

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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 DOWNSTATE NEW YORK AMBULANCE :  
 ASSOCIATION, INC., :  
 :  
 Plaintiff, :  
 :  
 -against- :  
 :  
 ANDREW M. CUOMO, as Governor of the State of :  
 New York; and HOWARD A. ZUCKER, M.D., J.D., :  
 as Commissioner of the New York State Department :  
 of Health, :  
 :  
 Defendants. :  
 -----X

**SUMMONS**

Index No.

Date Purchased:

**TO THE ABOVE NAMED DEFENDANTS:**

You are hereby summoned and required to serve upon the Plaintiff, Downstate New York Ambulance Association, Inc. an answer to the complaint in this action within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

This action is brought in the County of New York because Defendants' illegal actions had significant negative consequences at various locations, including but not limited to New York County.

Dated: Great Neck, New York  
July 26, 2017

GARFUNKEL WILD, P.C.  
*Attorneys for Plaintiff*

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TO: GOVERNOR ANDREW M. CUOMO  
New York State Capitol Building  
Albany, New York 12224

HOWARD A. ZUCKER, M.D., J.D.  
Commissioner  
New York State Department of Health  
Corning Tower  
Empire State Plaza  
Albany, New York 12237

ERIC T. SCHNEIDERMAN  
Attorney General  
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The Capitol  
Albany, New York 12224-0341

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
DOWNSTATE NEW YORK AMBULANCE  
ASSOCIATION, INC.,

COMPLAINT

Plaintiff,

Index No.

-against-

ANDREW M. CUOMO, as Governor of the State of  
New York; and HOWARD A. ZUCKER, M.D., J.D.,  
as Commissioner of the New York State Department  
of Health,

Defendants.  
-----X

Plaintiff, Downstate New York Ambulance Association, Inc. ("Downstate Ambulance"),  
by its attorneys, Garfunkel Wild, P.C., for its Complaint against the Defendants, Andrew M.  
Cuomo, as Governor of the State of New York; and Howard A. Zucker, M.D., J.D., as  
Commissioner of the New York State Department of Health, alleges as follows:

INTRODUCTION

1. The New York State Constitution provides that the "protection and promotion of  
the health of the inhabitants of the state are matters of public concern and provision thereof shall  
be made by the state and by such of its subdivisions and in such manner, and by such means as  
the legislature shall from time to time determine." N.Y. Const. art. XVII, § 3.

2. This obligation extends to *all* citizens of the state: "The aid, care and support of  
the needy are public concerns and shall be provided by the state and by such of its subdivisions  
and in such manner, and by such means as the legislature shall from time to time determine."

N.Y. Const. art. XVII, § 1.

3. In order for the State to discharge its constitutional health care obligations, its citizens – particularly those in poor health and unable to travel without assistance – must have access to ambulance services. Without such services, these vulnerable individuals cannot receive medically necessary – and, frequently, life-saving – treatment at hospitals, health care facilities, clinics, and physician practices located throughout New York.

4. It is for this reason that the State's Medicaid Program provides ambulance and other medical transportation services to its beneficiaries, as required by federal and state law. 42 U.S.C. § 1396a(a)(70); 42 C.F.R. § 431.53; N.Y. Soc. Servs. Law § 365-a(j).

5. Yet, in recent years, Defendants have stubbornly reimbursed ambulance service providers in the New York metropolitan area at rates far below the providers' costs for rendering those transportation services. Thus, every time these largely privately held ambulance service providers transport a Medicaid beneficiary to a health care facility for medically necessary treatment, they are actually *losing* a significant amount of money.

6. Obviously, this is an unsustainable economic model, and has already contributed to the demise of at least one major ambulance service provider in the New York metropolitan area. In addition, the stark reality is that the economic outlook for the ambulance service providers is about to get exponentially *worse* with the phased implementation of the \$15 minimum wage requirement in New York, which will significantly increase labor costs. N.Y. Labor Law § 652.

7. Unless there is a significant increase in the Medicaid reimbursement rates for ambulance services, the minimum wage increase will almost certainly sound the death knell for most ambulance providers. Without these providers, many medically fragile and economically

needy Medicaid patients will be unable to travel to health care facilities for needed treatment. Indeed, there already is a shortage of ambulance services in the New York City metropolitan area for Medicaid beneficiaries, forcing them to wait unacceptably long periods for transportation.

8. One of the major tragedies here is that Defendants are well aware of these dire economic circumstances. Indeed, pursuant to a law passed in 2016, the New York State Health Department – the agency statutorily charged with setting the Medicaid reimbursement rates for ambulance services – undertook a “Medicaid Ambulance Rate Adequacy Review.” 2016 N.Y. Laws ch. 59.

9. This Review resulted in a March 7, 2017 Medicaid Ambulance Rate Adequacy Review Report, a true and correct copy of which Plaintiff annexes to this Complaint as Exhibit A. In this Report, the State Health Department determined that the average cost to provide ambulance services in the New York metropolitan area is \$247 per trip. However, the current base Medicaid reimbursement rate in the same area ranges from \$155 to \$200 per trip, depending on location and level of life support.

10. In the Report, the State Health Department recommended that Medicaid reimbursement rates be raised to 75% of the ambulance service providers’ costs. This would result in Medicaid reimbursement rates in the New York metropolitan area being raised to \$188.70-\$224.63 per trip.<sup>1</sup>

11. Unfortunately, even though implementing this recommendation would have resulted in ambulance providers being reimbursed at 25% less than their costs, Defendants have

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<sup>1</sup> Notably, this figure is based upon the data in the Report, which was compiled using 2015 industry data. As provider costs continue to rise, the discrepancies in 2017 are even more stark than the Report recognized, and the proposed increase would have to be even higher to keep reimbursement at 75% of costs.

failed to implement even this modest increase. As a result, Defendants have put New York metropolitan area Medicaid beneficiaries – as well as the area’s ambulance service providers – on a collision course that will result not only in ambulance service providers going out of business, but also in severe shortages in the availability of ambulance services for Medicaid beneficiaries in the New York region.

12. As we explain in detail below, Defendants’ steadfast refusal to implement any rate increase that would bring Medicaid per-trip ambulance reimbursement up to the costs of providing those transportation services violates state and federal law. N.Y. Soc. Servs. Law § 365-h; 42 U.S.C. § 1396a(a)(30)(A). This is because, by stubbornly maintaining Medicaid reimbursement at woefully inadequate levels, Defendants are creating an imminent and significant shortage of high quality, efficient ambulance services for Medicaid beneficiaries in derogation of their constitutional, legal, and moral responsibilities.

13. For these reasons, Downstate Ambulance – a trade association of ambulance servicing New York City and its suburbs – brings this lawsuit for a declaratory judgment that Defendants’ actions are illegal and an injunction compelling Defendants to rectify this illegality. If this Court does not act, it would be sounding the death knell for the availability to Medicaid beneficiaries of high quality, efficient ambulance services.

### PARTIES

14. Plaintiff, the Downstate New York Ambulance Association, Inc., is a New York not-for-profit corporation with its principal place of business at 28 Sheridan Boulevard, Inwood, New York 11096.

15. Downstate Ambulance's members are largely privately held, small-to-medium size ambulance service providers located in New York City and its suburbs.

16. Virtually all of Downstate Ambulance's members are enrolled in the New York State Medicaid Program and, accordingly, provide substantial amounts of ambulance services to Medicaid beneficiaries. There are approximately 42,500 Medicaid discharges from facilities in the New York City area each year.

17. These Downstate Ambulance members are directly, and negatively, impacted by Defendants' illegal actions in refusing to increase the Medicaid reimbursement rates for ambulance services, which will prevent them from providing high-quality, efficient ambulance services in the New York metropolitan area.

18. Accordingly, most – if not all – Downstate Ambulance members would have direct standing to sue Defendants to seek redress for their illegal actions.

19. The purpose of Downstate Ambulance is to act as the trade association for ambulance service providers in the New York metropolitan area and to advance and advocate for their economic interests with the public at large, the health care community, and governmental entities and actors.

20. Accordingly, Downstate Ambulance is an appropriate, and more than adequate, representative of the interests of its members in connection with the Medicaid reimbursement and ambulance service delivery and availability issues that are at the heart of this lawsuit.

21. There are no facts, claims, or other issues that require the individual participation of Downstate Ambulance's members as parties in this lawsuit.

22. Defendant Andrew M. Cuomo is the 56th Governor of New York State. He took office on January 1, 2011, and his current term extends to December 31, 2018.

23. Under New York's Constitution, the executive power of state government is vested in the Governor, who "shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws are faithfully executed." N.Y. Const. art. IV, §§ 1, 3.

24. Defendant Andrew M. Cuomo's principal place of business is The Capitol, Albany, New York.

25. Defendant Howard A. Zucker, M.D., J.D. is the duly appointed Commissioner of Health for the State of New York.

26. As Commissioner, Defendant Zucker must "take cognizance of the interests of health and life of the people of the state, and of all matters pertaining thereto and exercise the functions, powers and duties of the" New York State Department of Health "prescribed by law." N.Y. Pub. Health Law § 206(a)(1).

27. The New York State Department of Health is the "single state agency" charged with overseeing and operating the State's Medicaid Program, and its reimbursement for ambulance and other health services in accordance with provisions of state and federal law. N.Y. Pub. Health Law § 201(1)(v).

28. Defendant Zucker's principal place of business is located at the New York State Department of Health, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York.

29. Defendants' illegal actions regarding the Medicaid reimbursement rate and the availability of ambulance services to Medicaid beneficiaries had significant negative consequences at various locations, including but not limited to New York County.

### FACTS COMMON TO ALL CAUSES OF ACTION

#### Medicaid Transportation Services

30. By law, the New York State Medicaid Plan provides, and pays transportation services to ensure that Medicaid beneficiaries have access to necessary medical services. N.Y. Soc. Servs. Law § 365-a(2)(j).

31. The Social Services Law expressly includes in the definition of Medicaid standard coverage: "transportation when essential and appropriate to obtain medical care, services and supplies otherwise available under the medical assistance program in accordance with this section. . . ." N.Y. Soc. Servs. Law § 365-a(2)(j).

32. The obligation for the New York State Medicaid Plan to provide transportation services is mandated by the federal Medicaid Act. This Act requires that states (a) ensure necessary transportation to and from health care providers; (b) use the most appropriate form of transportation; and (c) include coverage for transportation and related travel expenses necessary to secure medical examinations and treatment. 42 U.S.C. § 1396a(a)(70); 42 C.F.R. § 431.53.

33. Most transportation services provided to Medicaid beneficiaries in New York are provided by Medicaid-enrolled service providers, who are reimbursed by the Medicaid Program for providing services.

34. Before 2011, Medicaid transportation in New York was administered in New York City by the City's Department of Social Services, and in the counties outside New York City, by each county's Department of Social Services.

35. The 2010-11 State Budget gave the State Commissioner of Health the authority to assume administration of Medicaid transportation from New York City and the counties.

36. This was consistent with the State's 2010 Medicaid Administration Reform and subsequent Medicaid Redesign Team initiatives intended to improve the Medicaid Program by (a) relieving New York City and the counties the burden of administering Medicaid transportation; (b) improving Program quality; (c) reducing costs; (d) achieving greater Health Department accountability; and (e) standardizing the application of Medicaid transportation policy.

37. As of July 2015, the Health Department effectively assumed management of Medicaid transportation from New York City's and the counties' Departments of Social Services.

38. There are two basic classifications of transportation services under the New York Medicaid Program: (a) Emergency transportation services, which is the provision of initial, urgent medical care including the treatment of trauma, burns, and respiratory, circulatory, and obstetrical emergencies. (b) Non-emergency transportation services, which is transportation necessary in order for a beneficiary to access medical care. The State Health Department contracts with professional transportation management companies to manage non-emergency fee-for-service transportation.

39. Under the State's Medicaid Program, reimbursement can be approved for transportation to Medicaid-covered medical services including primary care physician services, various therapy services, and dental care.

40. Prior to this year, the transportation manager for New York City and Long Island was LogistiCare Solutions, LLC, and the transportation manager for the rest of the State was Medical Answering Services, LLC. This year, Medical Answering Services, LLC took over as transportation manager for the New York City area.

41. Modes of transportation covered under the New York State Medicaid Plan are (a) public transportation; (b) personal vehicle; (c) taxi/livery; (d) wheelchair van; (e) ambulance; and (f) commercial airline.

42. For non-emergency medical transportation services, the State's transportation manager is responsible for assessing the most cost-effective and medically appropriate mode of transportation for a beneficiary on a particular trip.

43. Basic Life Support ("BLS") ambulance services is an appropriate mode of non-emergency medical transportation under the State Medicaid Program if the patient is confined to a bed, cannot sit in a wheelchair, and requires medical attention/monitoring during transport for reasons such as isolation precautions, oxygen not self-administered by patient, or sedated patient.

44. Advanced Life Support ("ALS") ambulance services is an appropriate mode of non-emergency medical transportation services under the State Medicaid Program if the patient is confined to a bed, cannot sit in a wheelchair, and requires medical attention/monitoring during transport for reasons such as IV requiring monitoring, cardiac monitoring, or tracheotomy.

### Medicaid Ambulance Services Reimbursement

45. The reimbursement of ambulance transportation costs under the New York State Medicaid Program is governed by Social Services Law § 365-h.

46. Section 365-h obligates the Medicaid Program, in connection with reimbursement for transportation services, to “make appropriate and economical use of transportation resources available” when “meeting the anticipated demand for transportation. . . .” Similarly, when implementing cost-savings measures regarding reimbursement, the Commissioner of Health must ensure “compliance with applicable standards governing the safety and quality of transportation of the population served.” N.Y. Soc. Servs. Law § 365-h.

47. Likewise, the federal Medicaid Act requires that state Medicaid plans – like the New York State Medicaid Program – must assure that reimbursement “payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area. . . .” 42 U.S.C. § 1396a(a)(30)(A).

48. Implementing these provisions, the State’s Medicaid Regulations require that the reimbursement “rates of payment for transportation is adequate to ensure the availability of transportation to and from medically necessary care and services which can be paid for under the [Medicaid] program.” 18 N.Y.C.R.R. § 505.10(f)(2).

49. Since 2012-13, the Medicaid base reimbursement rates for ambulance services in the New York City metropolitan area are as follows:

	<u>BLS</u>	<u>ALS</u>
New York City	\$155.00	\$200.00
Nassau	\$155.00	\$200.00
Suffolk	\$155.00	\$200.00
Westchester	\$123.00	\$189.00

50. In addition to this base reimbursement rate, for non-emergency ambulance trips in certain counties, an ambulance provider receives mileage reimbursement at \$1.10 per mile.

51. Similarly, in accordance with the provision of Social Services Law § 367-s, there is a statewide supplemental medical assistance pool that pays certain ambulance service providers in the New York City metropolitan area an additional amount that is approximately \$6.00 per trip. N.Y. Soc. Servs. Law § 367-s.

52. Thus, the total Medicaid reimbursement rates for ambulance services in the New York City metropolitan area ranges from \$123.00 per trip to approximately \$206.00 per trip, plus, in some cases, \$1.10 per mile.

53. These Medicaid reimbursement rates are far below the applicable Medicare ambulance reimbursement rates for the New York City metropolitan area, which range from approximately \$250-\$480, and go as high as \$843. In addition, Medicare provides mileage reimbursement of \$7.29 per mile on all rides – over six times the mileage reimbursement paid by Medicaid.

54. These Medicaid reimbursement rates are also far below the applicable ambulance reimbursement rates for commercial insurance and managed care plans, which are typically 90-115% of the Medicare rates.

### Rising Ambulance Costs

55. Most significantly, however, the Medicaid reimbursement rates for ambulance services in the New York City metropolitan area are far below the costs to provide those ambulance services.

56. Indeed, in or around 2015, ambulance providers in the New York City metropolitan area estimated that their per-trip costs for providing ambulance services were approximately \$260-\$300, depending on the provider.

57. In addition, these costs are rising. The average annual inflation rate is more than 2%. There have been significant increases in automobile insurance and gasoline costs. There are significant investments that the ambulance service providers have to make each year in new and upgraded medical and communications equipment, medications and other supplies, to comply with governmental requirements.

58. The greatest costs for the ambulance service providers, however, are wages and benefits. Ambulance service providers need qualified ambulance drivers, EMS personnel, paramedics, dispatchers, and administrative personnel.

59. Wage costs rise each year. This is particularly the case in areas – such as ambulance service – where there are significant shortages in qualified personnel. Hiring and retaining qualified personnel require ever-larger salary and benefit increases.

60. These increases have been dramatically exacerbated by the phased implementation of the \$15 minimum hourly wage requirement in New York, which will significantly increase labor costs. N.Y. Labor Law § 652.

	<u>12/31/16</u>	<u>12/31/17</u>	<u>12/31/18</u>	<u>12/31/19</u>	<u>12/31/20</u>	<u>2021</u>
NYC	\$11.00	\$13.00	\$15.00			
Suburbs	\$10.00	\$11.00	\$12.00	\$13.00	\$14.00	\$15.00

61. The increase in the minimum wage affects not only entry-level workers who earn the minimum wage, but also all hourly workers. This is because, when the minimum wage for entry-level workers increases, by necessity, the entire salary scale for workers also must increase, to avoid compression issues.

62. Indeed, the ambulance service providers in the New York City metropolitan area, who employ close to 3,500 people, estimate that the minimum wage increases will add at least \$1-\$2 million each year, for the next several years, in increased wage costs.

#### **Defendants' Failure To Increase Reimbursement Rates**

63. Given all the above, it has become crystal clear to the Downstate Ambulance members over the past several years that a significant increase is needed in the Medicaid reimbursement rate to, at the very least, cover the providers' costs for providing services.

64. Accordingly, Downstate Ambulance members have repeatedly requested rate increases from Defendants over the last several years to cover their increased costs.

65. In connection with these requests, Downstate Ambulance members have provided extensive documentation to Defendants showing, in detail, how the Medicaid reimbursement rates does not meet the costs of providing transportation services and how these costs are dramatically rising.

66. All of these requests have fallen on deaf ears. Defendants have failed to increase the Medicaid reimbursement rates at all, except for one minor addition to mileage reimbursement.<sup>2</sup>

### Health Department's Report

67. Finally, in 2016, ambulance providers in New York – including Downstate Ambulance members – were able to persuade the State Legislature to pass a law requiring the New York State Health Department to undertake a “Medicaid Ambulance Rate Adequacy Review.” 2016 N.Y. Laws ch. 59.

68. Under this review, the State Health Department examined the ambulance providers’ – including Downstate Ambulance members’ – costs to provide services.

69. In the Department’s March 7, 2017 Medicaid Ambulance Rate Adequacy Review Report, the State Health Department determined that the average cost to provide ambulance services in the New York metropolitan area is \$247 per trip, which is significantly higher than the State’s Medicaid reimbursement rate. (Exhibit A.)

70. In the Report, the State Health Department recommended that Medicaid reimbursement rates increase to 75% of the ambulance service providers’ costs. This would result in Medicaid reimbursement rates in the New York metropolitan increasing to \$188.70-\$224.63 per trip. (Exhibit A.)

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<sup>2</sup> On May 15, 2015, the Department added to the reimbursement schedule reimbursement for mileage for BLS non-emergency transportation at \$2.75 per mile.

### Shortage Of Ambulance Services

71. To date, despite repeated requests, Defendants have failed to implement any of the Report's recommendations.

72. As a result, Defendants have embarked on a course that will result not only in ambulance service providers going out of business, but severe shortages in the availability of ambulance services for Medicaid beneficiaries in the New York region.

73. For example in early 2016, a major New York City ambulance provider – TransCare EMS – was forced to declare bankruptcy, lost its contracts in numerous municipalities, and eventually had to transfer its operations to another provider. This fate will befall other Downstate Ambulance members going forward if the current rates remain.

74. This will create a severe shortage in the availability of ambulance services in the New York region.

75. Indeed, there already is a shortage of ambulance services in the New York City metropolitan area for Medicaid beneficiaries. The wait times for Medicaid beneficiaries in some parts of the metropolitan area are incredibly long, making it virtually impossible for Medicaid beneficiaries to obtain transportation to receive medically necessary health care services.

76. Thus, if rates are not increased, while wages and other costs continue to escalate, it is unquestionable that more ambulance providers, including Downstate Ambulance's members, will be forced to shutter their businesses, and the citizens of New York will lose critical health care services.

### FIRST CAUSE OF ACTION

77. Plaintiff repeats and re-alleges the above allegations as if fully set forth herein.

78. New York and Federal law mandate that Medicaid reimbursement rates for transportation services be sufficiently high so that there are enough providers in the market to ensure transportation services are available for New York citizens.

79. The current Medicaid rates fall far below this standard, failing to reimburse Downstate Ambulance's members for the costs they expend in providing transportation services.

80. A justiciable controversy has arisen between Plaintiff and Defendants over the adequacy of the current Medicaid rates. A declaratory judgment is necessary to determine the adequacy of the rates under the law.

81. Accordingly, this Court should enter judgment under CPLR 3001 declaring that the current Medicaid reimbursement rates are insufficient to meet the financial needs of the Downstate Ambulance members, and therefore do not meet the statutory and regulatory requirements that rates be sufficient to ensure participation in the market, and further that the Commissioner should set Medicaid rates to be consistent with the Downstate Ambulance members' costs, as necessary, to ensure that they can remain in the market and continue to provide critical services to Medicaid patients, which at a minimum should not be less than 100% of the current Medicare rate.

### SECOND CAUSE OF ACTION

82. Plaintiff repeats and re-alleges the above allegations as if fully set forth herein.

83. New York and Federal law mandate that Medicaid reimbursement rates for transportation services be sufficiently high so that there are enough providers in the market to ensure transportation services are available for New York citizens.

84. The current Medicaid rates fall far below this standard, failing to reimburse Downstate Ambulance's members for the costs they expend in providing transportation services.

85. Downstate Ambulance members have been irreparably harmed by Defendants' conduct and lack an adequate remedy at law.

86. The balancing of equities is in Plaintiff's favor.

87. Accordingly, this Court should enter judgment directing Defendants to set Medicaid rates to be consistent with the Downstate Ambulance members' costs, as necessary, to ensure that they can remain in the market and continue to provide critical services to Medicaid patients, which at a minimum should not be less than 100% of the current Medicare rate.

WHEREFORE, the Plaintiff respectfully requests that the Court enter judgment in favor of the Plaintiff and against Defendants, for the relief demanded in this Complaint, and for such other and further relief (including the costs, disbursements, and attorney's fees incurred in this action) that this Court deems just and proper.

Dated: Great Neck, New York  
July 26, 2017

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*Attorneys for Plaintiff*

By

  
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# EXHIBIT A



Department  
of Health

# MEDICAID AMBULANCE RATE ADEQUACY REVIEW REPORT

2017

## MEDICAID AMBULANCE RATE ADEQUACY REVIEW REPORT

### Introduction

The 2016-17 Enacted State Budget (Chapter 59 of the Laws of 2016) requires the Commissioner of Health to "review the rates of reimbursement made through the Medicaid program for ambulance transportation for rate adequacy" and to report the findings of the review to the President of the Senate and the Speaker of the Assembly by December 31, 2016.

### Rate Adequacy Review Methodology

In response to the statutory requirement for an ambulance Medicaid rate adequacy review, and in an effort to standardize, modernize, and update ambulance rates, the Department's Office of Health Insurance Programs (OHIP) conducted a survey of Medicaid enrolled ambulance providers. The survey was intended to profile the industry's cost of providing transport and compare it to the current Medicaid reimbursed levels.

OHIP distributed the survey (see: Attachment A) to all enrolled Medicaid ambulance providers through its regional state Medicaid transportation managers. The OHIP survey solicited data such as the percentage of trips by level of service, trips that were emergency and non-emergency, average cost of a trip based on level of service, percentage breakdown of business revenue, cost components of trips, average wages, average hours worked, and questions regarding the ambulance company's fleet.

OHIP conducted an extensive outreach effort with the ambulance industry, including contacting major upstate and downstate stakeholder associations, in an attempt to gain relevant trip cost related data and other information the ambulance community considered important for rate adequacy review. With approximately 450 Medicaid enrolled ambulance providers, there were 58 responses to the OHIP survey, constituting a 12% response rate. Of the responses received, 2.8% were completed surveys with accurate data. In addition to this survey data, the Department also received helpful supplemental information from consulting organizations retained by various ambulance industry providers. This information greatly improved the quality of the data available to support recommending Medicaid ambulance rate updates.

### Conclusions and Fiscal Implications

Department data indicates that approximately 72% of all Medicaid ambulance transports are Basic Life Support (BLS) and 28% are Advanced Life Support (ALS). BLS services are those in which the treatment provided is noninvasive and/or within the scope of practice of a New York State-certified Emergency Medical Technician (EMT). ALS provides invasive treatment, including intubation and manual defibrillation, above the EMT level of care.

The Department conducted an ambulance transport cost analysis with the information available and recommends adjusting the current BLS and ALS rates to 75% of the average per ambulance trip cost. The resulting increase in the current Medicaid ambulance reimbursement rates would have an annual cost estimated at \$31.4 million (non-federal share \$15.7 million). The Department recommends that increases in the Medicaid ambulance rates be phased in over a multi-year period depending on available resources within the Medicaid Global Spending Cap.

In addition to increasing the ambulance rates in most counties and New York City, the Department's recommendation would achieve greater statewide rate standardization and reduce rate disparities among counties resulting from the legacy of local departments of social services administration of Medicaid transportation. Counties with current rates higher than the proposed rates will be held harmless from any reductions resulting from aligning the new rate increases.

### **Ambulance Transport Cost Analysis**

The OHIP Medicaid transportation team and the Department's Bureau of Emergency Medical Services (BEMS) staff reviewed the information provided by the ambulance industry sponsored surveys that contained per trip cost data and company-specific cost itemizations. Based on this review, BEMS staff estimated the mean cost per all ambulance trips combined to be \$304 upstate \$247 downstate, and a statewide mean cost of \$275.50.

Because Medicaid reimbursement currently does not differentiate between emergency and non-emergency trips, but only between ALS and BLS transports, the Department recommends apportioning the \$275.50 mean trip cost using Medicare's ambulance Relative Value Unit (RVU) methodology weighting established by the Centers for Medicare and Medicaid Services (CMS). The RVUs set a numeric value for ambulance services relative to the value of a base level ambulance service. Since there are marked differences in resources necessary to furnish the various levels of ground ambulance services, different levels of payment are appropriate for the various levels of service. The different payment amounts are based on level of service. An RVU expresses the constant multiplier for a particular type of service (including, where appropriate, an emergency response). An RVU of 1.00 is assigned to the BLS non-emergency and ground ambulance service, e.g., BLS has an RVU of 1. Higher RVU values are assigned to the other types of ground ambulance services, which require more service than BLS, as shown below:

### **Ambulance Transport Mode Medicare RVU**

BLS Non-Emergency	1.00
BLS Emergency	1.60
ALS Non-Emergency	1.20
ALS Emergency	1.90
Mean BLS RVU	1.30
Mean ALS RVU	1.55

The mean BLS RVU is 84% of the mean ALS RVU ( $1.30 / 1.55 = .84$ ), resulting in a 16% variance between BLS and ALS trip costs. Given a statewide mean cost per trip for all transport types of \$275.50, the approximate cost is calculated to be \$251.60 for a BLS trip and \$299.50 for an ALS trip.

Administrative expenses reported by ambulance operators included non-Medicaid reimbursable costs. Based on collected data, the Department is recommending the reasonable and allowable

Medicaid reimbursable cost percentage at 75% of reported ambulance trip costs, resulting in a base ambulance BLS rate of \$188.70 and ALS rate of \$224.63.

The Medicaid Ambulance Rate Adequacy Review Cost Analysis (see Attachment B) indicates the fiscal impact of raising the BLS and ALS fees statewide to 75% of the ambulance trip cost level. The shaded rows indicate the counties that are currently above the recommended rate adjustment level and would be held harmless at their current rate levels. As the chart indicates, 47 counties and New York City would receive either or both an ALS and BLS rate increase.

The fiscal impact of adjusting the current ALS and BLS rates to 75% of trip cost would result in an annualized combined cost of **\$31.4 million (non-federal share \$15.7 million).**

**Attachment A**

Welcome to Ambulance medical transportation rate adequacy review survey

The New York State Department of Health is conducting an Ambulance medical transportation rate adequacy review as required by legislation agreed to by Governor Cuomo and the State Legislature in the enacted 2016-17 State Budget. The results of this survey will assist the Department in reviewing the adequacy of Medicaid reimbursement for ambulance services and reporting its findings to the legislature by December 31, 2016.

Thank you for completing this survey. Your participation in this survey will benefit the New York Medicaid program and the ambulance industry. Responses are due close of business July 3, 2016

If you have any issues or questions regarding this survey please contact the Department's Medicaid Transportation Bureau via email ([medtrans@health.ny.gov](mailto:medtrans@health.ny.gov)) or by phone (518-473-2160).

**\* 1. Contact Information**

Name of person completing this survey

Name of ambulance company

Ambulance company address

Ambulance company city/town

Ambulance company county

Ambulance company state/province

Ambulance company ZIP/postal Code

Ambulance company Medicaid ID

Ambulance company email Address

Ambulance company phone number

**\* 2. What type of corporation is your ambulance company? (E.g. LLC, not for profit, S Corporation, or C Corporation)**

Please enter the total number of Medicaid trips performed in the last 12 months.

\* 3. Emergency Medicaid Trips

BLS

ALS

Other please specify

\* 4. Non-Emergency Medicaid Trips

BLS

ALS

Other please specify

Please enter the percentage of trip type for all Medicaid trips performed in the last 12 months.  
(Please use the following format ##%)

\* 5. Emergency Medicaid Trips (Please use the following format ##%)

BLS %

ALS %

Other please specify %

\* 6. Non-Emergency Medicaid Trips (Please use the following format ##%)

BLS %

ALS %

Other please specify %

Please enter the average cost of a Medicaid trip. (Please use the following format \$###).

\* 7. Emergency Medicaid Trips (Cost amounts should not include any reimbursements. Please use the following format \$###)

BLS \$

ALS \$

Other please specify \$

\* 8. Non-Emergency Medicaid Trips (Cost amounts should not include any reimbursements. Please use the following format \$###)

BLS \$

ALS \$

Other please specify \$

Please enter the total number of Non-Medicaid trips performed in the last 12 months.

\* 9. Emergency Non-Medicaid Trips

BLS

ALS

Other please specify

\* 10. Non-Emergency Non-Medicaid Trips

BLS

ALS

Other please specify

Please enter the percentage of trip type for all Non-Medicaid trips performed in the last 12 months.  
(Please use the following format ##%)

\* 11. Emergency Non-Medicaid Trips (Please use the following format ##%)

BLS %

ALS %

Other please specify %

\* 12. Non-Emergency Non-Medicaid Trips (Please use the following format ##%)

BLS %

ALS %

Other please specify %

Please enter the average cost of a Non-Medicaid trip. (Please use the following format ###)

\* 13. Emergency Non-Medicaid Trips (Cost amounts should not include any reimbursements. Please use the following format ###)

BLS \$

ALS \$

Other please specify \$

\* 14. Non-Emergency Non-Medicaid Trips (Cost amounts should not include any reimbursements. Please use the following format ###)

BLS \$

ALS \$

Other please specify \$

\* 15. What is your percentage of business revenue from the following sources?

Private Insurance %	<input type="text"/>
Private Pay %	<input type="text"/>
Medicaid Fee For Service %	<input type="text"/>
Managed Long Term Care %	<input type="text"/>
Medicare %	<input type="text"/>
Donations %	<input type="text"/>
Foundations %	<input type="text"/>
Philanthropy %	<input type="text"/>
Other please specify %	<input type="text"/>
Other please specify %	<input type="text"/>
Other please specify %	<input type="text"/>

\* 16. What are you reimbursed for the average BLS trip (include base, mileage, and surcharges) by the following sources? (Please use the following format \$###)

Medicaid \$

Medicare \$

Private Insurance \$

Other please specify \$

\* 17. What are you reimbursed for the average ALS trip (include base, mileage, and surcharges) by the following sources? (Please use the following format \$###)

Medicaid \$

Medicare \$

Private Insurance \$

Other please specify \$

18. Please provide the cost for the components of the average Medicaid Ambulance trip (Optional Question). (Please use the following format \$###)

Medical Equipment \$

Other Equipment \$

Personnel Salary \$

Personnel Training and ongoing certification \$

Fuel \$

Insurance \$

Pharmaceuticals \$

Other please specify \$

Other please specify \$

Other please specify \$

\* 19. Please enter the average hourly wage for the following employees.

EMT \$	<input type="text"/>
Paramedic \$	<input type="text"/>
Dispatcher \$	<input type="text"/>
Other please specify \$	<input type="text"/>
Other please specify \$	<input type="text"/>
Other please specify \$	<input type="text"/>

\* 20. Please enter the average hourly work week for the following employees.

EMT	<input type="text"/>
Paramedic	<input type="text"/>
Dispatcher	<input type="text"/>
Other please specify	<input type="text"/>
Other please specify	<input type="text"/>
Other please specify	<input type="text"/>

\* 21. Please enter the number of employees who have the following positions in your company.

EMT	<input type="text"/>
Paramedic	<input type="text"/>
Dispatcher	<input type="text"/>
Other please specify	<input type="text"/>
Other please specify	<input type="text"/>
Other please specify	<input type="text"/>

22. Please enter the percentage of your employees that are paid staff and volunteer staff

Paid staff %	<input type="text"/>
Volunteer staff %	<input type="text"/>

\* 23. How many ambulances do you have in your fleet?

24. Questions regarding your ambulance fleet

What is the average age of your ambulance fleet?

What is the average mileage of your ambulance fleet?

Do you lease, own, or a combination of both, your fleet?

What is the average age that you replace an ambulance?

What is the average mileage that you replace an ambulance?

What factor is most important in deciding to replace an ambulance?

What is the cost to purchase/lease a new ambulance?

When do you plan to purchase/lease your next ambulance?

25. Please enter the average trip distance in miles for the following level of service.

BLS	<input type="text"/>
ALS	<input type="text"/>
Specialty Care	<input type="text"/>
Emergency Transportation	<input type="text"/>
Non-Emergency Transportation	<input type="text"/>

**Attachment B**

Medicaid - Ambulance Rate Adequacy Review - Cost Analysis											
County	Basic Life Support Ambulance					Advanced Life Support Ambulance					BLS & ALS Total Annual Cost
	Current BLS Base Fee	Proposed BLS Base Fee	Adjustment	Number of Trips	Annual Cost	Current ALS Base Fee	Proposed ALS Base Fee	Adjustment	Number of Trips	Annual Cost	
NEW YORK CITY (All Boroughs)	\$155.00	\$188.70	\$33.70	422,048	\$14,223,018	\$200.00	\$224.63	\$24.63	106,631	\$2,625,788	\$16,848,806
ALBANY	\$123.45	\$188.70	\$65.25	10,315	\$673,054	\$186.45	\$224.63	\$38.18	4,270	\$163,007	\$836,061
ALLEGANY	\$145.00	\$188.70	\$43.70	751	\$32,819	\$197.50	\$224.63	\$27.13	650	\$17,631	\$50,450
BROOME	\$128.00	\$188.70	\$60.70	4,851	\$294,456	\$188.00	\$224.63	\$36.63	5,165	\$189,168	\$483,624
CATTARAUGUS	\$145.00	\$188.70	\$43.70	1,645	\$71,887	\$191.43	\$224.63	\$33.20	1,352	\$44,880	\$116,766
CAYUGA	\$200.00	\$200.00	\$0.00	1,662	\$0	\$250.00	\$250.00	\$0.00	1,983	\$0	\$0
CHAUTAUQUA	\$124.00	\$188.70	\$64.70	3,029	\$195,976	\$128.00	\$224.63	\$96.63	2,703	\$261,177	\$457,154
CHEMUNG	\$200.00	\$200.00	\$0.00	2,684	\$0	\$275.00	\$275.00	\$0.00	1,766	\$0	\$0
CHENANGO	\$215.00	\$215.00	\$0.00	873	\$0	\$265.00	\$265.00	\$0.00	943	\$0	\$0
CLINTON	\$110.00	\$188.70	\$78.70	2,388	\$187,936	\$210.00	\$224.63	\$14.63	1,399	\$20,460	\$208,396
COLUMBIA	\$92.00	\$188.70	\$96.70	1,571	\$151,916	\$147.00	\$224.63	\$77.63	1,183	\$91,830	\$243,746
CORTLAND	\$216.75	\$216.75	\$0.00	1,170	\$0	\$266.75	\$266.75	\$0.00	1,174	\$0	\$0
DELAWARE	\$210.00	\$210.00	\$0.00	575	\$0	\$260.00	\$260.00	\$0.00	769	\$0	\$0
DUTCHESS	\$145.00	\$188.70	\$43.70	7,351	\$321,239	\$205.00	\$224.63	\$19.63	3,327	\$65,292	\$386,531
ERIE	\$139.20	\$188.70	\$49.50	22,703	\$1,123,799	\$186.70	\$224.63	\$37.93	16,585	\$628,986	\$1,752,785
ESSEX	\$150.00	\$188.70	\$38.70	443	\$17,144	\$200.00	\$224.63	\$24.63	366	\$9,013	\$26,157
FRANKLIN	\$116.00	\$188.70	\$72.70	1,025	\$74,518	\$206.00	\$224.63	\$18.63	1,050	\$19,556	\$94,074
FULTON	\$145.00	\$188.70	\$43.70	1,497	\$65,419	\$220.00	\$224.63	\$4.63	1,689	\$7,812	\$73,231
GENESEE	\$190.45	\$190.45	\$0.00	1,432	\$0	\$230.45	\$230.45	\$0.00	1,089	\$0	\$0
GREENE	\$80.00	\$188.70	\$108.70	1,731	\$188,160	\$90.00	\$224.63	\$134.63	626	\$84,275	\$272,435
HAMILTON	\$150.00	\$188.70	\$38.70	29	\$1,122	\$200.00	\$224.63	\$24.63	37	\$911	\$2,033
HERKIMER	\$100.00	\$188.70	\$88.70	2,166	\$192,124	\$150.00	\$224.63	\$74.63	1,290	\$96,266	\$288,390

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

JEFFERSON	\$130.00	\$188.70	\$58.70	2,196	\$128,905	\$180.00	\$224.63	\$44.63	1,708	\$76,220	\$205,125
LEWIS	\$135.00	\$188.70	\$53.70	325	\$17,453	\$185.00	\$224.63	\$39.63	303	\$12,006	\$29,459
LIVINGSTON	\$117.70	\$188.70	\$71.00	1,061	\$75,331	\$200.00	\$224.63	\$24.63	712	\$17,533	\$92,864
MADISON	\$172.00	\$188.70	\$16.70	1,330	\$22,211	\$227.00	\$227.00	\$0.00	926	\$0	\$22,211
MONROE	\$185.00	\$188.70	\$3.70	26,385	\$97,624	\$225.00	\$225.00	\$0.00	20,938	\$0	\$97,624
MONTGOMERY	\$120.00	\$188.70	\$68.70	1,278	\$87,799	\$165.00	\$224.63	\$59.63	1,682	\$100,289	\$188,088
NASSAU	\$155.00	\$188.70	\$33.70	12,349	\$416,161	\$200.00	\$224.63	\$24.63	5,056	\$124,504	\$540,665
NIAGARA	\$123.89	\$188.70	\$64.81	4,418	\$286,331	\$165.16	\$224.63	\$59.47	3,506	\$208,484	\$494,815
ONEIDA	\$130.00	\$188.70	\$58.70	9,711	\$570,036	\$180.00	\$224.63	\$44.63	5,517	\$246,196	\$816,232
ONONDAGA	\$184.00	\$188.70	\$4.70	11,802	\$55,469	\$226.00	\$226.00	\$0.00	14,243	\$0	\$55,469
ONTARIO	\$95.00	\$188.70	\$93.70	1,546	\$144,860	\$170.00	\$224.63	\$54.63	1,309	\$71,504	\$216,364
ORANGE	\$155.00	\$188.70	\$33.70	9,036	\$304,513	\$260.00	\$260.00	\$0.00	4,540	\$0	\$304,513
ORLEANS	\$190.45	\$190.45	\$0.00	901	\$0	\$230.45	\$230.45	\$0.00	852	\$0	\$0
OSWEGO	\$175.00	\$188.70	\$13.70	3,484	\$47,731	\$215.00	\$224.63	\$9.63	3,513	\$33,813	\$81,543
OTSEGO	\$215.00	\$215.00	\$0.00	731	\$0	\$265.00	\$265.00	\$0.00	763	\$0	\$0
PUTNAM	\$137.00	\$188.70	\$51.70	821	\$42,446	\$187.00	\$224.63	\$37.63	309	\$11,626	\$54,072
RENSELAER	\$123.45	\$188.70	\$65.25	4,797	\$313,004	\$186.45	\$224.63	\$38.18	3,169	\$120,977	\$433,981
ROCKLAND	\$145.00	\$188.70	\$43.70	8,210	\$358,777	\$250.00	\$250.00	\$0.00	2,629	\$0	\$358,777
SARATOGA	\$130.45	\$188.70	\$58.25	3,178	\$185,119	\$191.45	\$224.63	\$33.18	2,520	\$83,601	\$268,720
SCHENECTADY	\$123.45	\$188.70	\$65.25	6,581	\$429,410	\$186.45	\$224.63	\$38.18	3,717	\$141,896	\$571,307
SCHOHARIE	\$120.00	\$188.70	\$68.70	414	\$28,442	\$160.00	\$224.63	\$64.63	273	\$17,643	\$46,084
SCHUYLER	\$205.56	\$205.56	\$0.00	295	\$0	\$295.33	\$295.33	\$0.00	245	\$0	\$0
SENECA	\$125.00	\$188.70	\$63.70	812	\$51,724	\$182.76	\$224.63	\$41.87	666	\$27,882	\$79,606
ST. LAWRENCE	\$154.50	\$188.70	\$34.20	2,134	\$72,983	\$237.50	\$237.50	\$0.00	1,598	\$0	\$72,983
STEUBEN	\$175.00	\$188.70	\$13.70	2,250	\$30,825	\$300.00	\$300.00	\$0.00	1,537	\$0	\$30,825
SUFFOLK	\$155.00	\$188.70	\$33.70	18,229	\$614,317	\$200.00	\$224.63	\$24.63	1,981	\$48,782	\$663,099
SULLIVAN	\$133.00	\$188.70	\$55.70	3,242	\$180,579	\$228.00	\$228.00	\$0.00	1,748	\$0	\$180,579
TIOGA	\$130.00	\$188.70	\$58.70	532	\$31,228	\$194.00	\$224.63	\$30.63	437	\$13,383	\$44,612
TOMPKINS	\$216.69	\$216.69	\$0.00	1,588	\$0	\$306.46	\$306.46	\$0.00	1,437	\$0	\$0
ULSTER	\$115.00	\$188.70	\$73.70	5,854	\$431,440	\$190.00	\$224.63	\$34.63	2,926	\$101,313	\$532,753

WARREN	\$82.00	\$188.70	\$106.70	1,232	\$131,454	\$132.00	\$224.63	\$92.63	1,106	\$102,443	\$233,898
WASHINGTON	\$85.00	\$188.70	\$103.70	1,586	\$164,468	\$145.00	\$224.63	\$79.63	1,073	\$85,438	\$249,906
WAYNE	\$76.45	\$188.70	\$112.25	1,919	\$215,408	\$170.00	\$224.63	\$54.63	1,734	\$94,720	\$310,128
WESTCHESTER	\$123.00	\$188.70	\$65.70	25,258	\$1,659,451	\$189.00	\$224.63	\$35.63	7,110	\$253,294	\$1,912,744
WYOMING	\$90.00	\$188.70	\$98.70	316	\$31,189	\$145.00	\$224.63	\$79.63	343	\$27,311	\$58,501
YATES	\$125.00	\$188.70	\$63.70	357	\$22,741	\$225.00	\$225.00	\$0.00	205	\$0	\$22,741
<b>TOTALS</b>				<b>668,097</b>	<b>\$25,064,013</b>				<b>258,378</b>	<b>\$6,346,912</b>	<b>\$31,410,926</b>