

MTAC Medical Transportation Access Coalition

July 20, 2018

Seema Verma, MPH
Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Re: Kentucky State Plan Amendment for Alternative Benefits Package (ABP) Change
Effective July 1, 2018

The Medical Transportation Access Coalition (MTAC) (www.mtaccoalition.org) was formed last year to educate federal and state policymakers and other stakeholders about the benefits of medical transportation and the need for policies that support continued access to these services. The coalition's founding and allied members include a diverse set of transportation brokers and providers, managed care organizations and trade associations, and patient advocacy groups.

We send this letter in response to the Commonwealth of Kentucky's Alternative Benefit Package (ABP) State Plan Amendment that, according to the state's website, was submitted April 23 and updated June 30.

We understand that other stakeholders may have expressed concerns to you regarding whether the Commonwealth provided adequate public notice for the State Plan Amendment (SPA) changes to the dental, vision, and non-emergency medical transportation (NEMT) in accordance with federal law. We do not reiterate (or downplay) those procedural due process concerns. Rather, we write to request confirmation from CMS that states cannot terminate the mandatory NEMT benefit through SPA authority.

Federal law requires states to ensure necessary transportation to and from providers as codified in federal regulations at 42 C.F.R. §431.53. NEMT has been a mandatory benefit of Medicaid since the program's inception, and more specifically, a mandatory benefit within the ABP that is available to low-income adults under age 65 not otherwise eligible for Medicaid with incomes at or below 138 percent of the federal poverty level (FPL). While under certain procedural conditions, states may make changes to *optional* benefits through SPAs, this flexibility does not apply to mandatory benefits, including NEMT. ABP Implementation Guides, ABP7, Benefit Assurances.¹ It is therefore our view that the Commonwealth of Kentucky, in light

¹ Available at: <https://wms-mmdl.cms.gov/MMDLDOC/abplG.html> (date last accessed: July 12, 2018).

of Judge Boasberg's June 29 decision invalidating the Kentucky HEALTH demonstration pending further CMS review, cannot limit NEMT through a SPA.

We seek CMS guidance quickly as granting approval of the Commonwealth of Kentucky's request may violate Judge Boasberg's order, upend decades of legal and agency precedent, create uncertainty for managed care entities and providers that are responsible for managing the health of patients, and deny beneficiaries in need of transportation a safe, reliable, and affordable means to obtain care. Moreover, the SPA gives no justification for the change, nor does it provide any explanation regarding how it will comply with the above-mentioned regulatory "assurance of transportation" requirement.

We appreciate your prompt attention to this matter. If you have questions, please contact tricia.beckmann@faegrebd.com.

Sincerely,



Robert Pittman, Director, Business Development and Government Relations
LogistiCare Solutions, LLC (MTAC Founding Member)



Phil Stalboerger, Vice President, Public Affairs
MTM, Inc. (MTAC Founding Member)



Rob Zachrich, Chief Operating Officer
Southeastrans, Inc. (MTAC Founding Member)

cc: Adam Meier, Office of Kentucky Governor
Cabinet for Health and Family Services