

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20D-0323EC

IN THE MATTER OF THE PETITION FOR DECLARATORY ORDER FILED BY
ALTERNATIVE SUPPORT, INC. PURSUANT TO THE COMMISSION'S RULE OF
PRACTICE AND PROCEDURE 4 CODE OF COLORADO REGULATIONS 723-1304(1).

**DECISION DENYING PETITION FOR
DECLARATORY ORDER, WITHOUT PREJUDICE**

Mailed Date: November 10, 2020

Adopted Date: November 4, 2020

I. BY THE COMMISSION

A. Statement

1. By this Decision the Commission denies, without prejudice, the Petition for Declaratory Order (Petition) filed by Alternative Support, Inc. (Alternative Support), on July 30, 2020. The Commission finds Alternative Support has not demonstrated that it meets the statutory criteria to be considered a provider exempt from regulation by the Commission.

B. Petition and Supplemental Filings

2. On July 30, 2020, Alternative Support filed its Petition seeking a declaratory order pursuant to Rule 4 *Code of Colorado Regulations 723-1-1304* of the Commission's Rules of Practice and Procedure.

3. In the Petition, Alternative Support states it provides non-medical transportation for persons with developmental disabilities and challenging behaviors requiring day habilitation services. Alternative Support states it operates as a corporation. Alternative Support states it provides transportation between 8 a.m., picking up from individuals' homes, and between 3 p.m. to 4 p.m., dropping off at individuals' homes. Alternative Support states it utilizes

six 7-passenger minivans and three 8-passenger minivans. It states these vehicles remain in manufacturer original specifications. Alternative Support states that passengers may be ambulatory but still require physical assistance from their support staff. Alternative Support states these passengers should be found to be “confined to a wheelchair” for purposes of § 42-7-510 (2)(b), C.R.S., even though they are not entirely non-ambulatory.

4. Based on this description, Alternative Support claims it is a “people service agency” as defined in § 40-1.1-102(3), C.R.S., and that its vehicles meet the definition of exempt motor vehicles in § 40-10.1-105(g), C.R.S. Alternative Support requests a declaration that its operations are not subject to Commission regulation.

5. By Decision No. C20-0651-I, issued September 4, 2020, the Commission required Alternative Support to make a supplemental filing describing how it is primarily supported by public funds and explaining whether it is a not-for-profit entity.

6. On September 8, 2020, Alternative Support timely made this filing. In its response, Alternative Support explains that its source of revenue is predominately payment from individuals who receive public funds or benefits. Alternative Support states it primarily submits Medicaid claims for payment from the individuals it serves. Alternative Support adds, although it is a for-profit organization, its sister organization, *Adore Foundation*, is a non-profit organization that raises funds to provide supplemental services to individuals requiring day habilitation services. Alternative Support states, through *Adore Foundation* funding, individuals are able to attend day program services for a total of 25 hours per week, while Alternative Support only submits Medicaid claims for service provided only 24 hours a week. Alternative Support filed a copy of *Adore Foundation*’s certification of tax-exempt status.

C. Findings and Conclusions

7. Alternative Support seeks a declaration that its operations are not subject to Commission regulation because it is a “people service agency” exempt from regulation under § 40-10.1-105, C.R.S. This statute provides that people service transportation pursuant to Article 1.1 of Title 40 is not subject to Commission regulation.

8. The legislative declaration in Article 1.1, titled “People Service Transportation,” states the purpose of this article is to promote improved transportation for the elderly, disabled, and residents of rural areas by removing barriers to low-cost people service transportation and volunteer transportation. The Colorado Legislature declares that transportation systems meeting the criteria in Article 1.1 are not considered “public utilities” or any form of carrier subject to regulation by the Commission.

9. Providers of “people service transportation” are generally exempt from regulation by the Commission. Based on the definitions in Article 1.1, to qualify for exemption, Alternative Support must: (1) provide transportation on a “nonprofit basis;” and (2) be a “people service agency” that is primarily supported by public funds and not for profit. § 40-1.1.102, C.R.S.

10. The Commission denies the Petition because we find Alternative Support has failed to show it meets these criteria.

11. Alternative Support’s petition and supplemental filing admits that it is a corporation and that it is a for-profit organization. The definition in Article 1.1 for “nonprofit” is that the entity provides the services for purposes other than pecuniary gain. § 40-1.1-102(2), C.R.S. Here, the fact that Alternative Support’s revenue primarily derives from submitting Medicaid claims does not transform it from a corporation operating for-profit, to a nonprofit. There is no evidence in the record demonstrating the owners of Alternative Support do not retain

revenues as profit. The key distinction between a for-profit company and nonprofit is that income is distributed to the owners of the for-profit company. In addition, there is a difference between a company being directly supported by public funds and a company being paid by individuals accessing public funds. Here, the definition of “people service agency” refers to “government funded bodies.” § 40-1.1-102(3), C.R.S. This suggests the intent is the provider directly receives government funding, not indirectly through passengers using government benefits as payment.

12. Finally, we note for the benefit of Alternative Support, that the Commission’s Transportation Staff is a generally available resource to assist Alternative Support in determining what authority may be appropriate for its operations and what filings would be required to apply for that authority.

II. ORDER

A. The Commission Orders That:

1. The Petition for Declaratory Order filed by Alternative Support, Inc., on July 30, 2020, is denied without prejudice.
2. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
November 4, 2020.**

(S E A L)



ATTEST: A TRUE COPY



Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners