

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02D-526BP

IN THE MATTER OF A DECLARATORY ORDER RE: CONTRACT CARRIERS THAT
PROVIDE NON-EMERGENT MEDICAL TRANSPORTATION WITH THE STATE'S
MEDICAID PROGRAM, UPON THE COMMISSION'S OWN MOTION.

**DECISION CLOSING DOCKET AND DENYING
MOTIONS TO CONSOLIDATE AS MOOT**

Mailed Date: January 29, 2003
Adopted Date: January 15, 2003

I. BY THE COMMISSION:

A. Statement

1. This matter comes before the Commission upon the Commission's own motion for a declaratory order clarifying and correcting the permits held by Commission-authorized contract carriers who provide non-emergent medical transportation services with Colorado's Medicaid program.¹ By Decision No. C02-1103, issued October 8, 2002, the Commission opened this docket and chronicled a new policy issued by Colorado's Department of Health Care Policy and Financing (HCPF), the agency that administers Colorado's Medicaid program. Pursuant to Agency Letter MA-02-03-A, dated April 17, 2002, HCPF designated the various County Departments of Human/Social Services as the "State Designated Entities" for the administration of Medicaid's non-emergent medical transportation program. HCPF added that those county departments may "contract out the transportation administration as long as there is no additional cost to the Colorado Medicaid Program."

¹ See Attachment A for a list of affected carriers.

2. In Decision No. C02-1103, we noted that HCPF's new policy would affect those Commission-authorized contract carriers who provide non-emergent medical transportation for the Medicaid program. Specifically, we stated:

as HCPF made clear in Agency Letter MA-02-03-A, many of the previously approved State Designated Entities with whom contract carriers have contracted may no longer be approved by HCPF.

The result of this HCPF policy change is that many contract carriers are forced to enter into new contracts with the new State Designated Entities, or with those to whom the State Designated Entities broker the coordination of the non-emergent medical transportation program in any particular county, if they wish to continue providing transportation services payable with Medicaid funds. However, to date, very few affected carriers have contacted this Commission seeking to amend their permits to reflect such a change in contracting parties or "customers."

3. We, hence, requested formal response from those carriers listed as affected contract carriers, as well as any other interested party, regarding corrections to the permits and options to the existing contract carrier permit system. The Commission received Responses² from more than half of those carriers, as well as from two common carriers.³ Additionally Metro Taxi, Inc. (Metro), filed three motions: a Motion to Consolidate Cases (Docket Nos. 02D-526BP and 02A-603BP) filed on December 10, 2002; a Motion to Consolidate Docket Nos. 02A-638BP and 02A-642BP-Extension with Docket No. 02D-526BP filed on December 31, 2002; and a Motion to Consolidate Docket Nos. 02A-672BP-Extension and 02A-671BP-Extension with

² We refer to all the pleadings filed in response to Decision No. C02-1103 as "Responses" regardless of the nomenclature chosen by the individual carriers.

³ The Respondents included: Mados Systems, Inc. (on October 21, 2002); JIV Services (on October 23, 2002); Kids Wheels, LLC (on October 25, 2002); Mobility Transportation and Services, Inc. (on October 29, 2002); Premier Senior Services (on October 30, 2002); The Myron Stratton Home (on November 4, 2002); Midtown Express, Inc. (on November 4, 2002); Greater Colorado Springs Transportation Co., doing business as Yellow Cab of Colorado Springs *et al.* (on November 6, 2002); Metro Taxi, Inc. (on November 6, 2002); Washington and Associates Home Health Care Network, Inc. (on November 6, 2002); Pleasant Journey, LLC (on November 13, 2002); Eagle Transportation, LLP (on November 8, 2002); Red Willow, Inc. San Luis Valley Transportation (on November 8, 2002); TransExpress, LLC (on November 20, 2002); and Admired Transportation, Inc. (on November 18, 2002). Colorado Mobility Transportation, Inc., and Care-4-U Transportation, Inc., both filed Responses with the Commission that were dated November 7 and 8, 2002, respectively, however, neither Response arrived at the Commission until January 15, 2002.

Docket No. 02D-526BP filed on January 10, 2003. Now being duly advised in the matter, we close this docket and direct Staff of the Commission (Staff) to conduct an informal investigation into the matter.

B. Findings

4. Prior to the issuance of Decision No. C02-1103, Staff became aware—through various carriers, HCPF, and Arapahoe County—of the changes brought about by Agency Letter A-02-03-A. Through informal inquiries, Staff was able to ascertain that Arapahoe County was to become the “broker” for non-emergent medical transportation services for several of the counties in the Denver metropolitan area. By opening this docket, the Commission sought to build upon the knowledge garnered by Staff and to “correct” or “clarify” all affected permits in an expedient, efficient manner.

5. In their Responses, many carriers expressed that they felt their permits would remain unchanged by HCPF’s new policy. Others explained the steps they were taking in order to correct their permits, including applying for extensions to their current authority. In its Response, Metro, a common carrier, raises numerous issues regarding the propriety of various aspects of the Commission’s handling of contract carriers, and contract carriage, in general.

6. While the Commission opened this docket upon its own motion in order to clarify and correct the permits held by the Attachment A carriers, it has become clear that the issues attendant to HCPF’s new policy require more than a declaratory order can perform. According to Commission Rule of Practice and Procedure 60, 4 *Code of Colorado Regulations* (CCR) 723-1, “[t]he Commission may issue a declaratory order to terminate a controversy or to remove an uncertainty as to the applicability to a petitioner of any statutory provision or Commission rule,

regulation or order.” At the time the Commission opened this docket, it appeared that a declaratory order would indeed remove uncertainties as to the permits of the affected carriers.

7. However, after contemplating the carriers’ Responses and the input from the various state and county agencies, and having studied the particulars of the permits at issue, we find that a declaratory order is no longer the appropriate forum for resolving the myriad problems resulting from Agency Letter MA-02-03-A. These problems relate to the fact that each permit raises its own unique issues, *i.e.*, some permits are restricted to serving various entities that may or may not still be arranging non-emergent medical transportation services; others may or may not include Arapahoe County, the broker for all Denver metropolitan area counties.

8. Unfortunately, we have determined that the issues presented by HCPF’s new policy and by Arapahoe County’s brokering of various counties’ responsibilities under the non-emergent medical transportation program necessitate further investigation, possibly leading to issuing orders to show cause to the affected carriers. Thus, a declaratory order docket is no longer the appropriate format for achieving these ends because: (1) each permit must be investigated separately due to the distinct issues of fact presented by each permit; and (2) if issuing orders to show cause is required to achieve the necessary ends, such must also be instigated separately, allowing each individual carrier an opportunity for a hearing. *See* § 40-11-110, C.R.S.

9. Because, as stated, *supra*, the various questions of law and fact raise discrete issues for each carrier, including the question of whether a particular permit can ever be merely re-written in order to make it reflect the new circumstances, we find that further investigation is necessary. To this end, we direct Staff to open an informal investigation of each of the contract carriers listed in Attachment A, with an eye toward correcting the permits held by those carriers

in any manner lawful and expedient, including but not limited to issuing orders to show cause pursuant to 4 CCR 723-1-60. The Commission finds that, utilizing the Commission's audit powers under §§ 40-6-106, 107, and 40-11-106, C.R.S., Staff has the unique ability to confirm the status of each contract carrier's contracts, and hence to determine the legality and propriety of those carriers' permits. Therefore we specifically direct Staff to utilize those audit powers to inspect any necessary documents in order to determine the propriety of each carrier's continued operations under Commission authority.

10. Because we now close this docket, we necessarily deny Metro's three Motions to Consolidate as moot. We also waive response time to the January 10, 2003, Motion. We urge Metro, that, should it still wish to consolidate those new and extension applications at issue in the now moot motions, it should file appropriate pleadings to do so.

II. CONCLUSION

11. Because we find that the issues raised by HCPF's new policy regarding State Designated Agents for the provision of non-emergent medical transportation require further investigation, and possibly action on the part of the Commission to assure that all contract carriers' permits comport with those services actually offered by the carriers, we close this docket. We direct Staff to conduct an informal investigation utilizing its full audit powers in order to determine the proper course to follow for each individual carrier.

III. ORDER

A. The Commission Orders That:

1. Docket No. 02D-526BP is closed.

2. Staff of the Commission is ordered to conduct an informal investigation consistent with the discussion above.

3. The Motion to Consolidate Cases (Docket Nos. 02D-526BP and 02A-603BP) filed by Metro Taxi, Inc., on December 10, 2002, is denied as moot.

4. The Motion to Consolidate Docket Nos. 02A-638BP and 02A-642BP-Extension with Docket No. 02D-526BP filed by Metro Taxi, Inc., on December 31, 2002 is denied as moot.

5. The Motion to Consolidate Docket Nos. 02A-672BP-Extension and 02A-671BP-Extension with Docket No. 02D-526BP filed by Metro Taxi, Inc., on January 10, 2003 is denied as moot.

6. Response time to the Motion to Consolidate Docket Nos. 02A-672BP-Extension and 02A-671BP-Extension with Docket No. 02D-526BP filed by Metro Taxi, Inc., on January 10, 2003, is waived.

7. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 15, 2003.**

(S E A L)



ATTEST: A TRUE COPY

**Bruce N. Smith
Director**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

POLLY PAGE

JIM DYER

Commissioners

CHAIRMAN RAYMOND L. GIFFORD
ABSENT.