



November 19, 2015

To: Secretary Kitty Rhoades, Department of Health Services
Joint Legislative Audit Committee, Co-Chairs Sen. Cowles and Rep. Kerkman,
Senators Lazich, Darling, Vinehout, Bewley; Representatives Macco, Nygren, Sargent, Berceau

Re: Third Party External Advocate for NEMT program

At the Transportation Advisory Committee meeting convened by DHS on Sept. 30, the Department announced the decision not to pursue additional third party advocate options. Instead, the current arrangement with HP will remain in place. It was expressed that this decision was made due to no direct recommendation in the legislative audit relating to a third party advocate. We find this surprising as the audit recognizes what transpired with the failed third party advocate contract negotiations and did not provide a recommendation because DHS indicated to the auditors they were exploring additional options. (Page #51 of the audit report).

As part of the audit, the LAB staff reviewed complaint determinations made by MTM, a task an external advocate would complete. LAB staff found that in two instances of their small sample, the complaints were wrongly determined. This type of audit is not occurring in the current system. These findings confirm the need for an independent third party advocate to audit complaints and perform other duties beyond what is currently provided by HP.

Under the current arrangement with HP, they are not required to perform the comprehensive duties that were requested under the RFP released in June of 2014. Request for Proposal S-0201 was seeking an independent external advocate with the following functions:

- Perform semi-annual auditing services of the NEMT Manager's Complaint Reports.
- Provide information, education and training about how to obtain NEMT through the NEMT Manager;
- Work directly and collaboratively with 3rd parties and the State regarding the adjudication of complaints;
- Work in conjunction with the NEMT Manager, including but not limited to the Member Ombudsman, to investigate and resolve issues quickly;
- Perform research and provide recommendations to the State on the current state of the NEMT program;

A question posed by a potential respondent to the RFP about the current contract with HP prompted the following response from the Department:

The current arrangement with HP for the NEMT advocacy function does not fully represent the scope of services that are being solicited under this RFP and should not be used as an indicator of the appropriate cost for the services to be provided by the entity selected under this solicitation.

It is also disturbing that the current agreement with HP does not require them to report to DHS per their response to another question.

Under the current agreement with HP for advocate services, HP is not required to produce or track call statistics. Therefore, this data is not available.

It was clear from the RFP released by DHS last year that the third party advocate position would not only hold the broker accountable, but also help the state make improvements to the program and ensure quality services for consumers. The current arrangement with HP does not provide this level of advocate services and does not hold HP accountable for their services.

Moreover, we believe it imperative that any External Advocacy program include the following characteristics: Independence, Accessibility, Advocacy.

The External Advocacy position must be independent of DHS or the NEMT Vendor. This independence means that the position be located in a separate agency, have independent control over the personnel assigned to the position, and be sufficiently resourced to carry out the duties of the position. Unlike the current arrangement with HP, the External Advocate must be directly accessible to participants. While complaints may still be routed through the NEMT vendor's complaint resolution process, participants must be able to complain directly to the External Advocate and receive advocacy assistance from the external advocate in navigating the internal complaint resolution processes. The External Advocate must be allowed to inform the participants of their full right of appeal and be available to independently represent the participant in any appeal process. The External Advocate should also be charged with conducting an audit of complaint resolutions and be charged with providing recommendations, including recommendations to improve policy, process, and customer experience to DHS and the vendor. The External Advocate position must serve as an advocate for the NEMT participant. Finally, any contract extended to the External Advocate must be free of penalty provisions that limit or inhibit its independence, freedom of speech, ability to actively represent participants, or that create a conflict of interest between the External Advocate and NEMT participants.

It is upsetting that the Department is using the lack of an expressed recommendation in the audit, rather than the data from the audit and their initial reasoning for seeking a third party oversight to base their decision to not move forward with a comprehensive external advocate position.

At the last meeting of the Transportation Advisory Council, many members expressed concern and dismay at the announcement that the external advocate position would not be pursued. Unfortunately, many previously active members of the council were not in attendance to provide feedback. Over the last year, meeting attendance has been waning. This may be attributed to the meeting schedule. According to RFP 1748 that was awarded to MTM, the council was to meet approximately 4 times per year. Despite major attempts to change the program in the last budget, performance concerns and other pressing issues, meetings have been reduced to two times a year. The last two council meetings lacked representation from tribes and consumer representation as well as noticeable absences of other key stakeholders.

We strongly encourage the Department find a way to reengage the council members and create a functioning advisory council with adequate representation from all sectors and meaningful discussion of the NEMT program, including implementing an independent third party external advocate program.

NEMT Alliance partner

cc: Dave Stepien, Section Chief, Division of Health Care Access & Accountability

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