

MEETING SUMMARY

Commission for the Transportation Disadvantaged **February 25, 2021 Public Workshop**

The Commission for the Transportation Disadvantaged (CTD) convened a public workshop on Thursday, February 25, 2021, at 2:00PM. The meeting was held via GoToMeeting webinar and telephone conference. The purpose of the workshop was to gather feedback from stakeholders on the use of CTD funding to serve individuals with disabilities who are also eligible for complementary paratransit services covered under the U.S. Americans with Disabilities Act (ADA).

Below is a summary of the information that was discussed at the workshop. Members of the public were invited to participate and speak on the information presented. This meeting summary includes the public input received during workshop.

Welcome and Meeting Objectives

Commissioner Robin Tellez provided the welcome and discussed the meeting objectives for the public workshop: 1) provide an overview of the current eligibility criteria for Transportation Disadvantaged (TD) “non-sponsored” services; 2) understand the implications of ADA complementary paratransit services on the TD program; and 3) gather public input from stakeholders on services for dual TD-ADA eligible customers.

Commissioner Tellez thanked Thomas Howell Ferguson for facilitating this workshop. She stated they will also be compiling all information pertaining to this issue, including public feedback received from public workshops and email correspondence, within a report to the Commission. Commissioner Tellez provided an overview of the Sunshine Law and informed participants that this meeting is being recorded. Megan Townsend, from Thomas Howell Ferguson, provided an overview of the features of the GoToMeeting webinar.

Presentation on TDTF “Non-Sponsored” Eligibility and ADA Complementary Paratransit Services

CTD Executive Director, David Darm, provided a presentation on the Commission’s current policies governing “non-sponsored” transportation services, which are funded under the Transportation Disadvantaged Trust Fund (TDTF). Individuals are eligible to receive TDTF non-sponsored services if they: are “transportation disadvantaged” due to disability, age, or income (s. 427.011(1), F.S.); need access to health care, employment, education, or other activities in their community; and have limited transportation options to participate in these activities. Mr. Darm began the presentation by posing questions for the workshop participants to consider addressing in their public feedback.

The TDTF was established in 1989, under Section 427.0159, Florida Statutes, where the majority of its funds are used to purchase trips for eligible individuals to access

activities “not sponsored” by another entity. TDTF eligibility criteria was adopted by the Commission on May 22, 1997. Mr. Darm cited the statutes and rule governing TDTF non-sponsored services: ss 427.011(12) and 427.0159(3), F.S., and Rule 41-2.013, F.A.C. He then provided an overview of the Commission’s TDTF eligibility criteria and process used to distribute funding for the delivery of non-sponsored services by Community Transportation Coordinators (CTCs).

The Americans with Disabilities Act (ADA) is a federal civil rights law that affords individuals with disabilities the right to access all areas of public life, including public transportation. Transit entities that operate fixed bus route systems are required to provide “ADA complementary paratransit” services to eligible individuals who: live within $\frac{3}{4}$ of a mile of a fixed route; and demonstrate they are unable to access the fixed route due to their physical or mental disability. Mr. Darm provided an overview of the federal regulations that govern ADA complementary paratransit services (49 CFR 37.131), which are administered by the Federal Transit Administration (FTA).

Mr. Darm provided an overview of the Commission’s position regarding the use of TDTF funding in relation to TD eligible individuals who also receive ADA complementary paratransit services. For individuals who are dual-eligible for TDTF and ADA services, CTD authorizes the use of TDTF to: purchase paratransit trips that are not covered under the ADA; and subsidize the rider’s fare for an ADA complementary paratransit trip. Notwithstanding these exceptions, CTD determined ADA complementary paratransit services not eligible for reimbursement under the TDTF. Mr. Darm presented the reasons for this decision:

- The ADA guarantees individuals with disabilities who live in a community with a fixed route access to complementary paratransit services, regardless of the existence of the TDTF. TDTF funding is intended to purchase trips for eligible individuals who have “no other means of transportation” to afford them access to services that would otherwise not exist.
- ADA paratransit serves as an extension of “public transit” fixed route services, which the CTC must explore as an option before determining an individual eligible for TDTF non-sponsored services.
- CTD’s decision to only subsidize the rider fare for an ADA paratransit trip is similar to purchasing bus passes, which only subsidizes the rider fare of fixed route services (not the full cost of fixed route trips).

Mr. Darm discussed additional federal grant programs that support the delivery of paratransit services to individuals with disabilities and other groups within the TD population: 5307 Formula Funding for Urbanized Areas; 5311 Formula Funding for Rural Areas; and 5310 Enhanced Mobility for Seniors and Persons with Disabilities. He concluded his segment of the presentation with a “cross-walk” table that provided a summary of both programs (TDTF and ADA), including their similarities and differences in requirements.

Casey Perkins, representing Thomas Howell Ferguson, provided an overview of data related to ADA complementary paratransit services within the National Transit Database (NTD). He explained the purpose of this presentation is to assist in identifying what trips

are taking place and where, how they more broadly fit within public transportation, and how they are financially supported.

Mr. Perkins presented a table of unlinked passenger trips (UPT), which identifies ADA complementary paratransit trips, “sponsored service” trips, and other trips provided by all transit agencies, reported in the NTD. The NTD manual defines UTP as “the number of boardings on public transportation vehicles during the fiscal year...” “Sponsored service” within the NTD, which are from the perspective of the federal government (not CTD), are trips that are “paid in whole or in part by a third party,” such as Medicaid, Meals-on-Wheels, Head Start, etc. So, from the perspective of the federal government, Mr. Perkins said a CTD funded trip might be considered a “sponsored service” trip. He noted that the NTD manual states: “Transit agencies should not include ADA UPT under Sponsored UPT. ADA-related UPT should not include any sponsored services.”

Mr. Perkins presented operating expense data reported in the NTD, which are the costs associated with providing UPT. For example, of the \$11.5 million of total operating expenses reported by Manatee County Area Transit in 2015, \$1.2 million was for ADA-related operating expenses. Mr. Perkins stated these operating expenses are covered with revenues termed as “funds earned.” According to the 2018 NTD Policy Manual, “Transit agencies must identify the portion of total expenses directly related to operating complementary paratransit services in compliance with the ADA requirements... agencies may estimate ADA related expenses using a reasonable approach, such as the proportion of ADA trips to total trips.” Mr. Perkins elaborated that the UPT data could be used to estimate ADA related expenses, which must not include costs associated with “sponsored service” trips.

The NTD identifies four revenue (i.e., “funds earned”) categories: 1) directly generated funds, such as passenger fares collected; 2) local government funds; 3) state government funds; and 4) federal government funds. Transit agencies may use the funding from federal grant programs, such as 5307, to support operating expenses related to ADA complementary paratransit services. Mr. Perkins stated that some of ADA related costs are included in the “Funds for Capital Assistance Expended on Operations” of the NTD, which receive about 80 percent enhance match from FTA grant programs. Mr. Perkins noted that the total operational expenses equal the total funds earned in the NTD table.

Mr. Perkins said all data presented in this workshop would be posted on the CTD website. He invited all feedback on this data as well as any other data sources that should be reviewed as part of the Commission’s report.

Public Input

Michelle Arnold, representing Collier Area Transit, spoke in support of utilizing TD funding for ADA eligible passengers. She said the information presented today is correct, but the ADA is an unfunded mandated program, so transit entities do not have the option to prioritize or make determinations outside of the ADA regulations. Ms. Arnold said transit entities are able to use 5307 funding to support operating expenses, but those funds are limited. She said the ADA places a financial burden on transit agencies that may limit services provided to the community overall. Ms. Arnold wanted

to see more consistency in the definition of “sponsored” trips – she was not aware of the federal definition prior to this workshop. She appreciated the Commission providing the opportunity to have this discussion.

Kelsey Peterson, representing Palm Beach Transportation Planning Agency, asked if there were specific examples of transit agencies that track TD expenses separately from ADA expenses. Mr. Darm said the Commission tracks Trip & Equipment Grant-related expenses through its invoice data and requires CTCs to report annual revenues/expenses through the Annual Operating Report (AOR). However, the AOR has not provided consistent or accurate data. Mr. Perkins said the NTD appears to be very high level, but it does not provide detailed data, such as expenses related to “sponsored services.”

Paul Strobis, representing Broward County Transit, said his agency only provides ADA paratransit trips to individuals who are eligible for such services. He did not support CTD’s policy for only reimbursing the rider’s fare for an ADA paratransit trip. For ADA paratransit customers who are not able to pay the fare, Mr. Strobis stated FTA provided guidance that transit properties are not obligated to provide those trips; therefore, those trips are not considered ADA paratransit services and should be eligible as TD “non-sponsored” services. He said it was not fair to CTCs to only draw down the fare value and not the full cost of a trip that would be reimbursed under the Trip & Equipment Grant. He asked the Commission to reconsider this policy and seek input from CTCs that provide a combination of ADA and TD non-sponsored services.

Lisa Bacot, representing Florida Public Transportation Association (FPTA), spoke in opposition of CTD’s current policy on ADA paratransit services. FPTA has been trying to work with CTD to address this issue since 2016. Ms. Bacot emphasized that this was not a formal policy approved by the Commission, but a change in interpretation that occurred in 2016 and, to her knowledge, was never sent out in writing to the CTCs. She said this policy has been unequally applied: some large urban CTCs were told through their quality assurance review that they had to start denying TD eligible riders services within the ADA corridor, while other CTCs that do not operate a fixed route have not been told of this policy in their quality assurance reports. Also, some urban CTCs that do provide ADA services on a smaller scale have not been told to do this, and CTCs that receive other funding for general public transportation, such as 5311, have not been told to deny TDTF trips to riders of those programs.

In 2019, FPTA sent a letter to FTA, requesting guidance on CTD’s position on ADA paratransit trips being considered as “sponsored” trips. FTA responded in agreement with FPTA’s position. Ms. Bacot stated she also met with Florida Department of Transportation Secretary Kevin Thibault in 2020 and it was her understanding that the Department also supported their position. These are the two major funders of transportation in the nation and state, so Ms. Bacot said it was somewhat incomprehensible to her why this policy continues to be enforced. She said FTA agrees that ADA should not and cannot be used to deny access to other forms of transportation that individuals are eligible for. It is not to be considered access to transportation, nor a sponsored program – it is a civil rights law. Ms. Bacot cited the FTA letter that these services are not “in any way ‘sponsored’ by any of these agencies, unless one regards

trips taken in private automobiles on public highways constructed using Federal, state and local tax dollars as 'sponsored' in the same manner."

Some counties are entirely covered by the fixed route, where ADA services the whole county. When this policy was implemented, Ms. Bacot said those counties were unable to spend their TDTF allocated dollars. She said this precedent was set back in the 1990s, when the Center for Medicare and Medicaid Services (CMS) tried to deny Medicaid-sponsored trips to individuals who were eligible for ADA paratransit services. FTA stopped CMS from enforcing that policy. If the Commission continues to enforce this policy, Ms. Bacot said other state agencies could follow, such as Medicaid.

Ms. Bacot stated this policy goes against coordination and local control under Chapter 427, F.S. She cited s. 427.0155, F.S., where CTCs are charged with utilizing public transportation funds, establishing eligibility guidelines and priorities, and having full responsibility for the delivery of services. For a solution, Ms. Bacot recommended the Commission ask each CTC how they are using TDTF dollars within their community (and how it relates to ADA) to ensure fair coverage to the entire county and fair access to the dollars by all types of TD eligible riders. The Transportation Disadvantaged Service Plan (TDSP) is monitored and approved by the Local Coordinating Board (LCB), which has much more experience in ensuring all areas are properly covered.

Ms. Bacot addressed one of the questions that was posed during the workshop: "If CTD purchased ADA trips (beyond what is covered for the rider's fare), what would be the budget impact on the TD Trust Fund?" She said this was not correct: the Commission would not be purchasing ADA trips because these are two separate programs (ADA and TD). Rather, this is about changing the policy that was enforced in 2016. Ms. Bacot said there would not be a budget impact on the TD Trust Fund because CTCs are given a set amount each month, so once those dollars are spent the CTC gets no additional funding. She said there was no concern from the CTD when this policy was put in place, where some counties like Miami-Dade were restricted in spending their TD dollars and had to return them back to the trust fund. She requested the Commission rescind this policy immediately.

Liz Stutts, representing the Florida Department of Transportation (FDOT), spoke to some statements made during the presentations. If the Commission continues down this path, Ms. Stutts was concerned that this policy will be chipping apart at the coordinated system, which the Belles, Commissioner Marion Hart, and Jo Ann Hutchinson worked so many years to make effective in the state. The information presented by Thomas Howell Ferguson was the guidance language from the NTD reporting handbook but is not the language that is in the FTA circular, which transit systems are required to follow. She said that language states that only 10 percent of a transit system's apportionment can be used to cover ADA expenses. For the smaller systems, such as Votran, RTS of Gainesville, and LeeTran, that amount equals (or is less than) about \$400,000 a year. Ms. Stutts said that does not begin to cover the costs of ADA paratransit services.

In response to Mr. Darm's presentation, Ms. Stutts stated the statutory definition of "sponsored transportation" led her to believe that it was referring to any kind of trip (or

transportation) that is paid for by any other agency, so that TD funding was the funding of last resort. If that is indeed the interpretation of the Commission, she said this will endanger the use of other federal funding sources to leverage the resources to provide the most transportation possible, which is what coordination is supposed to be all about. Agencies use their 5307 and 5310 funding to purchase vehicles that are delivered to serve the TD population. If the Commission considers those vehicles to be “sponsored” by another program or agency and prohibits the use to serve TD eligible riders (or TD funds cannot augment those trips because those vehicles are paid by another program), Ms. Stutts said that will hurt the urban and rural CTCs to serving their clients. Additionally, 5311 funding is used in conjunction with TD trip funding to serve rural customers across the state. Again, if the Commission takes the position that those trips are “sponsored” by another program (i.e., TD funding cannot be used for those trips), she said this will cut funding that could be used for those rural counties.

Ms. Stutts clarified that FDOT has not yet taken a position on this policy but has expressed these concerns to CTD staff about the potential unweaving of the coordinated system.

Mr. Darm appreciated Ms. Stutts sharing these concerns and stated the Commission would continue to work with FDOT as an advisor on this issue. Mr. Darm clarified that the statutory definition of “nonsponsored transportation” that was cited in the presentation was not an interpretation but the actual language in s. 427.011(12), F.S., which states that these services are “not sponsored or subsidized by any funding source other than the Transportation Disadvantaged Trust Fund.” He wanted to be cognizant of the concerns raised by Ms. Stutts, which is why they presented the NTD to serve as a starting point. But the statute is what the Commission must operate on because that is what the Legislature authorizes for the use of funds. Mr. Darm reiterated that this was the beginning of the discussion and that they would have a second workshop to further explore these issues. During the interim, he invited workshop participants and other stakeholders to submit their feedback to him via email (David.Darm@dot.state.fl.us), which will be compiled in the final report presented to the Commission.

Ross Silvers, representing Pinellas Suncoast Transit Authority (PSTA), spoke to some of the questions that were posed during the workshop. First, regarding the federal definition of “sponsored service” trips, Mr. Silvers said an ADA trip could be considered “sponsored.” For example, Bay Pines VA reimburses its veterans for the ADA fare (known as “travel funds”) to access the VA. So, if a trip occurs outside of the coordinated system and another entity is paying for it (such as Medicaid, Medicare or the VA), is that a “sponsored” trip that the CTC would know about and be able to disqualify the person under TD? Mr. Silvers said no: the CTC does not know what is “sponsored” and not. From the customer’s perspective, he said a trip is a trip, regardless of whether it is funded by TD or another entity.

In terms of “sponsored” vs “non-sponsored,” Mr. Silvers said there needs to be a separation of what applies to the individual’s eligibility and a trip. Even for the ADA, the common practice is to look at trip-by-trip eligibility. He believed the same approach should be used to determine “sponsored” vs “non-sponsored.” For example, if a city

government pays a person \$1.00 for a trip, but the trip costs \$4.50 total (\$3.50 for the individual to pay), is that considered a “sponsored” trip that cannot be subsidized by TD funding?

In response to the question on underserved populations within fixed route service areas that could be better served by TD funding, Mr. Silvers said some areas only have fixed route and ADA during rush hour, leaving some people waiting for hours for a trip back home. For the question over how the rate for an ADA paratransit trip would be determined (if CTD purchased the trip beyond the rider’s fare), Mr. Silvers said the rate would be the same as a TD ambulatory or wheelchair trip. The rate of reimbursement is based on the rate model used by the CTC, regardless of whether it’s a TD “non-sponsored” trip or ADA paratransit trip.

Mr. Silvers said the Commission has a great system in place to ensure there is equitable coverage of services: the LCB, the Designated Official Planning Agency (DOPA), Commissioners on the boards, the CTC annual evaluation, etc. He said we need to find a way to use the TD Trust Fund dollars appropriately county-by-county, including ADA eligible trip reimbursement for TD eligible individuals. This can be done best by the LCB and DOPA setting eligibility guidelines on the use of existing funds.

Mr. Darm clarified the term “sponsored service” being distinguished from ADA was referring to the federal government definition with the NTD report – not the CTD’s definition in statute.

Next Steps...

Mr. Darm reiterated that all the feedback received on this topic will be compiled in a report to the Commission. He said the report will also address the statutory requirements and any potential recommendations to consider with this policy for the future. Mr. Darm said the next Commission Business Meeting is scheduled for March 30, but he emphasized that they will not be taking any action on this matter at that meeting. He said they will plan to hold a second workshop on this topic following the March 30 Commission Meeting. During the interim, Mr. Darm said the Commission will continue to research and gather data to gain a better understanding of the issues discussed in this workshop.

Commissioner Tellez thanked everyone for participating in the public workshop.

Minutes compiled by David Darm.

Note: This meeting has been summarized to reduce paperwork in accordance with policies of State government. If an accessible format or more information than is provided herein is needed, please contact the Commission for Transportation Disadvantaged at (850) 410-5700 or 1-800-983-2435 for assistance. A copying or printing fee may be charged to the requesting party.