county, operator, any state department or agency, public corporation, or public district, or a joint powers entity created pursuant to Chapter 5 (commencing with Section 6500) of Division 7, Title 1 of the Government Code. b) A common carrier of persons as defined in Section 211 of the Public Utilities Code engaged in the transportation of persons as defined in Section 208. c) A private entity operating under a franchise or license. d) A nonprofit corporation organized pursuant to Division 2 (commencing with Section 9000) of Title 1 of the Corporations Code. A private entity such as a nonprofit social service agency or a private-for-profit company may be designated as a CTSA if it is a legal entity eligible to file TDA claims and provide transit services. A CTSA designation can be rescinded by the transportation planning agency for substantially failing to abide by the terms set forth in the SSTIA, or with the action plan.

Currently there are 53 active CTSAs in California.

Summary of the California Transportation Development Act
By Nicholas J. Farber, J.D.
National Conference of State Legislatures
December 31, 2008

The Transportation Development Act (TDA) consists of nine articles in the California Public Utilities Code, which makes it lengthy in both size and detail. The TDA was enacted to ensure that public transportation is an essential component to a balanced transportation system. Because of the size of the state, the public transportation system needs to be continually maintained and developed to allow for the efficient and orderly movement of people and goods. To that end, the TDA specifies in great detail how public transportation is to be funded by state resources.

Public transportation is so important to the state it should be designed and operated in such a way as to encourage "maximum utilization of the efficiencies of the service" for the benefit of both the transportation system and the elderly, the handicapped, the youth, and those with limited means to freely use the system. Providing assistance to a particular county transportation system may not be of interest to every taxpayer, however, providing an integrated and coordinated system to meet the public's transportation needs will benefit the county as a whole by reducing highway congestion, air pollution, and reliance on the welfare system.

The transportation planning agency in each area of the state is the body which establishes the processes for filing claims, evaluates and prioritizes all claims for funding under TDA, and determines the allocations to competing claimants. All transit operators and city or county governments responsible for providing transit services in their area can only file claims for money that was apportioned to their area.

The following details how CTSA's (Consolidated Transportation Service Agencies, which were created by AB 120) are funded by the TDA:

Use of TDA Article 4.5 Funds²²⁰: Under TDA Article 4.5, the transportation planning agency may make up to five percent of a county's local transportation fund available for "community transit service." Money may be allocated under TDA Article 4.5 to eligible claimants unless the transportation planning agency finds that such allocations of money could be used to better advantage for TDA Article 4 purposes in the development of a balanced transportation system. Unlike funds made available under TDA Articles 4 and 8 of TDA, the transportation planning agency may allocate TDA Article 4.5 funds without respect to area population apportionment restrictions within a county. The transportation planning agency may also reserve money to set aside for TDA Article 4.5 claims to be filed in future years (California Administrative Code, Section 6655.3).

Funds may be allocated under TDA Article 4.5 for "community transit services", which are defined as "services which link intra-community origins and destinations." The transportation planning agency is responsible for interpreting what "intra-community" service is. The funds may be used to provide public transit services or they may be used for transit services which are used exclusively by elderly and handicapped persons.

A claimant of TDA funds may not receive a private gift of public funds. Therefore, TDA Article 4.5 claims cannot be filed to buy vehicles for a private agency. However, a public CTSA can purchase a vehicle, and while retaining title to the vehicle, allow a contracting entity to use it in providing service.

TDA regulations also specify that a claimant may not file claims in excess of its operating and eligible capital costs. This will effectively preclude a private business from making a profit as a CTSA. However, a public CTSA would be restricted only by its service contract.

Use of TDA Article 6.5 Funds: Article 6.5 sets forth rules for funding both transportation planning and mass transit purposes. The funds are derived from remaining revenues from the state retail sales tax, and have to be allocated to the each county's transportation planning agency, and are allocated based upon that county's ratio of the population of the area to the total population of the state.

Fifty percent of these funds have to be allocated among the National Railroad Passenger Corporation, providing feeder services to and from rail terminals, the state's purchase of rail equipment, the Social Service Transportation Improvement Act programs (CTSAs), to Caltrans for transportation planning purposes, to the California Transportation Commission, and to the California Public Utilities Commission for its passenger rail safety responsibilities. Twenty-five percent goes to the transportation planning agencies and the San Diego Metropolitan Transit Development Board. Some of the money also has to be allocated to members of the Altamont Commuter Express Authority²²¹ and the Southern California Regional Rail Authority. The other twenty-five percent goes to each transportation planning agency based on the ratio of the population of the area to the total population of the state. All of the funds received have to be used for public transportation purposes, including community transit services.

Accountability under TDA²²²: Claimants for TDA funds under any Article must meet certain requirements under the TDA. These include filing claims with the transportation planning agency, submitting annual certified fiscal audits, and maintaining required fare revenue ratios for transit services. Since the CTSA is a claimant, it alone has these responsibilities, even when the CTSA's primary function is to channel funds to other organizations which are actually providing the transit services.

A final responsibility of CTSAs as TDA Article 4.5 and Article 6 claimants is the submittal of an annual certified fiscal audit. The fiscal audit report must include a certification that the funds allocated to the CTSA were expended in conformance with applicable laws and rules and regulations.

The TDA also creates a Social Services Transportation Advisory Councils²²³. The councils have to consist of:

- A potential transit user over the age of 60
- A potential transit user who is handicapped
- Two local social service providers for seniors
- Two local social service providers for the handicapped
- A local social service provider for persons of limited means
- Two representatives from the local CTSA

The Social Services Transportation Advisory Council has to participate annually in the identification of unmet transit needs in its jurisdiction; annually review and recommend action to the Transportation Planning Agency; and, advise the Transportation Planning Agency on any

other major transit issues, including the coordination and consolidation of specialized transportation services.

The Transportation Planning Agency then is required to set up a citizen participation process by using the Social Service Transportation Advisory Council.²²⁴ The process has to obtain input from the transit dependent and transit disadvantaged persons, including the elderly, handicapped, and persons of limited means. The council is required to meet at least once, with broad community participation. In addition to the citizen participation process, the Social Service Transportation Advisory Council can obtain feedback by teleconferencing, questionnaires, telecanvassing, email, or by any other reasonable means of communication.

Unmet Needs: Article 8 of the TDA allows counties, cities, and transit districts to file requests for funding with transportation planning agencies for local streets and roads²²⁵, pedestrian and bike projects, **passenger rail service and capital improvements**, and payment to entities that are under contract with a county, city, or transit district for public transportation or transportation services.

Before making the allocation the transportation planning agency has to consult with the social service transportation advisory council, identify the transit needs of the jurisdiction, and identify unmet transit needs of the jurisdiction that are reasonable to meet. The transportation planning agency is required to have at least one public meeting to determine the jurisdictions unmet transit needs and if those needs are reasonable. It is up to the transportation planning agency to define 'unmet needs' and 'reasonable to meet.'²²⁶ A transit need cannot be found unreasonable if it cannot be met on available resources, and the agency cannot make the determination that a need is unreasonable by comparing it with the needs of streets and roads. The transportation planning agency then has to adopt a resolution that finds: 1) there was no unmet transit needs; 2) there were no unmet transit needs that are reasonable to meet; or 3) there are unmet transit needs, including needs that are reasonable to meet. If there are unmet transit needs (including those that are reasonable to meet), then those are to be funded before any funding is provided for streets or roads. If it is found that there are no unmet transit needs or they are unreasonable, the transportation planning agency may give the funds to a county or city for streets or roads.

The Imperial Valley Association of Governments define unmet transit needs as:

"those public transportation or specialized transportation services that are identified in the *Regional Short Range Transit Plan, Regional Transportation Plan* or similar Mobility Plan that have not been implemented or funded."

The Santa Barbara County Association of Governments (SBCAG) defines unmet transit needs as:

"An unmet transit need is the expressed or identified need of the community for additional public transportation services to meet existing basic mobility needs which are not currently being met through the existing system of public transit services or private transportation services. Included, at a minimum, are those public transportation or specialized services which are identified in the Regional Transportation Plan, short-range transit plan, and/or transit development plan that have not been implemented or funded.

If an expressed or identified need is determined by SBCAG to be an “operational issue”, it shall not be considered to be an unmet transit need. Requests that do not require an identifiable additional increment of service will generally be considered operational. Issues such as, but not limited to, the adequacy of location of bus stops, minor route improvements, marketing, and service reliability will generally be considered operational.

The identified needs must be for the system of general public transit services. All eligible users of a given service should have equivalent access or opportunity to use the service."

SBCAG also defines reasonable to meet as:

"An identified unmet transit need shall be determined to be 'reasonable to meet' if SBCAG determines that the transit service will be in general compliance with the following criteria:

1. Can be implemented consistent with the transportation improvement priorities, policies and performance standards contained in the Regional Transportation Plan, the transit development plan, or the short-range transit plan for the area.
2. Can be implemented safely and in accordance with local, state, and federal laws and regulations.
3. Excluding the first three years of operation, the additional transit service shall not cause the system of which it is a part to fail to meet systemwide performance standards including:
 - a. the operator's ability to maintain the required fare to operating cost ratio;
 - b. the estimated number of passengers carried per service hour for propose service shall be in the range of other similar services provided; and
4. The proposed service would not cause claimant to incur expenses in excess of the maximum allocation of TDA funds.
5. The proposed service is projected to reach a 20% fare box recovery within 3 years, 10% in non-urbanized areas providing rural services, 10% in non urbanized areas serving urbanized areas, and projected to show continuous progress toward meeting the fare box recovery ratio within 3 years."

The allocation to the transportation planning agency cannot exceed 50 percent of the amount required to meet the city or county's total expenditure for that purpose. The 50 percent provision does not apply to cities or counties under contract for public transportation or for transportation services for any group, to a city or county that has a population of less than 5,000, or for funds allocated for local streets and roads.²²⁷

The decision to fund or not to fund an unmet transit need has to be filed within 30 days after the agency makes its decision, or after the secretary has reviewed the decision pursuant to Section 99242, whichever is later.

Summary of Medi-Cal Transportation Program
By Nicholas J. Farber, J.D.
National Conference of State Legislatures
January 6, 2009

Medicaid is a federal-state partnership that was created in by Congress in 1965 (Title XIX of the Social Security Act) to finance health care for the nation's poor people. Medicaid is an optional program, where states can choose to participate; however all 50 states and territories participate and administer their own Medicaid programs. Today, Medicaid has evolved to become three programs in one: 1) A health financing program for low-income parents (mostly women) and children; 2) A health financing program for people with significant disabilities; and 3) A long-term care financing program for low-income elderly people. Without Medicaid, the majority of these people would be uninsured.

Medicaid has become a vital funding source for health care in this country; it paid for nearly one-half of nursing home care, 17 percent of hospital services, 17.2 percent of prescription drug costs, and 16.7 percent of all personal health care services in 2001. Although it is difficult to determine precisely how much states spend on Medicaid, the Congressional Budget Office (CBO) estimates that total federal and state spending for the program will exceed \$300 billion for the fiscal year 2006, and will be 2% of the GDP by 2015. CBO also estimates that the Medicaid program currently covers 60 million people, or about 20 percent of the U.S. population.

Transportation for Medicaid beneficiaries is very important since most beneficiaries cannot procure it on their own. According to the CMS rule on Medicaid transportation a State plan must "specify that the Medicaid agency will **ensure necessary** transportation for recipients to and from providers..." (emphasis added).²²⁸ States have great flexibility in meeting the mandate of assuring medical transportation. To assure transportation, states look to contracting with transportation providers, using public transportation, helping clients obtain transportation by coordinating with other programs, or providing reimbursement directly to clients.

How a state will provide non-emergency transportation all depends on its definition of "necessary". Many states use the following criteria to help define what the assurance of necessary transportation is:

- Transportation to and from Medicaid covered services;
- Use of the least expensive mode of transportation available that is appropriate for the client;
- Restrictions to the nearest qualified provider;
- No other transportation services available free of charge; and,
- Exclusions for clients receiving services that include transportation.

California assures for the necessary transportation of Medi-Cal recipients by providing in the California Administrative Code that:

"Medical transportation services means the transportation of the sick, injured, invalid, convalescent, infirm or otherwise incapacitated persons by ambulances, litter vans or wheelchair vans licensed, operated, and equipped in accordance with applicable state or local statutes, ordinances or regulations. Medical transportation services do not include transportation of beneficiaries by passenger car, taxicabs or other forms of public or private conveyances."²²⁹

And:

"Ambulance, litter van and wheelchair van medical transportation services are covered when the beneficiary's medical and physical condition is such that transport by ordinary means of public or private conveyance is medically contraindicated, and transportation is required for the purpose of obtaining needed medical care."²³⁰

In 1983 a group of Medi-Cal recipients sued the state because they claimed that the state plan violated the assurance of transportation requirement since the state plan did not assure necessary transportation to *all* qualifying recipients (emphasis added).²³¹ This is evidenced by the medical transportation services codes being only applicable to Medi-Cal recipients who are too severely disabled to ride in automobiles or buses. The court ordered the state to amend and publish a complete plan that takes into account all qualifying recipients. Nevertheless, the court goes on to note that the state is not required to furnish transportation or pay for it, and that "federal regulations advise and counsel in detail that options and priorities be established, and alternate means of transport, including voluntary assistance by others, be considered in adopting a state administrative transportation plan." Since then, not much has changed as a result of the lawsuit. To comply with the court order, the California Department of Health Services expanded upon the information about transportation options that Medi-Cal offices provide to county welfare and local Social Security Offices. Further, the administrative codes describing medical transportation have not been amended since the lawsuit.

In California, both emergency and nonemergency transportation is a decentralized program, and is usually administered by the local Medi-Cal office. To provide transportation services to Medi-Cal beneficiaries, the transportation provider has to be certified by the Department of Health Care Service, which can be both a lengthy and difficult process. The provider has to fill out an eight page application, have all necessary licenses to conduct their business, obtain a National Provider Identifier Standard number (NPI) from CMS, and have no debts or fines from any state or federal agency. The Department then has the right to deny the application, accept it, accept it provisionally, or accept it provisionally while conducting a background check, pre-enrollment inspections, or unannounced visits.

**Summary of Medicaid Program; State Option to Establish Non-Emergency Medical
Transportation Program
CMS Rule: 42 CFR Part 440
By Nicholas J. Farber, J.D.
National Conference of State Legislatures
December 18, 2008**

The Medical Assistance Program (Medicaid) created under the Social Security Act of 1965 requires states to ensure the necessary transportation of Medicaid beneficiaries to and from their medical providers. The state can then claim these nonemergency medical transportation (NEMT) related costs as either administrative costs (reimbursed at a flat 50% rate), or can elect to include them as medical assistance (reimbursed at the state's federal rate, which is anywhere from 50% to 77% - California's rate is 50%).²³²

Before enactment of the medical transportation broker rule, if a state wanted to provide NEMT and be reimbursed under medical assistance it could not restrict a beneficiary's choice by contracting with a broker, nor could it provide services differently in different areas of the state without receiving a waiver under section 1915(b) of the Act. These waivers allow states to restrict freedom of choice providers, and selectively contract with brokers and to operate their programs differently in different areas of the state. Alternatively, a state does not have to request either a 1915(b) waiver or amend its state Medicaid plan if it wishes to treat NEMT as an administrative cost, or treat it as a medical service without restricting Medicaid recipients' freedom to choose their own transportation provider.

With the enactment of the Deficit Reduction Act of 2005 (DRA) states will not be required to obtain a section 1915(b) waiver to obtain non-emergency transportation. Under the DRA, a state will be **allowed** to use a non-emergency medical transportation brokerage program when providing transportation as medical assistance under the state plan.²³³ Therefore, the DRA gives states greater flexibility in providing nonemergency medical transportation.

Because both of California's Medicaid reimbursement rates are at 50% there has not been an incentive for the state to have a NEMT brokerage program. The passage of the American Recovery and Reinvestment Act of 2009 (ARRA) provided \$87 billion to states for state Medicaid assistance. One of the ways it assists California is by increasing its medical assistance reimbursement rate from 50% to 61.59% from October 1, 2008 through December 31, 2010.²³⁴ The increase provides an incentive for the state (and other states at the 50% medical assistance rate) to implement a NEMT brokerage program.

The rule:

- Allows brokers to provide for transportation services that include wheelchair vans, taxis, stretcher cars, bus passes and tickets.
- Allows the Secretary to allow for the use of other forms of transportation, such as air transportation in states with significant rural populations.
- Creates a competitive bidding process for selecting the broker. The state has to evaluate the broker's experience, performance, references, resources, qualifications, and cost.
- Declares the contract between the broker and the state must include oversight procedures so that the state can monitor beneficiary access, complaints, and to ensure that the broker's personnel are licensed, qualified, competent and courteous.

- Requires the broker must be an independent entity, in that the broker cannot provide transportation under the contract with the state. The broker also cannot refer or subcontract to another transportation provider with which it has a financial relationship.
 - A financial relationship, includes any direct or indirect ownership or investment interest in the entity that furnishes designated health services and any compensation arrangement between such an entity and the physician or an immediate family member of the physician.
- Provides an exception to the financial relationship and immediate family requirements for a non-governmental broker that provides transportation in a rural area where there is no other qualified provider available; when the necessary transportation provided by the non-governmental broker is so specialized that no other qualified provider is available; or when the availability of qualified providers other than the non-governmental broker is insufficient to meet the existing need.
- Provides that if a governmental entity is awarded the brokerage contract it can subcontract with a government-owned or controlled transportation provider if the broker:
 - Is a distinct governmental unit, and the contract could not include payment of costs other than those unique to the distinct brokerage function; and,
 - The broker would have to document, after considering the specific transportation needs of the individual, that the government provider is the most appropriate, effective, and lowest cost alternative for each individual transportation service; document that for each trip, and the Medicaid program is paying no more than what the general public is charged.
- Gives the Secretary the authority to add any other medical care which can be covered by the state.

The Centers for Medicare and Medicaid Services (CMS) has provided states with a letter providing guidance on these provisions and the implementation of the DRA, and an associated state plan amendment template for use by states to modify their Medicaid State plan if they choose to implement the option of using a transportation broker or brokers as spelled out by the rules above. The rule estimates that template will only take 12 minutes to complete and cost \$50. Once approved, the state will not need to resubmit the template, unless it is materially changing the brokerage program.

Summary of Broker Rule Comments:

Overall, CMS received 63 timely comments on many different issues regarding the rule. Many comments praised the rule, however many raised concerns about other aspects of the proposed regulation. A summary of the comments pertinent to the MAPPAC are below.

Comment: comments pertaining to the prohibitions were mainly received from regional transportation associations or transportation providers. They disagreed with the prohibition of a broker providing transportation from making a referral to or subcontracting with a transportation provider with which it has a financial relationship. Several said it was not practical and would limit the number of entities that could bid on a brokerage contract, and could limit competition to for-profit brokers, and reduce state flexibility in designing their Medicaid transportation program. Others said that restricting a company from both managing and providing transportation services would create an anti-business climate that would force transportation agencies to choose between a "broker role," the "provider role," resulting in neither role being filled.

CMS Response: When the DRA was enacted, Congress noted that having a brokerage owned by a company that provides transportation could result in higher costs and a higher potential for fraud or abuse. Even having a minority share in a company that provides NEMT could lead to fraud or abuse because it could represent a conflict of interest. CMS also believes that this rule would not create an anti-business climate, but would "level the playing field and promote competition."

Comment: Several commenters opposed the prohibition on non-governmental broker self-referral unless the broker proves that no other qualified providers are available. One commenter suggested the provisions be modified to (1) allow the broker to use its own resources or refer to another provider with which it has a financial relationship when deemed necessary by the broker to provide timely, cost effective and quality transportation, or to otherwise protect the health and welfare of the beneficiary; (2) the broker should be subject to a 10% limit on self referral in a calendar month, except during the first 90 days of the brokerage contract, when there should be no limit on broker self-referral.

CMS Response: Allowing the broker unrestricted discretion would be contrary to the intent of the statute, and create possible conflicts of interest. The CMS recognizes that gaps may occur in a provider network due to unforeseen circumstances, yet as they occur states are to determine if the broker can fill that gap, make sure the inadequacies in the system are not persistent or extensive, and guarantee that the broker is living up to its contractual duties. The CMS also expects states to provide reasonable oversight to ensure that a broker does not offer reimbursement so low that transportation providers are not willing to participate, thereby creating a situation where the broker has to provide transportation services. Allowing a broker to self-refer would defeat the intent of the statute.

Comment: One commenter said that the final rule should provide an exception so that the "'innocent and appropriate' financial relationships between a broker and a NEMT provider do not preclude the provider from participating in the network."

CMS Response: Even though these relationships seem innocuous or unrelated, they have potential for abuse.

Comment: Many commenters asserted that the rule²³⁵ "contravenes the policies, concepts, and principles of Executive Order 13330²³⁶ and the Interagency Coordinating Council on Access and Mobility (CCAM), which stresses the importance of coordination of public transportation at the Federal level." Other comments said that the rule was inconsistent with the coordinated public transit human service transportation planning process mandated under SAFETEA-LU.

CMS Response: Executive Order 13330 does not direct federal agencies to ignore their own policies and rules. For Medicaid, the policies of the CCAM are suitable so long as they do not interfere with Medicaid's policies and rules. According to CMS "[t]he rule did not preclude State Medicaid agencies from participating in efforts to coordinate the use of transportation resources consistent with the guidance issued by the CCAM, as long as those coordination efforts recognize that the Medicaid's responsibility is limited to ensuring cost-effective transportation for beneficiaries to and from Medicaid providers." Also, SAFETEA-LU allows states to use federal Medicaid funds to meet its requirements to draw down federal transportation grant funds. However, where Medicaid funds are used as state match when drawing down FTA grants, Medicaid funds would not be available to match any future state expenditures funded by SAFETEA-LU because Medicaid does not authorize the use of SAFETEA-LU funds for matching other federal funds.

Comment: Many commenters said the rule would interfere with states' ability to develop coordinated transportation services. Another commenter suggested human service transportation would be reduced if Medicaid were removed from the coordination plan.

CMS Response: The rule did not expressly mention coordination, but CMS notes that Medicaid funds can only be used for Medicaid services given to approved beneficiaries. When managing the Medicaid NEMT program, the state has to follow the program's guidelines regardless of whether they interfere with the state's efforts to coordinate transportation.

Comment: Many commenters disagreed with the rule's requirement that government brokers document an individual's specific transportation needs with respect to that the government provider is the most appropriate and lowest cost alternative, and that they are not charging more than the established fare charged to the public. They said the requirement will result in additional and costly paperwork.

CMS Response: CMS does not believe that this type of documentation will result in additional or costly paperwork. Both Medicaid and CMS guidance have always provided for documentation of medical services provided. The paperwork required by the rule would not be significant and would be relatively simple. According to CMS, "[a]n annual comparison of the fees paid by Medicaid under the brokerage program for fixed route transportation to the fees charged to the general public for fixed route transportation, and a comparison of the fees paid by Medicaid for public paratransit services to the fees charged to other agencies for comparable public paratransit services, should be all that is necessary."

Comment: Many commenters disagreed with the provision that Medicaid pay no more than what is charged the general public for the same type of ride. They mentioned that the actual cost of providing paratransit services (door-to-door, curb-to-curb services) to Medicaid beneficiaries is a great deal more than what is charged to the general public since public transit services are subsidized by federal, state, and local funds. By mandating that Medicaid cannot be charged for the full cost of the ride, the financial burden for providing these trips will shift from Medicaid to state and local entities. Further, contrary to the Medicaid rule, the ADA requires states to provide disabled persons with comparable paratransit services wherever public fixed routes are available, and the amount that can be charged may not exceed *twice* the amount charged to the general public.

CMS Response: States have rules that prohibit Medicaid from paying more for a service than what other third party providers would charge. CMS was informed that third party providers usually pay the same amount that is charged to the general public; therefore, CMS is prohibited from paying more than what the public is charged for public transportation on a *fixed route trip*.

Nevertheless, CMS believes that it is appropriate for Medicaid to pay more than the rate charged to disabled individuals for a similar ride. Therefore, CMS believes "that Medicaid, through its NEMT program with government brokers, can pay a fare for publicly provided *paratransit trips* that represents reasonable costs and which is no more than the fare paid for similar paratransit trips by other State Human Services agencies" (emphasis added).

Comment: Several commented that states are in a better position to design their own brokerage systems and procedures that prevent abusive practices and fraud and abuse.

CMS Response: Currently, states have broad flexibility to put together many different NEMT programs “that meet each state’s diverse needs in terms of geography, transportation infrastructure, and target populations, and this rule preserves this flexibility.” Nevertheless, NEMT programs have always had a high risk of fraud and abuse. Therefore, CMS implemented the contract requirements and prohibitions in the statute.

Comment: One commenter noticed that the rule does not include a provision for bus passes or other fare methods for Medicaid recipients who are able to use public transportation.

CMS Response: When designing their programs, states have the ability to require the broker to include bus passes and mileage reimbursements, or to allow the broker to determine another method for payment.

Comment: One state commented that responsibility for NEMT is delegated to multiple regions or counties within several states, and that the rule should be amended to allow for a brokerage contract template so the CMS would not have to approve each individual brokerage.

CMS Response: CMS believes it is obligated, under this type of model, to review and approve each separate brokerage program to ensure there is no conflict of interest.

Comment: Several commenters thought that the requirement that governmental entities and public transportation operators must compete on the same terms as non-governmental entities conflicts with current state laws that allow government entities the first right of refusal.

CMS Response: Section 6083 of the DRA requires competitive bidding, and it does not exempt state and local bodies that wish to take part in the bidding process.

Comment: A commenter suggested that limiting services only to beneficiaries with no other means of transportation could significantly reduce the number of Medicaid enrolled individuals benefiting from the NEMT brokerage program. The commenter asserted that CMS fails to take into account beneficiaries that usually have other means of transportation but cannot use them because of a medical condition

CMS Response: The CMS did not amend the rule to reflect the commenter’s suggestion because “States and brokers understand that they must take into consideration the beneficiary’s physical condition when determining if the beneficiary has another means of getting to and from a medical service.”

Summary of FTA's Proposed Expansion of Eligible New Freedom Projects

By Nicholas J. Farber, JD
National Conference of State Legislatures
February 10, 2009

The Federal Transit Administration (FTA) published a notice of proposed policy change to the New Freedom program on January 23, 2009 to expand the type of projects it considers to be "beyond the ADA." The proposed changes are described in this brief.²³⁷

When initially working on the guidelines to the New Freedom Program, the FTA proposed to fund either new transportation services *and* public transportation alternatives beyond those required by the American's with Disabilities Act (ADA); however the Congressional authors objected, and insisted that New Freedom funding be provided to projects that meet *both* criteria, new and go beyond the ADA.

Projects are only "beyond the ADA" if a funding recipient exceeds its obligations under the ADA. Department of Transportation (DOT) regulations interpreting and explaining the ADA determined that projects establishing or expanding fixed route or demand responsive service do not go beyond the ADA, and therefore cannot receive funds under New Freedom. This is because the ADA does not require a minimum level of public transit service in a given area, and once a service is provided, it must be ADA compliant, which would not be exceeding the obligations under the act.

Rural transit providers have expressed concern that the FTA's interpretation of "beyond ADA" prevents them from using New Freedom funds to provide new fixed route or demand responsive services for people with disabilities. They argue that these projects go beyond the ADA because they are transportation services that are not required under the ADA or under DOT ADA implementing regulations. They point out that even though New Freedom funds can be used for accessible taxis, travel training, and mobility management, rural transit's most urgent need is fixed route or demand responsive transportation services.

To answer this concern, the FTA has proposed to fund fixed route or demand responsive transportation services with New Freedom funds provided that²³⁸:

1. The service is identified in the locally developed, coordinated public transit-human services transportation plan;
2. The service is designed to meet the needs of individuals with disabilities;
3. The service removes transportation barriers and assists persons with disabilities with transportation;
4. The service was not operational on August 10, 2005, and did not have an identified funding source as of August 10, 2005, as evidenced by inclusion in the Transportation Improvement Program (TIP) or the State Transportation Improvement Program (STIP); and
5. The service is not designed to allow an agency to meet its obligations under the ADA or DOT ADA implementing regulations.

Examples of projects that would be eligible for New Freedom funds include:

Mobility Action Plan (MAP) Phase I Implementation Study

Assessing Human Service Transportation Coordination in California: An Analysis of Legal and Regulatory Obstacles

1. Fixed route service extended to serve a congregate living facility or a workplace serving large numbers of individuals with disabilities.
2. New or expanded demand responsive service, including new hours or days of operation, or increased geographic coverage, to meet the needs of individuals with disabilities.

As a result of the expanded fixed route service, an organization's complementary paratransit service might also be expanded; however, since complementary paratransit service is required under the ADA, it would not be eligible for New Freedom funds.

The FTA encourages transit providers to be inclusive to the general public, and not provide the fixed route or demand responsive transportation only to the disabled.

Legislative Histories of the SSTIA and the TDA

By Nicholas J. Farber, JD
National Conference of State Legislatures
February 20, 2009

This brief describes the legislative history and statutory changes made to both the Social Service Transportation Improvement Act (SSTIA) and the Transportation Development Act (TDA) since their enactment.

SSTIA

The SSTIA was enacted in 1979 to "improve transportation service required by social service recipients by promoting the consolidation of social service transportation services." By consolidating these services, the legislature hoped that transportation service providers would purchase necessary equipment together; train drivers; have a centralized dispatching system; have a centralized maintenance system; have centralized administration of social service programs; and, identify and consolidate existing funding sources to save funds.

The original bill (AB 120) contained one study and a number of reporting requirements for those who participated in the process. Section 15972, repealed in 1990, required the Department of Transportation to study insurance problems surrounding social service transportation services. The report was to "make specific recommendations regarding changes in state law which would assist in reduction of the high costs of insurance and resolve the problem of insurance availability." The bill that repealed the study (Senate Bill 2374) required the Legislature to "review and evaluate existing and proposed state advisory commissions and task forces, and to abolish those which are determined unnecessary or inefficient or which are undertaking duplicative activities." The insurance study was repealed without comment by the bill, however, it can be inferred that the study was determined either unnecessary or inefficient.

Originally, the SSTIA included a reporting requirement. Section 15973, repealed in 2002 by Assembly Bill 2647, required transportation planning agencies and county transportation commissions prepare and submit a report to the Director of the Department of Transportation on all existing social services transportation services in their respective geographic areas. The report was required to contain: an inventory of all existing public and private social service transportation services, the amount of funds they use and the number of people served; a statement on the services' drivers and management, a summary of average vehicle miles driven; a description of the background of the service in the community, and any other pertinent information about the service. Prior to the submission of the plan, the transportation planning agency had to hold a public hearing on the report. The social service transportation planning inventory had to be updated every four years, and the action plan every two years. The report had to contain "any obstacles that have been encountered, and proposed actions to be taken to overcome the obstacles, and any other proposed actions needed to further implement the action plan."

According to the legislative analysis of the bill (AB 2647) Caltrans argued that the reports "served no useful purpose." The analysis stated that regional transportation planning agencies (RTPAs) and county transportation commissions submit an inventory of social service transportation services and a service consolidation plan every four years and an action plan

every two years. Caltrans was also required to submit to the Legislature and the Governor a biennial summary of the report from the RTPAs and the county transportation commissions. The reports were submitted in 1990, 1992, 1994, and 2001, but received no inquiries or feedback from any public entity or the Legislature. The analysis goes on to mention that most reporting agencies have a system in place (for example, advisory boards) that takes action on unmet transit needs of particular clients in their area. It then states that

"[c]omparing the original legislative intent, consolidation and coordination of social service transportation, and current social service transportation coordination systems throughout the state, it appears that the legislative intent is being met without a cumbersome information collection and reporting process and that the legislation is of limited value. Furthermore, this bill would not affect the RTPA's and the county transportation commissions' obligation to collect the information on social service transportation services."²³⁹

TDA

The foundation for state financial assistance to public transportation in California is provided by The Transportation Development Act (TDA) enacted in 1971 declaring: "[p]ublic transportation is an essential component of the balanced transportation system which must be maintained and developed so as to permit the efficient and orderly movement of people and goods in the urban areas of the state..." and designed to "encourage maximum utilization of ...all the people of the state, including the elderly, the handicapped, the youth, and the citizens of limited means of the ability to freely utilize the systems."

The TDA provides funding to be allocated to transit and non-transit related purposes that comply with regional transportation plans. The TDA provides two funding sources: 1) Local Transportation Fund (LTF), which is derived from a ¼ cent of the general sales tax collected statewide; and, 2) State Transit Assistance fund (STA), which is derived from the statewide sales tax on gasoline and diesel fuel.

Since its enactment, the TDA has had neither significant additions or subtractions impacting coordination in the state. However some items of significance are worth mentioning. For instance, in 1998, AB 2132 amended the citizen participation process to ensure that "[h]earings ... be scheduled to ensure broad community participation and, if possible, the location of the hearings shall be rotated among the various communities within the advisory council's jurisdiction." The bill also allowed participation in the form of "teleconferencing, questionnaires, tele-canvassing, and electronic mail."²⁴⁰

Subsequently in 2007, then Assemblyman Mark DeSaulnier²⁴¹, introduced AB 1637 which would have repealed the requirement that prohibits a recipient of specified federal transportation funds from receiving reimbursement for medical transportation services under the Medi-Cal program in any amount greater than the fee charged by that provider to persons for whom services are not reimbursed by Medi-Cal. The bill would have allowed a provider of public transit or paratransit services to serve as a provider of Medi-Cal non-emergency transportation services and receive reimbursement on the same terms and conditions as other providers of comparable services. The bill died because it had not been passed by the Assembly by January 31st of its second year being active.²⁴²

Summary of the Older Americans Act
By Nicholas J. Farber, J.D.
National Conference of State Legislatures
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The Older Americans Act (OAA) (42 USCA § 3001 et seq.) was enacted in 1965 to promote the well being of older adults and help them remain independent in their homes and communities. To achieve its purpose, the OAA sets up a federal program to distribute funds to states using a formula based on the state's share of people over the age of 60. In the act's infancy, its primary focus was on organizing and delivering community-based services by coordinating with state level agencies. Yet, as the population of older Americans has continued to grow, the primary focus of the programs funded by the act has shifted to a broad community based long-term care structure including senior centers, volunteer programs and recreational activities. All people over the age of 60 are eligible to participate, but states are required to target those with the "greatest social or economic need," since funding levels restrict the number of people who can be served.²⁴³ The OAA also established the Administration on Aging (AoA), which works to bring awareness to other federal agencies, organizations, groups, and the public about the contribution that older Americans made to the nation, and alert them to their needs.

The OAA consists of seven extensive titles that incorporate a series of formula-based and discretionary grants that are administered by the AoA²⁴⁴. Transportation is directly funded under Title III-B and Title IV.

Title III-B is the primary source of transportation funding under the OAA. It provides grants to states for transportation services "to facilitate access to supportive services or nutrition services," and services provided by an area agency on aging (AAA) in conjunction with local transportation service providers (or other transportation agencies) that result in better transportation services to older individuals.²⁴⁵ Title III-B also provides grants to local AAAs for "Senior Opportunities and Services," which helps meet the needs of low-income older individuals for "referral service to health (including mental health), employment, housing, legal, consumer, transportation, and other services." Beneficiaries of Title III-B funds often also receive Federal Transit Administration 49 USCA § 5310²⁴⁶ funds since they can be used for capital expenditures, while the OAA funds can be used to cover operating expenses. Medicaid nonemergency funds can also be used in conjunction with Title III-B funds. Transportation providers characterize Title III-B as funding for healthy seniors who prefer not to drive, while Medicaid nonemergency transportation funding is used for persons (usually older individuals) who are not healthy.

Title IV allows the Secretary of the AoA to issue "grants or contracts to nonprofit organizations to improve transportation services for older individuals."²⁴⁷ The nonprofit organization has to use the funds to carry out demonstration projects or provide technical assistance to local transit providers, AAAs, senior centers, and local senior support groups to encourage use of local transportation systems by older individuals. Demonstration projects can include improving access to transportation services, developing techniques to improve access to transportation services, preparing information on transportation options and resources, developing best practice models for providing comprehensive integrated transportation services, or providing special services to link older individuals to transportation services.

Appendix D

Glossary of Human Service Transportation Terms for California Compiled by the National Conference of State Legislatures

Derived from the National Transit Database Glossary with Additions Requested by the
MAP PAC (<http://www.ntdprogram.gov/ntdprogram/Glossary.htm>)

Second Draft
January 2009

ADA

Americans with Disabilities Act of 1990

ADA Accessible Stations

Public transportation passenger facilities, which provide ready access, and do not have physical barriers that prohibit and / or restrict access by individuals with disabilities, including individuals who use wheelchairs. Refer to 49 CFR Part 37, Appendix.

Americans with Disabilities Act of 1990 (ADA)

The legislation defining the responsibilities of and requirements for transportation providers to make transportation accessible to individuals with disabilities.

Annual Passenger Trips

The number of passengers who board operational revenue vehicles. Passengers are counted each time they board vehicles no matter how many vehicles they use to travel from their origin to their destination. Trips should be counted regardless of whether an individual fare is collected for each leg of travel. It includes passenger trips on volunteer vehicles.

Annual Vehicle Miles

The total number of miles for the reporting period that all vehicles travel from the time they pull out to go into revenue service to the time they pull in from revenue service. This includes the miles of personal vehicles used in service.

Brokerage System

An association of transportation providers managed by broker or agent who makes transportation arrangements for a specific clientele such as the elderly and persons with disabilities. The transportation providers in a brokerage system are typically social service agencies and taxicab operators. The broker may be the transit agency directly or the transit agency may contract with an individual or firm to operate the brokerage system.

Bus (MB)

A transit mode comprised of rubber-tired passenger vehicles operating on fixed routes and schedules over roadways. Vehicles are powered by diesel, gasoline, battery, or alternative fuel engines contained within the vehicle.

California Administrative Code.

The administrative code is a set of rules issued by a state agency is. A state agency is created when the legislature delegates it rule making authority to the agency. The grant of power can

be vague, but has to contain sufficient standards to guide the agency's exercise of its powers. When an agency wants to issue a rule, it must first publish the proposed rule in the state register, allow a period of public notice and comment, and then publish those final rules in the California Administrative Code

California Constitution.

A constitution is a written instrument embodying the rules of a political or social organization. The first California state constitution was adopted in November 1849, and then superseded by a new constitution in 1879, which is still in effect today. Early in the 20th century, the constitution was amended to make it easier for the constitution to be amended by the initiative process. From 1911 to 1986, the constitution was amended over 500 times. In 1962, because of how expanded the constitution had become, a California Constitution Revision Commission was formed, which at its completion had removed 40,000 words from the 75,000 word document.

California Statutory Code

The code is the backbone of the state government. It consists of twenty-nine various codes on different subject areas from laws organizing the state government to food and agriculture laws. The Government Code, the Public Utilities Code, and the Welfare and Institutions Code contain the statutes that apply to human service transportation coordination. In terms of the way a statute is cited, the current year on statutory citations is to indicate that the statute has neither been amended nor repealed by the state legislature. The publisher Thomson/West publishes the state's statutes, so that is why their name is reflected in California statutory citations.

Capital Costs

The expenses incurred within the year related to the purchase of facilities, vehicles and equipment.

Casualty and Liability Costs (506)

The cost elements covering protection of the transit agency from loss through insurance programs, compensation of others for their losses due to acts for which the transit agency is liable, and recognition of the cost of a miscellaneous category of corporate losses.

Charter Service

A vehicle hired for exclusive use that does not operate over a regular route, on a regular schedule and is not available to the general public.

Community

Service operated primarily within the boundaries of a community that is not considered a municipality, county/independent city or parish.

Commuter Rail (CR)

A transit mode that is an electric or diesel propelled railway for urban passenger train service consisting of local short distance travel operating between a central city and adjacent suburbs. Service must be operated on a regular basis by or under contract with a transit operator for the purpose of transporting passengers within urbanized areas (UZAs), or between urbanized areas and outlying areas. Such rail service, using either locomotive hauled or self-propelled railroad passenger cars, is generally characterized by multi-trip tickets, specific station to station fares, railroad employment practices, and usually only one or two stations in the central business district.

It does not include heavy rail (HR) rapid transit, or light rail (LR) / streetcar transit service. Intercity rail service is excluded, except for that portion of such service that is operated by or under contract with a public transit agency for predominantly commuter services. Predominantly commuter service means that for any given trip segment (i.e., distance between any two stations), more than 50 percent of the average daily ridership travels on the train at least three times a week. Only the predominantly commuter service portion of an intercity route is eligible for inclusion when determining commuter rail (CR) route miles.

Complementary Paratransit Services

Transportation service required by the Americans with Disabilities Act (ADA) for individuals with disabilities who are unable to use fixed route transportation systems. This service must be comparable to the level of service provided to individuals without disabilities who use the fixed route system and meet the requirements specified in Sections 37.123-137.133 of *Transportation Services for Individuals with Disabilities (Part 37), Code of Federal Regulations, Title 49, Volume 1*. The complementary services must be origin-to-destination service (demand response (DR)) or on-call demand response (DR) service to an accessible fixed route where such service enables the individual to use the fixed route bus (MB) system for his or her trip.

Consolidated Transportation Service Agencies (CTSA)

Defined by the Transportation Development Act in Cal. Public Utilities Code 99204.5 as: "Consolidated transportation service agency" means an agency designated pursuant to subdivision (a) of Section 15975 of the Government Code. This is a reference to the Social Service Transportation Improvement Act (SSTIA). A derived definition by Cal Act from SSTIA is as follows: "Consolidated Transportation Services Agencies (CTSAs) are designated by county transportation commissions, local transportation commissions, regional transportation planning agencies, or metropolitan planning agencies under auspices of the Social Services Transportation Improvement Act to achieve the intended transportation coordination goals of that Act." (California Association for Coordinated Transportation, *CTSA e-Book*)

Cooperative Agreement

An agreement where one or more public transit agencies or governmental units contribute to, or are assessed for, the value of public transit services provided by another public transit agency. There is usually a written memorandum of understanding or mutual agreement on the calculation and payment for the services. Generally, the service is part of the public transit agency's directly operated (DO) service.

Customer Services (162)

Component activities include providing supervision and clerical support for public information and customer relations activities, selling and arranging for the provision of charter services providing route information in passenger stations and at other points along the transit way, providing telephone information service, handling customer complaints and administering a lost and found operation.

Demand Response (DR)

A transit mode comprised of passenger cars, vans or small buses operating in response to calls from passengers or their agents to the transit operator, who then dispatches a vehicle to pick up the passengers and transport them to their destinations. A demand response (DR) operation is characterized by the following a) the vehicles do not operate over a fixed route or on a fixed schedule except, perhaps, on a temporary basis to satisfy a special need, and b) typically, the vehicle may be dispatched to pick up several passengers at different pick-up points before

taking them to their respective destinations and may even be interrupted en route to these destinations to pick up other passengers.

Demand Response Service

Shared use transit service operating in response to calls from passengers or their agents to the transit operator, who schedules a vehicle to pick up the passengers to transport them to their destinations.

Deviated Fixed Route Service

Transit service that operates along a fixed alignment or path at generally fixed times, but may deviate from the route alignment to collect or drop off passengers who have requested the deviation.

Executive Order

An order issued by or on behalf of the Governor, usually intended to direct or instruct the actions of executive agencies or government officials, or to set policies for the executive branch to follow.

Fare Revenues

All income received directly from passengers, either paid in cash or through pre-paid tickets, passes, etc. It includes donations from those passengers who donate money on the vehicle. It includes the reduced fares paid by passengers in a user-side subsidy arrangement.

Federal Operating Assistance

Financial assistance from the Federal Transit Administration to assist in paying the operating costs of providing transit service.

Fixed Guideway (FG)

A public transportation facility using and occupying a separate right-of-way (ROW) or rail for the exclusive use of public transportation and other high occupancy vehicles (HOV) or a fixed catenary system useable by other forms of transportation.

Fixed Route Service

Transit service using rubber tired passenger vehicles operating on fixed routes and schedules, regardless of whether a passenger actively requests a vehicle.

FTA

Federal Transit Administration

FTA Grant Program

Financial assistance from FTA programs. These funds include:

- FTA Capital Program (§5309)
- FTA Urbanized Area Formula Program (§5307)
- FTA Clean Fuels Program (§5308)
- FTA Metropolitan Planning (§5303)
- FTA Special Needs of Elderly Individuals and Individuals with Disabilities Formula Program (§5310)
- FTA Other Than Urbanized Area Formula Program (§5311)

- FTA Research, Development, Demonstration and Training Projects (§5312)
- FTA Job Access and Reverse Commute Formula Program (§5316)
- FTA New Freedom Program (§5317)
- FTA Transit in the Park (§5320)
- Interstate Transfer Program

Heavy Rail (HR)

A transit mode that is an electric railway with the capacity for a heavy volume of traffic. It is characterized by high speed and rapid acceleration passenger rail cars operating singly or in multi-car trains on fixed rails, separate rights-of-way (ROW) from which all other vehicular and foot traffic are excluded, sophisticated signaling, and high platform loading.

Intercity Bus Service

Regularly scheduled bus (MB) service for the general public, using an over-the-road bus (MB), that operates with limited stops over fixed routes connecting two or more urban areas not in close proximity or connecting one or more rural communities with an urban area not in close proximity, has the capacity for transporting baggage carried by passengers, and makes meaningful connections with scheduled intercity bus (MB) service to more distant points.

JARC

FTA Job Access and Reverse Commute Program

Jitney (JT)

A transit mode comprised of passenger cars or vans operating on fixed routes (sometimes with minor deviations) as demand warrants without fixed schedules or fixed stops.

Joint Powers Agency

Two or more public agencies, when authorized by their governing authority, to enter into agreements to jointly exercise any power common to the contracting parties. The agency or entity provided by the agreement to administer or execute the agreement may be one or more of the parties to the agreement or a commission or board constituted pursuant to the agreement or a person or a firm or corporation, including a nonprofit corporation designated in the agreement. The administering agency is a public entity separate from the parties to the agreement and shall possess the common power specified in the agreement and may exercise it in the manner or according to the method provided in the agreement. As a general proposition, there are no new powers but merely a new procedure for the exercise of existing powers.

Leases and Rentals (512)

The payments for the use of capital assets not owned by the transit agency. True leases are those in which the lessor and lessee are not related parties, the total lease payments cover the lessor's cost of the property for the period of the lease plus interest, or the ownership of the property remains with the lessor upon expiration of the lease. For the true lease, this object class includes the lease payments on true lease property. Reporting manual reference: F-40

Light Rail (LR)

A transit mode that typically is an electric railway with a light volume traffic capacity compared to heavy rail (HR). It is characterized by passenger rail cars operating singly (or in short, usually two car, trains) on fixed rails in shared or exclusive right-of-way (ROW), low or high platform loading, and vehicle power drawn from an overhead electric line via a trolley or a pantograph.

Linked Passenger Trip

A trip from origin to destination on the transit system. Even if a person must make several transfers during a journey, the trip is counted as one linked trip on the system.

Local Operating Funds

Financial assistance from local entities that support the operation of the transit system. They include, but are not limited to:

- Tax levies — A specified amount from local levies that is dedicated to supporting public transit system operating costs.
- General funds — Transfers from the general fund of local governments to cover the Local Share portion of the transit system budget.
- Specified contributions — Contributions from city, county or other municipal government towards the Local Share portion of the transit system budget.
- Donations — Donations from individuals or organizations to help cover the costs of providing transit service but which are not related to specific passengers or trips.
- Other — Other revenues such as advertising.

Mass Transportation

Synonymous term with public transportation.

Mobility Management

Mobility management is the concept of making innovative use of transportation services through multi-agency partnerships resources to meet customer needs. More precisely, as defined by the Federal Transit Administration, "Mobility management is an approach to service development and management that focuses on individualized customer markets and involves establishing a variety of services tailored to meet the needs of those markets." Some state and local governments have hired mobility managers to implement these policies. A local mobility manager is empowered to design, coordinate or navigate the network of available transportation and mobility services in the community on behalf of users.

Minivans (MV)

A light duty vehicle having a typical seating capacity of up to 7 passengers and a driver. A minivan is smaller, lower, and more streamlined than a full-sized van, but it is typically taller and with a higher floor than a passenger car, such as a hatchback or station wagon. Minivans normally cannot accommodate standing passengers.

Mode

A system for carrying transit passengers described by specific right-of-way (ROW), technology and operational features.

Monorail (MO)

A transit mode that is an electric railway of guided transit vehicles operating singly or in multi-car trains. The vehicles are suspended from or straddle a guideway formed by a single beam, rail or tube.

Non-emergency medical transportation

As found in the Cal. Code of Regulations (Cal. Admin. Code tit. 22, § 51151.7): "Non-emergency medical transportation means transportation by ambulance, litter van and wheelchair van of the sick, injured, invalid, convalescent, infirm or otherwise incapacitated

persons whose medical conditions require medical transportation services but do not require emergency services or equipment during transport."

Operating Expenses (OE)

The expenses associated with the operation of the transit agency, and classified by function or activity, and the goods and services purchased. The basic functions and object classes are defined in Section 5.2 and 6.2 of the Uniform System of Accounts (USOA). These are consumable items with a useful life of less than one year or an acquisition cost which equals the lesser of the capitalization level established by the government unit for financial statement purposes or \$5,000.

Operators

The personnel (other than security agents) scheduled to be aboard vehicles in revenue operations, including vehicle operators, conductors, and ticket collectors. Operators may also include: Attendants who are transit agency employees that are aboard vehicles to assist riders in boarding and alighting, securing wheelchairs, etc., typically the elderly and persons with disabilities.

Paratransit

Types of passenger transportation which are more flexible than conventional fixed-route transit but more structured than the use of private automobiles. Paratransit includes demand response (DR) transportation services, shared-ride taxis, car pooling and vanpooling (VP), and jitney (JT) services. Most often refers to wheelchair-accessible, demand response (DR) service.

Passenger / Customer

A person who is: Onboard, boarding or alighting from a transit vehicle for the purpose of travel, without participating in its operation.

Passenger Fare Assistance

The subsidy given to the transit agency, usually by state and local governments, on behalf of specific classes of passengers, such as students, the elderly, and persons with disabilities. The subsidy may also come from the private sector, such as employers giving assistance to offer employees programs to use public transit services at reduced rates or free. The fare assistance helps to offset the reduced or free services provided to these passengers. It is usually based on the amount of service provided; i.e., the subsidy is calculated based on the number of rides taken, but may be a lump sum payment.

Passenger Fares

The revenue earned from carrying passengers in regularly scheduled and demand response (DR) services. Passenger fares include base fare, zone or distance premiums, express service premiums, extra cost transfers, quantity purchase discounts applicable to the passenger's ride and special transit fares.

Personal Vehicles in Service

Vehicles that are used by the transit provider to transport passengers in revenue service but are owned by private individuals, typically an employee of the agency or a volunteer driver.

Private For-Profit Provider

A nonpublic entity that provides public transportation services. For-profit entities exist primarily to generate a profit, (i.e., a surplus of revenues over expenditures).

Private Nonprofit Provider

A nonpublic entity with a tax-free status that provides public transportation services. Nonprofit entities exist to provide a particular service (e.g., public transportation) to the community. Nonprofit refers to a type of business — one that is organized under rules that forbid the distribution of profits to owners. Profit refers to a surplus of revenues over expenditures.

Public Agency or Transit System

A public entity that provides public transportation services. It may be a state or local government, or any department, special purpose district (e.g. transit or transportation district), authority or other instrumentality of one or more state or local governments (e.g., joint powers agency).

Public Transportation

As defined in the Federal Transit Act, "transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include school bus, charter, or intercity bus transportation or intercity passenger rail transportation provided by the entity described in chapter 243 (or a successor to such entity)."

Notes: (1) Passenger rail transportation refers to Amtrak. (2) This definition does not affect the eligibility of intercity bus service under the §5311 Other Than Urbanized Area (Rural) Formula Program. (3) The intercity bus and intercity rail (Amtrak) portion of Intermodal terminals is however an eligible capital cost.

Purchased Transportation (PT)

Transportation service provided to a public transit agency or governmental unit from a public or private transportation provider based on a written contract. The provider is obligated in advance to operate public transportation services for a public transit agency or governmental unit for a specific monetary consideration, using its own employees to operate revenue vehicles. Purchased transportation (PT) does not include franchising, licensing operations, management services, cooperative agreements, or private conventional bus service.

Reportable Incident

Existence of one or more of the following:

- A fatality due to an incident - does include suicides, but does not include deaths by natural causes, or deaths not associated with an incident, and / or
- Injuries requiring immediate medical attention away from the scene for one or more persons, and / or
- Property damage equal to or exceeding \$25,000
- An evacuation due to life safety reasons
- A mainline derailment
- Acts of God
- Hazardous material spill
- Security incidents:
 - Terrorism related events:
 - Bomb threat
 - Bombing
 - Chemical / biological / radiological / nuclear release
 - Other system security events:
 - Arson

- Sabotage
- Hijacking
- Cyber
- Other personal events:
 - Aggravated assault
 - Rape
 - Suicide
 - Attempted suicide
 - Vandalism
 - Robbery
 - Burglary
 - Motor vehicle theft
 - Larceny / theft
 - Homicide

Revenue Service (Miles, Hours, and Trips)

The time when a vehicle is available to the general public and there is an expectation of carrying passengers. These passengers either directly pay fares, are subsidized by public policy, or provide payment through some contractual arrangement. Vehicles operated in fare free service are considered in revenue service. Revenue service includes layover / recovery time. Revenue service excludes deadhead, vehicle maintenance testing, school bus service, and charter service.

Route Deviation

A type of transit service that operates as conventional fixed route bus (MB) service along a fixed alignment or path with scheduled time points at each terminal point and key intermediate locations. Route deviation service is different than conventional fixed route bus (MB) service in that the bus (MB) may deviate from the route alignment to serve destinations within a prescribed distance (e.g., $\frac{3}{4}$ mile) of the route. Following an off route deviation, the bus must return to the point on the route it left. Passengers may use the service in two ways:

1. If they want to be taken off route as part of a service deviation, they must tell the bus operator when boarding, or
2. If they want to be picked up at an off route location, they must call the transit system and request a pickup, and the dispatcher notifies the bus operator.

Scheduled Service

The total service scheduled to be provided for picking up and discharging passengers. Scheduled service is computed from internal transit agency planning documents (e.g., run paddles, trip tickets and public timetables). Scheduled service excludes service interruptions, and special additional services.

School Bus Service

The exclusive use of buses to carry children and school personnel to and from their schools or school-related activities. It includes county school buses, private school buses, and buses chartered from private companies for the express purposes of carrying students to or from school and / or school-related activities.

School Buses (SB)

Vehicle Type: Passenger vehicles which are designed or used to carry more than ten

passengers in addition to the driver, and used primarily for the purpose of transporting pre-primary, primary or secondary school students either to such schools from home or from such schools to home.

Seating Capacity

The number of seats that are actually installed in the vehicle.

Service Area

A measure of access to transit service in terms of population served and area coverage (square miles). The reporting transit agency determines the service area boundaries and population for most transit services using the definitions contained in the Americans with Disabilities Act of 1990 (ADA). Transit agency reporters are required to submit service area information on the Identification form (B-10).

Social Services Transportation Improvement Act (SSTIA)

Also known as AB 120, this act passed in 1979 with the intent of improving transportation service required by social service recipients by promoting the consolidation of social service transportation services. (Cal. Govt. Code, § 15950 et seq.)

Special Transit Fares

The revenues earned for rides given in regular transit revenue service, but paid for by some organization rather than by the rider, and for rides given along special routes for which revenue may be guaranteed by a beneficiary of the service. Special transit fares include providing rides for letter carriers with payments being made directly from the US Postal Service, providing rides for police with payments being made directly from the police authority, industrial firms, shopping centers, public and private universities, etc., to guarantee a minimum revenue on a line operated especially for the benefit of the payer, contractual arrangements with state or local governments, and contractual arrangements from non-government entities for special transit fares and from providing special service rides for sporting events, sightseeing, etc., where fares are not guaranteed on a contractual basis.

State Government Funds

Financial assistance obtained from a state government(s) to assist with paying the costs of providing transit services.

Subsidy

Government financial assistance.

Taxicab Operator

A private for profit company where passenger vehicles are for hire by the riding public.

Transit

Synonymous term with public transportation.

Transportation Development Act

The Transportation Development Act (TDA) consists of nine articles in the California Public Utilities Code. (Cal. Public Utilities Code, § 99220 et seq.) This act declares that because of the size of the state, the public transportation system needs to be continually maintained and developed to allow for the efficient and orderly movement of people and goods. To that end, the TDA specifies in great detail how public transportation is to be funded by state resources.

The law also declares that public transportation is an essential component to a balanced transportation system that needs to be continually maintained and developed; because public transportation is so important it should be designed to encourage use by the elderly, the handicapped, the youth, and those with limited means to freely use the system. It also provides funding to CTSA's created under the Social Service Transportation Improvement Act.

Transportation Disadvantaged

California law does not define the term "transportation disadvantaged." However the Social Services Transportation Improvement Act refers to "transportation service required by social service recipients." (Cal. Govt. Code, § 15951.)

The Transportation Development Act reads "public transportation is an essential component to a balanced transportation system that needs to be continually maintained and developed; because public transportation is so important *it should be designed to encourage use by the elderly, the handicapped, the youth, and those with limited means to freely use the system.*" (Cal. Public Utilities Code § 99220)

In a statute explaining the intent of Caltrans is "to provide adequate, safe, and efficient transportation facilities and services for the movement of people and goods at reasonable cost. *The provision of adequate transportation services for persons not now adequately served by any transportation mode, particularly the disadvantaged, the elderly, the handicapped, and the young, should be an integral element of the planning process.*" (Cal. Govt. Code § 1400)

Florida law defines transportation disadvantaged to mean "those persons who because of physical or mental disability, income status, or age are unable to transport themselves or to purchase transportation and are, therefore, dependent upon others to obtain access to health care, employment, education, shopping, social activities, or other life-sustaining activities, or children who are handicapped or high-risk or at-risk." (Florida Statutes § 411.202)

A similar definition has been used by the University of Minnesota, Center for Transportation Studies: "Broadly, transportation disadvantaged populations include elderly, poor, children, persons who do not speak English, the physically disabled, and the developmentally disabled."

United We Ride

United We Ride is an interagency federal national initiative that supports states and their localities in developing coordinated human service delivery systems. In addition to State coordination grants, United We Ride provides State and local agencies a transportation-coordination and planning self-assessment tool, help along the way, technical assistance, and other resources to help their communities succeed. (FTA web page.)

Unlinked Passenger Trips (UPT)

The number of passengers who board public transportation vehicles. Passengers are counted each time they board vehicles no matter how many vehicles they use to travel from their origin to their destination.

Vanpool (VP)

A transit mode comprised of vans, small buses and other vehicles operating as a ride sharing arrangement, providing transportation to a group of individuals traveling directly between their

homes and a regular destination within the same geographical area. The vehicles shall have a minimum seating capacity of seven persons, including the driver. For inclusion in the NTD, it is considered mass transit service if it is operated by a public entity, or is one in which a public entity owns, purchases, or leases the vehicle(s). Vanpool(s) (VP) must also be in compliance with mass transit rules including Americans with Disabilities Act (ADA) provisions, and be open to the public and that availability must be made known. Other forms of public participation to encourage ridesharing arrangements, such as the provision of parking spaces, use of high occupancy vehicle (HOV) lanes, and coordination or clearing house service, do not qualify as public vanpools.

Vanpool Service

Transit service operating as a ride sharing arrangement, providing transportation to a group of individuals traveling directly between their homes and a regular destination within the same geographical area. The vehicles shall have a minimum seating capacity of seven persons, including the driver. Vanpool(s) must also be open to the public and that availability must be made known. Does not include ridesharing coordination.

Glossary Sources: Unless otherwise noted, the majority of definitions were taken directly from the National Transit Database Glossary found at <http://www.ntdprogram.gov/ntdprogram/Glossary.htm>. Other definitions were added by NCSL at the request of the MAP PAC and those sources are noted in the definition.

Appendix D

Notes

¹ Cal. Govt Code, Sec. 15951.

² U.S. General Accounting Office. *Transportation—Disadvantaged Populations: Some Coordination Efforts Among Programs Providing Transportation Services, but Obstacles Persist*. Washington, D.C.: U.S. GAO, June 2003. Found at <http://www.gao.gov/new.items/d03697.pdf> (last visited September 2, 2009)

³ See the United We Ride Program at <http://www.unitedweride.gov/> (last visited September 25, 2009).

⁴ CCAM announces the United We Ride National Dialogue, www.UWRDialogue.org.

⁵ Ibid.

⁶ 49 USCA § 5310.

⁷ Alexandra Enders and Tom Seekins, *Technical Report, A Review of FTA Section 5310 Program's State Management Plan: A Legacy Program in Transition* (Missoula: The University of Montana Rural Institute, 2009), x.

⁸ This overview adapted from FTA website, http://www.fta.dot.gov/funding/grants/grants_financing_3556.html.

⁹ 49 USCA §5316.

¹⁰ *Overview - Job Access and Reverse Commute Program (5316)*, http://www.fta.dot.gov/funding/grants/grants_financing_3624.html (last visited July 10, 2009).

¹¹ Ibid.

¹² Ibid.

¹³ *Job Access/Reverse Commute (JARC)*, (Columbus: Ohio Department of Transportation, 2008), <http://www.dot.state.oh.us/Divisions/Local/Transit/Pages/JARC.aspx>.

¹⁴ The FTA recently issued a policy statement expanding the types of projects it considers 'beyond ADA.' For more information please see NCSL paper on ADA prepared for this project.

¹⁵ *Overview - The New Freedom Program (5317)*, http://www.fta.dot.gov/funding/grants/grants_financing_7184.html (last visited July 10, 2009). See also [appendix ?].

¹⁶ *Section 5317 New Freedom Program*, (Phoenix: Arizona Department of Transportation, 2008), <http://mpd.azdot.gov/transit/Section5317.asp>.

¹⁷ Language provided from the proposed rule.

¹⁸ APTA summary of the proposed bill. Cite the presentation.

¹⁹ 42 USCA §12101 et seq. (West 2009).

²⁰ 42 USCA §12184 (West 2009).

²¹ Overview of Reporting and Other ADA Requirements for Over-The-Road Bus Companies, <http://www.fmcsa.dot.gov/rules-regulations/bus/company/ada-guidelines.htm>.

²² 42 USCA §12101 et seq. (West 2009).

²³ Ibid.

²⁴ 42 USCA § 3001 et seq.

²⁵ Funding has increased slightly each year, but has failed to keep pace with inflation and the growth of the aging population.

²⁶ Title V, community service employment program, is administered by the Department of Labor.

²⁷ See the *Summary of the Older Americans Act*, NCSL paper for this project for further discussion of how the OAA funds human service transportation.

²⁸ See 42 USCA §3030d(a)(2) (West 2009).

²⁹ 42 USCA §3030(d)(a)(14) (West 2009).

³⁰ See 42 USCA §3032e (West 2009).

³¹ 42 USCA §3032e(b)(2) (West 2009).

³² Cal. Welf. & Inst. Code §9400 (West 2009).

³³ California Assembly Bill 324 (2009) http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_0301-0350/ab_324_bill_20090824_amended_sen_v96.html.

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- ³⁴ Elder Economic Security Standard Index California Counties 2007 (Los Angeles, UCLA Center for Health Policy Research, 2008) http://www.healthpolicy.ucla.edu/elder_index08feb.html.
- ³⁵ 42 USCA §1396 et seq. (West 2009).
- ³⁶ See for example Martha King, *Medicaid A Snapshot for State Legislatures*, (Denver, NCSL, 2004).
- ³⁷ 42 CFR §431.53 (West 2009).
- ³⁸ Please see NCSL project briefing paper for a summarization of the comments/responses to the rule.
- ³⁹ [http://www.cms.hhs.gov/MedicaidStWaivProgDemoPgl/04_Section1915\(b\)Authority.asp](http://www.cms.hhs.gov/MedicaidStWaivProgDemoPgl/04_Section1915(b)Authority.asp)
- ⁴⁰ The final rule was incorporated in 42 CFR §440.170(a)(4).
- ⁴¹ *Ibid.*
- ⁴² See [appendix x] for a legislative history of the SSTIA.
- ⁴³ See Cal. Pub. Utilities Code §15951 (West 2009).
- ⁴⁴ <http://www.calact.org/doc.aspx?17>
- ⁴⁵ California Public Utilities Code, Section 99200 et seq. Also, see *Summary of the California Transportation Development Act*, and *Legislative Histories of the SSTIA and the TDA*, by NCSL, prepared for this project.
- ⁴⁶ *Ibid.*
- ⁴⁷ Cal. Public Utilities Code § 99238 (West 2009).
- ⁴⁸ Cal. Public Utilities Code § 99221 (West 2009).
- ⁴⁹ Cal. Public Utilities Code §99401, §99401.6, §99402 (West 2009)
- ⁵⁰ Cal. Govt. Code 29536 (West 2009)
- ⁵¹ Cal. Public Utilities Code §99400 (West 2009)
- ⁵² According to DMT, the unmet needs process applies to about 2/3rds of all counties in California; but, most metro areas do not have to partake in the process. DMT keeps a list of those subject to the requirement.
- ⁵³ California Senate Bill 716 (2009) http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0701-0750/sb_716_bill_20090911_enrolled.html.
- ⁵⁴ Cal. Public Utilities Code §99235 (West 2009).
- ⁵⁵ Cal. Public Utilities Code §99401.5(d) (West 2009). DMT cannot offer any guidance on how to define terms in the unmet needs process.
- ⁵⁶ *Transportation Development Act - Statutes Codes and Regulations* (Sacramento: California Department of Transportation, Division of Mass Transportation, 2005), 2.
- ⁵⁷ Cal. Public Utilities Code §99408 (West 2009 and Cal. Public Utilities Code § 99242 (West 2009)
- ⁵⁸ Cal. Public Utilities Code §99401.5(d) (West 2009)
- ⁵⁹ Cal. Public Utilities Code §99401.6 (West 2009)
- ⁶⁰ Cal. Public Utilities Code §99401.5(c) (West 2009)
- ⁶¹ Cal. Public Utilities Code §99405(a) (West 2009)
- ⁶² Cal. Public Utilities Code §99405(c) (West 2009)
- ⁶³ Cal. Public Utilities Code § 99242 (West 2009)
- ⁶⁴ Gordon Arruda, Caltrans, *Presentation to the MAP PAC*, May 13, 2009.
- ⁶⁵ *Ibid.*
- ⁶⁶ NEED CITE
- ⁶⁷ California Department of Transportation, Division of Mass Transportation, *"Unmet Transit Needs" and "Reasonable to Meet" Definitions*, (Sacramento: California Department of Transportation, Division of Mass Transportation, 2009).
- ⁶⁸ San Benito Council of Governments, *Draft 2009 Unmet Transit Needs Annual Report*, (Hollister, Council of San Benito County Governments, 2009), 3.
- ⁶⁹ Division of Mass Transportation, *Definitions*, 3.
- ⁷⁰ Ventura County Transportation Commission, *FY 2009/2010 Unmet Transit Needs Findings* (Ventura: Ventura County Transportation Commission; 2009), 1.
- ⁷¹ *Ibid.*, 4.
- ⁷² When turning down a request, Madera County always gives the requester another option or points out another service that could meet the requester's need.
- ⁷³ *Ibid.*, 8. Financial feasibility was never the sole reason for determining that an unmet transit need was unreasonable to meet.
- ⁷⁴ *Ibid.*, 3.

⁷⁵ See for example Courtney Smith, *Unmet Needs Transit Needs Findings* (Independence: Inyo County Local Transportation Commission, 2008) 5.

⁷⁶ Cal. Pub. Utilities Code §99242 (West 2009), and Cal. Pub. Utilities Code §99408 (West 2009).

⁷⁷ Cal. Pub. Utilities Code §99242 (West 2009).

⁷⁸ California Legislative Analyst's Office, *State Transit Assistance* (Sacramento, California Legislative Analyst's Office), http://www.lao.ca.gov/analysis_2009/transportation/trans_anl09004005.aspx (last visited October 1, 2009).

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ Cal. Pub. Utilities Code §15951 (West 2009).

⁸² *Ibid.*

⁸³ CalAct, CTSA Ebook, "Chapter Six: How to get Started"

⁸⁴ California State Transportation Task Force, *Mobility Management Centers in California*, November 2005, P. Branson, Draft. P. 3. See www2.calact.org/resources/ctsa_ebook/Mobility%20Management%20Center%20Position%20Paper...

⁸⁵ *Ibid.*, p. 4.

⁸⁶ See *also* 21 CCR §6680 (West 2009).

⁸⁷ Cal. Pub. Utilities Code §15951 (West 2009).

⁸⁸ Cal. Pub. Utilities Code §15952 (West 2009).

⁸⁹ CalAct CTSA E-Book, Chapter 5: CYSA Designees Yesterday and Today.

⁹⁰ See [appendix x] for a summarization of what the Action Plan was supposed to contain.

⁹¹ CalAct, CTSA Ebook, Chapter 1, l p. 3. See www2.calact.org/resources/ctsa_ebook/Chapter%201%20What%20is%20a%20CTSA.doc

⁹² California Assembly Bill 2647 (2002) http://www.leginfo.ca.gov/pub/01-02/bill/asm/ab_2601-2650/ab_2647_bill_20020712_chaptered.html

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

⁹⁶ Cal. Pub. Utilities Code §15982 (West 2009).

⁹⁷ Cal. Pub. Utilities Code §15960 (West 2009).

⁹⁸ Nicholas Farber, School Bus report, NCSL

⁹⁹ CalAct, CTSA Ebook, Chapter 4 Funding.

¹⁰⁰ *Ibid.*

¹⁰¹ California State Transportation Task Force, *Mobility Management Centers in California*, November 2005, P. Branson, Draft. P. 3. See www2.calact.org/resources/ctsa_ebook/Mobility%20Management%20Center%20Position%20Paper...

¹⁰² CalAct CTSA E-Book, Chapter Four: "How are CTSA's Funded?", www2.calact.org/resources/ctsa_ebook/Chapter%204%20CTSA%20Funding.doc

¹⁰³ Dave Raphael, *Medical Transportation under Medi-Cal* (Washington, D.C.: CTAA, 2005).

¹⁰⁴ *Ibid.*

¹⁰⁵ 42 CFR §431.53 (West 2009).

¹⁰⁶ 22 CCR §51151 (West 2009).

¹⁰⁷ Merriam-Webster Dictionary Online, <http://www.merriam-webster.com/dictionary/contraindicated>.

¹⁰⁸ 22 CCR §51323 (West 2009).

¹⁰⁹ *Bingham v. Obledo*, 195 Cal. Rptr. 142 (1983).

¹¹⁰ *Ibid.*

¹¹¹ Judith Norman, *Health Access in San Bernardino and Riverside Counties: Non-Emergency Medical Transportation Needs and Resources*, (Southern California Association of Governments, San Bernardino, 2004) 66.

¹¹² *Ibid.*

¹¹³ See for example *Smith v. Vowell* [cite], *Blue v. Craig* [cite], *Fant v. Stumbo* [cite], and *Daniels v. Tennessee Dept. of Health and Environment* [cite].

¹¹⁴ 42 U.S.C.A. § 1983 (West 2009).

¹¹⁵ Sara Rosenbaum, Nancy Lopez, Melanie J. Morris, and Marsha Simon, *Policy Brief - Medicaid's Medical Transportation Assurance: Origins, Evolution, Current Trends, and Implications for Health Care*, (Washington, D.C., The George Washington University School of Public Health and Health Services, 2009), 11.

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*, 12.

¹¹⁸ California Legislative Analyst's Office, DHCS—The Broker Model for Medicaid Nonemergency Medical Transportation (Sacramento, California Legislative Analyst's Office),

http://www.lao.ca.gov/analysis_2009/health/health_anl09004003.aspx (last visited August 20, 2009).

Next **two** sentences: *Ibid.*

¹¹⁹ California Legislative Analyst's Office, DHCS—*The Broker Model for Medicaid Nonemergency Medical Transportation* (Sacramento, California Legislative Analyst's Office),

http://www.lao.ca.gov/analysis_2009/health/health_anl09004003.aspx (last visited August 20, 2009).

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

¹²² *Ibid.*

¹²³ The final rule was incorporated in 42 CFR § 440.170(a)(4).

¹²⁴ Developed from a compilation of definitions provided by Valerie Miller, Medical Transportation Specialist, CTAA, September 3, 2009.

¹²⁵ See <http://www.dhcs.ca.gov/Pages/A.aspx> (last visited June 26, 2009).

¹²⁶ *Need cite.*

¹²⁷ Rosenbaum, et al., *Medicaid's Medical Transportation Assurance*, 16.

¹²⁸ For a more in-depth analysis of this issue see Nicholas Farber, *Insurance Issues for Paratransit*, (Denver, NCSL, 2008).

¹²⁹ *Ibid.*

¹³⁰ The National Resource Center, *Coordination Myths and Realities*, 3.

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ Transit Cooperative Research Program, *TCRP Synthesis 13: Risk Management for Small and Medium Transit Agencies* (Washington, D.C.: National Academies Press, 1995), 3.

¹³⁴ Walt Diangson, *Risk Management for Rural Transit Systems, Technical Assistance Brief No. 8* (Washington, D.C.: National Transit Resource Center, 1999), 1.

¹³⁵ Transit Cooperative Research Program, *TCRP Synthesis 13*, 4.

¹³⁶ *Ibid.*, 24.

¹³⁷ Cal. Corporations Code §5239 (West 2009).

¹³⁸ National Cooperative Highway Research Program, Research Results Digest 311: FMCSA Regulations as They Apply to FTA Section 531/5311 Providers: A Handbook (Washington D.C.: National Academies Press, 2006), 2.

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.*

¹⁴¹ *Ibid.*, 1.

¹⁴² *Ibid.*, 7.

¹⁴³ NCHRP, Research Results Digest 295, 20.

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.*

¹⁴⁶ *Ibid.*

¹⁴⁷ *Ibid.*

¹⁴⁸ Walt Diangson, President, Pacific Shore Insurance Services Inc., telephone conversation with author, September 22, 2008.

¹⁴⁹ National Resource Center for Human Service Transportation, *Coordination Myths and Realities*, 1, 1 (2008): 2.

¹⁵⁰ Matt Sundeen, James B. Reed, and Melissa Savage, *Coordinated Human Service Transportation* (Denver: National Conference of State Legislatures, 2005).

¹⁵¹ Bobby Jernigan, *Overview of the Florida Transportation Disadvantaged Program* (Tallahassee: Florida Commission of the Transportation Disadvantaged, 2009), <http://www.dot.state.fl.us/ctd/docs/TD%20Overview%202009.ppt>.

¹⁵² Fl. Stat. Ann. §427.011(1).

¹⁵³ Fl. Stat. Ann. §427.013.

¹⁵⁴ Fl. Stat. Ann. §427.012.

¹⁵⁵ Jernigan, *Overview*; Sundeen, Reed, and Savage, *Coordinated Human Service Transportation*; Fl. Stat. Ann. §427.013 et seq.

¹⁵⁶ Jernigan, *Overview*.

¹⁵⁷ *Ibid.*

¹⁵⁸ Fl. Stat. Ann. §427.013.

¹⁵⁹ *Ibid.*; Florida Commission for the Transportation Disadvantaged (CTD), *Distribution Formula for the Commission for the Transportation Disadvantaged Grant Programs* (Tallahassee: Florida Commission for the Transportation Disadvantaged, n.d.), <http://www.dot.state.fl.us/ctd/docs/tdhandbook/m%20DistributionFormula.doc>.

¹⁶⁰ Fl. Stat. Ann. §427.0159(3); CTD, *Distribution Formula*.

¹⁶¹ Rule 41-2.014, Florida Administrative Code.

¹⁶² Fl. Stat. Ann. §427.0159(2).

¹⁶³ Jernigan, *Overview*.

¹⁶⁴ Fl. Stat. Ann. §320.03(9).

¹⁶⁵ Fl. Stat. Ann. §341.052(5).

¹⁶⁶ Jernigan, *Overview*.

¹⁶⁷ Fl. Stat. Ann. §320.02(14).

¹⁶⁸ Jernigan, *Overview*.

¹⁶⁹ Fl. Stat. Ann. §320.0848(3)(c)(1).

¹⁷⁰ Jernigan, *Overview*.

¹⁷¹ *Ibid.*

¹⁷² Fl. Stat. Ann. §320.204; Bobby Jernigan, CTD, telephone conversation with author, October 22, 2009.

¹⁷³ Fl. Stat. Ann. 427.0159(4).

¹⁷⁴ *Ibid.*; Florida Commission for the Transportation Disadvantaged (CTD), *Florida Commission for the Transportation Disadvantaged Annual Performance Report 2008* (Tallahassee: Florida Commission for the Transportation Disadvantaged, 2009), <http://www.dot.state.fl.us/ctd/docs/APR/2008/CTD%202008%20Annual%20Performance%20Report.pdf>.

¹⁷⁵ CTD, *Annual Performance Report 2008*.

¹⁷⁶ Jernigan, *Overview*.

¹⁷⁷ J. Joseph Cronin, Jr., *Florida Transportation Disadvantaged Programs Return On Investment Study* (Tallahassee: Florida State University, 2008), <http://tmi.cob.fsu.edu/ROIaccessible.htm>.

¹⁷⁸ CTD, *Annual Performance Report 2008*.

¹⁷⁹ *Ibid.*

¹⁸⁰ Sundeen, Reed, and Savage, *Coordinated Human Service Transportation*; Agency Council on Coordinated Transportation (ACCT), *About ACCT* (Olympia, WA: Washington Department of Transportation, 2009), http://www.wsdot.wa.gov/acct/about_acct.htm.

¹⁸¹ *Ibid.*; James B. Reed and Nicholas J. Farber, *Transportation Mobility Management* (Denver: National Conference of State Legislatures, August 2009).

¹⁸² Wa. Stat. Ann. 47.06B.020.

¹⁸³ *Ibid.*

¹⁸⁴ Wa. Stat. Ann. 47.06B.012.

¹⁸⁵ Wa. Stat. Ann. 47.06B.030 (1999).

¹⁸⁶ Wa. Stat. Ann. 47.06B.060 (2007).

¹⁸⁷ Wa. Stat. Ann. 47.06B.040 (2007).

¹⁸⁸ Reed and Farber, *Transportation Mobility Management*; State of Washington Joint Transportation Committee, *Special Needs Transportation Coordination Study Final Report [Executive Summary]* (Olympia, WA:

Nelson/Nygaard Consulting Associates Inc., January 2009),

http://www.leg.wa.gov/JTC/Documents/ACCT/SpecialNeedsTranspFINALEXECSUM_010609.pdf.

¹⁸⁹ Wa. Stat. Ann. 47.06B.070 (2009).

¹⁹⁰ Agency Council on Coordinated Transportation (ACCT), *Agency Council on Coordinated Transportation 2007-2009 Budget* (Olympia, WA: ACCT, 2009), http://www.wsdot.wa.gov/acct/documents/budget_001.pdf.

¹⁹¹ Anne Fennessy and Kris Jorgensen, *Memorandum Re: Stakeholder Research Themes and Findings* (Seattle, WA: Cocker Fennessy, November 15, 2006), <http://www.wsdot.wa.gov/acct/library/reports-studies/ACCT%20Stakeholder%20Findings%20Memo.pdf>; Agency Council on Coordinated Transportation (ACCT), *Agency Council on Coordinated Transportation 2007 Report to the Washington State Legislature* (Olympia, WA: ACCT, 2007), http://www.wsdot.wa.gov/acct/library/reports-studies/ACCTReport2007_Web.pdf.

¹⁹² State of Washington Joint Transportation Committee, *Special Needs Transportation Coordination Study*.

¹⁹³ ACCT, *2007 Report to the Washington State Legislature*; Agency Council on Coordinated Transportation (ACCT), *Washington State Summary of Community and Brokered Transportation 2005* (Olympia, WA: Washington State Department of Transportation, March 2007), http://www.wsdot.wa.gov/acct/library/reports-studies/Com.%20Trans%20Providers_Complete.pdf.

¹⁹⁴ Sundeen, Reed, and Savage, *Coordinated Human Service Transportation*.

¹⁹⁵ ACCT, *Summary of Community and Brokered Transportation 2005*.

¹⁹⁶ California State Transportation Task Team, *Mobility Management Centers in California: A Position Paper of the California State Transportation Task Team* (Sacramento, 2005), http://www2.calact.org/resources/cta_e-book/Mobility%20Management%20Center%20Position%20Paper%20Final%20Version.doc.

¹⁹⁷ State of Washington Joint Transportation Committee, *Special Needs Transportation Coordination Study*.

¹⁹⁸ *Ibid.*

¹⁹⁹ Wisconsin Department of Transportation (WisDOT), *Wisconsin Human Service Transportation Coordination Model*

Final Report (Madison: Nelson/Nygaard Associates Inc., July 2008),

<http://www.dot.wisconsin.gov/localgov/coordination/docs/finalreport-090508.pdf>; Wisconsin Department of Transportation (WisDOT), *Interagency Council on Transportation Coordination (ICTC)* (Madison: WisDOT, 2009), <http://www.dot.wisconsin.gov/localgov/coordination/ictc.htm>.

²⁰⁰ Reed and Farber, *Transportation Mobility Management*.

²⁰¹ *Ibid.*

²⁰² Wis. Stat. Ann. 85.21.

²⁰³ Wis. Stat. Ann. 85.24.

²⁰⁴ Wisconsin Department of Transportation (WisDOT), *Specialized Transportation Assistance Program for Counties (s. 85.21 Wis. Stats) 2010 Application* (Madison: WisDOT, 2009),

<http://www.dot.wisconsin.gov/localgov/docs/countyelderly-application.pdf>; Wisconsin Department of Transportation (WisDOT), *Wisconsin Employment Transportation Assistance Program* (Madison: WisDOT, 2009), <http://www.dot.wisconsin.gov/localgov/transit/wetap.htm>.

²⁰⁵ Wis. Stat. Ann. 85.22.

²⁰⁶ WisDOT, *Wisconsin Human Service Transportation Coordination Model Final Report*.

²⁰⁷ Wisconsin Department of Transportation (WisDOT), *Application: New Freedom (49 U.S.C. Section 5317) Calendar year 2010 projects* (Madison: WisDOT, August 2009), <http://www.dot.wisconsin.gov/localgov/docs/newfreedom.doc>.

²⁰⁸ Wisconsin Department of Transportation (WisDOT), *Mobility Management in Wisconsin* (Madison: WisDOT, 2009), <http://www.dot.wisconsin.gov/localgov/transit/newfreedom-mobility-wi.htm>.

²⁰⁹ *Ibid.*

²¹⁰ Wisconsin Department of Transportation (WisDOT), *Coordination Model* (Madison: WisDOT, 2009), <http://www.dot.wisconsin.gov/localgov/coordination/model.htm>; Reed and Farber, *Transportation Mobility Management*; WisDOT, *Wisconsin Human Service Transportation Coordination Model Final Report*.

²¹¹ WisDOT, *Wisconsin Human Service Transportation Coordination Model Final Report*; WisDOT, *Coordination Model*.

²¹² John Alley, Wisconsin Department of Transportation, telephone conversation with author, October 22, 2009; Interagency Council on Transportation Coordination (ICTC), *“Opening Doors to Human Services Transportation Coordination”*: 2007 Interagency Council on Transportation Coordination (ICTC) Conference (Madison: ICTC, 2007), <http://www.dot.wisconsin.gov/localgov/coordination/docs/ictc-2007agenda.pdf>.

²¹³ WisDOT, *Wisconsin Human Service Transportation Coordination Model Final Report*.

²¹⁴ Ibid.

²¹⁵ Jernigan, *Overview*.

²¹⁶ State of Washington Joint Transportation Committee, *Special Needs Transportation Coordination Study*; WisDOT, *Wisconsin Human Service Transportation Coordination Model Final Report*.

²¹⁷ According to the Attorney Advisor for the FTA, FTA rules carry the same authority as DOT rules. Many of DOT's rules are implemented by the modes (FTA, FHWA, FRA, etc.). U.S. DOT rules that are implemented by the modes include 49 CFR part 5, FOIA regulations; 49 CFR parts 18 and 19, collectively known as the common grant rule; 49 CFR parts 27, 37 and 38, implementing the Rehabilitation Act and the Americans with Disabilities Act; 49 CFR part 20, lobbying restrictions, etc. The FTA does not engage in rulemaking in those areas.

²¹⁸ This is subject to change because of the FTA's January 15, 2009 proposed rule to expand the type of projects funded under the New Freedom program. Please see the *Summary of FTA's Proposed Expansion of Eligible New Freedom Projects* for an explanation of the rule.

²¹⁹ Adapted from CalAct's CTSA E-book, available at http://www.calact.org/resources/ctsa_e-book/ (last visited December 31, 2008).

²²⁰ Adapted from CalAct's CTSA E-book, available at http://www.calact.org/resources/ctsa_e-book/ (last visited December 31, 2008).

²²¹ The joint power agency formed between the Alameda Congestion Management Agency, the Santa Clara Valley Transportation Authority, and the San Joaquin Regional Rail Commission.

²²² Adapted from CalAct's CTSA E-book, available at http://www.calact.org/resources/ctsa_e-book/ (last visited December 31, 2008).

²²³ Cal. Public Utilities Code § 99238 (West 2009).

²²⁴ Cal. Public Utilities Code § 99238.5 (West 2009).

²²⁵ Claims for streets and roads may include those purposes necessary and convenient to the development, construction, and maintenance of the city or county's streets and highways network, including planning and contributions to the transportation planning process, acquisition of real property, and construction of facilities and buildings (Cal. Public Utilities Code § 99402 (West 2009)).

²²⁶ Cal. Public Utilities Code § 99401.5(c) (West 2009). The meeting has to be held at the Social Services Transportation Advisory Councils per Cal. Public Utilities Code § 99238.5 (West 2009).

²²⁷ All money received for streets and highway purposes have to be reported to the Controller. The Controller will then submit a report to the Legislature on January 1 of each year.

²²⁸ 42 CFR § 431.53

²²⁹ 22 CCR § 51151 (West 2009).

²³⁰ 22 CCR § 51323 (West 2009).

²³¹ See *Bingham v. Obledo*, 195 Cal. Rptr. 142 (1983).

²³² When transportation is treated as a *medical service*, states usually receive a higher reimbursement rate, but have less control over how services are provided. States have more flexibility in how they provide *administrative services*, but also must accept a lower federal reimbursement rate.

²³³ The final rule was incorporated in 42 CFR § 440.170(a)(4).

²³⁴ See <http://www.dhcs.ca.gov/Pages/A.aspx> (last visited June 26, 2009).

²³⁵ The term 'rule' is used throughout since it is now final; however, at the time the comments were made, the rule was still proposed.

²³⁶ See the California Coordinated Human Service Transportation Matrix for additional information.

²³⁷ For information on the New Freedom program please see the California Coordinated Human Service Transportation Matrix and the Summary of the Americans with Disabilities Act of 1990.

²³⁸ Language provided from the proposed rule.

²³⁹ See http://www.leginfo.ca.gov/pub/01-02/bill/asm/ab_2601-2650/ab_2647_cfa_20020627_183031_asm_floor.html (last visited February 20, 2009).

²⁴⁰ See Cal. Pub. Utilities Code § 99238.5 (West 2009).

²⁴¹ Currently Senator Mark DeSaulnier.

²⁴² Article IV § 10(c) of the California Constitution.

²⁴³ Funding has increased slightly each year, but has failed to keep pace with inflation and the growth of the aging population.

²⁴⁴ Title V, community service employment program, is administered by the Department of Labor.

²⁴⁵ See 42 USCA § 3030d(2) (West 2009).

²⁴⁶ See California Coordinated Human Service Transportation Matrix for explanation.

²⁴⁷ See 42 USCA § 3032e (West 2009).