

UPDATED OPRA MEMBER BRIEFING

Non-Medical Transportation: Commercial Motor Vehicles, Drivers, and Provider Responsibilities

Providers have a variety of responsibilities when providing non-medical transportation for individuals. This document is designed to provide an overview of the many requirements that Providers must meet in order to transport individuals. This document is up to date regarding legal requirements as of December 31, 2017.

I. Commercial Motor Vehicles (“CMVs”)

A. Definition:

Passenger carrying motor vehicles are CMVs regulated by federal and state safety laws when they meet certain weight and/or passenger carrying requirements. These vehicles require federal or state authority to operate, and in some instances, drivers may be required to have a commercial driver’s license.

A CMV is any of the following:

- Vehicles with a gross vehicle weight rating that is 10,001 pounds or more; or
- Vehicles designed or used to transport more than 8 passengers including the driver for compensation; or
- Vehicles designed or used to transport more than 15 passengers including the driver, not for compensation; or
- Vehicles designed or used to transport 9-15 passengers not for direct compensation provided the vehicle does not otherwise meet the definition of a commercial vehicle. *49 C.F.R. 390.3 and 49 C.F.R. 390.5.*

As outlined above, if a vehicle is designed to transport 8 passengers or more, and the Provider will be paid for the transport, that vehicle qualifies as a CMV. A commercial driver’s license is only required to operate certain types of CMV’s as outlined more fully below.

B. Registration:

CMVs must obtain an identification number issued by the United States Department of Transportation (“USDOT”), and then must register with the Public Utilities Commission of Ohio (“PUCO”). *O.A.C. 4901:2-21-03.* The registration can be performed online by visiting www.omcis.puc.state.oh.us. There is a \$30 annual registration fee for buses and a \$20 annual registration fee for vans, cars, and other vehicles. The receipt showing proof of payment of this fee must be kept in the vehicle, along with proof of insurance (discussed further below). *O.R.C. 4921.19.*

C. Markings:

CMVs must have the following markings:

- Legal name or trade name of the corporation or Provider operating the motor vehicle.
- The ID number issued by the PUCO, or the identification number issued by the U.S. Department of Transportation.
- Markings must appear on both sides of the vehicle in letters that contrast sharply with the background on which the letters are placed.
- Markings must be legible during daylight hours from a distance of 50 feet while the vehicle is stationary. *49 C.F.R 390.21 and O.A.C. 4901:2-5-10.*

D. Insurance Requirements:

Proof of insurance must be contained within the vehicle. Vehicles with a seating capacity of 15 or less are required to have \$1,500,000 in insurance coverage. Vehicles with a seating capacity of 16 or more, must have \$5,000,000 in insurance coverage. *49 C.F.R. 287.33 and O.A.C. 4901:2-13-02.*

E. Inspection Requirements:

On each day a vehicle (commercial or non-commercial) is used to provide non-medical transportation, the first driver of the vehicle shall conduct and document inspection and testing of the lights, windshield wipers, emergency equipments, mirrors, horns, tires and brakes prior to transporting an individual. *O.A.C. 5123:2-9-18(D)(4)-(D)(5).*

At least every 12 months, the vehicle shall be inspected by the Ohio State Highway Patrol safety inspection unit or a certified mechanic and be determined to be in good working condition. Proof of inspection should be kept in the vehicle. *Id.*

II. Commercial Drivers Licenses

A Commercial Driver's License ("CDL") is only required if the driver is driving a vehicle that weighs 26,001 pounds or more or the vehicle is designed to transport 16 or more passengers including the driver. *49 C.F.R. 383.5.* Therefore, drivers who drive smaller vans, will not need to obtain a CDL. Please note that the passenger requirement referenced above is based upon the seating capacity of the vehicle, and not based upon the number of people who are actually transported at any given time. If a vehicle has seating capacity of 16 or more, including the driver, and only one person is in the vehicle other than the driver, a CDL is still required. Because most Agencies do not own vehicles which require a CDL, we have not addressed all of the requirements in this briefing. Please seek further counsel regarding employer requirements for those who have CDLs.

III. Provider Responsibilities Regarding CMV Drivers

A. General Requirements for Drivers of Commercial Motor Vehicles

The job applications for applicants applying for a job which will require them to drive CMVs must include the following:

- Signature of the applicant and certification by the applicant that the application is true and complete to the best of the applicant's knowledge.
- Name and address of the Agency.
- Applicant's name, address, date of birth and social security number.
- Address at which the applicant has resided for the past 3 years.
- The application date.
- The issuing State, number, and expiration of each unexpired CMV operator's license or permit that has been issued to the applicant (if applicable).
- Nature and extent of the applicant's experience in the operation of CMVs, including the type of equipment the applicant has operated.
- A list of all motor vehicle accidents in which the applicant was involved during the prior 3 years, specifying the date and nature of each accident and any fatalities or personal injuries it caused.
- A list of all violations of motor vehicle laws or ordinances (other than parking violations) of which the applicant was convicted or forfeited bond or collateral for the prior 3 years.
- A statement setting forth in detail the facts and circumstances of any denial, revocation, or suspension of any license, permit, or privilege to operate a motor vehicle, or a statement that no such denial, revocation or suspension has occurred.
- A list of the names, and addresses of the applicant's employers for the prior three years, the dates of employment, and the reason for leaving employments.

Upon hire, the Agency is required to obtain the driver's motor vehicle records for the past 3 years in each state in which the driver holds a license. *49 C.F.R. 391.23*. Further, if the employee previously worked for another Agency or Company which was regulated by the Department of Transportation, the Agency must investigate the driver's performance by contacting those previous employees. Notes regarding this investigation, and a copy of the driver's record should be placed in the employee's file within 30 days of hire. *Id.*

At least once every 12 months, drivers or CMVs are required to furnish their employer with a list of all violations of motor vehicle traffic laws of which the driver was convicted or for which he/she forfeited bond or collateral during the prior 12 months. *49 C.F.R. 391.27*. This certification should be submitted in writing and maintained in the employee's file. Further, employers of CMV drivers are required to check their driving records every 12 months. *49 C.F.R. 391.25*. The check must be reviewed to ensure that the driver is not disqualified from operating a CMV, and a copy of the driving record must be kept in the employee's file. *Id.*

Before allowing a driver to drive, the Agency is required to give the new driver a road test. 49 C.F.R. 391.32. The road test must be performed in the type of vehicle to which the driver will be assigned. The road test may be given by another employee of the Agency. The road test must address the following skills:

- Placing the vehicle in operation.
- Use of the CMVs controls and emergency equipment.
- Operating the CMV in traffic and while passing other motor vehicles.
- Turning the CMV.
- Braking and slowing the CMV by means other than braking.
- Backing and parking the CMV.

After the completion of the road test, a “Certification of Road Test” form should be completed by the Agency, and a copy should be kept in the employee’s file. That form should include the following:

- Driver’s name, Social Security Number, and Driver’s License Number.
- The type of vehicle used for the test.
- List how many miles were driven during the test.
- The date of the test.
- A certification from the person giving the road test, that the “driver possesses sufficient driving skill to operate safely the type of CMV that is listed on the certificate.”
- Signature of the person administering the test. *Id.*

Drivers of CMVs need to have a special medical exam by a specially licensed medical examiner as defined in 49 C.F.R. 390.5. The medical examination is required at least every 24 months, and the medical examiners that are licensed to perform this exam are listed on the National Registry of Certified Medical examiners website which is administered by the U.S. Department of Transportation. (USDOT). 49 C.F.R. 391.41. These physical examinations can only be administered by people who are specially qualified medical examiners and are listed on that website:

<https://nationalregistry.fmcsa.dot.gov>

Drivers must carry a card with them that says that they passed this special physical exam. *Id.* Those providers listed on the website will conduct an appropriate physical exam, and issue the required card or certificate.

The following are offenses which will disqualify someone from driving CMVs:

- Driving a CMV while alcohol concentration is 0.04% or more.
- Driving any vehicle under the influence of alcohol as prescribed by state law.
- Refusal to undergo drug or alcohol testing.
- Driving under the influence of a Schedule 1 controlled substance, and amphetamine, a narcotic drug, a formulation of an amphetamine, or a derivative of a narcotic drug.
- Leaving the scene of an accident while driving a CMV.

- A felony involving a CMV.
- Conviction of texting while driving a CMV.
- Conviction for violation of the restriction on using a hand held mobile telephone while driving a CMV. *49 C.F.R. 391.15.*

Please note that although it is legal to talk on a hand held cell phone in Ohio, federal law prohibits using a hand held cell phone while driving a CMV. Therefore, Providers who employ CMV drivers should ensure that they have hands free devices if those drivers intend to utilize their cell phones.

B. State Regulations Related to Non-Medical Transportation

In addition to the general certification requirements for Agency employees found at *O.A.C. 5123:2-2-02, 5123:2-3-07, and 5123:2-3-08*, when a Provider hires an employee to provide non-medical transportation, the Provider must:

- Ensure that the driver has a valid driver's license.
- Ensure that the driver has valid insurance liability coverage meeting the minimum state requirements.
- Perform a drug test to determine that the driver is drug free prior to initially providing non-medical transportation as part of their job.
- Obtain the BMV driving record of someone who will be providing non-medical transportation no earlier than 14 days prior to employment and at least every 3 years thereafter. *O.A.C. 5123:2-9-18.*

A driver who has 6 or more points, may not provide non-medical transportation, and the Provider should require its drivers to notify them if they accumulate 6 points on their driving records. *Id.*

If a driver is in a motor vehicle accident while performing non-medical transportation, the Provider must drug test the driver within 32 hours and test for blood alcohol levels within 8 hours of the accident if:

- The accident involves the loss of human life;
- The driver is cited for a moving violation if the accident involves:
 - Bodily injury to any person who immediately receives medical treatment away from the scene of the accident; or
 - One or more vehicles incurred disabling damage as a result of the accident requiring the vehicle to be towed from the scene. *Id.*

Non-medical transportation drivers are required to notify their employers if they accumulate 6 or more points, or if their driver's license is suspended or revoked. *Id.* Providers are required to maintain policies and procedures regarding the above mentioned requirements for their non-medical transportation drivers. *Id.*

Drivers of CMV's for Non-medical transportation are required to provide documentation from a physician or other practitioner licensed to provide medical examinations, which establishes the driver's physical qualifications to provide non-medical transportation. *Id.* This requirement would be satisfied by the physical examination required of all CMV drivers as outlined above.

IV. Vehicle Equipment Requirements for Non-Medical Transportation

All vehicles utilized for non-medical transportation shall be equipped with secure storage for removable equipment and passenger property. Further, the vehicle must have a communication system that may include cellular communication capable of 2 way communication. Finally, each vehicle must have a fire extinguisher and emergency first aid kit that are safely secured. *O.A.C. 5123:2-9-18(D)(3).*

V. Summary

The requirements regarding CMVs, drivers who work for Providers and various Provider responsibilities relative to transportation are numerous and complex. This member briefing is intended to provide an overview. How these laws apply to your agency may depend upon your specific factual situation. For further assistance, OPRA members should consult the Vorys law firm in order to take advantage of your two hour OPRA member benefit, or your own legal counsel.

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