****

**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.

1. **Commercial Motor Vehicles (“CMVs”)**
	1. **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 (which are outlined further below), 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.

* 1. **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](http://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.*

* 1. **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*.
	1. **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*.

* 1. **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 equipment, 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.*

1. **Drivers**
2. **Commercial Drivers:**

A Commercial Driver’s License (“CDL”) is only required if the driver is driving a vehicle that weighs 10,001 pounds or more or the vehicle is designed to transport 8 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 8 or more, including the driver, and only one person is in the vehicle other than the driver, a CDL is still required.

Drivers applying for a CDL must be over 18 years of age, and must have a current medical examiner’s certificate which states that they are physically qualified to drive a CMV. People who apply for a CDL must have this exam conducted by a medical examiner that is listed on the National Registry of Certified Medical Examiners. That list of Examiners can be found at <https://nationalregistry.fmcsa.dot.gov/NRPublicUI/home.seam>. Commercial drivers must be re‑examined every 24 months. *49 C.F.R. 391.41 and O.A.C. 4901:2-5-04*.

 Federal law states that drivers may not operate commercial motor vehicles if they have a suspended or withdrawn CDL. Further, the following are offenses which will disqualify someone from driving under their CDL:

* 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 drivers who are driving commercial vehicles should ensure that they have hands free devices if those drivers intend to utilize their cell phones.

1. **Provider Responsibilities Regarding Drivers**

 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(C)(5)*.

Any 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*. Further, *49 C.F.R. 391.2*7 requires drivers to notify their employer of their driving record every 12 months by filling out a certification form.

 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.*

Providers are required to maintain policies and procedures regarding the above mentioned requirements for their non-medical transportation drivers. *Id.*

1. **Vehicle Equipment**

 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)*.

1. **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.

Suzanne J. Scrutton, Esq. Robin L. Canowitz, Esq.

Partner Senior Attorney

Vorys, Sater, Seymour and Pease LLP Vorys, Sater, Seymour and Pease LLP

614-464-8313 614-464-4953

sjscrutton@vorys.com rlcanowitz@vorys.com