



ALAN WILSON  
ATTORNEY GENERAL

June 19, 2019

The Honorable Lawrence K. Grooms  
Senator  
District No. 37  
Post Office Box 142  
Columbia, South Carolina 29202

Dear Senator Grooms:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter asks the following:

I request your opinion regarding the following: When South Carolina's Transportation Network Company (TNC) regulations were originally drafted in 2015 there was concern that the State's Medicaid nonemergency medical transportation broker (NEMT broker) who arranges and pays for covered transportation services for Medicaid beneficiaries would unintentionally be classified as a TNC. In order to avoid misclassification of the NEMT broker, language was added to the definitions section of the TNC regulations (Section 58-23-1610(9)) to clarify that a "prearranged ride" as used to define a TNC does not include "arranging nonemergency medical transportation for individuals qualifying for Medicaid or Medicare pursuant to a contract with the State or a managed care organization."

The text of subsection (9) remains as originally enacted and excludes or carves out "arranging" Medicaid or Medicare nonemergency transportation services and prevents an NEMT Broker from being classified as a TNC. My question is, does subsection (9) also prevent the DHHS from allowing the NEMT broker from contracting with a TNC to perform covered nonemergency medical trips?

#### Law/Analysis

It is this Office's opinion that a court likely would hold the exception from the Transportation Network Company Act ("TNC Act"), S.C. Code Ann. §§ 58-23-1610 to -1720, for "nonemergency medical transportation ["NEMT"] for individuals qualifying for Medicaid or Medicare pursuant to a contract with the State or a managed care organization," does not prevent SCDHHS from permitting a NEMT broker to contract with a TNC to perform nonemergency

medical trips.<sup>1</sup> S.C. Code Ann. § 58-23-1610(9). The TNC Act established a comprehensive statutory scheme that governs several facets of ride sharing services including insurance, issuance of TNC permits, driver qualification requirements, and safety inspections. See id. The TNC Act defines “Transportation Network Company” or “TNC” to mean:

[A] person, corporation, partnership, sole proprietorship, or other entity operating in this State that uses a digital network, platform, or Internet-enabled application to connect a passenger to a transportation network driver for the purpose of providing transportation for compensation using a vehicle. A transportation network company does not include transportation services provided pursuant to Articles 1 through 15, Chapter 23, Title 58, or arranging nonemergency medical transportation for individuals qualifying for Medicaid or Medicare pursuant to a contract with the State or a managed care organization.

S.C. Code Ann. § 58-23-1610(1) (emphasis added). The TNC Act further defines “prearranged ride” to mean:

[T]he provision of transportation by a transportation network company driver to a transportation network company rider, beginning when a driver accepts a ride requested by a rider through a digital network controlled by a transportation network company, continuing while the driver transports a requesting rider, and ending when the last requesting rider departs from the personal vehicle. A prearranged ride does not include shared expense carpool or vanpool arrangements, or transportation provided using a taxi, limousine, or other for-hire vehicle pursuant to a Class C certificate issued by the South Carolina Public Service Commission or pursuant to a license issued by the governing body of a county or city. A prearranged ride does not include services provided pursuant to Articles 1 through 15, Chapter 23, Title 58 or arranging nonemergency medical transportation for individuals qualifying for Medicaid or Medicare pursuant to a contract with the State or a managed care organization.

S.C. Code Ann. § 58-23-1610(9) (emphasis added). The emphasized language in both definitions excludes NEMT for individuals qualifying for Medicaid or Medicare pursuant to a contract with the State or a managed care organization. Because a NEMT broker is not considered a TNC nor are its transportation services considered prearranged rides, its operations fall outside of the TNC Act.

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<sup>1</sup> This opinion does not consider other potential issues that could prevent SCDHHS from permitting a NEMT broker from contracting with a TNC to perform covered nonemergency medical trips. This Office was not provided with the terms of a proposed or existing NEMT contract to evaluate the efficacy of contracting with a TNC to perform NEMT. Further, please note that an NEMT broker may be liable for such a TNC’s services provided under a contract because the duty to provide safe transport may be nondelegable. See Gary v. Askew, 423 S.C. 47, 813 S.E.2d 717 (2018) (vacating lower court ruling that a NEMT broker did not owe a nondelegable duty to safely transport passenger for further discovery).

The question presented, however, asks if SCDHHS is prevented from allowing an NEMT broker to contract with a TNC to perform NEMT operations solely as a result of the exclusion in the definition of “prearranged ride.” *Id.* This Office was not provided with a specific legal theory as to why the prearranged ride definition would prevent such a contract rather than the “TNC” definition. Because the TNC definition first provided an exception for NEMT, the second exception for NEMT within the prearranged ride definition could be interpreted to do something more than merely exclude it from the TNC Act. Presumably, the concern is that by excluding NEMT from the definition of prearranged ride, a TNC would also be prohibited from providing those services.

In order to determine whether the definition of “prearranged ride” prohibits a TNC from providing NEMT services, it must be interpreted according to the rules of statutory construction. Statutory construction of the South Carolina Code of Laws requires a determination of the General Assembly’s intent. *Mitchell v. City of Greenville*, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) (“The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible.”). Where a statute’s language is plain and unambiguous, “the text of a statute is considered the best evidence of the legislative intent or will.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). “A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers.” *State v. Henkel*, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), *reh’g denied* (Aug. 5, 2015).

When the TNC Act is read as a whole, it is reasonable and fair to interpret the General Assembly’s purpose in establishing the statutory definition of “prearranged ride” was, in part, to limit what types of for-hire vehicle transportation are governed thereunder. First, the definition broadly describes the service of a ride sharing program beginning with the TNC driver’s acceptance of a rider’s request through a digital network until the rider departs from the vehicle. S.C. Code Ann. § 58-23-1610(9). Next, the plain language of the definition excludes certain types of “for-hire vehicle” transportation that could be construed to fall within this description. *Id.* For example, carpools, taxis, and limousines are explicitly excluded using the same language that excludes NEMT. The definition does not contain an express or implied limitation on what services may be offered by a TNC. Rather, the definition effectively provides that when a TNC facilitates a “prearranged ride” which does not fall within one of these listed exceptions, the TNC and the TNC drivers must comply with the TNC Act.

### **Conclusion**

As is discussed more fully above, it is this Office’s opinion that a court likely would hold the exception from the Transportation Network Company Act for “nonemergency medical transportation for individuals qualifying for Medicaid or Medicare pursuant to a contract with the State or a managed care organization” does not prevent SCDHHS from permitting a NEMT broker to contract with a TNC to perform nonemergency medical trips. S.C. Code Ann. § 58-23-1610(9). When the Act is read as a whole, it is reasonable and fair to interpret the General

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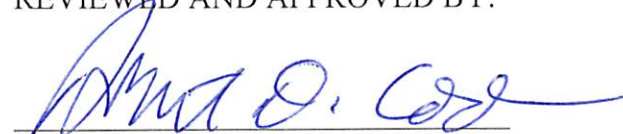
Assembly's purpose in establishing the statutory definition of "prearranged ride" was, in part, to limit what types of for-hire vehicle transportation are governed thereunder. Id.

Sincerely,



Matthew Houck  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General