

LEGISLATIVE SUMMARY SHEET

Tracking No. 0412-17

DATE: October 4, 2017

TITLE OF RESOLUTION: AN ACTION RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES; APPROVING NAVAJO NATION REGULATIONS GOVERNING NON-EMERGENCY MEDICAL TRANSPORTATION PROVIDERS

PURPOSE: This bill will approve Navajo Nation regulations governing non-emergency medical transportation providers.

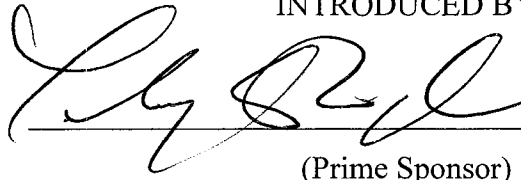
This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

5-DAY BILL HOLD PERIOD: SNOWH
Website Posting Time/Date: 8:18pm 10/5/17
Posting End Date: 10/10/2017
Eligible for Action: 10/11/2017

PROPOSED STANDING COMMITTEE RESOLUTION

23rd NAVAJO NATION COUNCIL - Third Year, 2017

INTRODUCED BY



(Prime Sponsor)

0412-17

AN ACTION

RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES; APPROVING
NAVAJO NATION REGULATIONS GOVERNING NON-EMERGENCY MEDICAL
TRANSPORTATION PROVIDERS

BE IT ENACTED:

SECTION ONE. AUTHORITY

A. The Health, Education and Human Services Committee is a standing committee of the Navajo Nation Council. 2 N.N.C. § 400 *et. seq.*

B. As a standing committee of the Navajo Nation Council, among other delegated duties and responsibilities, the Health, Education and Human Services Committee oversees the Navajo Nation Department of Health. 2 N.N.C. § 401(C)(1). In addition to its oversight responsibilities, the committee is authorized to "promulgate rules and regulations governing health, social services, education, human services and general government services of the Navajo Nation and its tribal organizations, entities, and enterprises." 2 N.N.C. § 401(B) (1).

C. Pursuant to 2 N.N.C. § 1604(I), the Navajo Nation Department of Health regulates non-emergency transport providers.

SECTION TWO. FINDINGS

A. The Navajo Nation is a sovereign government responsible for providing critical governmental services to and protecting its people.

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1 B. There are a number of non-emergency medical transport providers operating within the
2 Navajo Nation. It is necessary that regulations be enacted to ensure the proper permitting of
3 transportation providers, the safety of those being transported by such providers and the
4 quality of services provided.
5

6 **SECTION THREE. APPROVING REGULATIONS GOVERNING NON-**
7 **EMERGENCY MEDICAL TRANSPORTATION PROVIDERS**

8 The Navajo Nation hereby approves Navajo Nation Department of Health
9 Regulations Governing Non-Emergency Medical Transport Providers, attached as Exhibit
10 "A."
11

12 **SECTION FOUR. EFFECTIVE DATE**

13 The regulations enacted herein shall be effective pursuant to 2 N.N.C. §189(A) and
14 other applicable sections of Navajo Nation law.
15

16 **SECTION FIVE. RECORDING OF REGULATIONS**

17 The regulations enacted herein shall properly be recorded pursuant to 2 N.N.C. §
18 189(A).
19

20 **SECTION SIX. SAVINGS CLAUSE**

21 Should any provision of these regulations approved herein be determined invalid by the
22 Navajo Nation Supreme Court, or the District Courts of the Navajo Nation without appeal to
23 the Navajo Nation Supreme Court, those sections of the regulations that are not determined
24 invalid shall remain effective and applicable.
25

26 **SECTION SEVEN. AMENDMENTS**

27 The regulations enacted herein can be amended by the Health, Education and Human
28 Services Committee.
29
30

TITLE 13 DEPARTMENT OF HEALTH REGULATIONS

13.1.100 NEMT REGULATIONS

ARTICLE 1

13.1.101 Authority

The Department of Health is authorized by 2 N.N.C. § 1604(I) to regulate non-emergency medical transportation (NEMT) providers. *See* CO-50-14.

13.1.102 Purpose

The purpose of these regulations is to ensure the safe and efficient transportation of individuals from their homes to their medical appointments and back, by qualified NEMT companies.

13.1.103 Definitions

A. "AHCCCS" means Arizona Health Care Cost Containment System, who is the payor for NEMT services in Arizona.

B. "ASE Certified Inspector" means an Automotive Service Excellence Inspector. ASE-certified technicians and mechanics earn national certification by meeting experience quotas and completing specialty exams. ASE certified mechanics must also recertify every five years, guaranteeing their knowledge is fresh.

C. "Business License" means a business license issued by the Navajo Division of Economic Development.

E. "DOT" means Department of Transportation.

F. "Department" means the Navajo Nation Department of Health.

G. "Documents" means the supporting documentation required for an NEMT permit.

H. "HIPAA" means Health Insurance Portability and Accountability Act, which requires that personal health information be kept confidential.

I. "Health Director" means the highest administrator within the Department.

1 J. "Logo" means an NEMT identification posted in a conspicuous place on a vehicle used
2 to transport Members to their destination. A logo must be of a size, and include
3 information, as required in the Department Rules.

4 L. "Meeting" is an administrative appeal before the Health Director in which an NEMT
5 may present evidence in an informal setting to remove a fine, obtain or reinstate an NEMT
6 permit.

7 K. "Member" means an individual who receives Medicaid services.

8 L. "NEMT" means a non-emergency medical transportation company.

9 M. "NEMT Permit" means authorization by the Department for an NEMT to provide
10 services on the Navajo Nation. A permit shall be displayed conspicuously in the NEMT
11 vehicle so that it can be seen by the Member.

12 N. "Navajo Nation" means all lands contained within the exterior boundaries of the
13 Navajo Indian Reservation or of the Eastern Navajo Agency, all land within the limits of
14 dependent Navajo Indian communities, all Navajo Indian allotments, all land owned in fee
15 by the Navajo Nation, and all other land held in trust for, owned in fee by, or leased by the
16 United States to the Navajo Nation or any Band of Navajo Indians. 7 N.N.C. § 254.

17 O. "New Mexico Medicaid" means the payor for NEMT services in New Mexico.

18 P. "Office of Hearings and Appeals" means the Navajo Nation administrative court in
19 which an NEMT may appeal a permit revocation or a denial of permit issuance.

20 Q. "Utah Medicaid" means the payor for NEMT services in Utah.

21 22 **ARTICLE 2**

23 **13.2.100 NEMT PERMITS**

24 All NEMTs providing non-emergency transportation services to clients residing on the
25 Navajo Nation shall obtain an NEMT permit from the Department.

26 A. TERM. NEMT permits shall be valid for the time period determined by the
27 Department Rules.

28 B. NONTRANSFERABLE. NEMT permits may not be transferred or sold to any other
29 NEMT company.

30 C. RENEWAL. NEMT permits must be renewed 30 days in advance of expiration.

1 D. NONISSUANCE OR NONRENEWAL. The Department may in its discretion refuse
2 to either issue or renew an NEMT permit.

3
4 **13.2.101 APPLICATION FEE**

5 All completed applications for an NEMT permit shall be submitted with the application
6 fee set by the Department Rules.

7
8 **13.2.102 APPLICATION**

9 Application forms shall require the following information, and shall be signed before a
10 notary attesting that all of the information is true and accurate:

- 11 A. Name of Applicant's NEMT Company
- 12 B. Name of Applicant company's principal
- 13 C. Address of Applicant's principal place of business
- 14 D. Name and Street Address of Registered Agent for NEMT
- 15 E. Applicant's business telephone number
- 16 F. Business Fax Number, if available
- 17 G. Applicant's Email Address, if available
- 18 H. Applicants' Federal Tax ID Number
- 19 I. Business principal's social security number or business tax ID number
- 20 J. Description of Form of Ownership, Names and Addresses of all Principal
21 Owners/Directors
- 22 K. Description of primary service area

23 **13.2.103 SUPPORTING DOCUMENTS FOR APPLICATION**

24 The following current and up-to-date Documents shall be submitted with the NEMT
25 permit application:

- 26 A. Navajo Nation Business License to verify authority to conduct business on Navajo
27 Nation
- 28 B. Certificate of Incorporation or proof of status of legal formation of NEMT company
- 29 C. Current Liability Insurance. All NEMTs shall carry the following minimum
30 insurance:

1 1. Required liability coverage:

2 a. 6 PERSONS OR FEWER: NEMTs who are motor carriers providing service
3 in vehicles a seating capacity of six (6) persons or fewer, excluding driver,
4 must maintain a combined single-limit public liability insurance policy of at
5 least one million dollars (\$1,000,000.00) per occurrence for bodily injury to or
6 death of all persons injured or killed, and property damage.

7 b. SEVEN TO FIFTEEN PERSONS: NEMTs who are motor carriers of person
8 providing service in vehicles with a seating capacity of seven (7) to fifteen
9 (15) persons, excluding the driver, must maintain a combined single-limit
10 public liability insurance policy of at least one million five hundred thousand
11 dollars (\$1,500,000.00) per occurrence for bodily injury to or death of all
12 persons injured or killed, and property damage.

13 2. Maximum Deductible. No NEMT motor carrier insurance policy shall have a
14 deductible in excess of two thousand dollars (\$2,000.00), except that the Navajo
15 Nation may approve a higher deductible for a motor carrier that files a surety
16 bond with the Navajo Nation in an amount equal to the difference between two
17 thousand dollars (\$2,000.00), and the amount of the higher deductible.

18 D. Copy of registration for all NEMT vehicles

19 E. Copy of AHCCCS or state Medicaid certification which includes the provider ID
20 number.

21 F. Copies of Driver's Licenses for all NEMT drivers

22 G. Copies of Driver's records for each NEMT driver from each state Department of
23 Motor Vehicles in which the NEMT provides services

24 H. Copies of drug tests for all NEMT drivers

25 I. Copies of State, Federal and Navajo criminal background checks for all NEMT
26 drivers

27 J. Fingerprint clearance card for all NEMT drivers

28 K. State DOT physical exam report for all NEMT drivers

29 L. Current vehicle inspection from ASE Certified Inspector dated within 3 months of
30 application submittal, and annually thereafter

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- M. Copy of Applicant's vehicle maintenance log
- N. Photographs of all of Applicant's vehicles
- O. Copy of Applicant's drug, alcohol and sexual harassment policy
- P. Name and Telephone Number of Contact Person to Receive Complaints
- Q. First Aid and CPR cards for each NEMT driver
- R. Copy of company HIPAA policy ensuring client confidentiality
- S. Notarized Release allowing the Department to verify insurance status and to inform NEMT clients of insurance company and contacts

13.2.104 SUBMITTAL OF PERMIT APPLICATIONS

- A. Applications must be submitted to the Navajo Department of Health, Administration 2 Building, _____.
- B. Applications which are not complete, do not have all supporting documents, or are without payment of the application fee will not be accepted.

ARTICLE 3

13.3.100 FINES

The Department may impose fines for the failure to submit updated Documents.

13.3.101 FINE AMOUNTS

A fine schedule shall be set by the Department Rules.

13.3.102 NOTICE

- A. The Department shall issue written notice to the NEMT that its Documents are out of date and that a fine will be imposed if not timely updated within the prescribed amount of time.
- B. The Department shall set the number of days in which an NEMT has to update its Documents within the Department Rules.
- C. The Department shall set the number of days in which the NEMT has to pay the fine in the Department Rules.

- 1 D. If the Document deficiency has not been cured within the deadline set by the
2 Department, the NEMT may either:
3 1. Pay the fine; or
4 2. Request a Meeting with the Regulatory Director to appeal the fine.
5

6 **13.3.103 MEETING**

- 7 A. The Health Director, or its designee, shall schedule a Meeting if requested by the
8 NEMT to:
9 1. Review a fine;
10 2. Obtain an NEMT permit; or
11 3. Reinstate a revoked NEMT permit.
12 B. The Meeting is an informal process where people can “talk things out”, and which
13 does not observe the rules of civil procedure or rules of evidence.
14 1. The Department shall set a deadline for the Health Director, or its designee, to
15 schedule a Meeting in the Department Rules.
16 2. The NEMT may bring documentary evidence, witnesses, and an attorney to the
17 meeting to support its position.
18 3. The Department may bring documentary evidence, witnesses, and its attorney to
19 the meeting to support its position.
20 C. After the Meeting, the Health Director shall issue a written decision based upon the
21 preponderance of the evidence which:
22 1. Upholds or removes the fine;
23 2. Establishes a deadline by which the NEMT must submit the required Documents;
24 3. States the reason for the decision; and
25 4. Informs the NEMT of its right to appeal the decision to the Office of Hearings and
26 Appeals; and
27 E. The Department shall set a deadline for the Regulatory Director to issue its decision
28 after the Meeting in the Department Rules.
29 F. The Department shall set a deadline for the fine to be paid after the Meeting in the
30 Department Rules.

1
2 **13.3.104 PERMIT REVOCATION**

- 3 A. Failure to pay the fine in accordance with the Health Director's final decision after
4 the Meeting, will result in an immediate permit revocation, unless appealed.
5 B. After all appeals have been litigated, an NEMT permit revocation shall be
6 immediately implemented and reported to the appropriate state Medicaid agency and
7 the Business Regulatory Department (Report).
8

9 **13.3.105 OHA REVIEW**

- 10 A. OFFICE OF HEARINGS AND APPEALS. The Office of Hearings and Appeals
11 shall have jurisdiction to review and determine de novo an appeal of a:
12 1. Revocation of an NEMT permit by the Department; or
13 2. Denial of an NEMT permit issuance or renewal.
14 B. TIME LIMIT ON FILING APPEAL. The NEMT shall file his or her appeal within
15 ten (10) business days from the date of the Department's decision.
16 C. STANDARD OF REVIEW. Review by the Office of Hearings and Appeals of the
17 Navajo Nation shall be limited to questions of abuse of discretion and lack of
18 reasonable basis for denial or revocation of the NEMT permit.
19 D. DECISION. The Office of Hearings and Appeals shall make a determination based
20 on the preponderance of the evidence on the issue of whether the actions by the
21 Department are consistent with these regulations and the Department Rules. The
22 Department's decision shall be upheld unless it is shown by a preponderance of the
23 evidence that the actions of the Department violated a specific provision of these
24 Regulations or the Department's Rules.
25

26 **13.3.106 APPEALS**

27 Determinations by the Office of Hearings and Appeals may be appealed to the Navajo
28 Supreme Court.
29

30 **13.3.107 SEVERABILITY**

1 The provisions of these regulations are severable and if any provision of these
2 regulations, or its application to any person or circumstance is held invalid by final
3 judgement of a Navajo Nation court, such decision shall not affect the validity of the
4 remaining regulations.

5
6 **13.3.108 AMENDMENTS**

7 These regulations may be amended by the Health and Human Services Committee of the
8 Navajo Nation Council at any time.

*Honorable LoRenzo Bates
Speaker
23rd Navajo Nation Council*

MEMORANDUM

To : Hon. Tuchoney Slim, Jr. Council Delegate
Navajo Nation Council



From : Ron Haven, Attorney
Office of Legislative Counsel

Date : October 4, 2017

Re : AN ACTION RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES;
APPROVING NAVAJO NATION REGULATIONS GOVERNING NON-
EMERGENCY MEDICAL TRANSPORTATION PROVIDERS

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. The resolution drafted is legally sufficient, although, as with all legislation, challenges are possible in the courts. You are advised and encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction. If you are satisfied with the proposed resolution, please sign it as "sponsor" and submit it to the Office of Legislative Services where it will be given a tracking number and sent to the Office of the Speaker for assignment. As you may be aware, the Speaker is authorized to refer this proposed resolution to other committees than those stated in the title.

If the proposed resolution is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like made to the proposed resolution. Ahéhee'.

OLC # 17-309-1

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0412-17__

SPONSOR: Tuchoney Slim, Jr.

TITLE: An Action Relating To Health, Education and Human Services; Approving Navajo Nation Regulations Governing Non- Emergency Medical Transportation Providers

Date posted: October 5, 2017 at 8:18 PM

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7586

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

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**THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY**

LEGISLATION NO.: 0412-17

SPONSOR: Honorable Tuchoney Slim Jr.

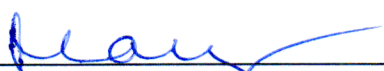
TITLE: An Action Relating to Health, Education and Human Services; Approving Navajo Nation Regulations Governing Non- Emergency Medical Transportation Providers.

Posted: October 5, 2017 at 8:18 PM

5 DAY Comment Period Ended: October 10, 2017

Digital Comments received:

Comments Supporting	<i>None</i>
Comments Opposing	<i>None</i>
Inclusive Comments	<i>None</i>



**Legislative Secretary II
Office of Legislative Services**

10/11/2017 8:46 am

Date/Time