

Feasibility of Using Private Operators and Independent Contractors for ADA Paratransit Services



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Preface

Virginia has seen an increase in the number of transportation network companies (TNCs) and other private operators offering services to our citizens. Companies including Lyft and Uber have begun offering new models of service, including on-demand, for-hire transportation using smartphone applications.

The varied options being offered by these companies are innovative and may expand transportation choices, improve efficiency, and address transportation needs when public transportation is unavailable, insufficient, or inappropriate.

Virginia is receptive to new forms and modes of transportation but also recognizes the need to ensure that all companies and individuals wishing to transport people for-hire are providing safe and reliable service.

These concerns are addressed through Virginia and federal laws providing for the regulation of commercial passenger travel. Additionally, Virginia statutes were amended in 2014 and 2015 to ensure that TNCs and their services fit within the framework of Virginia's transportation related laws.

These recent changes are consistent with findings and recommendations contained in a study of TNCs requested by the chairs of the Senate Transportation Committee and the House Transportation Committee and led by the Virginia Department of Motor Vehicles (DMV). The objective of DMV's study was to determine whether current Virginia law regarding for-hire passenger carriers provided an adequate framework to ensure that TNCs would provide a safe and reliable service to the public, or whether the law needed to be amended. (See *Transportation Network Companies in Virginia*, December 2014, Report Document 481.)

The following report builds on the excellent research, analysis, findings, and recommendations of the DMV study and examines paratransit services. Specifically, in accordance with item 439E of Virginia's biennial budget, the Department of Rail and Public Transportation (DRPT), in coordination with consultants at the KFH Group and numerous stakeholders, studied the feasibility of increasing utilization of private operators and independent contractors, including but not limited to TNCs, in the provision of paratransit services throughout the Commonwealth. The feasibility of increasing utilization of private operators in human service transportation is also addressed in Appendix B.

Table of Contents

Executive Summary	iii
Background.....	iii
Paratransit	iii
Private Providers.....	iii
Feasibility of Increasing the Use of Independent Contractors	iv
<i>Taxis</i>	iv
<i>Transportation Network Companies</i>	v
Chapter 1 Introduction.....	1
Chapter 2 ADA Paratransit: Definitions, Requirements, and Standards.....	3
Introduction.....	3
ADA Paratransit.....	3
<i>Definition</i>	3
Requirements and Standards	4
<i>Funding</i>	4
<i>Private Operators “Stand in the Shoes” of the Transit Agency</i>	5
<i>Public Regulation</i>	6
<i>Insurance</i>	7
<i>Driver Background Checks</i>	8
<i>Driver Training</i>	9
<i>Inspection of Vehicles</i>	10
<i>Vehicle Accessibility</i>	10
Chapter 3 Current Use and Projected Demand For ADA Paratransit In Virginia	13
Introduction.....	13
Current Use and Cost.....	13
Projected Demand and Costs	15

Chapter 4 Private Operators as Providers of ADA Paratransit	17
Introduction	17
ADA Paratransit Operators.....	17
<i>National Data</i>	17
<i>Virginia Data</i>	20
Chapter 5 Feasibility of Increasing the Use of Private Operators and Independent Contractors to Provide ADA Paratransit.....	21
Introduction	21
ADA Paratransit	21
<i>Increasing the Use of Taxis for ADA Paratransit</i>	22
<i>Use of TNCs for ADA Paratransit</i>	29
Concluding Analysis.....	36
<i>ADA Paratransit</i>	36
<i>TNCs</i>	39
<i>Concluding Comments</i>	41
Appendix A Directive for the Study – Item 439E	
Appendix B Human Service Transportation	
Appendix C	
Table C-1:	
<i>Regulations and Standards for ADA Paratransit and Human Service Transportation Provided by Private Operators, including TNCs – Regulations and Standards Pertaining to Safety and Service</i>	
Table C-2:	
<i>Regulations and Standards for ADA Paratransit and Human Service Transportation Provided by Private Operators, including TNCs – Regulations Pertaining to Consumer Protections</i>	
Appendix D Federal Certifications and Assurances	

Executive Summary

BACKGROUND

This document responds to a directive of the Virginia General Assembly that the Department of Rail and Public Transportation (DPRT) report to the Chairmen of the House Appropriations and Transportation Committees and the Senate Finance and Transportation Committees on the feasibility of increasing the use of private operators and independent contractors, including but not limited to transportation network companies (TNCs), in the provision of paratransit services throughout the Commonwealth. The assessment is to determine potential costs and feasibility of, as well as identify potential liability and risks associated with, increasing the provision of paratransit services through private providers.

PARATRANSIT

Paratransit, more formally known as ADA paratransit, is mandated by the federal Americans with Disabilities Act (ADA) of 1990. All public transit agencies that provide fixed route service must also provide complementary ADA paratransit service for individuals with disabilities who are prevented from using traditional fixed route service due to their disability and who have been certified as eligible. Regulations require that ADA paratransit be provided on a next-day basis with no capacity constraints. ADA paratransit has benefitted many individuals with disabilities with increased mobility, but rising demand and costs for the service are concerns for transit agencies, both in Virginia and nationwide.

The most recent available data show increasing ADA paratransit ridership at Virginia's transit agencies, with a five-year increase over 2008 to 2013 ranging from 7% to 68%. Costs are also increasing. Over the same five years, ADA paratransit costs increased 33% to more than 100%. The cost per ADA paratransit trip in Virginia ranges from \$19.61 to \$51.04, according to the 2013 data.

PRIVATE PROVIDERS

Transit agencies use different approaches to provide their ADA paratransit service in Virginia. Somewhat less than one-half use private providers, with the others providing the service in-house with their own employees.

The private providers include the large national transportation companies, smaller more local transportation companies, non-profit organizations, and taxi companies. The latter are used by three transit agencies in Virginia, which includes the Washington Metropolitan Area Transit Authority (WMATA) that provides ADA paratransit in the Northern Virginia suburbs.

Taxi companies use independent contractors as drivers, and they have been providing ADA paratransit for many years. The TNCs are a new transportation resource, with individuals driving their personal cars and providing for-hire, on-demand transportation. The drivers are independent contractors.

FEASIBILITY OF INCREASING THE USE OF INDEPENDENT CONTRACTORS

Taxis

Current Use

Taxis are used by almost 10% of the country's urban transit agencies for ADA paratransit, primarily to take advantage of taxis' lower cost structure compared to in-house service or contracting with a transportation company with direct employees. Research shows that the cost of ADA paratransit trips provided by taxi ranges from \$23.29 to \$28.17 per trip, compared to transit agency costs shown in national data, with an average of \$34.06 per trip and \$43.65 per trip for the country's 50 largest transit agencies.

Transit agencies use taxis in three ways. First, transit agencies contract with a taxi company to operate ADA paratransit service. This requires the taxi company to meet all the requirements that convey with federal funding, which are identified in the Certifications and Assurances (see Appendix D). These include, among others, the Civil Rights statutes of Equal Employment Opportunity (EEO), Title VI, and ADA. Also included is the requirement to have a drug and alcohol testing policy and program, with testing for safety sensitive employees, which include drivers regardless of whether they are independent contractors. And it means the taxi company must meet the mandatory ADA service criteria, which includes accepting trip reservations from riders the day before desired trips.

Second, transit agencies may use taxis to provide back-up service on the day-of-service. In this way, the transit agency sends trips to the taxi company on an immediate response basis to provide trips that the transit agency's own drivers or the drivers of a private transportation company under contract cannot meet due to operational or scheduling issues. For this second use, the taxi company must also agree to the federal requirements set out in the Certifications and Assurances, which include compliance with drug and alcohol testing.

Third, transit agencies may use taxis to provide a service supplemental to required ADA paratransit with a same-day user-side subsidy program for ADA riders. Because the service is same-day, it is optional, and the ADA paratransit service criteria do not apply. Transit agencies can set the subsidy at an amount significantly below the cost for next-day ADA trips. Such same-day taxi programs can serve the trips of ADA-eligible riders more cost-efficiently than trips provided by the next-day ADA paratransit service. Same-day user-side subsidy programs for ADA riders are not a common practice of transit agencies, and to our knowledge they are not used by any Virginia transit agency for ADA paratransit.

Additionally, as long as a user-side subsidy program provides riders a choice among taxi companies, the federal requirements for drug and alcohol testing do not apply. However, ADA regulations that require equivalent service for individuals with disabilities do apply.

What is the Feasibility of Increased Use of Taxis for ADA Paratransit?

It is feasible to promote increased use of taxis for ADA paratransit service. An objective of increased use should consider the following:

- Taxi companies have greater capacity to provide ADA paratransit service when they have accessible vehicles, which cost more to purchase compared to a taxi sedan.
- Incentives for taxi drivers to use accessible taxis and provide accessible trips are important. An accessible vehicle also costs more to operate than a taxi sedan, and it takes more driver time to provide trips for riders in wheelchairs which is not charged by the drivers. Pay incentives for drivers can address these issues and are typically provided by the taxi company and often by the contracting transit agency.
- Liability and risks can be addressed in several ways:
 - Each transit agency needs to require liability insurance at a level the transit agency deems sufficient for its risk management program, which often is a limit higher than set by the regulatory body. A taxi company can partition its service so that only those drivers who have volunteered to serve ADA trips are insured at the higher level.
 - Risks can be addressed by ensuring that the local jurisdiction conducts comprehensive driver background screening of taxi drivers, to include a driving record check as well as a fingerprint-based criminal history check. These are typical for drivers in the taxi industry.
 - Each transit agency can require the taxi drivers to participate in training to serve the specialized needs of ADA riders, which is particularly important for drivers of accessible taxis.
 - The taxi vehicles should be inspected regularly, particularly the safety features. Virginia’s annual state inspection program is an appropriate baseline requirement. A transit agency may require more frequent inspections and may stipulate that that it can inspect vehicles at any time and remove a vehicle from the agency’s service if it deems a vehicle unsafe.
- If a transit agency plans a user-side subsidy program for ADA riders, it should set controls over its use to ensure demand does not escalate beyond the agency’s budget. Same-day service is popular and may induce trip volumes that become financially unsustainable.

Transportation Network Companies

Current Use

There are no known examples of TNCs providing ADA paratransit service. However, the transit agencies in Dallas and Atlanta are coordinating with Uber to provide an option for “first mile/last mile” service for their rail systems. This refers to trips from an origin, such as the transit rider’s home, to the rail station and from the rail station to the transit rider’s final destination.

The TNCs are also developing services for riders who need assistance with transportation. In selected cities, Uber has what it calls “UberASSIST,” designed for seniors and people with disabilities, including those who use a mobility device that can be folded and placed in the trunk or back of a passenger car. In a few cities, Uber provides accessible service to serve riders who use wheelchairs that cannot be folded, though the service is not provided by the TNC itself, but rather by accessible taxis or another company.

What is the Feasibility of Using TNCs for ADA Paratransit?

With their current business model, it may be feasible to use TNCs and their independent contractor drivers to provide a same-day subsidy program for ADA-eligible riders. A number of transit agencies around the country currently provide such a service, giving subsidies to the ADA riders to use taxis. This is one of the three ways that transit agencies now use taxis.

Transit agencies use these taxi-based user-side subsidy programs as a way to serve trips of ADA-eligible riders more cost-effectively than with the required next-day ADA paratransit. Because same-day service is not an ADA requirement, transit agencies can set parameters that help control the cost of the service. Importantly, since TNCs do not operate accessible vehicles, transit agencies using TNCs for a same-day subsidy program would need to ensure a level of accessible service for ADA riders needing a lift or ramp-equipped vehicle.

With the current TNC business model and based on available information at the time of writing this report, it does not appear that TNCs could be used in the other two ways that transit agencies now use taxis and which would require a TNC to enter into a contract with the transit agency to provide the required ADA paratransit. These two approaches – provision of ADA paratransit service and provision of back-up ADA paratransit service – require agreement to comply with the federal requirements that convey with the transit agency’s funding. These requirements are set out in the Certifications and Assurances and include Civil Rights statutes such as ADA as well as drug and alcohol testing, which apply even for independent contractor drivers. A company must have a drug and alcohol policy and program, which includes pre-employment, random, post-accident, and reasonable suspicion testing, as well as follow-up and return-to-duty testing for all safety sensitive employees.

Beyond the requirements that convey with the funding, contracting to provide ADA paratransit requires the private operator to meet the ADA service criteria, including accepting trips the day before the desired trip. The current TNC business model is not designed to accept advance reservation trips.

Costs and Benefits Without any current TNC-provided ADA paratransit service, costs are not known. However, generally costs for TNC trips, when provided by private individuals driving their personal cars, are somewhat less than taxi service, except when the TNCs’ trip charges increase through what one TNC calls surge pricing.

While TNCs do not currently provide ADA paratransit service, there are many individuals in cities where TNCs operate who use the service, including people with disabilities.

But benefits of TNCs do not apply to all those with disabilities. Service for people with disabilities who use a wheelchair and need an accessible vehicle is available only in a very limited number of cities and at a cost that may be more than non-accessible TNC service.

Benefits also do not apply to those without a smartphone or credit or debit card. Research shows that only 27% of those age 65 and older have a smartphone and that almost 8% of households in the country (one in 13 households) are “unbanked” (no bank account). Some proportion of these population groups could be expected to have disabilities and thus not able to use TNCs.

Liability and Risks Should TNCs become involved in the required ADA paratransit service at some point, liability and risks should be addressed through adequate insurance, driver background checks, driver training, and vehicle inspections. These issues are particularly important given that ADA riders are, by definition, individuals with disabilities.

- **Insurance:** Insurance for TNCs has been established through the Commonwealth's regulations. The insurance levels required for the time periods when the TNC driver has accepted a trip and, importantly for rider protection, when the driver is transporting the passenger are \$1 million. This level is considerably higher than what Virginia requires for taxis, but lower than what most transit agencies require for their ADA paratransit service from private transportation companies.
- **Driver Background Checks:** TNC driver background checks have been a contentious issue, in particular whether fingerprint-based criminal history record checks should be required or whether document-based criminal history record checks (that is, using a driver's license, Social Security number, etc.) are sufficient. The TNCs use document-based criminal history record checks, not fingerprint-based checks. Many ADA riders, particularly those with intellectual disabilities, are more vulnerable than general public riders. Given this risk and potential liability, requiring fingerprint-based criminal history record checks as well as driving record checks for TNC drivers providing paratransit service may be prudent.
- **Driver Training:** Adequate TNC driver training should be required, including both classroom and hands-on training in serving the specialized needs of ADA riders. Transit agencies contracting with taxis for ADA paratransit may require the same training that is required for private transportation companies, which may involve 80 or more hours.
- **Vehicle Inspections:** TNC vehicles should undergo regular inspections, with Virginia's annual state safety inspection a baseline requirement. A transit agency may require more frequent inspections and should have the right to remove any vehicle from its service that it deems unsafe.

Accessibility ADA paratransit, both the mandatory service and any optional same-day user-side subsidy program, must ensure accessible service. If not provided by the TNC, the transit agency must ensure the provision of accessible service that is equivalent to the service provided to riders who do not need accessible service.

Concluding Comments

TNCs may be an option for transit agencies to provide a same-day subsidy program for ADA riders, in the same way that a number of transit agencies have used taxis for many years. Such service is not a requirement of the ADA, but provided by some transit agencies as an optional service to help meet trips for ADA-eligible riders more cost-efficiently. Should transit agencies consider the use of TNCs for required ADA paratransit service, various questions and issues should be addressed. In particular, potential liability questions remain about the adequacy of TNCs' driver background checks. Other questions and issues to be addressed concern driver training as well as insurance, vehicle inspections, and the role of drug and alcohol testing, should TNCs be considered as providers of required ADA paratransit. These issues relate not just to requirements that convey with federal transit funding, but also help ensure the safety of ADA riders, many of whom are more vulnerable than the general public.

Paratransit and Evolving TNC Services

The country's transportation landscape is changing rapidly. It may be – as TNCs' services evolve, as attempts to regulate them continue, and as court cases are resolved – that these new transportation services become a more viable resource for transit agencies' required ADA paratransit programs.

Chapter 1

Introduction

This document responds to a directive of the Virginia General Assembly that the Department of Rail and Public Transportation (DPRT) report to the Chairmen of the House Appropriations and Transportation Committees and the Senate Finance and Transportation Committees on the feasibility of increasing the use of private operators and independent contractors, including but not limited to transportation network companies (TNCs), in the provision of paratransit services throughout the Commonwealth. The assessment is to determine potential costs and feasibility of, as well as identify potential liability and risks associated with, increasing the provision of paratransit services through private providers. The directive for the study is included in Appendix A to this report.

Paratransit service, more formally known as ADA paratransit service, is mandated by the federal Americans with Disabilities Act (ADA) of 1990. All transit agencies that provide fixed route service must also provide ADA paratransit service for individuals with disabilities who are prevented from using fixed route service due to their disability and who have been certified as eligible. ADA paratransit has benefitted many individuals with disabilities with increased mobility, but rising demand and costs for the service are concerns for transit agencies, both in Virginia and nationwide.

Private providers have been involved in the provision of ADA paratransit for many years, as transit agencies have found that use of private providers can be a cost-efficient approach compared to operating the service in-house with transit agency employees. These private providers include the large national private transportation companies, smaller and more local private transportation companies, as well as taxi companies and their drivers, the latter who are almost exclusively independent contractors.

Transportation network companies (TNCs), such as Uber and Lyft, are new mobility resources that have evolved in just the last four to five years. While the TNCs claim they are technology companies and not transportation providers, their drivers are in fact providing trips for individuals in cities throughout the country, including, among communities in Virginia, Richmond, Charlottesville, Hampton Roads, and the Northern Virginia suburbs of Washington, D.C.

The TNC drivers are independent contractors, in keeping with the TNC business model. The drivers provide on-demand, for-hire transportation – a service that is very similar to that provided by taxi drivers.

Human service transportation is another form of transportation that is provided to individuals with disabilities as well as others who have difficulty with traditional fixed route transit, such as older adults. Human service transportation is provided by many public and private non-profit human service agencies to support the agencies' primary mission, which might be senior services, health care, adult day care, or sheltered workshops, among others. Transportation is an ancillary

service for these agencies, provided so that the clients can access the main service that the agency offers.

Similar to ADA paratransit, rising demand and costs for human service transportation are concerns, particularly with the coming “age wave” and projected increases in the numbers of older Americans. Among the important services that will be required to meet the needs of the aging population is transportation.

Funding for human service transportation in Virginia is administered by various state agencies including, among others, the Department of Social Services (VDSS), the Department of Aging (VDA), the Department of Mental Health, Mental Retardation, and Substantive Abuse Services, as well as by DRPT. While DRPT’s contribution is only a small percent of overall human service transportation funding in the Commonwealth, its funding is important because, unlike some other sources, DRPT’s program provides vehicles to the human service agencies. With increasing demand for human service transportation and given its limited funding for such service, DRPT requested that the study also consider whether the use of private operators, including TNCs, might provide opportunities for new, cost-effective, and perhaps innovative options for human service transportation.

The study has thus included an analysis of human service transportation, and this analysis is provided in Appendix B to the report. The main body of the report focuses on ADA paratransit, as directed.

Following this Chapter 1 Introduction, the report includes the following:

Chapter 2 provides an overview of ADA paratransit. The chapter then identifies the federal requirements for ADA paratransit that impact private operators and describes how the services are operated to meet essential service and safety standards, as well as equal access for individuals with disabilities.

Chapter 3 discusses the current use of ADA paratransit in Virginia and projects the resource needs for this service for the years 2020 and 2030 given population forecasts for the target demographic group – people with disabilities.

Chapter 4 identifies and discusses the range of private providers that operate ADA paratransit.

Chapter 5 addresses the key questions required for the report: what is the feasibility of increasing the use of private operators and independent contractors, including TNCs, in providing ADA paratransit service? And what are the potential costs as well as potential liabilities and risks associated with increasing their use?

Chapter 2

ADA Paratransit: Definition, Requirements, and Standards

INTRODUCTION

Chapter 2 provides an overview of ADA paratransit and identifies federal requirements and standards for ADA paratransit that impact the provision of service. This includes requirements and standards that address essential service and safety standards, as well as equal access for individuals with disabilities. The focus is on the provision of service by private operators.

Private transportation companies and taxi companies are primary private entities that operate ADA paratransit for transit agencies. A key difference between these two types of private providers is that drivers for taxi companies are typically independent contractors while drivers of private transportation companies are direct employees.

Private operators of non-emergency medical transportation (NEMT) are included in this chapter's discussion as such operators include independent contractors, and requirements for their service provide a reference point for the discussion of the role of independent contractors as providers of transportation for people with disabilities and seniors. Both these population groups are served by NEMT.

This chapter identifies requirements set out by the federal government that convey with funding for ADA paratransit and builds on information in two tables, provided in Appendix C, which outline regulations and standards for ADA paratransit and human service transportation that is provided by private operators. These tables identify regulations and standards that apply in Virginia for TNCs, taxis, independent contractors of NEMT, and private transportation companies that contract with transit agencies for ADA paratransit service and with human service agencies for the agencies' client transportation.

ADA PARATRANSIT

Definition

ADA paratransit is mandated by the federal Americans with Disabilities Act (ADA) of 1990. All public transit agencies that provide fixed route service must also provide complementary ADA paratransit service for individuals with disabilities who are prevented from using traditional fixed route service due to their disability and who have been certified as eligible.

The paratransit service is intended to complement the public transit agency's fixed route service, with federal regulations defining the service criteria that ensure compliance with the complementary requirement.

The federal government has called ADA paratransit a safety net for those whose disabilities prevent their use of regular public fixed route, although it specifically recognizes that ADA

paratransit “is not intended to be a comprehensive system of transportation that meets all the travel needs of persons with disabilities.”¹

REQUIREMENTS AND STANDARDS

Funding

Transit agencies use federal funds from the Federal Transit Administration (FTA) to support capital needs, operations, or both, including support for their ADA paratransit service. There are various requirements that convey with the use of FTA funds. In particular, using FTA funds obligates transit agencies to include specific required clauses – referred to as Certifications and Assurances – in their contract documents when they contract for service.

Some of the clauses are standard and are required for all types of procurements when the federal money is involved and other clauses are specific to transit service which includes ADA paratransit. Among the standard clauses are clauses referring to compliance with Civil Rights, which include federal laws for Equal Employment Opportunity (EEO), Title VI and the ADA. A copy of the federal Certifications and Assurances is included in Appendix D to the report.

For example, regarding compliance with Title VI, transit agencies with 50 or more vehicles in fixed route service are required to have a plan and ensure compliance with the title, which is a federal statute that provides “that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” Title VI has been broadened by related statutes, regulations and executive orders, and now includes requirements that transit agencies receiving federal funds must ensure their programs and service do not disproportionately cause adverse impacts on minority populations, low-income populations and limited English proficient (LEP) persons.

When a transit agency contracts for service, it must include the specified clauses in the contract document with the private operator. In the case of Title VI, for example, this does not mean that the contractor has to also prepare a Title VI plan but it does mean that the contractor is agreeing to adhere to Title VI in providing the contracted service. It also means that the transit agency is required to investigate any Title VI complaint against its contractor’s drivers or staff as if the complaint was lodged against the transit agency itself.

Among the transit-specific clauses is a requirement that any contractor must adhere to FTA requirements for drug and alcohol testing. This requires the private contractor to have a drug and alcohol policy and program, which includes pre-employment, random, post-accident, and reasonable suspicion testing, as well as follow-up and return-to-duty testing for all safety sensitive employees. Any private provider of ADA paratransit service that is under contract to a transit agency receiving FTA funds must comply with these testing requirements, including taxi companies and their independent contractor drivers.

¹ Federal Transit Administration ADA Information “Premium Charges” for Paratransit Service, Office of Civil Rights, accessed at http://www.fta.dot.gov/12325_3895.html.

Private Operators “Stand in the Shoes” of the Transit Agency

Another important requirement of the ADA impacting private operators that provide ADA paratransit for public transit agencies is the provision that private operators providing service on a contract or other formal basis “stand in the shoes” of the public transit agency. This means that the transit agency must ensure that its private provider meets the ADA requirements in the same way as if the transit agency operated the service itself.

Regarding accessible vehicles for ADA paratransit service, for example, the private operator has to ensure that its service, when viewed in its entirety, provides service to individuals with disabilities that is equivalent to service to other individuals. In practice, the private provider may have some non-accessible vehicles in its fleet, but the service for those who need an accessible vehicle must meet all the ADA service requirements, including the six service criteria defined below.

The “stand in the shoes” requirement does not apply, however, if the private providers are regulated only by or receive a permit or franchise from a public entity, such as a city or county. This affects taxi subsidy programs that some public transit agencies provide to their ADA eligible riders, which are structured as a “premium” service that is beyond the requirements of the ADA.

In such programs, the transit agency provides vouchers or tickets that discount taxi trips to eligible riders who then contact a taxi company of their choosing to request a same-day trip. By accepting the subsidized vouchers or tickets, the taxi companies do not “stand in the shoes” of the sponsoring public transit agency, but the transit agency must ensure that the taxi subsidy program meets ADA requirements that prohibit discrimination against individuals with disabilities and that the program provides “equivalent service” for such riders. The “equivalency” standards mean, for example, that the taxi subsidy program must have accessible vehicles available, that it cannot charge a higher fare for riders with disabilities, and that it provides a response time to riders with disabilities that is equivalent to the response time for riders without disabilities.²

Federal ADA Service Requirements

To meet federal requirements, ADA paratransit must meet six mandatory service criteria:

- (1) Service must be provided within three-quarter mile corridors of all fixed routes.
- (2) Service must be provided on the same days and during the same hours as fixed route service.
- (3) Reservations for trips must be taken up to the day before when a rider wants to travel, and, at the option of the transit agency, trips can be reserved up to 14 days in advance.
- (4) The fare cannot be more than twice the non-discounted full fare for a fixed route trip.
- (5) There can be no restrictions or priorities based on trip purpose.
- (6) Service must be operated without any “capacity constraints.” This means that there can be no trip denials, no waiting lists for service or trip caps, and no operational pattern or

² Federal Transit Administration, Americans with Disabilities Act: Guidance, Circular C 4710.0, Chapter 7, Demand Response Service, “Equivalency for Taxi Subsidy Services,” pg. 7-8 – 7-9.

practice that significantly limits service. The latter means no pattern of late trips, no excessively long trip times, and no long hold times when calling for service.

Some of these requirements apply to the transit agency such as setting the fare policy, and others apply to the providers of day-to-day service on the street, including private providers operating service under contract. For example, a private provider cannot deny trip requests made by eligible users³ and must meet high standards for on-time performance to ensure no capacity constraints.

Transit agencies may, at their discretion, exceed the ADA minimum service requirements. For example, some transit agencies serve a larger service area than required, and they may charge a higher fare for trips outside the mandated area.

A number of transit agencies exceed the ADA requirements by providing supplemental service through a same-day user-side taxi subsidy program for ADA eligible riders. Since same-day service exceeds what ADA requires, it does not have to meet the same criteria or standards as required for ADA paratransit service. Fares for the service, for example, are often higher than for next-day ADA service, and the subsidy per trip can be limited, for example, by requiring the rider to pay for the trip once it exceeds a defined cost on the taxi's meter.

Same-day user-side subsidy service is typically used as a strategy by a transit agency to provide trips for ADA riders more cost-effectively than by next-day ADA paratransit service, and transit agencies using the strategy have claimed significant cost-savings. As noted above for taxi subsidy programs, the taxi companies do not stand in the shoes of the public transit agency sponsor when the transit agency provides the subsidy to the riders for their use and the riders choose the taxi company for their trips. Importantly, though, such a same-day taxi program must meet the ADA's equivalency standards, and these apply regardless of whether federal funds are used to support the program.

Public Regulation

Beyond the federal requirements of the ADA that apply to private operators, such operators including independent contractors may face state and local regulations.

Regulations for TNCs have been established by the Commonwealth of Virginia. There are a number of other states that regulate TNCs, including California and Colorado. However in some states, the city or county regulates TNCs. In Texas, for example, several cities have established regulations for TNCs such as Houston, however there are some policy makers at the state level who are advocating that the state establish regulations that would supersede local regulations.

Taxis are generally regulated at the local level, as is the case in Virginia, though taxi companies must, at a minimum, meet the Commonwealth's liability insurance requirement. While local

³ While the transit industry commonly refers to *no trip denials* to meet the requirement prohibiting capacity constraints, the regulations and subsequent court decisions require that ADA paratransit systems meet all expected demand for service, with recognition that there may be an insubstantial number of trips that cannot be met as long as such denials are not attributable to the design of the paratransit system.

regulation of taxis is typical across the country, there are a few states that regulate taxis, for example, Colorado, where the Colorado Public Utilities Commission regulates taxis.

Private providers that operate ADA paratransit service or human service transportation must meet the requirements set out by the public agency that is contracting for service. The public entity will identify its regulatory requirements through the procurement and contracting process and, assuming the contracting public agency is using federal funds for the service, the procurement and contract documents will include the federal requirements that apply due to the funding source.

When the public entity contracts with a taxi company for service, it typically sets requirements that are more stringent than those required by the local taxi ordinance. For example, if a taxi company is under contract to a transit agency for ADA paratransit service, the taxi company must meet federal drug and alcohol testing requirements and often the taxi company must meet higher liability insurance standards than those set by local regulation.

Private providers who are independent contractors for Virginia's NEMT must meet the Commonwealth's requirements for insurance and provide trips only through specifically defined avenues: the Virginia Department of Medical Assistance (DMAS), a broker that is under contract to DMAS, or a broker operating as a Medicaid Managed Care Organization under contract to DMAS. Independent contractors that are not taxi companies must obtain from Virginia's Department of Motor Vehicles a NEMT permit and license plate, a relatively new permit that allows only brokered NEMT trips.

Insurance

Transit agencies that use private operators for their ADA paratransit service specify the levels of insurance required in their procurement documents, with liability insurance a key requirement. Required levels vary by transit agency.

Loudoun County, for example, requires \$10 million in liability insurance for its contractor as well as workers compensation insurance. In addition, the county requires an additional \$5 million in umbrella liability, or a total of \$15 million in liability coverage.

Arlington County requires its private contractor to provide liability insurance of \$1 million combined single limit as well as workers compensation insurance. For its taxi contractor, the county accepts the insurance coverage required by county ordinance, which is \$100,000 (injury to one person)/\$300,000 (injury to two or more persons)/\$50,000 (property damage). This level of insurance is higher than what Virginia requires through state regulation for taxi companies, which is liability insurance of \$125,000 for bodily injury and property damage.

As another reference point, the Washington Metropolitan Area Transit Authority (WMATA), until 2012, required liability insurance of \$5 million for its private transportation operators. More recently, the transit authority has developed alternative arrangements that build on the authority's own insurance program.

Liability insurance for NEMT providers is set by the state and varies by the seating capacity of the vehicle being used. For vehicles seating one to six passengers including the driver, \$350,000 in

liability insurance is required; for vehicles seating seven to 15 passengers including the driver, the level is \$1.5 million; and for vehicles seating 16 or more vehicles, the level is \$5 million.

Driver Background Checks

Requirements for background checks for drivers of private providers that provide ADA paratransit service vary. The public transit agency contracting for service specifies its requirements for driver background checks through the procurement process. Some transit agencies include requirements for fingerprint-based criminal history record checks, and others do not.

Loudoun County, for example, contracts with a large national transportation company and does not require fingerprint-based background checks, according to the county's procurement document. The county requires the contractor to:

- Conduct pre-employment DMV checks of the state issuing the driver's license and then to check every six months.
- Conduct 15-year criminal history record and employment checks.
- Drivers must be 21 years of age and with no more than two moving violations in the last five years.
- Ensure drivers have never convicted of a felony or have a record of alcohol or drug offense.

Arlington County, which uses both a private transportation company as well as a taxi company to operate its ADA paratransit service, does require fingerprint-based background checks. According to the county's procurement document for its ADA paratransit service, the private provider must do the following for driver background checks:

- A national criminal history record check and motor vehicle record check.
- Examination of the statewide Automated Fingerprint Identification System and a sex offender registry record request from the Virginia State Police and Virginia Dept. of Social Services-Child Protection Unit.
- Drivers must be 25 years of age and with no more than two chargeable accidents or moving violations in the past three years.

Arlington County also contracts with a local taxi company for ADA paratransit service and relies on the county's taxi ordinance for taxi driver background checks. Requirements for taxi driver background checks are stipulated in the county taxi ordinance and include:

- Review of a ten-year traffic record (excluding parking tickets).
- Review of prior driving experience.
- Fingerprint-based criminal history check through the Central Criminal Records Exchange.
- Taxi driver license is valid for one year, with option for two years depending on the background check; renewal requires the same background check as for a new driver.

Virginia's DMAS defines its requirements for driver background checks in its procurement document for the statewide NEMT broker. According to this document, DMAS requires the broker to ensure the following:

- Secure, maintain, and provide criminal background checks to DMAS from Virginia State Police and the national FBI fingerprint database on each driver before the driver transports members under this contract.
- Drivers must have no more than two chargeable accidents or moving violations in last three years and have not been convicted of any crime as defined in VA Code § 37.2-314B.
- Drivers must be at least age 18 and a driver's license holder for at least one year.

While the procurement document includes a requirement for fingerprint-based checks as part of driver background checks, DMAS reports that the agency is not currently enforcing that requirement because the background checks, which are performed by a law enforcement agency, cannot be released to a private company such as the DMAS broker.

Driver Training

Requirements for driver training for drivers of private providers are typically specified by the transit agency contracting for service. Training must at a minimum meet ADA requirements which specify that drivers are "trained to proficiency."

Driver training generally includes classroom training and behind-the-wheel training which includes training on use of the vehicle lift or ramp and other accessibility equipment to serve riders who use wheelchairs or scooters. Driver training also includes sensitivity training so drivers can effectively and appropriately provide trips for people with disabilities.

The large national private transportation companies have well-developed driver training programs that include classroom training, behind-the-wheel training, and often "cadetting," where a driver-trainee drives with an experienced driver for a period of time before driving alone in passenger service. Many smaller and more local transportation companies also have well-developed comprehensive driver training programs.

Such training programs are structured to provide 80 to 120 hours of driver training. It is to these companies' advantage to have comprehensive driver training programs as it helps ensure safe operations, which affects their insurance exposure, and instructs drivers on proper body mechanics for serving riders in wheelchairs, which affects the companies' worker's compensation experience modification factor.

Loudoun County's requirements for driver training for its private provider are fairly general, specifying that drivers must be trained and certified in the use of vehicles with thorough knowledge of the service area and of operations, as evidenced by training, testing and certification prior to operating passenger service.

Arlington County requires that all drivers of its private providers must be trained in map reading, providing service to individuals with disabilities and seniors, passenger and wheelchair/scooter handling and securement, and dealing with difficult passengers. Drivers of dedicated vehicles are

also to be trained in proper use of first aid and biohazard clean-up kits which are required for all dedicated vehicles. These training requirements apply to both the private transportation company and the taxi company under contract for the county's ADA paratransit service

Arlington County's driver training requirements for its contracted taxi company are in addition to the taxi driver training required by the county tax ordinance, which applies to all taxi companies in the county. Arlington County's tax ordinance requires taxi drivers to pass a written test which includes questions on the county's tax laws and regulations. The ordinance also requires that before a company can place a wheelchair accessible taxi in service, it must present proof that the driver has successfully completed training on use of the lift/ramp.

Inspection of Vehicles

Vehicle inspections for ADA paratransit will depend on the type of private provider and the public transit agency contracting for service. Generally, inspections of taxi vehicles are defined by the locality that regulates the company. Arlington County's tax ordinance, for example, requires its taxi vehicles to undergo the annual state inspection and an annual inspection by the county tax inspector, appointed by the police, may be required in addition.

For private transportation companies under contract for ADA paratransit, the transit agency specifies its requirement for vehicles including maintenance and inspections in the contract document. Frequently, the transit agency will specify that the contractor use maintenance software for maintenance recording-keeping and reporting and often will require the contractor to give unfettered access to that software for monitoring purposes.

Loudoun County's procurement document for ADA paratransit states that the county will conduct a "condition inspection" of the vehicles that the contractor is to provide for the service as well as the right to ask for the most recent year of maintenance records and that it can order the removal of any vehicle from passenger service.

Arlington County's procurement document has similar requirements, although some of the requirements are more prescriptive. The county requires its contractor to conduct annual vehicle inspections which are to include inspections related to "safety, accessibility compliance, [and] passenger comfort." The county also specifies that it has the right to inspect all vehicles before they go into service and is the sole authority over whether a vehicle meets the county's requirements. Additionally, the county requires the contractor to provide vehicle maintenance schedules and records for county review.

For NEMT service, DMAS specifies that vehicles must meet "all applicable laws, regulations and ordinances of federal, state, and local agencies in which the vehicles are used." Vehicles are to have a first aid kit and fire extinguisher. DMAS requires that its broker under contract inspect every vehicle used for NEMT twice a year.

Vehicle Accessibility

Private operators that provide ADA paratransit service for public transit agencies must ensure the provision of accessible vehicles. As identified above, the entire fleet does not have to be accessible

but there needs to be enough accessible vehicles so that service to riders who use wheelchairs is equivalent to those who do not.

In some cases, the transit agency supplies the vehicle fleet to the private operator for its use. In other cases, the private operator is responsible for providing the fleet. Both Loudon County and Arlington County require their private operators to provide vehicles, and for the private transportation companies, both counties require all the vehicles to be accessible. For its taxi contractor, Arlington County requires that the accessible vehicles operated by the taxi company meet ADA requirements. The current taxi company contractor has a fleet of 355 taxis, of which 28 are wheelchair accessible.

Chapter 3

Current Use and Projected Demand for ADA Paratransit in Virginia

INTRODUCTION

Chapter 3 provides data on current use of ADA paratransit in Virginia as well as projected demand for the years 2020 and 2030.

CURRENT USE AND COST

Current data on ADA paratransit service in Virginia has been obtained from the National Transit Database (NTD) for Report Year 2013,⁴ the most recent data available. Transit agencies operating in urban areas report detailed operating and financial statistics annually, and the data is compiled in the NTD. Transit agencies operating in rural areas report a reduced set of operating and financial data, which is provided to their states, and that data is then compiled in the Rural NTD.

According to the national data, there are fourteen urban transit systems in Virginia that provide ADA paratransit and report data for NTD purposes, with paratransit ridership and operating cost data shown in Table 3-1. Also shown in Table 3-1 is data for the Northern Virginia portion of the ADA paratransit service provided by WMATA. Virginia's DRPT reports that there is one rural system in the Commonwealth that provides ADA paratransit service – Farmville Area Bus. Available data for this transit agency is also included in the table, for a total of 16 transit agencies.

These transit agencies have different models for providing their paratransit services. Some agencies operate paratransit service directly with their own employees, for example, Williamsburg Area Transit Authority. Some use private transportation companies, such as WMATA, which contracts with a private company to operate its Call Center and with two additional private companies to operate transportation service. One of the transportation contractors subcontracts with a taxi company to provide back-up service, which is provided by the taxi company and its independent contractor drivers. A couple of transit agencies use a private, non-profit agency to operate their ADA paratransit, such as JAUNT in Charlottesville which operates the ADA paratransit service for Charlottesville Area Transit as well as human service transportation in the Charlottesville area.

Data on costs for ADA paratransit service have been assessed for the ten transit agencies in Virginia that provide ADA paratransit service and reported sufficient cost detail for the service in the National Transit Database. For these ten agencies, the average cost per passenger trip is \$28.68. The cost per passenger trip ranged from \$19.61 to \$51.04 for the ten agencies. The latter cost per trip is for the ADA paratransit service provided by WMATA, which operates in a very large, 1500-square mile service area covering parts of two states and the District of Columbia and provides well over 7,000 passenger trips per day.

⁴ Transit agencies report data according to their individual fiscal years, which may be July through June, October through September, or January through December. The 2013 Report Year includes fiscal years that end during 2013.

Table 3-1: Ridership and Operating Costs for ADA Paratransit Services in Virginia, 2013

Transit Agency	Service Area Population	Ridership (Unlinked Passenger Trips)	ADA Trips	Total Modal Expenses	ADA Related Expenses
Urban Transit Agencies					
Greater Richmond Transit Company	449,572	--	355,028	\$6,962,265	\$6,962,265
Greater Roanoke Transit Company	97,032	65,894	65,894	\$1,619,189	\$1,619,189
Greater Lynchburg Transit Company	80,846	26,518	26,518	\$697,193	\$697,193
Petersburg Area Transit	32,948	10,849	10,849	\$219,402	\$219,402
JAUNT, Inc.	233,455	314,994	142,689	\$5,479,634	\$1,332,770
Bristol Virginia Transit	17,835	1,932		\$57,548	
City of Danville Mass Transit System	48,411	35,257		\$742,100	
City of Alexandria	139,966	55,163	55,163	\$1,425,631	\$1,425,631
Williamsburg Area Transit Authority	57,000	3,809	3,809	\$374,946	\$374,946
Arlington Transit - Arlington County	210,000	95,011	95,011	\$2,555,055	\$2,555,055
Transportation District Commission of Hampton Roads, dba: Hampton Roads Transit	1,439,666	304,004	304,004	\$10,819,386	\$10,819,386
Blacksburg Transit	63,661	30,970	16,082	\$878,370	\$562,813
City of Harrisonburg Department of Public Transportation	51,828	24,323	24,323	\$528,853	\$528,853
City of Winchester	26,000	14,845		\$151,706	
Northern Virginia Suburbs of the Washington Metropolitan Area Transit Authority (WMATA)					
Partial Washington Metropolitan Area Transit Authority: No. VA suburbs	2,230,623	300,058	300,058	\$15,314,960	\$15,314,960
Rural Transit Agencies That Provide ADA Paratransit Service					
Farmville Area Bus, Town of Farmville - 2014 Data		5,272	--	--	--

Notes:

- Data for urban transit agencies obtained from the National Transit Database, Report Year 2013.
- Data for the Northern Virginia Suburbs of WMATA's ADA paratransit service obtained from WMATA.
- DRPT identified one Virginia rural transit agency that provides ADA paratransit service. Data on ridership obtained from the Rural NTD, 2014 Report Year.
- Ridership data shown for the rural agency is for total Demand Response service; Rural NTD does not require separate data for ADA paratransit
- Where an agency does not report separate ADA paratransit data, it can be assumed that some portion or perhaps all of the ridership and cost data shown is for ADA paratransit, though any distinction was not reported.

Transit agencies nationwide have experienced ADA ridership and cost increases over the years. To assess recent trends for transit agencies in Virginia, data from 2008 was obtained and compared to 2013 data for a subset of the urban transit agencies, selected based on the availability of comparable data for the two time periods. As shown in Table 3-2, data for the selected transit agencies demonstrate significant ridership and cost increases over the five-year period for all but one of the transit agencies. Cost increases for paratransit services increased by more than one-third at the six of the transit agencies shown in the table, and, for one agency, costs more than doubled in five years.

Table 3-2: Comparison of ADA Paratransit Ridership and Operating Cost from 2008 to 2013

Transit Agency	ADA Trips		% Increase 2008-2013	ADA Related Expenses		% Increase 2008-2013
	2008	2013		2008	2013	
Greater Richmond Transit Company	235,631	355,028	50.7%	\$5,037,830	\$6,962,265	38.2%
Greater Roanoke Transit Company	47,577	65,894	38.5%	\$1,036,913	\$1,619,189	56.2%
Greater Lynchburg Transit Company	15,773	26,518	68.1%	\$293,489	\$697,193	137.6%
Williamsburg Area Transit Authority	5,108	3,809	-25.4%	\$281,658	\$374,946	33.1%
Transportation District Commission of Hampton Roads, dba: Hampton Roads Transit	239,956	304,004	26.7%	\$6,691,022	\$10,819,386	61.7%
Blacksburg Transit	10,708	16,082	50.2%	\$389,426	\$562,813	44.5%
City of Harrisonburg Department of Public Transportation	22,691	24,323	7.2%	\$546,013	\$528,853	-3.1%
Partial Washington Metropolitan Area Transit Authority (WMATA): No. VA suburbs	237,335	300,058	26.4%	\$10,639,728	\$15,314,960	43.9%

PROJECTED DEMAND AND COSTS

Demand for ADA paratransit in Virginia is projected from a base year of 2010 to the years 2020 and 2030, using a modified published model.

The projections first employed a model that was developed for the American Public Transportation Association with funding through the Transportation Research Board's Transit

Cooperative Research Program (TCRP).⁵ This published model addresses the need for several types of public transportation and specifically for transportation services for seniors and people with disabilities. The model uses data and experience from 27 public transit agencies around the country known to provide a high level of service. We used that portion of the model that projects the need for ADA paratransit, with projections for both trips and operating costs.

Our review of the results of this model found that the ridership data for the 2010 base year, which was projected through the model’s calculations, is significantly overstated. We then estimate demand forecasts in a second way, using actual data for the base year for Virginia’s urban transit agencies and applying the growth factors from the model for the years 2020 and 2030.

Results from the model as modified are shown in Table 3-3.

Table 3-3: Projected ADA Trips and Operating Costs Based on the Modified Model

	Population (Census Reported and Projected)			Annual Trips, Measured as Unlinked Passenger Trips (NTD Data and Projected)			Estimated Annual Operating Cost (\$1,000s)		
	2010	2020	2030	2010	2020	2030	2010	2020	2030
Virginia									
Urbanized Areas	5,586,049	6,147,187	6,720,473	1,200,000	1,325,000	1,444,000	---	\$42,400	\$46,200

As shown in the table, the projections estimate ADA ridership for the urban transit agencies at approximately 1,325,000 in 2020 and 1,444,000 by 2030. Annual estimated operating costs are then projected at approximately \$42.4 million in 2020 and \$46.2 million in 2030.

⁵ Funding the Public Transportation Needs of an Aging Population, prepared for the American Public Transportation Association by D. Koffman et. al, Nelson/Nygaard, March 2010.

Chapter 4

Private Operators as Providers of ADA Paratransit

INTRODUCTION

This chapter provides background information on the current role of private operators including independent contractors in the provision of ADA paratransit and the costs for the service. Where available, national data is provided as well as data specific to Virginia. The terms *private operator* and *private provider* are used interchangeably.

ADA PARATRANSIT OPERATORS

As indicated previously, transit agencies that provide fixed route service are required to also provide ADA paratransit service, in accordance with the federal Americans with Disabilities Act (ADA). To provide the service, transit agencies use different approaches. Many operate the service themselves with transit agency employees – referred to as in-house service – and others use private transportation providers, including taxi companies.

National Data

Types of ADA Paratransit Providers

A 2014 research study conducted for the Federal Transit Administration (FTA) found that most commonly transit agencies operate ADA paratransit in-house.⁶ Of the 198 transit agencies responding to the study's survey, 50% operate ADA paratransit service themselves. The second most common approach, reported by 25% of transit agencies, is the use of one private transportation company to provide all the ADA paratransit service.

The remaining 25% of transit agencies use other approaches, all of which involve private providers in some manner. For example, some transit agencies handle the trip reservations and scheduling in-house and contract with a private provider to operate the service on the street. Others contract with two or more private transportation companies (e.g., in large cities with a large service area). Some agencies use a broker arrangement, using a private company to broker trips to various private operators.

A larger dataset is provided by the National Transit Database (NTD). According to 2013 data, which is the most recent data available, almost 10% of approximately 850 reporting urban transit agencies use taxis for their paratransit service.

⁶ Accessible Transit Services For All, prepared for the Federal Transit Administration, FTA Report No. 0081, by the Disability Rights Education & Defense Fund in association with The Collaborative, KFH Group, and TranSystems Corporation, December 2014.

Generally, transit agencies that use a private provider for ADA paratransit service contract for *dedicated* service, with the private provider operating accessible small buses and vans and sometimes sedans, using full- and part-time employees. Dedicated service means that the private provider operates only ADA paratransit during the time periods that the transit agency has specified in the contract document.

For dedicated ADA paratransit service, many transit agencies contract with one of the country's large national private transportation companies (e.g., First Transit, MV, and TransDev/formerly Veolia). There are also many smaller, more local private providers, including taxi companies, which operate ADA paratransit on a dedicated basis for transit agencies. When providing dedicated ADA paratransit service, taxi companies use their independent contractor drivers, though some may have direct employees to provide service, and some use both independent contractor drivers and employee drivers.

Transit agencies may also use a private provider to provide *non-dedicated* service to supplement the dedicated ADA paratransit service. Non-dedicated service means that the provider's drivers can intermingle the transit agency's ADA paratransit trips with other trips, for example, trips for the general public. Taxis are, by far, the typical providers of non-dedicated service.

Cost for ADA Paratransit Service

Transit agencies and those that fund public transportation including DRPT have concerns about the cost for ADA paratransit. On a cost per passenger trip basis, ADA paratransit is significantly more expensive than fixed route service. National data from 2013 shows that the average cost per trip for paratransit is \$34.06. For the largest 50 transit agencies in the country, the average cost per trip is 28% higher, at \$43.65. These costs can be compared to average cost per passenger trip on fixed route bus service at \$3.71.⁷

Why are ADA paratransit trips so costly? A key reason is that paratransit services carry very few riders each hour of service compared to fixed route service. On average, ADA paratransit service provides two passenger trips per hour, while the average for fixed route buses is 34.3 passenger trips per hour. And unlike a fixed route bus that can add passengers until there is no more room for standees, each new passenger trip on paratransit requires additional resources – to respond to the additional rider's origin and destination – and therefore cost.

Transit agencies use private operators for their ADA paratransit service for a number of reasons, but particularly because contracting for transit service is generally considered to bring cost savings. These savings result mainly from reduced labor expenses compared to direct, public agency operation.

There are other benefits cited in the transportation literature including, among others, flexibility to start new services and incorporate changes into a new transportation program; private contractors' assumption of supervisory and administrative burdens; flexibility to buy or lease

⁷ National Transit Database, 2013 Report Year.

additional vehicles quickly; and the collective experience and knowledge obtained by a larger contractor from multiple contracts that can be brought to a public agency.⁸

Use of Taxis as a Strategy for Cost-Efficient ADA Paratransit

Taxis are a subset of private operators of ADA paratransit, and public transit agencies have found that taxis can provide the service at a lower cost than more traditional private transportation companies.

A forthcoming 2015 research report on transit agencies' use of taxis conducted by the consultants assessed the role of taxis as providers of ADA paratransit and identified cost-efficiency as one of the two major benefits to transit agencies for using taxis.⁹ The second major benefit was the responsiveness of taxi service.

The 2015 study found that the average cost for ADA paratransit provided by taxis is \$23.29 per trip for non-dedicated taxi service (the taxis can intersperse general public trips with paratransit trips) and \$28.17 per trip for dedicated taxi service (the taxis provide only paratransit service during transit agency-defined hours). These trip costs can be compared to costs for paratransit provided by transit agencies. As reported above, the 2013 NTD shows an average cost of \$34.06 per trip; for the largest 50 transit agencies, the average cost is \$43.65 per trip.

The responsiveness of taxis derives from their ability to provide trips on a real-time, day-of-service basis, whereas more traditional private transportation companies provide service only on an advance scheduled basis. Taxis use real-time dispatching, and they can respond quickly to serve trips that the prescheduled vans cannot meet.

It is useful to identify the three ways that public transit agencies use taxis for ADA paratransit: First, transit agencies may contract with a taxi company to operate the paratransit service, which requires the taxi company to meet the requirements that convey with federal funding. This means the taxi company must sign a contract with agreement to comply with federal requirements, such as compliance with the federal Civil Rights statutes including Equal Employment Opportunity and ADA. It also requires compliance with drug and alcohol testing for safety sensitive employees. And it means the taxi company must meet the ADA service criteria, which includes, among other criteria, accepting trip reservations from riders the day before desired trips.

Second, transit agencies may have a contract agreement with a taxi company to use taxis to provide back-up service on the day-of-service. This also requires the taxi company to agree to comply with the federal requirements, including drug and alcohol testing. In the back-up or overflow capacity, the taxi company receives trips from the transit agency on an immediate response basis to serve trips that the transit agency's own drivers or the drivers of a private

⁸ TCRP Report 75: *The Role Of The Private-For-Hire Vehicle Industry In Public Transit*, by Gorman Gilbert, Thomas J. Cook, Anna Nalevanko And Lynn Everett-Lee, Transportation Research Board, Washington, D.C., 2002; *Contracting for Bus and Demand-Responsive Transit Services: A Survey of US Practice and Experience*, Special Report 258, prepared by the TRB Committee for a Study of Contracting Out Transit Services, Transportation Research Board, Washington, D.C., 2001; and TCRP Synthesis 31, *Paratransit Contracting and Service Delivery Methods*, by Rosalyn Simon, Transportation Research Board, Washington, D.C., 1998.

⁹ *Use of Taxis in Public Transportation for People with Disabilities and Older Adults*, prepared by KFH Group, Inc., for the Transit Cooperative Research Program, Transportation Research Board, Washington, D.C., forthcoming TCRP Synthesis 2015.

transportation company under contract cannot meet due to operational issues (e.g., a vehicle breakdown) or scheduling issues (e.g., the rider's medical appointment ran late and the prescheduled vehicle could not go back for the trip). This back-up capability is important because the ADA requires the transit agency to serve all requested trips to ensure compliance with the ADA prohibition of capacity constraints.

Third, transit agencies may use taxis to provide a service supplemental to the required ADA paratransit service with a same-day user-side subsidy program for its ADA certified riders. While this is not a common practice in the transit industry, it is used by transit agencies as a strategy to meet trips more cost-efficiently than by the required next-day service. Because the service is same-day, it exceeds the requirements of the ADA, and the ADA paratransit service criteria do not apply. Transit agencies can then set the subsidy at an amount significantly below the cost for next-day trips.

With such programs, the transit agency provides a subsidy to ADA riders in the form of a voucher or agency-issued swipe card if technology is used, the riders determine which taxi company to use, and they contact the taxi company to book their trips on the day of service. The federal drug and alcohol testing requirements also do not apply, as long as there is a choice among taxi companies. However, ADA regulations that require equivalent service for individuals with disabilities do apply. This means the transit agency must ensure there is service for the ADA riders who use wheelchairs and that the service level for those riders is equal to those who do not need accessible service.

Virginia Data

Types of ADA Paratransit Providers

Data for Virginia is similar to the national data regarding the types of ADA paratransit providers that are used. Of the 16 Virginia transit agencies that provide ADA paratransit service, based on the NTD, nine – somewhat more than half – provide the service in-house. The remaining seven use private providers. These seven include the Washington Metropolitan Area Transit Authority's (WMATA), which provides ADA paratransit in the Northern Virginia suburbs using three private companies as well as a taxi company to operate its ADA paratransit service.

Cost for ADA Paratransit Service

As identified in Chapter 3, the average cost per ADA paratransit passenger trip is \$28.68, with a range from \$19.61 to \$51.04 (2013 NTD data). Excluding the \$51.04 cost, which is the average for WMATA's ADA paratransit trips in the Washington metropolitan region, the range is \$19.61 to \$35.00. Virginia's average cost for ADA paratransit trips are 16% less than the national average: \$28.68 compared to \$34.06.

Three of the Virginia transit agencies (which include WMATA) use taxis to provide ADA paratransit service. Arlington County, for example, uses a private transportation company as well as a taxi provider, the latter serving only non-dedicated service to help meet overflow demand and providing cost savings over the dedicated service.

Chapter 5

Feasibility of Increasing the Use of Private Operators and Independent Contractors to Provide ADA Paratransit

INTRODUCTION

This chapter addresses the key question for the report: what is the feasibility of increasing the use of private operators and independent contractors including but not limited to TNCs to provide ADA paratransit in Virginia.

Private operators include a range of transportation providers, as discussed in Chapter 4. Given that private operators that are transportation companies with direct employees have a track record of providing ADA paratransit in Virginia, the feasibility of increasing their use for ADA paratransit is not in question. Transit agencies that want to contract out their transportation service to a private transportation company can do so as long as the outsourcing is permitted by the transportation funding sources and that the agencies ensure their contractor's compliance with regulations required by those transportation funding sources and, as appropriate, any other applicable regulations established by the state and/or local jurisdiction. For ADA paratransit, then, this assessment focuses on private operators that are independent contractors, specifically taxi drivers (and their taxi companies) and TNC drivers.

ADA PARATRANSIT

Taxi companies and their drivers are currently providers of ADA paratransit for several transit agencies in Virginia. Can their use as ADA paratransit providers be increased? The relevant issues are discussed below and are informed by research conducted for this study that included a review of available literature, a forthcoming 2015 federal research report written by the consultants on the use of taxis by transit agencies for ADA paratransit, as well as the consulting team's experience with the taxi industry.

Similar to the taxi industry, the TNC business model uses independent contractors to provide transportation. TNCs are not currently providers of ADA paratransit in Virginia (and to-date there are no known examples of TNCs providing ADA paratransit service elsewhere in the country). Given that the TNC service is similar to taxi service in its use of independent contractors to provide trips to the public, could the TNCs also be providers of ADA paratransit? The relevant issues are discussed below and are informed by research conducted for this study, including a review of relevant literature and primary research into several cities where TNCs have introduced or plan to introduce service for seniors and those with disabilities.

Increasing the Use of Taxis for ADA Paratransit

Compliance with FTA Requirements

Taxi companies that contract with transit agencies to operate ADA paratransit service must agree to comply with requirements that apply to all contracts when FTA funds are used (as discussed in Chapter 2). The FTA is the primary source of funds used for public transit capital expenses, operating costs, or both.¹⁰ Across the country, there are numerous taxi companies that have agreed to such federal requirements as part of their contract with transit agencies for ADA paratransit service, including taxi companies in Virginia under contract to provide the service.

A key issue for FTA funding of ADA paratransit provided by taxis is the requirement for drug and alcohol testing. As part of their agreement to comply with the federal requirements, taxi companies under contract with transit agencies to provide ADA paratransit service must have an FTA-compliant drug and alcohol testing policy and program. This must include pre-employment, random, post-accident, reasonable suspicion, and follow-up/return-to-duty testing for all safety sensitive employees. Drivers, including independent contractor drivers, are the majority focus of the testing.

There are two options that may facilitate taxi companies' compliance with the testing requirements and that could increase taxis' participation as ADA paratransit providers. First, a taxi company can partition a portion of its service to provide the transit agency contracted work. Taxi drivers who have volunteered to serve the ADA paratransit trips would be the only drivers participating in the required testing program. The taxi company, then, does not have to administer the testing program for all its drivers. Since taxi drivers are independent contractors, they cannot be directed by the taxi company management to participate. Partitioning off a portion of the drivers will reduce the testing requirements as well as the administrative and financial responsibility of the taxi company.

Second, the transit agency contracting for the service may be able to include the taxi drivers in its own agency testing program, assuming the transit agency has its own drug and alcohol testing program. This means that those taxi drivers who volunteer to serve the ADA paratransit trips will use the transit agency's testing program. And this also means that the taxi company does not have to implement, administer or pay for its own drug and alcohol testing program. This option benefits the taxi company and facilitates the inclusion of taxis as ADA paratransit operators, which in turn benefits the transit agency with the lower cost structure of taxi providers. This is the arrangement used for a large taxi company in Northern Virginia that provides ADA paratransit service for two transit agencies.

We note that the FTA drug and alcohol testing requirements apply if the taxis are providing service as a dedicated ADA paratransit provider (serving only transit agency riders during specified times) or a non-dedicated provider (intermingling transit agency riders with general public riders). The trigger for compliance is whether or not there is a choice of taxi companies for the riders to use. When the transit agency is scheduling the taxi trips for ADA paratransit service, there is no choice and the drug and alcohol testing requirement applies.

¹⁰ The companies agree to comply with the federal regulations by signing annual Certifications and Assurances, shown in Appendix D.

However, the FTA’s drug and alcohol testing requirements do not apply when the transit agency uses taxis for a user-side subsidy program. If a transit agency implements a same-day subsidy program to supplement its ADA paratransit and the eligible ADA riders choose the taxi company for their trips, then the taxi drivers do not have to meet the testing requirements. Same-day subsidy programs for ADA certified riders are discussed in more detail below.

Compliance with ADA Paratransit Service Criteria

Taxi companies that provide ADA paratransit must meet the ADA’s six service criteria, which were identified in Chapter 2. One of the criteria addresses timely service. This means that when a taxi driver is scheduled to perform an ADA paratransit trip, the taxi must arrive in a timely manner, within the schedule set by the transit agency.

Another criterion addresses the trip fare. The fare for the service is set by the transit agency, which can be no more than twice the agency’s fixed route fare. When providing the trip, the taxi driver accepts the fare payment set by the transit agency’s policy (which may be cash, a ticket, or a transit agency issued swipe card, if the transit agency and taxi company use technology). The taxi company later invoices the transit agency for the taxi trips according to the agreed-upon method (which may be based on the meter charge, a standard per trip rate, or a charge by zone).

A third criterion applies, unless the taxi company is only providing ADA paratransit trips on the day of service as “back-up” service. The ADA requires that trip reservations can be made up to the day before the ADA rider’s requested trip. A taxi company, then, must be able to accept trips the day before service.¹¹ While the company may not dispatch the trip until the day of service, the company needs a mechanism to accept advance reservation trips.

Safety and Service Standards

Insurance Insurance requirements for taxis in Virginia are set by the Commonwealth’s DMV, with a minimum liability insurance level of \$125,000.¹² Local jurisdictions, which regulate taxis in Virginia, may set higher limits. Arlington County, for example, requires \$100,000 (injury to one person)/\$300,000 (injury to two or more persons)/\$50,000 property damage through its taxi ordinance.

Arlington County uses one of its local taxi companies, as well as a private transportation company, to provide ADA paratransit service and accepts the county’s taxi insurance levels for the taxi company’s service. The county, however, requires a higher level for the private transportation company under contract for ADA paratransit. According to the county’s procurement document, that company must provide liability insurance of \$1 million.

¹¹ We note that the ADA regulations do not restrict a transit agency from providing ADA paratransit service on a same-day basis, however the very limited experience in the industry with same-day ADA paratransit service showed that it was a costly option creating excess demand. We know of no urban transit agency that provides ADA paratransit on a same-day basis as the primary service model. Research shows the most common practice allows for trip reservations up to seven days in advance (and no later than the day before, as required by regulation).

¹² See <https://www.dmv.virginia.gov/commercial/#mcs/programs/intrastate/taxicab.asp>

Requirements for liability insurance for ADA paratransit are typically set by the transit agency that is contracting for service. Insurance is often set at a level of at least \$5 million and sometimes more. Loudoun County, for example, requires its private ADA provider to have \$10 million in liability insurance, plus a \$5 million umbrella policy, or a total of \$15 million in liability insurance. It is unlikely that a taxi company would be willing to meet insurance requirements at that level.

Transit agencies that use taxis as an ADA paratransit provider need to decide if the insurance requirements established by the local jurisdiction that regulates the taxis are sufficient. If not, higher limits can be established. If the limits are higher than what the taxi company can provide for its entire company, it can partition its transit agency-provided service, in a similar way as described above for meeting FTA's drug and alcohol testing requirements. In this way, the company could obtain the higher insurance level required by the transit agency only for that part of its company providing the ADA paratransit service. In some cases, though, a transit agency's insurance requirements may be too high for a taxi company, and it would not be able to compete for the transit agency business.

When a taxi company participates in a user-side subsidy program provided by a transit agency, the transit agency may set insurance requirements or possibly accept the requirements set by the regulating jurisdiction.

Public Regulation Taxis must meet certain requirements set by the Commonwealth but they are primarily regulated by local jurisdictions: Virginia requires that taxis comply with “the ordinances of all cities and counties in which [the taxis] operate.”¹³

State requirements include, among others, markings on the vehicle that clearly show the vehicle is a taxicab as well as the use of For Hire Taxi license plates. The state also requires a minimum liability insurance level, as identified above.

Local regulations may establish a limit on the number of taxis permitted to operate, with the local jurisdiction issuing permits for taxis or certificates to taxi companies. Limits on the number of allowed taxis are referred to as entry controls in the taxi industry.

We note that such entry controls – which have historical roots from the country's Depression years when too many taxi drivers competing for business led to chaos in many cities¹⁴ – have been cited among the reasons for the rise of TNCs, which do not face similar entry controls. Because of entry controls on taxis, the taxi companies could not increase their fleets to meet rising demand from the public, which left an opening for TNCs to enter the market.

To increase the use of taxis for operating ADA paratransit, policy makers in local jurisdictions might look to entry controls and consider whether such controls should be reassessed, ensuring there are an adequate number of taxis to serve the general public as well as take on possible business from the local transit agency.

¹³ Requirements are provided on the DMV website at <https://www.dmv.virginia.gov/commercial/#mcs/programs/intrastate/taxicab.asp>.

¹⁴ Gilbert, G. and R. Samuels, *The Taxicab: An Urban Transportation Survivor*, The University of North Carolina Press, Chapel Hill and London, 1982.

Policy makers might also consider methods to increase the number of accessible taxis. This can be done through incentives (e.g., issuing new taxi permits only for accessible taxis) or through regulation (e.g., require taxi companies of a certain size to ensure a defined percent of their fleet is accessible). This can also be facilitated by helping taxi companies' acquire accessible taxi vehicles.

A transit agency might lease accessible minivans to a local taxi company for a nominal fee or could donate retired accessible paratransit vans, still in good condition, to the taxi company. Virginia's DRPT has used federal grant funds through the FTA Section 5310 program to subsidize the acquisition of accessible taxis for a taxi company in the Norfolk area, ensuring the availability of accessible taxi service for individuals who use wheelchairs.

A taxi company that operates accessible taxis has greater capacity to provide ADA paratransit service for a transit agency and must have accessible vehicles to be a viable competitor to operate ADA paratransit service as a dedicated provider.

Driver Background Checks Depending on the local ordinance, taxi drivers in Virginia may be required to have a fingerprint-based criminal history record check as well as a driving record check. Arlington County's ordinance, for example, stipulates that an applicant for a taxi driver position must permit the county to make a record of the applicant's fingerprints, which the county forwards through the state's Central Records Exchange to the FBI to obtain criminal record information. Such a requirement is permitted through the Virginia Code in Section 15.2-1503.1.

Arlington County additionally requires a review of a ten-year traffic record (excluding parking citations) as well as a review to ensure the applicant has not been convicted, pled guilty or pled nolo contendere (pled no contest) to a list of violations, including, among others, any sex offense, theft, assault, disorderly conduct, driving under the influence, or reckless driving.

Driver Training Virginia's regulations for taxis do not include requirements for taxi driver training. Ordinances established by local jurisdictions may include a test of some type, such as Arlington County's ordinance discussed below, and that would require some level of driver training by the taxi company.

Arlington County's taxi ordinance requires, first, that applicants for taxi driving must pass a written test with questions about the laws, rules and regulations for taxis in the county. The test also examines knowledge of the county's street system and locations of important buildings and landmarks in the county.

Arlington County's ordinance further includes a requirement regarding the operation of a wheelchair-accessible taxi vehicle. Accordingly, before placing an accessible taxi vehicle into service, the taxi company must show to the county evidence that the driver of that vehicle has successfully completed training in use of the wheelchair lift. This would include training on use of the ramp if the vehicle has a ramp rather than a lift as well as training on the other accessibility equipment (i.e., the wheelchair securement system).

Beyond requirements of a local ordinance, taxi companies may require some amount of driver training before placing a driver into service, particularly when the driver is leasing a vehicle from

the taxi company. For example, one of the larger taxi companies in Arlington County has its own formal training requirements, with length of initial training up to three days, dependent on the driver's prior driving experience. This company, which provides ADA paratransit service for two transit agencies, also requires each of its drivers who have agreed to participate in the transit agency service to take sensitivity training. This training provides instruction on best practices for providing transportation for seniors and people with disabilities.

Generally, if a taxi company is under contract to a transit agency to provide ADA paratransit service, the taxi company will have to meet the training requirements established by the agency, beyond any requirements that might be included in a local ordinance or set by the taxi company itself.

Taxi driver training has been identified in several recent studies as an issue, among others, that affect taxi service for transit agencies.¹⁵ Two of the studies indicated that taxi driver training was not adequate and the third underlined the importance of driver training for transit agency work. This suggests that driver training is an area that would benefit from additional attention and effort if taxis are to increase their role in providing of ADA paratransit service.

Vehicle Inspections Inspection of taxi vehicles is regulated by the local jurisdiction. Arlington County, as one example, requires its taxis to undergo the annual state inspection and may require an additional county inspection.

When taxi companies are under contract to provide ADA paratransit for a transit agency, the agency may require more frequent inspections than set by ordinance of the local jurisdiction.

Supplemental Same-Day User-Side Subsidy Program for ADA Riders

Some transit agencies, outside Virginia, offer a supplemental same-day user-side subsidy program for their ADA riders as a strategy to provide trips more cost-efficiently than by the next-day service. Such supplemental service, typically provided by taxis, exceeds what the ADA requires for ADA paratransit, so the transit agency has more latitude in providing the service.

While it does not appear that any of the Virginia transit agencies provide a same-day subsidy programs to help meet ADA paratransit demand, such programs are credited with cost-savings by agencies that provide them. As one example, the transit agency in Denver, one of the first transit agencies in the country to offer a same-day taxi subsidy program, claims significant cost-savings for its ADA paratransit service with its "Access-a-Cab" program. Riders who are ADA eligible can choose to take same-day trips, instead of next-day ADA paratransit trips, on one of three

¹⁵ *TCRP Report 121, Toolkit for Integrating Non-Dedicated Vehicles in Paratransit Service*, by Nelson/Nygaard Consulting Associates in association with TWJ Consulting and RLS and Associates, Transportation Research Board, National Research Council, Washington, D.C., 2007; *A Survey on the Use of Taxis in Paratransit Programs*, by Westat- J. Burkhardt, J. Doherty, J.M. Rubino and J. Yum, Easter Seals Project ACTION, Washington, D.C., 2009; and *Use of Taxis in Public Transportation for People with Disabilities and Older Adults*, prepared by KFH Group, Inc., for the Transit Cooperative Research Program, Transportation Research Board, Washington, D.C., forthcoming TCRP Synthesis 2015.

participating taxi companies. Riders pay the first \$2 on the taximeter, the transit agency subsidizes the next \$12, and the rider is responsible for any cost over \$14 on the meter. This means that the transit agency pay \$12 for each trip on the same-day subsidy program, whereas a trip on the next-day ADA paratransit program costs \$57, more than four times the cost of the same-day taxi trip.

When the same-day user-side subsidy program involves a choice of taxi companies for the ADA certified riders, the FTA funding requirements do not apply regarding drug and alcohol testing. However, the ADA requirements on equivalency do apply, which means that the transit agency sponsor must ensure accessible service for the eligible riders who need such service and with the same service level as provided to riders who do not need accessible service.

Benefits and Costs

Transit agency data, as well as several research reports, show that ADA paratransit service provided by taxis is a cost-efficient option. Data for a Virginia transit agency that uses a taxi company for non-dedicated service shows the cost per trip is \$23.21, which is 35% less than the cost of the agency's dedicated ADA paratransit service.¹⁶

A federally-supported forthcoming 2015 report, written principally by the author of this study, found that the average cost for ADA paratransit provided by taxis ranges from \$23.29 to \$28.17 per trip, which can be compared to costs for paratransit provided by transit agencies. For example, national transit agency data for 2013 shows an average cost of \$34.06 per trip and for the largest 50 transit agencies, the average cost is \$43.65 per trip.¹⁷

In addition to cost-efficiency, transit agencies cited the responsiveness of taxis as a benefit. As discussed in Chapter 4, taxis use real-time dispatching and can respond to trip requests on an immediate response basis, assisting the transit agency in meeting the ADA trips that were scheduled the day before.

While there are advantages to the use of taxis in the provision of ADA paratransit service, transit agencies have cited challenges. Efforts needed to monitor, verify, and audit taxi trips are cited in the 2015 study referenced above as the major challenge by transit agencies in their use of taxis.¹⁸ Increasingly, transit agencies are looking to technology to address that function, so that riders use a transit agency-issued swipe card to pay for trips with in-vehicle equipment and associated software that automate the trip payment and reconciliation process.

The second most frequently cited challenge in the 2015 study was the lack of enough accessible vehicles and service. There are options to increase the number of accessible taxi vehicles, as discussed above. But ensuring the provision of accessible service is another matter. Since the drivers are independent contractors and cannot be directed to provide specific trips, incentives are important to encourage drivers to serve the accessible trips. The Arlington County transit agency, for example, provides a \$5 incentive to the driver for each accessible trip provided for its ADA paratransit service and another \$5 to the driver if the rider requires assistance door-to-door.

¹⁶ Cost data from National Transit Database, Report Year 2013.

¹⁷ *Use of Taxis in Public Transportation for People with Disabilities and Older Adults*, forthcoming TCRP Synthesis 2015.

¹⁸ *Use of Taxis in Public Transportation for People with Disabilities and Older Adults*, forthcoming TCRP Synthesis 2015.

Taxi companies also frequently provide their own incentives to encourage drivers to drive the accessible vehicles. Discounting the weekly lease fee for the taxi drivers to use the accessible vehicles is a common incentive that is provided by taxi companies to encourage their drivers to provide the accessible service.

It is also important to point out the extra costs associated with acquiring and maintaining accessible vehicles. Costs to a taxi company to purchase and maintain accessible taxi vehicles are significantly greater than for taxi sedans.

The purchase price of an accessible taxi can be twice the cost of a typical taxi sedan. According to a 2010 report, the capital costs for an accessible taxi, normally a ramp-equipped mini-van with accessibility equipment, can cost up to \$49,000 when new.¹⁹ Costs have undoubtedly increased over the past five years since the report's publication.

There are several additional issues to bear in mind with efforts to ensure accessible taxi service, particularly in light of interest in the feasibility of using TNCs to provide ADA paratransit service. The first is that the rise of TNCs has decreased the number of taxi drivers in many cities and, where a city has accessible taxi service, this decrease may impact the availability of accessible taxi service. San Francisco, for example, has seen a direct correlation between the rise of TNCs and the loss of accessible taxi service. The reported loss of one-third of its taxi drivers because of the TNCs has taken a particular toll on accessible taxi service. Of the 100 accessible taxis in the city, more than one-fourth are parked in lots for lack of a driver. This loss impacts not just San Francisco's transit agency that relies on accessible taxis to help meet its ADA paratransit demand, but also on general public taxi riders who use wheelchairs.²⁰

Second, some disability advocates and taxi company representatives have expressed concern that Uber is relying on accessible taxis to meet trip requests for riders who use wheelchairs rather than providing the service itself. According to disability advocates in New York City, where Uber uses accessible taxis to serve trips for riders who use wheelchairs: "Uber is using the taxi industry to serve wheelchair users, even as it threatens to overthrow the taxi industry altogether."²¹ And in Washington, D.C., Uber's efforts to capitalize on the city's accessible taxis have not found favor with the taxi companies that operate and subsidize wheelchair accessible service. According to one of the taxi companies operating and subsidizing accessible service, there should be focus on "why Uber is not providing wheelchair-accessible services as part of their product offering," as the "D.C. taxicab industry is doing its part [to provide accessible service]."²²

¹⁹ *Assessing the Full Cost of Implementing an Accessible Taxicab Program*, Taxicab, prepared for the Limousine & Paratransit Foundation, under the direction of R. Mundy, PhD., et al., Center for Transportation Studies, University of Missouri-Saint Louis, 2010.

²⁰ Use of Taxis in Public Transportation for People with Disabilities and Older Adults, forthcoming TCRP Synthesis 2015.

²¹ Uber's Business Isn't Built To Help Disabled People, by I. Lapowsky, Business, Wired 8-14-15, accessed at <http://www.wired.com/2015/uber-disability>

²² Uber Does Not Serve Disabled People, Say D.C. Advocates, by Martin DiCaro, WAMU News, August 17, 2015, accessed at https://wamu.org/news/15/08/17/uber_does_not_serve_disabled_people_say_dc_advocates

Use of TNCs for ADA Paratransit

Compliance with FTA Funding and ADA Paratransit Service Standards

Under the current TNC business model and based on available information about TNC service, it would appear to be very difficult for a TNC to enter into a contract with a transit agency, to meet the requirements that convey with FTA funding to operate a transit agency's ADA paratransit service, and to operate the service in compliance with the ADA. Among other requirements, a transit agency contractor must commit to complying with the federal requirements by signing the Certifications and Assurances. The FTA requirements include, as described in Chapter 2, compliance with federal Civil Rights statutes that explicitly include EEO, Title VI and ADA. They also require pre-employment, random, post-accident, reasonable suspicion, and follow-up/return-to-duty drug and alcohol testing for all safety sensitive employees, which particularly focuses on drivers.

Particularly regarding ADA compliance, the TNCs have stated that they are technology companies, not transportation companies, and Uber, for one, is on record as stating that the ADA does not apply because it is not a transportation company. At the time of writing this report, this issue of whether ADA applies to Uber is being litigated in a federal court in California.²³ The U.S. Department of Justice has issued a "statement of interest" in the case, which supports the notion that ADA does apply.²⁴

Compliance with the ADA is a foundational criterion for providing ADA paratransit service. Compliance requires, among other mandates, that there be adequate accessible vehicles to ensure that riders with disabilities including those who use wheelchairs and need an accessible vehicle receive the same level of service as those who do not need an accessible vehicle.

Compliance with ADA paratransit regulations also requires the private operator to meet ADA paratransit's six service criteria. These include the ability to take trip reservations up to the day before a desired trip. With the current business model, TNCs accept trips only on an immediate response basis.

Fare payment is another issue for ADA paratransit and TNCs. Transit agencies often have several payment mechanisms for ADA paratransit trips such as cash, a paper ticket and at some agencies a swipe card system as well as a pre-paid account in the rider's name. With the current business model, TNCs accept payment only via the rider's credit or debit card. Moreover, Virginia's regulations for TNCs explicitly state that "All fares collected for transportation passengers must be collected electronically through the digital platform. A TNC may not authorize the collection of fares in any other manner such as payment from a passenger to a TNC partner."²⁵

²³ The National Federation of the Blind in California and individuals who are blind and use guide dogs have sued Uber, with allegations that the company discriminates against blind riders with guide dogs.

²⁴ http://www.ada.gov/briefs/uber_soi.pdf

²⁵ Virginia Transportation Network Company Manual, Virginia Department of Motor Vehicles, accessed at <https://www.dmv.virginia.gov/webdoc/pdf/dmv277.pdf>

TNC Efforts to Provide Accessible Service

Both Uber and Lyft provide information to their drivers that they are expected to serve people with disabilities, including people who use wheelchairs that can be folded up and placed in a non-accessible vehicle. However, there are also people who use mobility aids who require an accessible vehicle. These include people who use electric wheelchairs and scooters, and there are some people who use manual wheelchairs and cannot transfer to a sedan seat, so they, too, require an accessible vehicle.

We note that Uber has introduced wheelchair accessible service in a small number of selected cities, such as Chicago, Philadelphia, and New York City. This service, called UberWAV (WAV for wheelchair accessible vehicle), is one of the options that a rider can select when using the Uber application (“app”) on a smartphone. Uber does not provide this service as ADA paratransit but as one of its offerings of transportation service that is available to Uber users in those cities.

In these cities, however, the accessible service is not provided by Uber drivers. In Chicago and New York, for example, the service is provided by accessible taxi drivers. In Chicago, a request for UberWAV is sent through the city’s centralized accessible taxi dispatch service, a service that all 160+ accessible taxis in the city must use. (Chicago has mandated that taxi companies with at least 20 medallions must ensure that at least 5% of their fleet is accessible and that they must accept trips through the centralized dispatch service.)

In Chicago, then, it could be said that Uber is taking advantage of the city’s efforts over more than ten years to ensure accessible taxi service to its residents – through mandates on taxi companies to provide accessible taxis and the funding of a centralized dispatch service for accessible taxis – at the same time that the company is hurting the city’s taxi industry with its lower cost on-demand transportation service.

It is also noted that the Uber service in Chicago for people with disabilities who use wheelchairs is not the same as for those who do not. Uber users who need accessible service pay a standard taxi fare for the accessible taxi trip. Taxi fares are generally somewhat higher than Uber fares (except when the TNC uses its “surge pricing” and fares increase). Riders who use wheelchairs pay a higher price for their trips.

The City of Portland, Oregon, provides another example of Uber providing accessible service. To meet strict requirements to serve riders who use wheelchairs for a pilot test period during 2015 in Portland, Uber has contracted with First Transit, one of the country’s large private transportation companies, so it could meet Portland’s requirements. It realized that its business model, relying on private individuals using their private cars, could not meet the performance standards required for the pilot. This means that trips for wheelchair users requested through the Uber app have been provided by First Transit employees using First Transit accessible vehicles. Such an arrangement would not appear to be sustainable given the TNC’s current business model.

As of the writing of this report, Portland is assessing the results of the pilot and will implement more permanent regulations for the TNCs. Recommendations for these regulations have been prepared, which treat TNCs and taxis similarly as private for hire transportation companies. Among other recommendations, TNCs would be required to provide wheelchair accessible vehicle

service 24/7, either through use of their own vehicles or by contracting for the service.²⁶ (Portland already has requirements for taxi companies to provide accessible service.)

Same-Day User-Side Subsidy Program for ADA Riders

As discussed above, some transit agencies provide a supplemental same-day user-side subsidy program for their ADA riders as a strategy to provide trips more cost-efficiently than by the required next-day service. Since a same-day program exceeds what the ADA requires for ADA paratransit, the transit agency has more latitude in providing the service. The service, however, must meet the ADA's equivalency standards.

As discussed above, taxis are typical operators of same-day subsidy programs. TNCs could possibly be considered as operators as well. TNC drivers, like taxi drivers, are independent contractors.

To use TNCs, the transit agency would have to ensure that the program does not discriminate against people with disabilities including those who use wheelchairs and that the service is equivalent for individuals with and without disabilities. Current regulations for TNCs in Virginia do not require the TNCs to provide any wheelchair accessible service.

Virginia's current TNC regulations address accessible service under a requirement that TNCs must have and enforce a policy of nondiscrimination. Starting in July 2016, a TNC is required to give individuals the option to indicate if they need an accessible vehicle, however the TNC is under no obligation to provide the service. According to the regulations, "If the TNC cannot arrange wheelchair-accessible service in a TNC partner vehicle, it must direct the passenger to an alternative provider of wheelchair-accessible service, if available."²⁷ This procedure is not adequate to meet the federal equivalency requirements.

Virginia's regulations for TNCs do address the issue that TNCs may impact the availability of accessible service in communities, as has been the experience in San Francisco and described above. Accordingly, the DMV is to periodically consult with local government officials to see if the TNCs have had an effect on the availability of accessible services and, if so, the DMV is to work with appropriate stakeholders to develop recommendations.²⁸

Virginia's legislation for TNCs requires the DMV to submit a report on TNCs by December 1, 2016 that will address several issues, such as enforcement activities and insurance issues. While not specified in the legislation, this report is also anticipated to address issues related to the need for accessible service.

If a transit agency was interested in having TNCs participate in a same-day user-side subsidy program for its ADA riders, the transit agency would have to ensure accessible vehicles and service through another source, assuming the TNCs do not have such service. This might be done, for example, by contracting with a company to provide wheelchair accessible service. More than

²⁶ <http://www.portlandoregon.gov/transportation/article/542148>

²⁷ Transportation Network Companies, Nondiscrimination Policy, at <http://www.dmv.state.va.us/commercial/#tnc/intro.asp>

²⁸ Virginia legislation authorizing TNCs, accessed at <http://lis.virginia.gov/cgi-bin/legp604.exe?151+ful+CHAP0002>

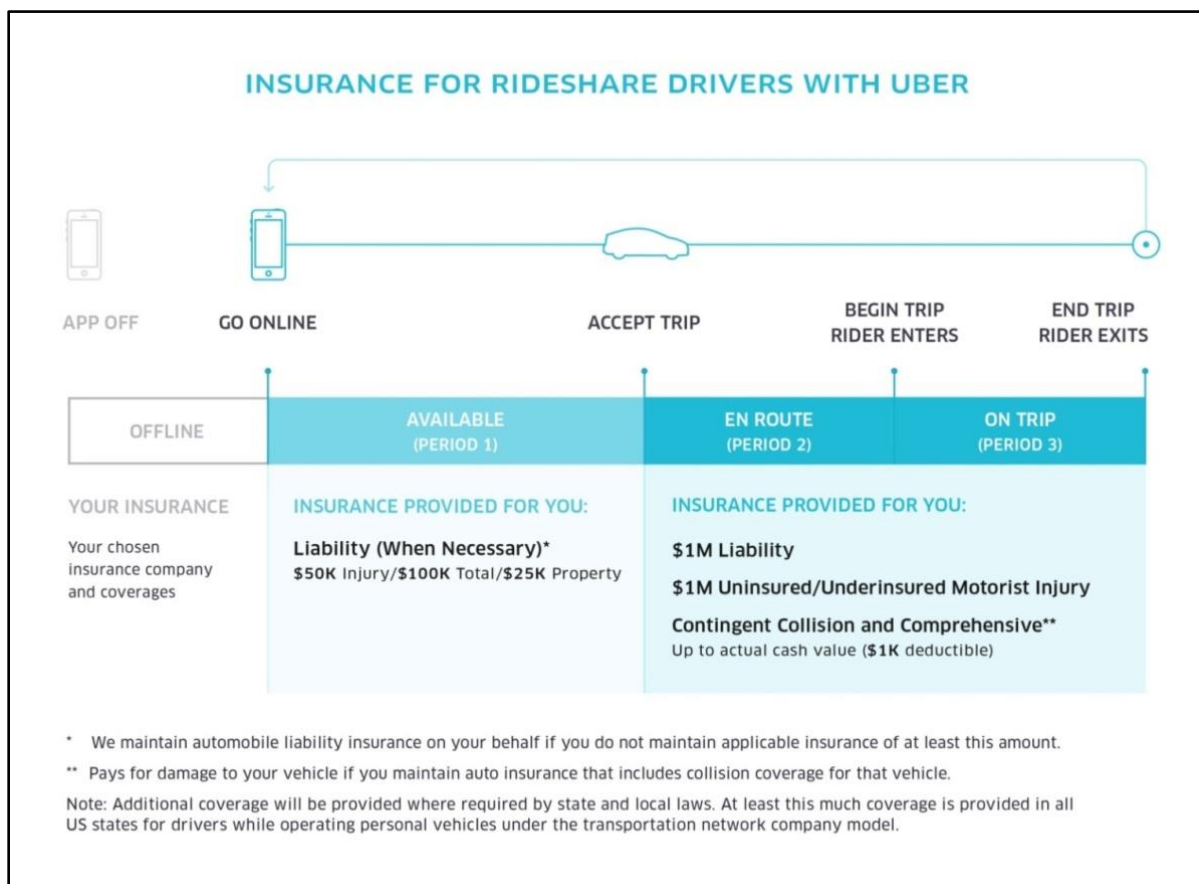
accessible vehicles, however, the supplemental same-day service must be equivalent in all aspects of service. This means, for example, that fares must be equivalent and response times equivalent for persons without and with disabilities including those who need an accessible vehicle.

Safety and Service Standards

Insurance Virginia’s insurance requirements for TNCs are set out in state regulations, with insurance required during all three time periods of TNC service. This includes: (1) When the driver has the app open and is available for a ride request; (2) When the driver has accepted a request and is traveling to the pick-up; and (3) When the passenger is on board and until the end of the trip or the driver completes the transaction, whichever is later. During time periods 2 and 3, the regulations specify \$1 million of liability insurance that must be primary as well as uninsured and underinsured motorist (UM/UIM) coverage of \$1 million.

Insurance level requirements are lower during period 1 and will change at the start of the new year. Currently, the requirements include: liability coverage, which is secondary, of \$125,000/person; \$250,000/incident, and \$50,000/property damage. After January 1, 2016, the requirements include: liability coverage of \$50,000/person; \$100,000/incident; and \$25,000/property damage which must be primary. Uber’s insurance for its UberX service, where drivers use their own personal cars, is shown in Figure 5-1.

Figure 5-1: Uber’s Insurance for UberX Service
(Excerpt from <http://newsroom.uber.com/2014/02/insurance-for-uberx-with-ridesharing/>)



Insurance coverage during period 1 was an issue of concern during early TNC experience in other communities when the TNCs did not provide insurance and this is addressed with Virginia's TNC regulations which include requirements for coverage.

According to some reports, there remain issues with TNC insurance. For example, there is no TNC-provided coverage for collision or comprehensive insurance during period 1. Consequently, it is unclear whether a driver's personal auto policy would cover claims in this situation. Additionally, it is unclear which TNC, if any, is responsible to cover liability during period 1 when an accident occurs and the driver has multiple TNC apps open.

It is noted, however, that the TNC insurance provides for greater coverage than the minimum required taxi companies during the second and third periods of TNC use. However, taxi companies may have to provide higher limits than set by the state to meet requirements of their local jurisdiction. And a taxi company may have to go beyond the local jurisdiction's insurance requirements to meet levels set by a transit agency, if the company is under contract for ADA paratransit service.

Public Regulation In Virginia, TNCs are regulated by the state. These regulations, then, apply to TNC service throughout the Commonwealth and in every community, so there are no differences among communities (with the exception that the regulations allow certain named localities to charge additional license fees for TNCs). This is different from taxis, which are primarily regulated by local jurisdictions, so there are variations across communities.

Driver Background Checks Driver background checks have been one of several contentious issues with the rise of TNCs, and it is an issue that continues to receive attention in a number of cities where TNCs are active. A key issue concerns whether fingerprint-based criminal history record checks should be required as part of the overall driver background check process.

Generally, taxi drivers are subject to fingerprint background checks. Such checks are considered by many to be more reliable than background checks that are based on a person's name and other identifying information such as social security number and driver's license. Fingerprints, referred to as a biometric identifier, are unique to an individual and thus cannot be stolen or falsified. This is not the case for names and other identifying information.²⁹

For TNCs in Virginia, the initial recommendation for TNC driver record checks, as reported in Virginia's DMV study on TNCs, was a two-tiered background check system, "whereby a vendor could be utilized to perform the criminal history record check unless the TNC did not meet the prospective TNC partner [driver] in person. In those cases, a fingerprint-based criminal history record check performed by a law enforcement agency was required, the results of which would be reviewed by the TNC."³⁰

According to the DMV report, based on discussions with the Virginia State Police, "it was determined that federal law prohibits the results of a Central Criminal Records Exchange (CCRE) background check from being released to a private organization such as a Transportation

²⁹ <https://www.fbi.gov/about-us/cjis/cc/library/national-fingerprint-based-background-checks-steps-for-success>

³⁰ Transportation Network Companies in Virginia – 2014 Report, prepared by the Virginia Department of Motor Vehicles, December 2014, email from J. Smoot, DMV, to the study's stakeholders, dated November 20, 2014.

Network Company. Based on this information, we have decided to eliminate the two-tier background check system and will instead require TNCs to obtain and review a national criminal history record check before authorizing an individual to act as a TNC partner.”³¹ This approach, which does not involve fingerprint-based checks, is favored by TNCs.

Rather than fingerprints, the TNC method uses the driver applicant’s name and other identifying information such as driver license number and social security number to conduct the criminal background check. Uber states that its driver applicants are “screened through a process that includes county, federal, and multi-state criminal background checks. Uber also reviews drivers’ motor vehicle records throughout their time driving with Uber”³²

It has been reported that one reason the TNCs favor their background check process is that it can be completed faster than background checks that involve fingerprints. And that with an objective of getting drivers on the road quickly, their process has advantages.³³

Discussions with DMV and Virginia State Police personnel involved with the DMV study, conducted as part of the research supporting this report, indicated that there are advantages and disadvantages with both approaches to driver background checks.

The requirements for TNC driver background checks are now settled in Virginia, with the Commonwealth’s adoption of regulations for the new transportation service in February 2015. These regulations utilize name-based record checks. This method accommodates the finding that federal law prohibits the results of a Central Criminal Records Exchange (CCRE) background check from being released to a private organization such as a TNC. However, it might also be argued that fingerprint-based record checks provide greater validity and, consequently, greater passenger safety and lower potential liability. This is important when considering the potential use of TNC drivers to provide trips for ADA paratransit riders. Some of these individuals are more vulnerable than general public riders, particularly those with intellectual disabilities.

Driver Training Virginia’s TNC regulations do not address driver training. This responsibility is left to the individual companies. Primarily, training is provided through online videos. Uber’s videos, for example, address driving safety, among other topics, as well as accommodating riders with disabilities. This latter video segment offers guidance and advice for serving riders with disabilities including those who use wheelchairs and older adults. The video points out that many riders with disabilities can use a standard vehicle with assistance. For example, some wheelchairs can be folded and will fit into the trunk of a car. The video shows how to fold up a manual wheelchair.

Uber has also begun providing hands-on training in selected cities to drivers who are interested, and those drivers then provide what the TNC calls UberASSIST. This service is designed for “additional assistance for members of the senior and disability communities. Drivers are specifically trained to assist riders into the vehicles and can accommodate folding wheelchairs, walkers, and scooters.” To clarify the service, Uber states that “UberASSIST vehicles do not have accessible ramps.”³⁴

³¹ Transportation Network Companies in Virginia - 2014 Report, by the DMV.

³² Uber – Safety: Background Checks, accessed at <https://www.uber.com/safety>.

³³ <http://www.bizjournals.com/stlouis/print-edition/2015/07/24/road-rage-the-fight-between-taxis-and-uber-has.html>

³⁴ <http://newsroom.uber.com/houston/2014/09/uberassist-expanding-transportation-options-2/>

The training is provided by a disability organization based in Chicago, through an arrangement with Uber. The organization has provided training in a selected number of cities thus far.

Vehicle Inspections TNC vehicles must undergo an annual Virginia state safety inspection, even if the vehicle is not registered in Virginia. The inspections cover such vehicle components as brakes, headlights and tires and help to ensure that vehicles meet safety standards.

Costs and Benefits

Without any current TNC-provided ADA paratransit service (in Virginia or elsewhere), costs are not known. However, generally costs for TNC trips, when provided by private individuals driving their own cars, are somewhat less than taxi service, except when the TNCs' trip charges increase through what Uber calls surge pricing. In such cases, the TNCs use a multiplier of the standard rate. Similarly to taxis, trip charges have a time and mileage component.

While there are no known cases of TNCs providing ADA paratransit service, there are many individuals in cities where TNCs operate who like and use the service, including people with disabilities. While reports often focus on Millennials, who are a prominent TNC user group, there are also people with disabilities of various ages who now use TNCs for transportation. These new transportation resources have provided these individuals with another transportation option.

But the benefits that may come with TNC use do not apply to all those with disabilities. Service for people with disabilities who use a wheelchair and need an accessible vehicle is generally not available. There is some service in a very limited number of cities, where the service is actually provided not by TNCs, but by accessible taxis or other private companies.

It should also be recognized that TNC service for those individuals with disabilities who do not own a smartphone or do not have a credit or debit card is generally not an option. Research shows that only 27% of those age 65 and older have a smartphone.³⁵ Regarding credit or debit cards, research conducted by the Federal Deposit Insurance Corporation (FDIC) has found that almost 8% of households in the country (which computes to one in 13 households) are “unbanked,” meaning they do not have a bank account.³⁶ Some proportion of these population groups could be expected to have disabilities and thus not able to use TNCs.

Despite the lack of TNC access to all those with disabilities, some people with disabilities as well as some disability advocates believe that it's more important to look forward and urge the TNCs to help solve transportation for people with disabilities, which specifically includes the provision of wheelchair accessible service.³⁷

³⁵US Smartphone Use in 2015, Pew Research Center, April 2015, accessed at <http://www.pewinterest.org/2015/04/01/us-smartphone-use-in-2015/>

³⁶ 2013 FDIC National Survey of Unbanked and Underbanked Households, accessed at <https://www.fdic.gov/householdsurvey/>

³⁷ Open Doors Organization, June 2014 Newsletter, comments by E. Lipp, Executive Director, accessed at <http://us2.campaign-archive1.com/?u=2933aa8bcc33808e379b50bca&id=e62fc5b2ba>

CONCLUDING ANALYSIS

ADA Paratransit

ADA paratransit is a federal Civil Rights mandate requiring all public transit agencies that provide fixed route service to also provide a complementary paratransit service for individuals with disabilities who cannot use fixed route due to their disability. The service has benefitted many people with disabilities, however it is an expensive service for public transit agencies to provide.

Transit agencies have used taxi companies, with their independent contractor drivers, for ADA paratransit service for many years. TNCs also use independent contractor drivers.

Current Use of Taxis

National data indicate that almost 10% of urban transit agencies in the country use taxi companies and their independent contractor drivers to help meet the ADA paratransit mandate. This includes two transit agencies in Virginia as well as the Washington Metropolitan Area Transit Authority (WMATA) that provides ADA paratransit in Northern Virginia. Research shows that transit agencies use taxis primarily to take advantage of their lower cost structure compared to operating the service in-house or using private transportation companies with direct employees. Data show that trips provided by taxis range from \$23.29 to \$28.17, compared to transit agency costs that average \$34.06 per trip and \$43.65 for the country's 50 largest transit agencies.

Transit Agencies Use Taxis in Three Ways

When considering the use of taxis as well as other independent contractors for ADA paratransit, it's important to distinguish the three ways that transit agencies now use taxis, as described in Chapter 4.

First, transit agencies may contract with a taxi company to operate the paratransit service, which requires the taxi company to meet the requirements that convey with federal funding. This means the taxi company must sign a contract with agreement to meet the federal requirements including compliance with drug and alcohol testing for safety sensitive employees, particularly drivers. And, it means the taxi company must meet the ADA service criteria, which includes, among others, accepting trip reservations from riders the day before desired trips.

Second, transit agencies may use taxis to provide back-up service on the day-of-service. In this way, the transit agency sends trips to the taxi company on an immediate response basis to provide trips that the transit agency's own drivers, or the drivers of a private transportation company under contract, cannot meet due to operational or scheduling issues. This back-up capability is important because the ADA requires the transit agency to serve all requested trips through the ADA prohibition of capacity constraints. For this second use of taxis, the taxi company must also agree to comply with the federal requirements, which include compliance with drug and alcohol testing.

Third, transit agencies may use taxis to provide a service supplemental to the required ADA paratransit service with a same-day user-side subsidy program for ADA certified riders. Because

the service is same-day, it exceeds the requirements of the ADA, and the ADA paratransit service criteria do not apply. Transit agencies can then set the subsidy at an amount significantly below the cost for next-day trips. While user-side subsidy programs for ADA riders are not a common practice of transit agencies, those that have such a program find it a strategy to meet trips of ADA riders more cost-efficiently.

With a user-side subsidy program, the transit agency provides a subsidy to ADA riders in the form of a voucher or agency-issued swipe card, the riders determine which taxi company to use, and they contact the taxi company to book their trips on the day of service. The federal drug and alcohol testing requirements also do not apply, as long as there is a choice among taxi companies. However, ADA regulations that require equivalent service for individuals with disabilities do apply. This means the transit agency must ensure that there is service for the ADA riders who use wheelchairs and that the service level for those riders is equal to those who do not need accessible service.

What is the Feasibility of Increased Use of Taxis for ADA Paratransit?

It is feasible to promote increased use of taxis for ADA paratransit service. An objective of increased use should consider the following:

- Taxi companies have greater capacity to provide ADA paratransit service for a transit agency when they have accessible vehicles, which cost more to purchase compared to a taxi sedan. Local jurisdictions can facilitate an increase in accessible taxi vehicles with incentives or requirements for their taxi companies to acquire such vehicles. Transit agencies can also work towards this objective by acquiring accessible mini-vans and leasing them for a nominal fee to the local taxi company or by donating retired paratransit vans, still in good condition, to the local taxi company.
- Incentives for taxi drivers to use accessible taxis and provide accessible trips are important. In addition to the greater purchase cost, an accessible vehicle also costs more to operate than a taxi sedan, and it takes more driver time to provide trips for riders in wheelchairs, with the need for boarding and alighting on the ramp or lift and for wheelchair securement. Drivers do not charge extra for this time. Pay incentives for drivers can address these issues and are typically provided by the taxi company and often by the contracting transit agency. Incentives can be provided in different ways, for example, a direct payment to the driver for each wheelchair trip, a discounted lease fee for the accessible vehicle, and priority to provide airport trips after serving a defined number of wheelchair trips.
- Risks and liability involved in the use of taxis for ADA paratransit can be addressed in several ways:
 - Each transit agency needs to set the liability insurance at a level the transit agency deems sufficient for its risk management program. This might be the level set by the state or a higher level set by the local jurisdiction. The transit agency can also set a higher level beyond this, and a taxi company can partition its service so that only those drivers who have volunteered to serve ADA trips are insured at the higher level.
 - Risks can also be addressed by ensuring that the local jurisdiction conducts

comprehensive driver background checks on taxi drivers, to include a driving record check as well as a fingerprint-based criminal history check. These are typical for drivers in the taxi industry.

- Each transit agency can require the taxi drivers to participate in training to serve the specialized needs of ADA riders. In particular, drivers of accessible taxis need training on the use of the accessibility equipment and procedures for safely securing riders and their mobility devices in the vehicle.
 - Addressing potential risk should also involve ensuring the taxi vehicles are inspected regularly, particularly the safety features. Virginia's annual state inspection program is an appropriate baseline requirement. A transit agency may require more frequent inspections and may stipulate that it can inspect vehicles at any time and has the right to remove a vehicle from its service if determined unsafe.
- Should a transit agency plan a subsidized same-day service to its ADA riders, it is important to set mechanisms or controls over its use to ensure that demand does not escalate beyond the agency's budget. Same-day service tends to be popular with users and may induce trip volumes that become financially unsustainable. It's important that the ADA riders understand that the required next-day ADA paratransit service remains an option should they reach their limits on use of a subsidized same-day program.

In addition to the considerations above, we include findings from a federally supported forthcoming 2015 report on taxi use by transit agencies, written principally by the author of this study, that suggest several notions for increasing the use of taxis for ADA paratransit service.³⁸ The first is that a transit agency interested in using taxis should find a taxi company that wants to build a relationship with the transit agency as a new business opportunity. The taxi company should have an interest in and understanding of what it means to serve people with disabilities.

Second, as part of the relationship building, the transit agency should understand the taxi company's perspective in providing service for the transit agency. This means, for example, that the transit agency understand that the taxi company must invest administrative time and expense to administer drug and alcohol testing and to provide data required by the transit agency. The transit agency also needs to understand that the taxi company has additional costs to acquire and operate accessible taxi vehicles.

Taxi companies should know that the business created by a transit agency can be profitable. One of the larger taxi companies in Northern Virginia that operates ADA paratransit service for two transit agencies reports that the ADA trips tend to be "good trips," meaning that fares are typically more than the fares for general public, private pay riders. Moreover, at least in Northern Virginia, the regular taxi business tends to be seasonal in nature, while the transit agency trips are relatively steady throughout the year. This means that taxi drivers taking the transit agency trips have a steadier flow of business throughout the year.³⁹

³⁸ *Use of Taxis in Public Transportation for People with Disabilities and Older Adults*, forthcoming TCRP Synthesis 2015.

³⁹ *Use of Taxis in Public Transportation for People with Disabilities and Older Adults*, forthcoming TCRP Synthesis 2015.

TNCs

TNCs are a new mobility resource, with individuals using their own personal cars to provide for-hire, on-demand transportation. Interested riders connect with a driver via the TNC's digital platform using a smartphone, with ride payment by the rider's credit or debit card.

Current Use of TNCs

While there are no known examples of TNCs providing ADA paratransit service, at least two transit agencies are coordinating with TNCs (specifically Uber) to provide an option for what's called "first mile/last mile" service for their rail systems. This refers to the trips from an origin, such as the transit user's home, to the rail station and then from the rail station to the transit user's final destination. The two transit agencies – in Dallas and Atlanta – now provide links to the Uber app as an option to access rail stations, and several other transit systems are reportedly discussing similar first mile/last mile arrangements.⁴⁰

Regarding service for those who need assistance with transportation, the TNCs are developing services designed to provide more specialized transportation. Uber, for example, has what it calls UberASSIST designed for seniors and people with disabilities, including those who use a mobility device that can be folded and placed in the trunk or back of a passenger car. And there are a few cities where Uber provides accessible service, though it is not provided by the TNC itself.

What is the Feasibility of Using TNCs for ADA Paratransit?

With the current TNC business model and based on available information at the time of writing this report, it does not appear that TNCs could be used to provide ADA paratransit service in two of the three ways that taxis are now used. These two arrangements – contracting to provide ADA paratransit service and contracting to provide back-up ADA paratransit services – would require a TNC to contract with the transit agency, which in turn requires agreement to comply with the federal requirements that convey with the transit agency's funding. This includes agreement to comply with federal Civil Rights statutes such as ADA as well as drug and alcohol testing for the safety sensitive employees, which apply even if independent contractor drivers are used. This testing requires pre-employment, random, post-accident, reasonable suspicion, and follow-up/return-to-duty drug and alcohol testing.

In particular, regarding compliance with the ADA, the TNCs claim that the ADA does not apply, since they are technology companies, not transportation companies. It would seem that the TNCs would have an issue agreeing to comply with the ADA when they claim that the ADA does not apply to them.

Beyond the funding requirements, contracting to provide ADA paratransit service requires the private provider to meet the ADA's six service criteria, which include accepting trips the day

⁴⁰ "Uber and Public Transit Are Trying to Get Along: Partnerships hold promise but also raise questions," by E. Jaffe, Passenger Transport, August 21, 2015, accessed at <http://newsmanager.commpartners.com/aptapt/issues/2015-08-21/15.html>

before the desired trip.⁴¹ The current TNC business model accepts trips on a real-time basis and is not designed to accept advance reservation trips.

It may, however, be potentially feasible to use TNCs under their current business model for a transit agency's same-day user-side subsidy program for ADA certified riders, as long as the transit agency ensures equivalent service for people with disabilities, including those who use wheelchairs and need an accessible vehicle.

A user-side subsidy program goes beyond what the ADA requires, and a number of transit agencies around the country use such a program to meet ADA riders' trips more cost-efficiently than through the required next-day service. It does not appear, however, that any of Virginia's transit agencies currently use such a program to supplement their ADA paratransit service.

In addition to the requirement for equivalent service for those who need accessible service, a transit agency considering possible use of TNCs for a same-day user-side subsidy for ADA riders should address the following:

- The same-day user-side subsidy programs now in use are structured to involve more than one taxi company, so the ADA rider has a choice among companies to use, which is a factor in determining that the federal drug and alcohol testing requirements do not apply. It may be that TNC drivers are each considered a separate business entity, thus a transit agency might use one TNC. Or it may be that such a program would need more than one TNC to participate. It would be advisable to request an opinion from the FTA's Regional Office on this matter before pursuing possible use of TNCs for a transit agency's user-side subsidy program.
- A transit agency would need to decide if the regulations for TNCs established by Virginia are adequate for its program. These are the same considerations that a transit agency would make if determining to use taxis companies for a same-day user-side program. The transit agency would need to consider TNC regulations governing liability insurance, driver background checks, driver training and vehicle inspections and augment these if the agency determined that necessary for its risk management program. Regulations for TNC liability insurance, for example, require higher levels than the state requires for taxis.
- A transit agency should consider the ability of all its ADA riders to use the same-day subsidy program. There may be ADA riders without a smartphone or credit or debit card who, without these, could not use the service. Research shows that only 27% of older adults (age 65+) have a smartphone and almost 8% of households are unbanked, with no bank account. Similarly to the requirement to ensure accessible service, the transit agency would need to take measures to ensure that ADA riders without smartphones or credit or debit cards could access the same-day user-side subsidy program.

While an underlying principle of a user-side subsidy program is that the ADA riders decide to use it or not, a transit agency will want to consider a range of issues before possible use of TNCs for a same-day user-side subsidy program. And the very first consideration is whether or not to offer

⁴¹ As noted earlier, the ADA regulations do not restrict a transit agency from providing ADA paratransit service on a same-day basis, however transit agencies follow the advance reservation procedure, as set out in ADA regulations, as same-day service is not a financially sustainable model.

such a program as a supplement to the mandated ADA paratransit service. Same-day user-side subsidy programs are credited with cost-savings by those transit agencies that have such programs, but they must be designed and managed carefully to ensure trip volumes do not become financially unsustainable.

Concluding Comments

Private operators and specifically independent contractors have a role in providing transportation for people with disabilities. For example, taxi companies and their independent contractor drivers have been providing ADA paratransit for many years.

TNCs, which also use independent contractor drivers, have started to coordinate with a few transit agencies to support their fixed route service. Such coordination appears feasible, and use of TNCs for a same-day user-side subsidy program for ADA riders may be feasible. In this way, transit agencies might use TNCs in the same way that a number of transit agencies have used taxis for many years. Importantly, a same-day subsidy program is not a requirement of the ADA, but some transit agencies use such programs to serve trips of ADA-eligible riders more cost-effectively than with the required next-day ADA paratransit service. Since TNC service – provided by private individuals driving their personal cars – is not accessible to riders who need a vehicle with a lift or ramp, a transit agency would need to ensure a level of accessible service so that the same-day program meets ADA equivalency requirements.

Currently available information about the TNC business model and the findings of this study suggest that there are a number of questions and issues to be addressed should transit agencies consider use of TNCs for required ADA paratransit service. Potential liability questions remain, in particular, about the adequacy of TNCs' driver background checks. Other questions and issues to be addressed concern driver training as well as insurance, vehicle inspections, and the role of drug and alcohol testing, should TNCs be considered as providers of ADA paratransit. Such issues have been addressed by transit agencies that use taxis effectively for ADA paratransit. Importantly, these issues relate not just to requirements that convey with federal transit funding, but also help ensure the safety of ADA riders, many of whom are more vulnerable than the general public.

The pace and scope of innovation related to technology-based business models designed to arrange or provide transportation will likely continue to increase. It may be – as TNCs' services evolve, as attempts to regulate them continue, and as court cases are resolved – that these new transportation services become a more viable resource for transit agencies' required ADA paratransit programs.

Appendix A

Directive for the Study – Item 439E

ITEM 439.	Item Details(\$)		Appropriations(\$)	
	First Year FY2015	Second Year FY2016	First Year FY2015	Second Year FY2016

Department of Rail and Public Transportation (505)

439.	Financial Assistance for Public Transportation (60900) ...			\$396,860,779	\$407,366,035
	Public Transportation Programs (60901)	\$376,925,801	\$387,414,287 \$412,414,287		\$432,366,035
	Congestion Management Programs (60902)	\$13,344,000	\$13,344,000		
	Human Service Transportation Programs (60903)	\$6,590,978	\$6,607,748		
	Fund Sources: Special	\$838,520	\$855,290		
	Commonwealth Transportation	\$396,022,259	\$406,510,745 \$431,510,745		

Authority: Titles 33.1 and 58.1, Code of Virginia.

A.1. Except as provided in Item 441, the Commonwealth Transportation Board shall allocate all monies in the Commonwealth Mass Transit Fund, as provided in § 58.1-638, Code of Virginia. The total appropriation for the Commonwealth Mass Transit Fund is \$237,748,173 the first year and \$248,236,659 the second year from the Transportation Trust Fund. From these funds, the following estimated allocations shall be made:

a. \$177,424,325 the first year and \$184,983,594 the second year to statewide Operating Assistance as provided in § 58.1-638, Code of Virginia.

b. \$52,251,293 the first year and \$55,136,665 the second year from the Commonwealth Mass Transit Fund to statewide Capital Assistance.

c. Notwithstanding the provisions of paragraph A.1.a and A.1.b. of this Item, prior to the annual adoption of the Six-Year Improvement Program, the Commonwealth Transportation Board may allocate funding from the Commonwealth Mass Transit Fund to implement the transit and transportation demand management improvements identified for the I-95 corridor. Such costs shall include only direct transit capital and operating costs as well as transportation demand management activities. Costs associated with additional park and ride lots required to be funded by the Commonwealth under the provisions of the Comprehensive Agreement for the Interstate 95 High Occupancy Toll Lanes project shall be borne by the Department of Transportation as set out in Item 446 of this act.

2. Included in this Item is \$1,500,000 the first year and \$1,500,000 the second year from the Commonwealth Mass Transit Trust Fund. These allocations are designated for "paratransit" capital projects and enhanced transportation services for the elderly and disabled.

3. a. From the amounts appropriated in this Item from the Commonwealth Mass Transit Fund, \$6,302,555 the first year and \$6,616,400 the second year is the estimated allocation to statewide Special Programs as provided in § 58.1-638, Code of Virginia.

b. From the amounts provided for Special Programs, the Commonwealth Transportation Board shall operate a program entitled the Transportation Efficiency Improvement Fund (TEIF). The purpose of the TEIF program is to reduce traffic congestion by supporting transportation demand management programs and projects designed to reduce the movement of passengers and freight on Virginia's highway system.

4. Not included in this appropriation is an amount estimated at \$26,130,677 the first year and ~~\$26,130,677~~ \$25,515,973 the second year allocated to transit agencies from federal sources for the Surface Transportation Program (STP) and the Minimum Guarantee program.

B. 1. Funds from a stable and reliable source, as required in Public Law 96-184, as amended, are to be provided to Metro from payments authorized and allocated in this program and pursuant to §§ 58.1-1720 and 58.1-2295, Code of Virginia. Notwithstanding any other provision of law, funds allocated to Metro under this program may be disbursed by the Department of Rail and Public Transportation directly to Metro or to any other transportation entity that has an agreement to provide funding to Metro as deemed appropriate by the Department. In appointing the Virginia members of the board of directors of the Washington Metropolitan Area Transit Authority (WMATA), the Northern Virginia Transportation Commission shall

ITEM 439.	Item Details(\$)		Appropriations(\$)	
	First Year	Second Year	First Year	Second Year
	FY2015	FY2016	FY2015	FY2016

include the Secretary of Transportation or his designee as a principal member on the WMATA board of directors.

2. To ensure that all revenues provided to support the Washington Metropolitan Area Transit Authority (WMATA) are used efficiently and appropriately, the WMATA Board of Directors shall submit to the Director, Department of Rail and Public Transportation, and the Chairmen of the House and Senate Transportation Committees and the House Appropriations and Senate Finance Committees, a report on the actions taken to address all the recommendations cited in the Federal Transit Administration of the U. S. Department of Transportation's "Full Scope of Systems Review of the Washington Metropolitan Transit Authority" dated June 10, 2014. Such reports shall be submitted no more than 30 days after the close of each quarter of the fiscal year, and shall include any further findings issued by the appropriate compliance officer of the Federal Transit Administration. In addition, the WMATA Board of Directors shall provide, immediately upon its issuance, a copy of the audited financial statements for FY 2014 and shall submit a plan to remedy any deficiencies within 30 days of receipt of the report.

C. All Commonwealth Mass Transit Funds appropriated for Financial Assistance for Public Transportation shall be used only for public transportation purposes as defined by the Federal Transit Administration or outlined in § 58.1-638 A.4. or in § 58.1-638 A.5., Code of Virginia.

D. It is the intent of the General Assembly that no transit operating assistance funding be used to support any new transit system or route at a level higher than such project would be eligible for under the allocation formula set out in § 58.1-638 A 4. e., Code of Virginia, beyond the first two years of its operation.

E. Prior to November 15, 2015, the Director of the Department of Rail and Public Transportation shall report to the Chairmen of the House Appropriations and Transportation Committees and the Senate Finance and Transportation Committees on the feasibility of increasing utilization of private operators and independent contractors, including but not limited to transportation network companies, in the provision of paratransit services throughout the Commonwealth. Included in this assessment, the Department shall determine the potential costs and feasibility of, as well as identify potential liability and risks associated with, increasing the provision of paratransit services through private providers.

Appendix B
Human Service Transportation

Appendix B

Human Service Transportation

INTRODUCTION

Human service transportation is provided by human service agencies to support the primary mission of the agency. Virginia's Department of Rail and Public Transportation (DRPT) provides funding for human service transportation through the federal Section 5310 program, which is one of a number of programs that support human service transportation. Given rising demand and costs for human service transportation, DRPT requested that this study, which is assessing the feasibility of using private operators and independent contractors for ADA paratransit, also assess the feasibility of their use for human service transportation. This appendix provides the requested assessment.

HUMAN SERVICE TRANSPORTATION: DEFINITIONS, REQUIREMENTS, AND STANDARDS

Definition

Human service transportation is that transportation which is provided to support the primary mission of human service agencies, which might be health care, adult day care, sheltered workshops, or job training, among others. Transportation is an ancillary service for these agencies, provided so that the clients can access the main service that the agency offers to its clients. Examples of agencies providing human service transportation include Area Agencies on Aging and Community Services Boards.

Many human service agencies have supported transportation for their clients for years, and for years pre-dating the ADA. Such service has been provided directly by the agencies with their own vehicles and with staff often doubling as drivers. This trend was spurred in the 1970's with the 1974 federal transportation legislation that provided grant funds for human service agencies to purchase vehicles through the predecessor to the federal Section 5310 program, known as Section 16(b)(2). Section 5310 continues to be an important funding mechanism, with grant funding available to support human service agencies' transportation programs.

In addition to or as an alternative to directly providing transportation, human service agencies, with their various funding sources, have purchased bus tickets or bus fare for their clients as well as subsidized taxi fare. Some human service agencies contract with private transportation providers, including taxi companies, for service. And with the advent of ADA paratransit, human service agencies have been turning to their public transit agencies' paratransit services to provide their clients' transportation.

A variety of programs fund human service transportation in Virginia. As noted in VDOT's 2009 State Transit Plan, DRPT oversees only about 9.7% of the overall total of human service transportation funding. DRPT's human service transportation funding is provided through the

federal Section 5310 program, with grant funding available to human service agencies and other defined organizations that serve seniors and people with disabilities. This study is focused on DRPT's role in meeting human service transportation needs and is thus limited to the Section 5310 program.

Requirements and Standards for Section 5310 Program

Requirements for human service transportation for this report are framed around control of the federal Section 5310 program. Specifically, DRPT oversight and authority are designed to implement the FTA Section 5310 program and minimize administrative burden while protecting important public interests. As such, the obligations and constraints of receiving these funds are identified below, and stem from FTA and DRPT criteria.

Title 49 U.S.C. 5310 authorizes the formula assistance program for the *Enhanced Mobility of Seniors and Individuals with Disabilities Program* and provides formula funding to states and designated recipients (recipients) to improve mobility for seniors and individuals with disabilities. In addition to states, recipients include, among others, Metropolitan Planning Organizations (MPOs) in urban areas.

The 5310 program provides grant funds for capital and operating expenses to recipients for:

- Public transportation projects planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, inappropriate, or unavailable;
- Public transportation projects that exceed the requirements of the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101 et seq.);
- Public transportation projects that improve access to fixed route service and decrease reliance on complementary paratransit; and
- Alternatives to public transportation projects that assist seniors and individuals with disabilities with transportation.

Recipients, in turn, provide grant funding to eligible subrecipients (also called subgrantees) in accordance with the requirements of the federal grant program.

Under MAP-21, the most recent federal transportation legislation, the 5310 program no longer provides a single apportionment to each state as it did formerly; it now provides apportionments specifically for large urbanized, small urbanized, and rural areas, and will require new designations of designated recipients in large UZAs (U.S. Census defined urbanized areas).

The Section 5310 *Enhanced Mobility of Seniors and Individuals with Disabilities Program*, as it is titled in the most recent federal transportation bill, seeks to:

“Improve mobility for seniors and individuals with disabilities throughout the country by removing barriers to transportation services and expanding transportation mobility options available.”

Section 5310 continues to provide grant funds for capital and certain operating expenses to eligible subrecipients for the same purposes listed above. Eligible subrecipients for Section 5310 funding include, among others, private non-profit human service agencies and local and state authorities.

MAP-21: Section 5310 Funding Apportionment

Funds through the Section 5310 program are apportioned for urbanized and rural areas based on the number of seniors and individuals with disabilities, with 60 percent of the funds apportioned to designated recipients in urbanized areas with populations larger than 200,000, 20 percent to states for use in urbanized areas of fewer than 200,000 persons, and 20 percent to states for use in rural areas.

MAP-21: Designated Recipients and Applications to DRPT

Under MAP-21, funds are apportioned based on each state's share of the targeted populations, as described above. MPOs and other entities are allowed, under MAP-21, to be designated recipients for large urbanized areas (over 200,000 population).

In accordance with FTA guidance related to implementation of MAP-21, and by mutual agreement, DRPT will serve as the designated recipient for the Richmond/Petersburg, Roanoke, and Hampton Roads Urbanized Areas, in addition to its role as the designated recipient for small urban and rural areas. This works to clarify, simplify, and streamline the application process for agencies interested in applying for the funding. The Metropolitan Washington Council of Governments (COG) will serve as the recipient of Section 5310 funds for the Washington D.C., MD, and VA Urbanized Area and most applicants serving this area apply to COG if interested in funding.

MAP-21: Section 5310 Eligible Activities

MAP-21 also modified eligible activities under the Section 5310 Program. At least 55 percent must be used on capital, public transportation projects planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, inappropriate, or unavailable (what DRPT classifies as "Traditional 5310 Projects").

At most, the remaining 45 percent can be spent for other capital and operating expenses. These include: 1) public transportation projects that exceed ADA requirements, 2) public transportation projects that improve access to fixed route service and decrease reliance by individuals with disabilities on complementary paratransit, and 3) alternatives to public transportation that assist seniors and individuals with disabilities with transportation.

Public Transportation Alternatives that Assist Seniors and Individuals with Disabilities with Transportation

The following two activities are examples of projects that are eligible public transportation alternatives:

1. Purchasing vehicles to support accessible taxi, ride-sharing, and/or vanpooling programs. Section 5310 funds can be used to purchase and operate accessible vehicles for use in taxi,

ride-sharing, and/or vanpool programs provided that the vehicle meets the same requirements for lifts, ramps, and securement systems specified in 49 CFR part 38, subpart B, at a minimum, and permits a passenger whose wheelchair can be accommodated pursuant to part 38 to remain in his/her personal mobility device inside the vehicle.

2. Supporting the administration and expenses related to voucher programs for transportation services offered by human service providers. This activity is intended to support and supplement existing transportation services by expanding the number of providers available or the number of passengers receiving transportation services. Vouchers can be used as an administrative mechanism for payment of alternative transportation services to supplement available public transportation. The Section 5310 program can provide vouchers to seniors and individuals with disabilities to purchase rides, including: (a) mileage reimbursement as part of a volunteer driver program; (b) a taxi trip; or (c) trips provided by a human service agency. Providers of transportation can then submit the voucher for reimbursement to the recipient for payment based on predetermined rates or contractual arrangements. Transit passes or vouchers for use on existing fixed route or ADA complementary paratransit service are not eligible. Vouchers are an operational expense, which – according to Section 5310 requirements – are eligible for only 50 percent funding through the grant program.

FTA considers private taxi companies that provide shared-ride taxi service to the public or to special categories of users (such as older adults or persons with disabilities) on a regular basis to be operators of public transportation, and therefore eligible subrecipients. Local statutes or regulations, or company policy will determine whether a taxi company provides shared-ride or exclusive-ride service. If the local regulation requires the consent of the first passenger to hire a taxi be obtained before the taxi may take on additional riders the service is not shared-ride. Taxi companies that provide only exclusive-ride service are not eligible subrecipients, however, they may participate in the Section 5310 program as contractors. These companies may receive Section 5310 funds to purchase accessible taxis under contract with a state, designated recipient, or eligible subrecipient such as a local government or non-profit organization.

Match Ratio

Recipients that receive funding through the Section 5310 program must provide “match” funds, and the proportion of match funds depends on whether the recipient is requesting capital funds or operating funds.

When applying for Section 5310 funds, an interested recipient must clearly identify its match funds and those match funds must be secured at the time of application (in-kind contributions are not an allowable source of match). Significantly, **capital assistance is provided on an 80 percent federal share, 20 percent local share. If awarded, operating assistance requires a 50 percent local match** (such as the voucher alternative noted above). Experience shows that it is often difficult for human service agencies and other eligible subrecipients to find and secure the match funds required for operating projects. This means that capital projects are typically favored.

Capital applications are consistently funded at the maximum federal participation ratio of 80 percent of the eligible expenses. Non-U.S. Department of Transportation (DOT) federal funds and

local and private funds can be used for the remaining 20 percent. Sources for Non-U.S. DOT federal funds include: Temporary Assistance for Needy Families, Medicaid, Employment Training Programs, Rehabilitation Services, and Administration on Aging. Examples of sources of local match which may be used for any or all of the local share include: State or local appropriations; other non-U.S. DOT federal funds; dedicated tax revenues; private donations; revenue from human service contracts; toll revenue credits; and net income generated from advertising and concessions.

Section 5310 Program Funding

In addition to limiting the types of agencies eligible for Section 5310, federal rules also limit the types of projects eligible for grant funding and the area to be served.¹

Funding allocations by geographic area, new with MAP-21, is a critical change since historically DRPT would allocate funds throughout the Commonwealth based on need, without limitations based on population/geographic area. Due to this geographic policy in MAP-21, DRPT currently estimates that available funds for rural and small urban areas in the Commonwealth will be approximately 10% less than the FY15 awards, and this is beyond the already reduced FY15 level compared to prior years. The clear implication is that subgrantees in rural and small urban areas will face significant competition for scarce funds and that other sources of support are essential.²

DRPT has established priorities for allocating the funding, and these priorities are used when assessing applications for funds from eligible organizations:

- First Priority – The first funding priority is to continue capital (including mobility management) and operating assistance to current Section 5310/5317 recipients where there exists a continuing demand for public transportation service and/or mobility management initiatives, a need for government subsidy, and a commitment of local financial and administrative support.
- Second Priority – The second priority is the funding of new capital and operating projects.

FTA Requirements of Agencies Receiving Section 5310 Funds

In accordance with MAP-21, there are a number of state management and FTA oversight requirements that convey to those agencies and other organizations that receive 5310 funds (the subrecipients or subgrantees). Below are some of the key policies, procedures and administrative requirements.

- Federal Certifications and Assurances: Adherence to the standard federal Certifications and Assurances that convey with federal funding, as described earlier in the discussion of ADA paratransit.

¹ FTA's Section 5310 Circular and FTA's current interpretation of relevant statutory requirements, dictate that funds available to large urban areas cannot be transferred to rural or small urban areas, regardless of the need or availability of funds.

² Predicting the upcoming funding levels is even more uncertain and volatile since future years' funding is uncertain and contingent upon the next long-term federal transportation bill.

- **Triennial Reviews:** The review is to ensure that transit agencies/grantees are able to manage the FTA funded programs in accordance with the grant application, the grant agreement, and the FTA approved State Management Plan and all applicable laws and regulations using sound management practices. The review is intended to look behind the signed certifications and assurances submitted by subgrantees to ensure adherence to all statutory and program requirements when expending federal and/or state funds on local projects.
- **Title VI Plans:** Title VI prohibits discrimination on the grounds of race, color, national origin, sex, age, physical or mental disability, or religion in the delivery of public transit services. Title VI plans are required and are to demonstrate thoughtful compliance meeting statutory intent and specific requirements.
- **Coordinated Human Service Mobility Plans:** FTA requires that funded projects are included in the Coordinated Human Service Mobility (CHSM) Plan. Specifically, the current federal legislation notes that the projects selected for funding through the Section 5310 program must be “included in a locally developed, coordinated public transit-human services transportation plan” and this plan must be “developed and approved through a process that included participation by seniors, individuals with disabilities, representatives of public, private, and non-profit transportation and human services providers, and other members of the public.”
- **Monthly Ridership/Annual Performance Reports:** FTA currently requires an Annual Performance Report and milestone updates. To capture this data, DRPT collects monthly ridership and annual performance reports from subgrantees where they must document monthly one-way trips.
- **Accessible Vehicles:** Virginia requires vehicles funded with Section 5310 funds to be accessible, unless the agency requesting funding can prove equivalent service for its clients needing an accessible vehicle and then only with approval from DRPT.
- **Insurance:** Subgrantees must use FTA-funded equipment to provide transportation as described in the application. They must maintain a combined single limit of insurance coverage of at least \$1 million on FTA-funded vehicles and must submit proof of insurance annually. The insurance must be adequate to replace any FTA funded equipment such as bus lifts, etc. They must also obtain prior written approval from DRPT before selling, leasing, or disposing of vehicles, equipment, or facilities that have any remaining federal interest. The local agencies granted the funding must additionally have procedures to prevent loss, damage, or theft of FTA-funded property and inventory.
- **Maintenance:** Subgrantees must have the managerial capability to maintain FTA-funded equipment and facilities. This includes a written maintenance plan for vehicles and facilities and facility-related equipment. Subgrantees must maintain project equipment and facilities at a high level of cleanliness, safety, and mechanical soundness. They must maintain all accessibility features and equipment in good operating condition. And they must have procedures to track when preventive maintenance inspections are due (by manufacturer standards) and to schedule preventive maintenance inspections in a timely manner.

The agencies granted the funding for a vehicle must have a pre-trip inspection program that addresses vehicle condition, appearance, cleanliness, and safety. Deficiencies noted in a pre-trip inspection must be repaired in a timely manner and properly reviewed by management.

They must also repair accessibility equipment promptly and take reasonable steps to continue service to persons with disabilities while repairs are being made. This includes maintaining a file on each piece of equipment that contains daily logs, inspection checklists, and repair records.

- **Training:** Subgrantees should have effective procedures in order to ensure quality service delivery to the public. A comprehensive training program is a key component of a quality assurance program.
- **Safety and Security:** Subgrantees must document that drivers have a valid operator's license, have a safe driving record, and receive adequate training. DRPT recommends that all drivers have at least six hours of documented safety training per year. All safety devices must be in operative condition. All vehicles must have a blood-borne pathogens kit, first-aid kit, fire extinguisher, bi-directional reflective triangles, and web cutters. Drivers and in some instances passengers must wear seat belts. Smoking is prohibited on all vehicles. Drivers must focus on driving and limit distractions when vehicles are in motion.

Overlap of ADA Paratransit and Human Service Transportation

As mentioned earlier, with the advent of ADA paratransit, human service agencies have been turning to their public transit agencies' paratransit services to provide their clients' transportation.

This trend for human service agencies to use paratransit for their clients has been increasing at many transit agencies, a trend that appears to result from several factors:

- **Trip shifting:** With the availability of ADA paratransit and its mandate to meet all trip needs for eligible riders, human service agencies may refer clients to the transit agency to obtain paratransit eligibility, with the transit agency's ADA paratransit program then providing the clients' transportation. With less expenditure for client transportation, the agencies can then devote greater resources to their primary mission. The trend is also related to mainstreaming, as human service agencies see benefits in introducing their clients to public transit service, albeit specialized public transportation, as opposed to reliance on the human service agency's own transportation.
- **Human service agencies lack operating funds:** Related to the issue of trip shifting, human service agencies do not have adequate funds to maintain a transportation program. Such agencies may have received vehicles through the Section 5310 program, but this program has not in the past provided any funds for operating purposes. Thus, the human service agency may not have funds to keep the vehicles in service, with costs for fuel, maintenance, and insurance. The agency may instead turn to the community's ADA paratransit program for its client transportation.

- **Retrenchment:** Facing increasingly limited budgets because of economic conditions that were exacerbated with the country's recession, human service agencies have not been able to grow their transportation service despite increasing demand. Thus, they scale back to serving only existing clients and do not advertise their transportation service.

There are many examples around the country of transit agencies that have seen increased ADA paratransit demand from their community's human service agencies. In California, for example, many of the agencies that oversee programs for individuals with developmental disabilities, known as Regional Centers, had provided daily transportation for their clients to access day activity centers. When the ADA passed and transit agencies began providing paratransit, many of these clients became ADA-eligible and used the transit agency's paratransit service for their daily transportation, often with cost savings for the Regional Centers. A 2005 study in Orange County, California found that one-third to two-fifths of trips on the transit agency's ADA paratransit program were trips for clients of these agencies and workshops.³

A more recent study in Northern California found a number of the San Francisco Bay Area transit agencies that have witnessed increased numbers of riders who are clients of Regional Centers that serve individuals with development disabilities. One transit agency reported that the Regional Center in its area has been buying large numbers of tickets for its clients to ride ADA paratransit, including some clients with behavioral issues that make it difficult for them to use ADA paratransit. Another transit agency reported "overwhelming" numbers of trips formerly carried by human services agencies, including clients of the Regional Center.⁴

A study conducted for the Washington Metropolitan Area Transit Authority (WMATA) in 2011 found a significant restructuring of trips provided by the transit agency's ADA paratransit program, MetroAccess, with a growing proportion of clients of human service agencies. In a seven-year time period from 2003 to 2010, total trips provided by the region's human service agencies and human service programs funded by local jurisdictions decreased 9%, from 2.1 million trips in 2003 to 1.9 million in 2010. Over the same time period, trips on MetroAccess grew from 1 million to 2.4 million, an increase of 144%.

Discussions with several local human service agencies in the Washington region confirmed the trend, with one agency stating that it formerly operated 22 to 23 "routes" that transported clients to and from the agency's day programs but with the availability of ADA paratransit, the agency reduced its own service to nine routes. This transition did not happen all at once but over time, and the shifts corresponded to the quality of the ADA paratransit service. According to this agency, when service quality declined in 2006-2007, the agency maintained its then level of its own transportation program and when quality improved, it continued to shift trips to WMATA's paratransit service.⁵

Research conducted for the WMATA study also found some human service agencies in the Washington region had shuttered their transportation programs, due in large part, it appeared, to

³ "Paratransit Growth Management Study," for the Orange County Transportation Authority, by A-M-M-A et al., 2004.

⁴ Transit Sustainability Project, Draft Paratransit Final Report, prepared for the Metropolitan Transportation Commission by Nelson/Nygaard Consulting Associates with Elizabeth Ellis, KFH Group, August 2011.

⁵ The Growing Challenge of Specialized Transportation in the Washington, D.C. Metropolitan Region, a White Paper prepared for Washington Metropolitan Area Transit Authority by the KFH Group, Inc., 2011.

the recession. While this did not seem a large-scale phenomenon, individuals who had used these human service agency transportation programs to meet their local trip needs had to turn elsewhere for transportation. The data suggest that they turned to WMATA's MetroAccess paratransit service.

CURRENT USE AND PROJECTED DEMAND

There is a variety of transportation service provided throughout Virginia by human service agencies and other organizations specifically designed to meet the mobility needs of older adults, people with disabilities, and people with lower incomes. This human service transportation fills critical mobility gaps for Virginia residents who live outside the service area of their public transit agency, need to access jobs or services outside public transit service hours, or need more personalized or specialized services to travel.

Information on human service transportation in Virginia is provided below, drawing upon demographic data for the population groups typically served by human service agencies. Information on human service transportation funding and the role of Virginia's DRPT in supporting human service transportation is also provided.

Background

In general, the human service transportation system is made up of community agencies that have complex organizational roles related to transportation of the clients in addition to their primary agency responsibilities. Most agencies provide both direct transportation services and actively arrange transportation for their clients with other providers to support their primary service.

With demographic forecasts and particularly the coming "age wave," the need for human service transportation in Virginia will grow. The Commonwealth has experienced substantial population growth since 2000. Based on the 2010 Census, 11.8 percent of the population are 65 years and older, 14.1 percent have a disability (population age 5 and over), and 9.9 percent are below poverty levels. These numbers are going to increase over time. It is anticipated that Virginia's population growth will continue and will reach 8,870,000 in 2020, while increasing by another 830,000 the next decade. The growth of seniors is expected to grow significantly as well, numbering more than 1,350,000 in 2020 and increasing by another 400,000 by 2030 – a 30% upswing.⁶

Much of the human service transportation provided in Virginia is local in nature, but there is growing interest and support for a more regional approach. Planning efforts in parts of the Commonwealth to coordinate services operated by various transportation providers, particularly those provided by human service agencies, are often pursuing a regional strategy.

Since 2007, DRPT has led the development of regional Coordinated Human Service Mobility (CHSM) Plans for rural and small urban areas of Virginia. Specifically, federal legislation requires that projects selected for funding under the FTA Section 5310 program be derived from a locally developed, coordinated public transit-human services transportation plan, and that the plan be developed through a process that includes representatives of public, private, non-profit and

⁶ Updated August 2013 by the Weldon Cooper Center for Public Service, Demographics & Workforce Group

human services transportation providers and participation by the public. The CHSM Plans are organized geographically around the Commonwealth's 21 regional Planning District Commissions (PDCs).

The CHSM planning process has identified several common themes and issues:

- Limited general public transit, particularly in rural areas.
- Limited transportation options in evenings and on weekends.
- Limited or no demand-response/ADA paratransit service outside fixed-route service areas.
- Limited transportation options to access jobs that require second and third shift work.
- Limited or no transportation for trips to medical services for people not eligible for transportation services funded through the Medicaid program.
- Transportation provided by human service agencies is constrained by jurisdictional boundaries or to specific clientele.
- Lack of information on available transportation options, including limited outreach to individuals, doctor's offices, human service agencies, employers, and others on available transportation services.
- Limited transportation options for passengers who need additional assistance beyond the vehicle to access their destination.
- Limited funding (both capital and operating funds) to support human service transportation, particularly in rural areas.

Target Population for Human Service Transportation

Demographic data is important for understanding overall mobility needs and the transportation challenges faced by residents. Virginia grew 13 percent between 2000 and 2010, significantly faster than the national growth rate (10 percent). The majority of this growth – more than 80 percent – occurred in the urban crescent of Northern Virginia, the Richmond region, and Hampton Roads. Of importance for this study is the landscape of the “transit” dependent population groups – those individuals typically reliant on public and specialized transportation.

Aging Population

In 2010, nearly one out of every eight Virginians was 65 or older. The Weldon Cooper Center for Public Service expects continued growth of the proportion of older Virginians. At the same time, increases in life expectancy have contributed to the growth of Virginia's “oldest seniors,” those individuals 85 and older. While this population is numerically small – just fewer than 125,000 persons – the growth of this population will increase long-term demands for care-giving, medical facilities, and transportation, among other needs.

Virginians with Disabilities

There are significant demographic, social, and economic differences between working-age Virginians with a disability and those without.

The following statistics characterize the social and economic status of non-institutionalized people with disabilities in Virginia, based on data from the 2011 American Community Survey (ACS). These data clearly show the increasing incidence of disability with increasing age.

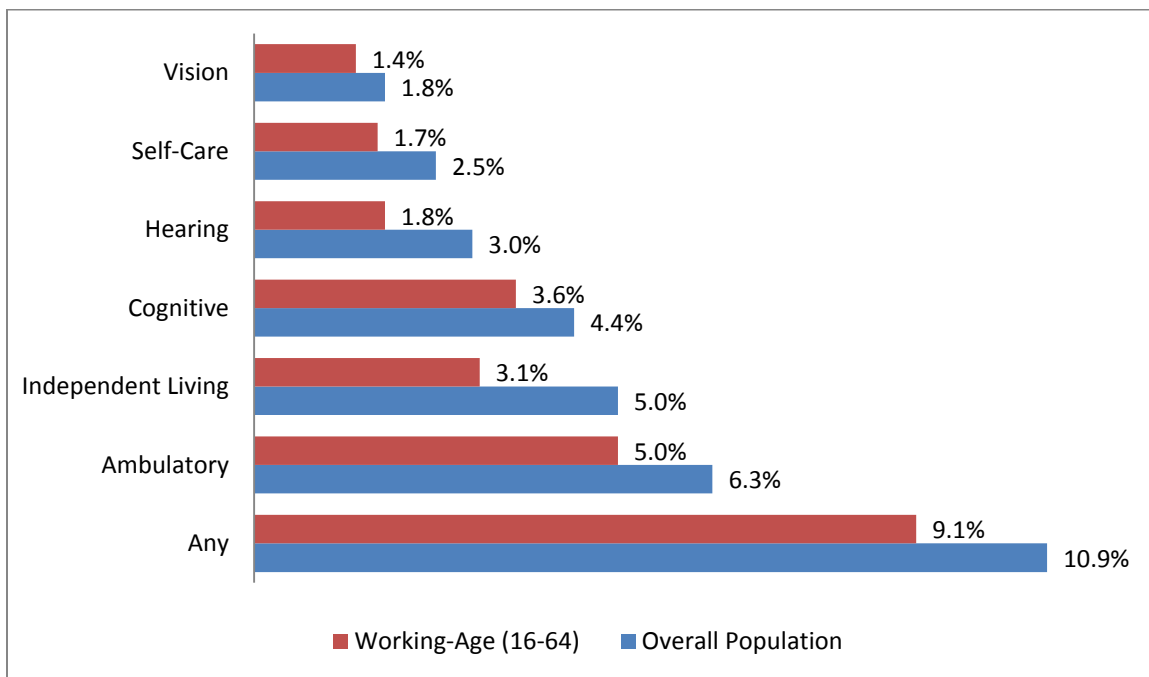
In 2011, the prevalence of disability in Virginia was:

- 10.9 percent for persons of all ages
- 0.5 percent for persons ages 4 and under
- 4.8 percent for persons ages 5 to 15
- 5.1 percent for persons ages 16 to 20
- 9.1 percent for persons ages 21 to 64
- 23.5 percent for persons ages 65 to 74
- 50.5 percent for persons ages 75+

In 2011, Virginia had 5.4 million non-institutionalized citizens between the ages of 16 and 64. Nearly 470,000 working-age Virginians – 9 percent – reported at least one disability in the 2011 ACS. Additionally, the data show 210,000 working-age Virginians reporting two or more disabilities. Fourteen percent of Virginia’s working-age households have at least one disabled working-age adult.

Figure B-1 presents the prevalence of the six disability types among persons of all ages in the Commonwealth, as well as the distribution of disability by type for working-age Virginians. The most common reported disability is an ambulatory disability. Overall, the patterns among working-age residents are similar to the patterns among the population of all Virginians.

Figure B-1: Types of Disability among Persons of All Ages

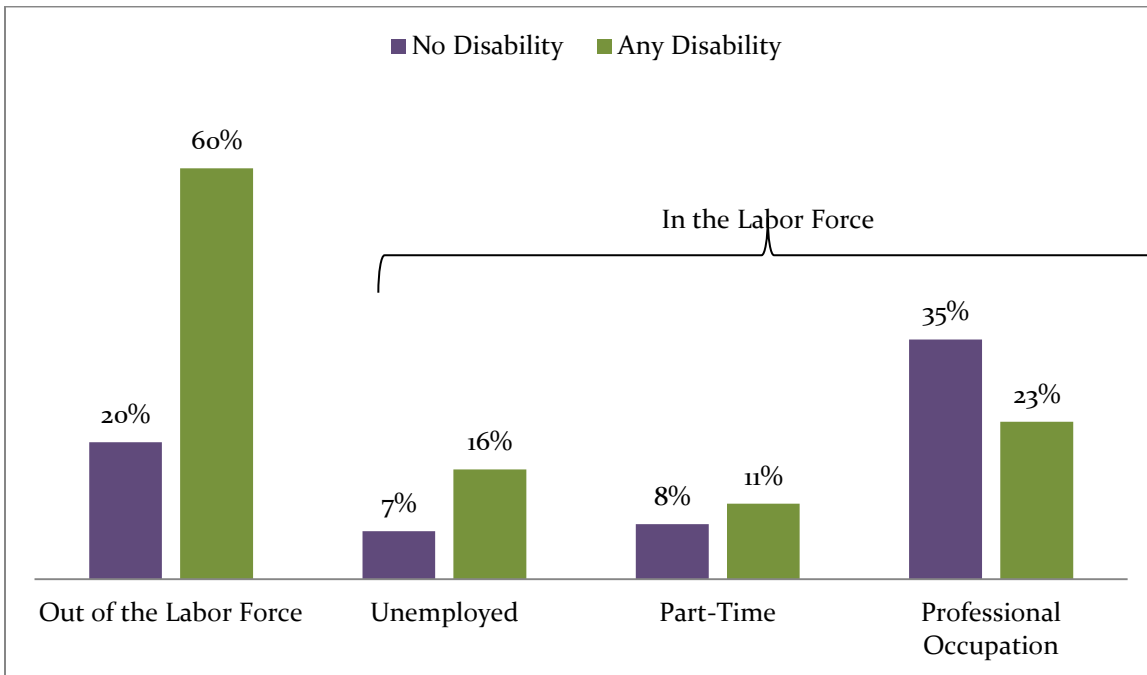


Working-Age Labor Force Participation

A major concern for policy makers is the low levels of employment among working-age adults with disabilities. Employment rates in Virginia are no exception. Three-fifths of working-age

Virginians with disabilities are out of the labor force, meaning they are neither working nor looking for work. This is triple the out-of-the-labor-force proportion of non-disabled working-age Virginians. Among individuals in the labor force, Virginians with disabilities reported higher unemployment rates, greater part-time work, and lower employment in professional occupations which are all highlighted in Figure B-2.⁷

Figure B-2: Working-Age Labor Force Participation, 2011



Poverty in Virginia

Virginia is fortunate to have a poverty rate lower than the national average, yet poverty in the Commonwealth is an issue of concern. More than 750,000 Virginians, including 250,000 children, live in poverty.⁸ According to the most recent data from the U.S. Census Bureau, Virginia’s poverty rate has increased to 11.6 percent. As in other states, children in Virginia are more likely than adults to live in poverty. In 2011, 15.6 percent of all children statewide, more than one in seven children, lived in households below the poverty line.

Working-age individuals with disabilities have a poverty rate more than twice as high as those with no disabilities. Research shows the higher poverty rate is strongly associated with work limitations for people with disabilities: the more serious the work limitation, the higher the likelihood of poverty. Conversely, individuals in poverty are much more likely than individuals not in poverty to have a disability. A recent research study found that about half of all working-age individuals in poverty reported a disability. The same study found that individuals with

⁷ *Working-Age Virginians with Disabilities*, December 2012, by Rebecca M. Tippet, Demographic & Workforce Group, Weldon Cooper Center, University of Virginia

⁸ “Poverty in Virginia”, Recommendations from the Commonwealth of Virginia’s Poverty Reduction Task Force, 2010.

disabilities in poverty are much more likely than others in poverty to report material hardships, especially food insecurity and an inability to get needed medical care.⁹

Funding for Human Service Transportation

As noted earlier, a variety of programs fund human service transportation in Virginia. The vast majority of the funding to support human service transportation is not administered by DRPT, the state agency that administers public transit programs. According to the 2009 State Transit Plan, DRPT oversees only about 9.7 percent of the overall total of human service transportation funding. Other state agencies providing funds for human service transportation include the Department of Medical Assistance Services (DMAS) as well as Department of Mental Health, Mental Retardation, and Substance Abuse Services, Virginia Department of Social Services (VDSS), and Virginia Department of Aging (VDA), among others.

DRPT provides its share of human service transportation funding predominately through the FTA's Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities Program. This program is authorized under the provisions set forth in the Moving Ahead for Progress in the 21 Century Act (MAP-21) enacted on July 6, 2012, as codified at 49 U.S.C. 5310. The goal of the Section 5310 program is to provide assistance in meeting the special transportation needs of elderly persons and persons with disabilities.

The Governor of Virginia has previously designated Virginia's DRPT as the recipient of the Section 5310 program funds for all areas of the Commonwealth. MAP-21 legislation adjusted how funds are apportioned for urbanized and rural areas based on the number of seniors and individuals with disabilities, as described earlier. In order to maximize the availability of Section 5310 funds to Virginia's human service transportation providers and to clarify, simplify, and streamline the application process, DRPT currently serves as the designated recipient for all areas of the Commonwealth under Section 5310, except in the Northern Virginia/Washington, D.C. metropolitan urban area.

The Section 5310 program offers limited funding, particularly in relation to the need for human service transportation in the Commonwealth. Moreover, due to the prescriptive uses and designation of where the funds may flow, competition has become even more intense for these funds. In the most recent fiscal year (FY 2016) with funding information, the program had \$3,856,000 available for grants.

Vehicles provided to organizations through the Section 5310 program are granted for the purpose of providing necessary transportation services to the specific client group of elderly persons and/or persons with disabilities, which are identified in the agency's application. This also includes transportation services above and beyond the requirements of the ADA for individuals with disabilities.

The Section 5310 program must provide for maximum feasible coordination with transportation services assisted by other federal sources. Recipients are encouraged to also provide service to elderly persons and persons with disabilities not affiliated with their agency, as well as to the

⁹ Gina Livermore. 2009. "Poverty and Hardship Among Working-Age People with Disabilities." Washington DC: Mathematica Policy Research, Inc.

general public on an incidental basis if such service does not interfere with transportation services for elderly and persons with disabilities.

Based on the high appeal for the funding support and limited dollars, demand for Section 5310 funds exceeds the annual allocation. This is reflected in DRPT’s annual Section 5310 capital requests compared to the vehicles awarded. Table B-1 displays the number of vehicles requested over the last five years for the FTA Section 5310 Program Application against those actually awarded as identified in the Virginia Six-Year Improvement Program (SYIP).

Table B-1: Demand for Section 5310 Vehicles

Fiscal Year	Vehicle Capital Requests	Vehicles Awarded
FY 2012	96	81
FY 2013	115	81
FY 2014	100	79
FY 2015	85	83
FY 2016	103	77

Projected Demand

Human service transportation and demand for the service have been growing for the last decade, with an intense focus from the Commonwealth over the last few years. This study has projected the demand for human service transportation, relative to Section 5310, with the forecasts provided in an attachment to this appendix. The process for calculating projected demand is described below, with a focus on transportation for older adults and people with disabilities, which are the target population groups for the Section 5310 program. The intent of the forecasting effort is to estimate the service level that would be required to support unconstrained demand.

Anticipating future population impacts, population projections by county/city were projected for the current “base year” and then years 2020 and 2030, respectively, using data from the University of Virginia’s Weldon Cooper Center. An estimate of the potential trip demand for human service transportation trips then was constructed for these target populations under three scenarios – high, medium, and low for each year of analysis.

The annual trips for the target human service population were used to develop operating and capital costs associated with each scenario of trip growth for the two projected time horizons (2020 and 2030). Knowing each jurisdiction is unique in terms of its makeup (rural, small-urban, and urban components), a number of standard assumptions were required and applied throughout. It is important to note that the operating and capital dollars associated with each scenario and year is for the **total demand of human service transportation**. It does not factor in current operating service and existing capital that may already be operating within each jurisdiction service area.

A detailed analysis of this work is found in the attachment to this appendix.

PRIVATE OPERATORS AS PROVIDERS OF HUMAN SERVICE TRANSPORTATION

For human service transportation, private operators include both taxi companies and private transportation companies, though service by private operators is considerably less prevalent for those organizations that provide human service transportation when compared to their use by public transit agencies.

Section 5310 Eligible Human Service Transportation Providers

The Section 5310 program includes “traditional” projects, which are those allowed by the program since its inception many years ago, as well as “other” projects defined by MAP-21, the most recent federal transportation legislation.

As directed by MAP-21, traditional Section 5310 projects are public transportation capital projects planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, unavailable or inappropriate. In order to meet the requirement for traditional Section 5310 projects, subrecipients eligible to be transportation providers in this category are limited to:

- Private non-profit organizations and
- State or local governmental authorities that:
 - are approved by the state to coordinate services, or
 - certify that there are no non-profit organizations readily available in the area to provide the service.

Governmental authorities eligible to apply for Section 5310 funds as “coordinators of services for seniors and individuals with disabilities” are those state or local public entities designated by the state to coordinate human service activities in a particular area. Examples of such eligible governmental authorities are an Area Agency on Aging or a public transit provider that the state has identified as the lead agency to coordinate transportation services funded by multiple federal or state human service programs.

For the other 5310 projects and activities, eligible subrecipients include the two eligible for traditional projects as well as operators of public transportation that receives section 5310 funds indirectly through a recipient. This category includes private operators of public transportation.

Private Taxi Operators as Subrecipients

As indicated earlier in this appendix, taxi companies, as private operators of public transportation, are eligible subrecipients of Section 5310 grant funds. Section 5310’s definition of “public transportation” includes “... shared-ride surface transportation services ...” Private taxi companies that provide shared-ride taxi service to the public or to special categories of users (such as seniors or individuals with disabilities) on a regular basis are operators of public transportation, and therefore are eligible subrecipients.

“Shared-ride” means two or more passengers in the same vehicle who are otherwise not traveling together. Similar to general public demand response service and ADA paratransit, every trip does

not have to be shared-ride in order for a taxi company to be considered a shared-ride operator, but the general nature of the service must include shared rides.

Local (municipal or state) statutes or regulations, or company policy, will generally determine whether a taxi company provides shared-ride or exclusive-ride service. For example, if the local regulation permits the driver to determine whether or not a trip may be shared, the service is not shared-ride. Similarly, if the regulation requires consent of the first passenger to hire a taxi to be obtained before the taxi may take on additional riders, the service is not shared-ride. In essence, services which can be reserved for the exclusive use of individuals or private groups, either by the operator or the first passenger's refusal to permit additional passengers, is not shared-ride but rather exclusive-ride taxi service.

Taxi companies that provide only exclusive-ride service are not eligible subrecipients; however, they may participate in the Section 5310 program as contractors. Exclusive-ride taxi companies may receive Section 5310 funded vehicles under contract with a state, designated recipient or eligible subrecipient such as a local government or non-profit organization. The taxi company may hold title to the accessible vehicle(s) as long as the agreement between the state, designated recipient or subrecipient and the taxi company is sufficient to establish what the Section 5310 regulations call "satisfactory continuing control."

A taxi company applicant for a Section 5310 grant must provide documentation in its application that identifies whether it provides shared-ride or exclusive-ride service. In all cases, DRPT requires that it be designated as first lien holder. Additionally, taxi companies must certify and assure that the accessible taxi will be used to provide transportation for seniors and people with disabilities, and that the vehicle may not be removed from service or disposed of prior to the end of its useful life without the express written consent of DRPT.

Types of Section 5310 Human Service Transportation Providers in Virginia

DRPT has only funded "traditional" projects and subrecipients in the history of administering the program. This is primarily the function of limited available funding (requests exceed availability annually) and the local matching requirement (as noted earlier, most subrecipients have difficulty providing a 50% match for a project).

Currently in Virginia, there are 77 active Section 5310 subrecipients, which include the Metropolitan Washington Council of Governments (COG) region, defined as those that still operate a Section 5310 vehicle to which DRPT holds the lien. To show the diversity of 5310 subrecipients that are providing human service transportation, the organization types are listed below along with the number of agencies within that group.

- Area Agency on Aging (AAA) – 13
- Arc – 5
- Community Service Board (CSB) – 17
- Employment Service Organization (ESO) – 10
- Government Agency – 7
- Other Private Non-Profits – 23
- Other Operator of Public Transportation (e.g., taxi company) – 2

To supplement this information on types of subrecipients, DRPT conducted a brief online survey in August of 2015 of agencies and organizations that have received Section 5310 grants over the past four years to gain an understanding about the types of transportation and services currently provided. Responses were received from 38 organizations, representing just over half (51%) of those surveyed.

According to this survey, the large majority of the responding 5310 grant recipients (87%) provide human service transportation for their agency's clients, as would be expected. Somewhat more than one-third (39%) indicated that their service is paratransit and six of the respondents (16%) provide public transit service. About one-fourth (26%) also provide mobility management, which is an allowable expense for Section 5310 funding. According the comments to this question, one of the responding agencies is a taxi company, which was awarded funding to acquire accessible taxis.

The survey asked respondents if they use taxis for their client transportation. Somewhat over one-third (37%) indicated "yes." Respondents' comments showed that taxis are used for different purposes, including for a domestic violence program and a guaranteed ride home program; one agency said they use taxis just "rarely." Six agencies indicated prior but not current use of taxis. The remaining respondents indicated they have never used taxis or that taxis were not appropriate for their agency's transportation needs. Of the six agencies that used taxis in the past, three indicated the service had been too costly and two replied that the lack of accessible taxi vehicles was a problem.

Section 5310 Public Transportation Alternatives that Assist Seniors and Individuals with Disabilities

As described earlier, the Section 5310 program allows grants for "public transportation alternatives" that assist seniors and individuals with disabilities. This includes the use of Section 5310 funds to purchase and operate accessible vehicles for use in taxi, ride-sharing, and/or vanpool programs provided that the vehicle meets the same requirements for lifts, ramps, and securement systems specified in 49 CFR part 38, subpart B, at a minimum, and permits a passenger whose wheelchair can be accommodated pursuant to part 38 to remain in his or her mobility device inside the vehicle.

Allowed alternatives also include voucher programs that are intended to support and supplement existing transportation services by expanding the number of providers available or the number of passengers receiving transportation services. Vouchers can be used as an administrative mechanism for payment of alternative transportation services to supplement available public transportation.

Under the voucher option, the Section 5310 program can provide vouchers to seniors and individuals with disabilities to purchase rides, including: (a) mileage reimbursement as part of a volunteer driver program; (b) a taxi trip; or (c) trips provided by a human service agency. Providers of transportation can then submit the voucher for reimbursement to the Section 5310 subrecipient for payment based on predetermined rates or contractual arrangements. Transit passes or vouchers for use on existing fixed route or ADA complementary paratransit service are not eligible. Vouchers are an operational expense and require a 50/50 (federal/local) match.

Cost of Section 5310 Program

Funding for the Section 5310 program is formula based, therefore only minor fluctuations typically occur from year-to-year. The number of vehicles funded through the program is predicated upon the number of applicants (note that some applicants apply for more than one vehicle), the anticipated capital cost for the different vehicles available, and the quality and merit of the potential subrecipient's application. As shown in Table B-2, the number of vehicles awarded over the last five years has ranged from 77 to 83. By contrast, the number of vehicles that were requested but denied because of inadequate funding ranged from 6 to 34. These numbers could potentially have been higher, but it is suspected that the new MAP-21 geographic stipulations, along with the numerous requirements that convey with receiving a grant, reduce the number of potential applicants.

Table B-2: Section 5310 Program Grant Funding History

Fiscal Year	Requested Vehicles Not Funded	Amount Not Funded	Cost of Vehicles Funded	Number of Vehicles Funded
2012	15	\$349,000	\$3,446,000	81
2013	34	\$1,472,000	\$3,589,000	81
2014	21	\$652,660	\$3,687,340	79
2015	6	\$177,000	\$3,855,000	83
2016	19	\$950,000	\$3,599,000	77

Impact of the Required 60/20/20 Apportionment of Section 5310 Funds

The Section 5310 apportionment of funds between each state's urban, small urban, and rural areas, as established with MAP-21 and described earlier, has particular impacts on a state's small urban and rural areas. In Virginia, the impacts include:

- Estimated FY16 Section 5310 funding available for Virginia's rural human service transportation projects can support only approximately 83% of their request.
- Estimated FY16 Section 5310 funding available for Virginia's small urban human service transportation projects can support only approximately 86% of their request.
- Conversely, eligible applicants in the large urban areas of Hampton Roads and Richmond sought significantly less than the available amount. However, the FTA's Section 5310 Circular and FTA's current interpretation of relevant statutory requirements, dictate that funds available to large urban areas cannot be allocated to rural or small urban projects, regardless of the need or availability of funds.

FEASIBILITY OF INCREASING THE USE OF PRIVATE OPERATORS AND INDEPENDENT CONTRACTORS TO PROVIDE HUMAN SERVICE TRANSPORTATION

The use of private operators for human service transportation using Section 5310 funding has been very limited, both in Virginia and across the country. Such use to-date has been focused on the use of Section 5310 grant funds to purchase accessible taxi vehicles. Changes to the Section 5310 program in 2012 with the most recent federal transportation legislation allow for “alternatives” to the more traditional focus of the grant program on purchase of vehicles. Such alternatives permit human service agencies that are granted 5310 funds to use that funding for vouchers for seniors and individuals with disabilities to purchase rides, including rides from a taxi company.

Increasing the Use of Private Providers for Human Service Transportation

Compliance with FTA Funding Requirements

Under certain circumstances, a for-profit taxi company may be an eligible subrecipient under the Section 5310 program. As defined in MAP-21, eligible subrecipients for this program are a state governmental authority, a private non-profit organization, or *an operator of public transportation that receives a grant under this section indirectly through a recipient.*

Similar to ADA paratransit, private providers that contract with human service agencies utilizing Section 5310 funds must agree to the standard Certifications and Assurances that apply to all contracts, when FTA funds are used. Additionally, the funding program requires that agencies granted funds must provide a match. These match requirements specify that the federal share of eligible capital costs is 80 percent of the eligible expenses. The federal share of the eligible operating costs may not exceed 50 percent of the net operating costs of the activity.

Under previous federal policy, the FTA declared taxi companies that provide shared-ride taxi service to the public or a segment of the population as “operators of public transportation” and therefore eligible for 5310 funding as subrecipients. The Section 5310 program defines “shared ride.” Whether or not a taxi company provides shared ride service is generally determined by the taxi regulatory body. Most regulations governing taxi service do not provide for shared ride service.

When the taxi company provides exclusive ride service, it may be eligible as a third-party contractor to DRPT and receive a grant to acquire accessible taxi vehicles. Through such an agreement, the taxi company must agree to the following:

- Provide the local funding match, with a check made payable to the Treasurer of Virginia upon receipt of the agreement.
- Agree that the Project Vehicles (i.e., the accessible taxi vehicles) shall be used for the provision of transportation services to Wheelchair Passengers within the area described in the contract application for the duration of the vehicle’s useful life, in accordance with vehicle use and other applicable conditions in the current Section 5310 Circular.

- The primary objective of the wheelchair accessible taxi service is to serve individuals who use wheelchairs and cannot board a standard taxi sedan because of their disability. In accordance with the Section 5310 Circular, Project Vehicles may be used to provide service to the general public on an incidental basis if such service does not interfere with transportation services for Wheelchair Passengers.
- Ensure that each driver of the Project Vehicles while they are in service is a properly and currently licensed taxi driver who has successfully completed appropriate accessible taxi driver training.
- Ensure that there is some level of taxi service available to Wheelchair Passengers during all hours of the day.
- Ensure that each Project Vehicle is equipped for dispatch service that provides priority service to Wheelchair Passengers.
- Have a written maintenance plan and must maintain all accessibility features and equipment in operating condition. The plan must also include procedures to facilitate repair of accessibility features and equipment in a timely manner.
- Maintain files on each Project Vehicle that contain copies of manifests, inspection checklists (including inspections regularly performed prior to release of the Project Vehicles to their drivers), and maintenance and repair records (including records documenting preventive maintenance conducted in accordance with manufacturer recommendations).
- Provide DRPT monthly reports on:
 - Number of trips requested by Wheelchair Passengers
 - Number of trips provided to Wheelchair Passengers in Project Vehicles (this figure shall be reported monthly via the Department's OLGA database)
 - Number of all trips provided in Project Vehicles
 - Percentage of all trips in which Wheelchair Passengers were transported in Project Vehicles
 - Average response time for Wheelchair Passengers requesting Project Vehicles

Other key requirements prior to funding approval include:

- Subrecipient must certify that their project is included in a locally developed, coordinated public transit-human service transportation plan and that the plan was developed and approved through a process that included participation by seniors; individuals with disabilities; representatives of public, private, nonprofit transportation and human service providers; and other members of the public.
- Projects in UZAs must be included in the metropolitan transportation plan (MTP) prepared and approved by the metropolitan planning organization (MPO), the transportation improvement program (TIP) approved jointly by the MPO and the

governor, and the statewide transportation improvement program (STIP) developed by a state and jointly approved by FTA and FHWA.

- Projects outside UZAs must be included in, or be consistent with the statewide long-range transportation plan, as developed by the state, and must be included in the STIP.
- Subrecipients that receive only Section 5310 program assistance are not subject to FTA's drug and alcohol testing rules, but must comply with the Federal Motor Carrier Safety Administration (FMCSA) rule for all employees who hold commercial driver's licenses.

Current Use of Private Operators for Human Service Transportation

Human service transportation is provided by a wide range of public and private non-profit agencies to support the primary mission of the agency. DRPT provides just a small portion of total human service transportation funding in Virginia through the federal Section 5310 program, which provides formula funding to states and other specified recipients to improve mobility for seniors and individuals with disabilities. DRPT, in turn, awards grants to eligible agencies for projects and activities defined within the regulations of the federal grant program.

The Section 5310 program has historically focused on providing grant funds to human service agencies so they can purchase vehicles to provide transportation for their clients. These agencies then are the human service transportation providers. Until recent changes to the 5310 program, private transportation providers have not been eligible for the grant funds.

Changes to the Section 5310 program in 2012 have expanded the use of the program's funds, which now allow grants to acquire accessible taxi vehicles and specifically defined "alternatives" that include the purchase of vouchers to buy rides, including rides from taxis.

With these changes, private operators are now directly using Section 5310 funds in Virginia. DRPT has granted funds to two taxi companies in Virginia to purchase accessible vehicles. These arrangements require the taxi company to contract with DRPT and follow the various requirements set out by the federal program defined earlier.

What is the Feasibility of Increased Use of Private Providers – Specifically TNCs and Taxis – for Section 5310 Human Service Transportation?

With the changes to the Section 5310 program, it is feasible to increase the use of private providers for human service transportation using the 5310 funds.

Taxi companies can now be directly involved in two ways. First, taxi companies can receive 5310 grant funds to acquire accessible vehicles, and, second, through the defined "alternatives" for 5310 funds, a human service agency can use its grant funds for vouchers to pay for its clients' trips on taxis.

With the use of vouchers now allowed for Section 5310 funding, TNCs, similar to taxis, might be potential providers. There are a number of issues that a human service agency would need to consider before such use, including:

- The need to ensure accessible service for those human service agency clients who use a wheelchair and need an accessible vehicle.
- A mechanism so the voucher payment process works with the TNC payment scheme, which uses a credit or debit card.
- Provision for those agency clients without a smartphone or credit or debit card to use the vouchers.
- To what extent are the clients with physical and/or cognitive disabilities able to travel by themselves?
- Have the drivers been adequately vetted through the TNC hiring process?
- Have the TNC drivers had any training on serving seniors and people with disabilities?

A number of these issues are reflected in the responses that current Section 5310 subrecipients gave in the online survey conducted by DRPT in August 2015. Among questions in the survey was one that asked the subrecipients about TNCs and their opinions about questions or issues to be resolved for possible use of TNCs for human service transportation.

The large majority of the respondents (78%) indicated that TNCs were not available in their area, and four respondents (11%) were not familiar with Uber or Lyft. Four indicated interest in TNCs.

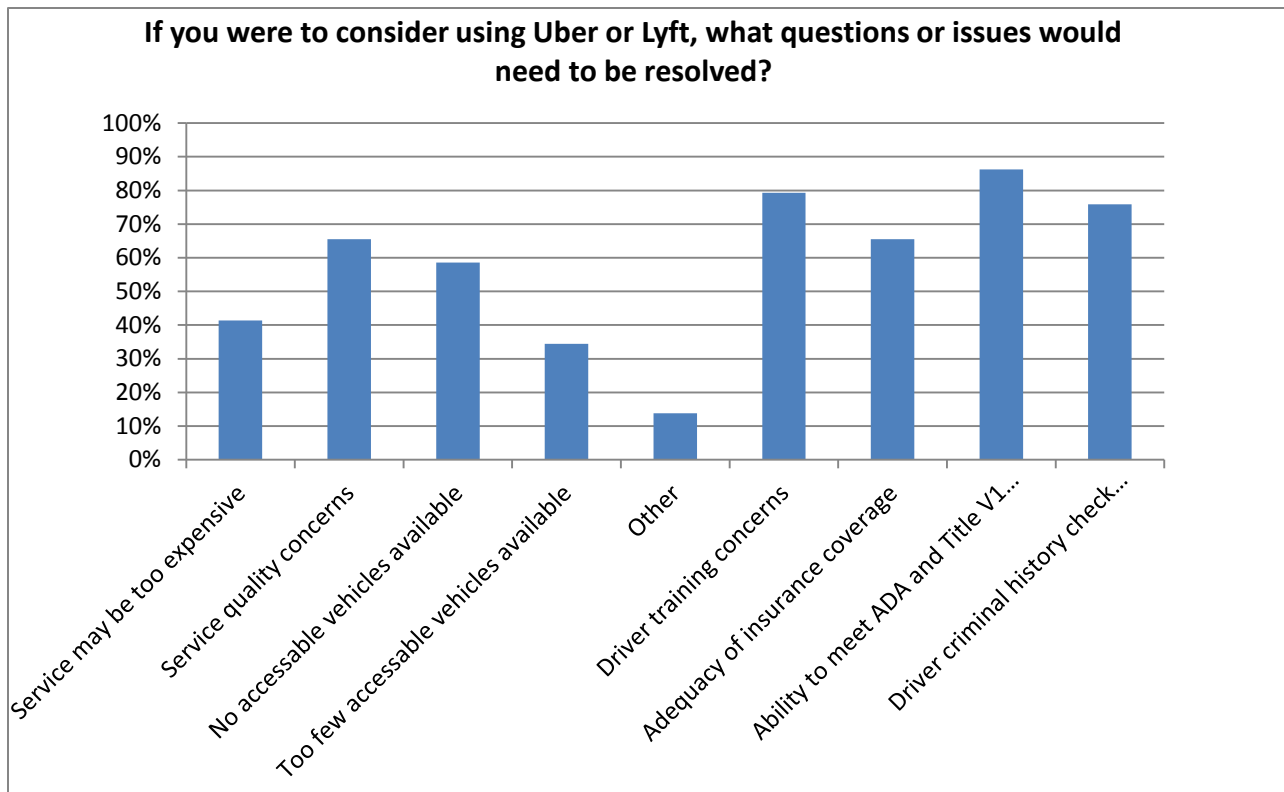
Regarding the potential use of TNCs for human service transportation, 29 of the 38 survey respondents provided answers (with multiple responses allowed). The primary issues of concern, as shown in Figure B-3, include:

- Ability to meet ADA and Title VI requirements (86%)
- Driver training concerns (79%)
- Driver background checks (76%)
- Service quality concerns (65%)
- No accessible vehicles available (59%)

While most of the survey respondents are in locations in the Commonwealth with no TNC service, they recognize that a key issue regarding the ability of a TNC to provide human service transportation is the ability to comply with the requirements that come with federal funding, specifically including the ADA and Title VI.

With the current business model and based on available information at the time of writing this report, it does not appear feasible to involve TNCs as subrecipients receiving Section 5310 supported accessible vehicles. Such an arrangement – with the use of Section 5310 funds granted to purchase an accessible vehicle – would require a TNC to contract with DRPT. Such a contract would require agreement to comply with all federal and state requirements that convey with the funding. As discussed for ADA paratransit, it is not likely that TNCs would be willing to enter into a direct contract with these requirements.

Figure B-3: Opinions of Surveyed Section 5310 Subrecipients on Possible Use of TNCs for Human Service Transportation



Attachment to Appendix B

Demand Projections for Human Service Transportation in Virginia

INTRODUCTION

The need for human service transportation will continue to grow. As noted earlier, 11.8 percent of the population are 65 years and older and 14.1 percent have a disability (population age 5 and over). Therefore, a critical part of ensuring effective mobility for all Virginians is to identify the current and future unmet need for human service transportation, and estimate the projected costs to support the operational and capital costs associated with these services.

HUMAN SERVICE TRANSPORTATION DEMAND

Human service transportation has been growing for the last decade, with an intense focus from the Commonwealth over the last few years. This section reports on current and projected demand for human service transportation (Section 5310 specific), in particular transportation for older adults and people with disabilities. This process replicates the methodology that KFH Group employed when calculating the demand and potential operational and capital costs for human service transportation in the Commonwealth's 2009 statewide long-range multimodal transportation plan titled "VTrans2035." Building on this established approach, the intent of this effort is to provide a breadth of service levels that would be required to support the unconstrained demand statewide.

Older Adults

The senior population has a variety of characteristics of interest. For this report, this group is identified as people age 65 and over. This grouping is not unique since it also incorporates seniors with disabilities. Advanced age is associated with increased rates of disability. The physiology of aging identifies age 75 as the point which the natural effects of the aging processes are increasingly likely to impinge upon lifestyle, health status, and general well-being that can limit mobility.¹⁰

Disabled

The second population group of interest is persons with disabilities. As characterized by the 2009-2013 American Community Survey 5-year estimates – Disability Characteristics and identified among the adult population. The target population is individuals with a disability between the ages of 18 and 64 years. The disability classification includes those with:

- Hearing difficulty
- Vision difficulty
- Cognitive difficulty
- Ambulatory difficulty
- Self-care difficulty
- Independent living difficulty

Target Population - Current "Base" Population

Understanding that although the Census 2010 data is the most comprehensive and accurate account for the populations under review, this report reflects "current" population data based on changes that have occurred within the Commonwealth. The Demographics & Workforce Section of the University of Virginia's Weldon Cooper Center is the agency responsible for producing the Commonwealth's official population estimates for its counties and independent cities. Each year, demographers at the Weldon Cooper Center develop and release the official population estimates for Virginia and its counties and independent cities to illuminate population counts between decennial censuses. These estimates provide the best approximation of the population count.

¹⁰ Spirduso, W. Physical Dimensions of Aging, Human Kinetics, 1995.

Table B-3 identifies the numbers of these individuals statewide in the Commonwealth from selected 2014 Census variables. The table, and each subsequent table, considers adult population only, persons 18 and older. This report recognizes that there are children with disabilities that benefit and use human service transportation, however, for purposes of developing an estimate of demand for transportation it is necessary to consider the individual likely to be traveling on their own and not the dependent child. Therefore, only the adult population is presented throughout this analysis.

Table B-3: Target Population

Geography	Target Population	
	Total Older Adults, Age 65 and Over ¹	Disability (18 to 64 Years) ²
Statewide	1,146,886	452,939

¹2014 Census Estimate by Age and Sex (July 1, 2014), U.S. Census Bureau, Population Division, Weldon Cooper Center.

²American Community Survey Tables S1810 - Disability Characteristics, 2009-2013 ACS 5-Year Estimates.

Future Population Projections

Anticipating future population impacts, population projections are presented in Tables B-4 and Table B-5 for years 2020 and 2030, respectively. The Cooper Center’s 2014 population estimates were used to develop the elderly population figures by county/city and summed for the statewide total. Unfortunately, this information is only gathered for age, sex, and race, therefore some calculations were required to estimate the disabled population data. This information was produced by applying the percent change from the 2010 and 2020 based on the proportion of total population growth for the jurisdictions to achieve the 2020 and 2030 figures.

Table B-4: Target Population – 2020

Geography	Target Population	
	Total Older Adults, Age 65 and Over ¹	Disability (18 to 64 Years) ²
Statewide	1,357,655	476,490

¹Virginia Workforce Commission population projections.

²Applied percent change from 2010 population based on total population growth for the jurisdictions.

Table B-5: Target Population – 2030

Geography	Target Population	
	Total Older Adults, Age 65 and Over ¹	Disability (18 to 64 Years) ²
Statewide	1,765,497	507,962

¹Virginia Workforce Commission population projections.

²Applied percent change from 2020 population based on total population growth for the jurisdictions.

Demand Estimation for Human Service Transportation

The next step was developing an estimate of the potential trip demand for human service transportation trips that could be constructed for these target populations. Again, this is the same process employed for the VTrans2035 plan where three scenarios – high, medium, and low – were created for each year of analysis.

High Demand Coverage

Estimating transportation demand for human service transportation trips under the “high” scenario draws upon the population figures presented in the preceding Tables B-3 through B-5. Trip rates for each population group, average number of one-way trips per day made by an individual within Virginia, were determined using the Bureau of Transportation Statistics, 2001 National Household Survey¹¹:

- Total Older Adults, Age 65 and Over – 3.74 Trip Rate
- Go-Outside-Home Disability, 16 to 64 Years – 2.50 Trip Rate

Annual trips were then generated for the target populations by multiplying the population by the number of days of service available (254) by the appropriate trip rate. Finally, a 3% human service transportation mode share¹² was applied (average of U.S. mode share for all trips, 2.2% and commuter trips, 5.0%, rounded down)¹³. Table B-6 provides the annual trips for the target population for the base year and the two projected time horizons (2020 and 2030).

¹¹ 2010 Census information collected and analyzed did not contain trip rates by State.

¹² "Mode share" indicates the share of the region's travel that is made by different modes of transportation.

¹³ ACS 2011 and NHTS 2009.

Table B-6 – High Service Scenarios: Estimated Transportation Need

Geography	Estimated Transportation Need ¹								
	(Estimated Transportation Need = Designated Population * 254 Days * Trip Rate * 3% Share on Transit)								
	Base Year			2020			2030		
	Older Adults, Age 65 and Over	Disability (18 to 64 Years)	Annual Trips for Target Population	Older Adults, Age 65 and Over	Disability (18 to 64 Years)	Annual Trips for Target Population	Older Adults, Age 65 and Over	Disability (18 to 64 Years)	Annual Trips for Target Population
Statewide	32,684,875	8,628,488	41,313,363	38,691,538	9,077,132	47,768,671	50,314,546	9,676,683	59,991,229

¹Estimated Transportation Need - Based on 2010 Census data, Weldon Cooper Center data, and ACS data.

Medium Demand Coverage

Estimating transportation demand for human service transportation trips under the “medium” scenario also draws upon the population figures presented in Tables B-3 through B-5. Under this scenario, the goal is to satisfy transportation demand by providing six trips per month to the targeted population and applying a 20% usage factor. This results in a calculated total “need” for trips per year. Table B-7 provides the annual trips for the target population again for the base year and the two projected time horizons (2020 and 2030).

Table B-7: Medium Service Scenario: Estimated Transportation Need

Geography	Estimated Transportation Need ¹								
	Base Year			2020			2030		
	Older Adults, Age 65 and Over	Disability (18 to 64 Years)	Annual Trips for Target Population	Older Adults, Age 65 and Over	Disability (18 to 64 Years)	Annual Trips for Target Population	Older Adults, Age 65 and Over	Disability (18 to 64 Years)	Annual Trips for Target Population
	Statewide	16,515,158	6,522,322	23,037,480	19,550,232	6,861,454	26,411,686	25,423,157	7,314,658

¹Estimated Transportation Need - Based on population statistics: Providing 6 trips per month to 20 percent of the targeted populations.

Low Demand Coverage

Finally, a “low” scenario was produced using the same population figures presented in High and Medium demand scenarios (Tables B-6 and B-7). Estimating transportation demand for human service transportation trips under the “low” scenario aims to cover the “basic” need for human service transportation. It is modeled after the medium scenario and follows the same premise except it strives to meet 50% of the calculated total “need” for trips per year in each jurisdiction – i.e. three trips per month and usage by 20% of the target population. Table B-8 also provides the annual trips for the target population for the base year and the two projected time horizons (2020 and 2030).

Table B-8: Low Service Scenario: Estimated Transportation Need

Geography	Estimated Transportation Need ¹								
	Base Year			2020			2030		
	Older Adults, Age 65 and Over	Disability (18 to 64 Years)	Annual Trips for Target Population	Older Adults, Age 65 and Over	Disability (18 to 64 Years)	Annual Trips for Target Population	Older Adults, Age 65 and Over	Disability (18 to 64 Years)	Annual Trips for Target Population
Statewide	8,257,579	3,261,161	11,518,740	9,775,116	3,430,727	13,205,843	12,711,578	3,657,329	16,368,908

¹Estimated Transportation Need - Meeting 50 percent of the "Medium Service Estimate": Providing 3 trips per month to 20 percent of the targeted populations.

Potential Operational and Capital Costs

The final step is outlining the operating and capital costs associated with each scenario trip growth for the base year and the two projected time horizons (2020 and 2030). Knowing each jurisdiction is unique in terms of its makeup (rural, small-urban, and urban components), a number of standard assumptions were required and applied throughout. Specifically, the following service and capital factors were used:

- Service provided 254 days per year
- 10 revenue hours per day
- 2.5 passengers per revenue hour
- \$45 operating cost per revenue hour
- \$55,000 cost per vehicle
- 3% annual inflation for operating and capital expenses

It is important to note that the operating and capital dollars associated with each scenario and year are for the Total Demand of Human Service Transportation. It does not factor in current operating service and existing capital that may already be operating within each jurisdiction service area. Tables B-9 through B-11 present the summary of operating and capital expenses for the state for each scenario.

Table B-9: High Service Scenario: Operating and Capital Costs

Geography	Required Vehicles			Annual Operating Costs			Capital Cost for Entire Fleet		
	Base Year	2020	2030	Base Year	2020	2030	Base Year	2020	2030
Statewide	6,505	9,535	11,478	\$743,521,500	\$992,583,220	\$1,319,887,630	\$357,775,000	\$479,158,420	\$639,093,094

Table B-10: Medium Service Scenario: Operating and Capital Costs

Geography	Required Vehicles			Annual Operating Costs			Capital Cost for Entire Fleet		
	Base Year	2020	2030	Base Year	2020	2030	Base Year	2020	2030
Statewide	3,633	6,186	7,188	\$415,251,900	\$550,247,300	\$720,574,630	\$199,815,000	\$265,626,180	\$348,904,624

Table B-11: Low Service Scenario: Operating and Capital Costs

Geography	Required Vehicles			Annual Operating Costs			Capital Cost for Entire Fleet		
	Base Year	2020	2030	Base Year	2020	2030	Base Year	2020	2030
Statewide	1,818	4,105	4,611	\$207,797,400	\$275,388,820	\$360,567,730	\$99,990,000	\$132,941,620	\$174,588,613

Appendix C

Table C-1: Regulations and Standards for ADA Paratransit and Human Service Transportation Provided by Private Operators, including TNCs – Regulations and Standards Pertaining to Safety and Service

Table C-2: Regulations and Standards for ADA Paratransit and Human Service Transportation Provided by Private Operators, including TNCs – Regulations Pertaining to Consumer Protections

Table C-1: Regulations and Standards for ADA Paratransit and Human Service Transportation Provided by Private Operators, including TNCs – Regulations and Standards Pertaining to Safety and Service

Safety and Service Regulations and Standards	TNCs	Taxis	Independent contractors for Medicaid Non-Emergency Transportation (NEMT)	Private Operators/Contractors for ADA Paratransit Service	Private Operators/Contractors for Human Service Transportation
Public Regulation	VA regulates TNCs, TNC drivers and TNC vehicles. VA law allows certain named localities to charge additional license fees for TNCs.	Taxis must meet several state regulations, but they are primarily regulated by the locality in which they operate.	Independent contractors for NEMT must meet VA requirements for insurance and comply with state requirements and provide trips only through (1) VA’s Dept. of Medical Assistance (DMAS); (2) a broker under contract to DMAS; or (3) a broker operating as a Medicaid Managed Care Organization contracted to DMAS. Transportation providers that are not taxi companies have a NEMT permit and license plate, which is a relatively new permit from the DMV that allows only brokered Medicaid trips.	<p>Cities, counties, and other public entities that contract for ADA paratransit service with a private contractor establish requirements through the procurement and contracting process. Public regulation will vary by jurisdiction and the specifics of the services being procured.</p> <p>Examples of the use of private contractors in Loudoun and Arlington Counties are provided here.</p>	<p>Organizations that contract with private operators establish requirements through the procurement and contracting process. When the private operator is a taxi company, the company and its drivers must at least meet state requirements for taxis and any additional requirements that may be established by the particular locality.</p> <p>Human service transportation is provided by private operators in various Virginia localities. Fairfax County is used as an example here, which contracts with a private for profit company to serve more than 4,000 human service clients in the county with approximately 350,000 annual passenger trips.</p>

Safety and Service Regulations and Standards	TNCs	Taxis	Independent contractors for Medicaid Non-Emergency Transportation (NEMT)	Private Operators/ Contractors for ADA Paratransit Service	Private Operators/ Contractors for Human Service Transportation
<p>Insurance</p>	<p>VA has set insurance requirements for TNC services. Insurance must be provided during all 3 time periods of TNC service:</p> <p>(1) When the driver has the app open and is available for a ride request;</p> <p>(2) When the driver has accepted a request and in traveling to the pick-up; and</p> <p>(3) When the passenger is on board and until the end of the trip or the driver completes the transaction, whichever is later.</p> <p>During time periods 2 and 3, insurance must include:</p> <ul style="list-style-type: none"> - \$1 M of liability insurance, which must be primary. <p>During time period 3, insurance must include:</p> <ul style="list-style-type: none"> - Uninsured and underinsured motorist coverage of \$1 M. <p>Coverage may be satisfied any of the following: TNC provided insurance, the driver's own TNC insurance, or a combination of the two.</p>	<p>VA requires that taxis have liability insurance for \$125,000 auto – bodily injury and property damage. (From DMV website)</p> <p>Localities may impose higher levels. For example, Arlington County, which uses taxis for paratransit service, requires liability insurance at:</p> <ul style="list-style-type: none"> \$100,000/injury to one person, \$300,000/injury to two or more persons, \$50,000 property damage. 	<p>VA's insurance requirements for a NEMT carrier:</p> <p>Liability coverage for bodily injury and property damage, \$350,000 for 1-6 passengers, incl. driver; \$1,500,000 for 7-15 passengers, incl. driver; \$5,000,000 for 16+ passengers, incl. driver. (From DMV website)</p> <p>The DMAS procurement document requires that the broker's subcontracted NEMT providers maintain sufficient liability insurance as established by the Commonwealth.</p>	<p>Loudoun County: the contractor must provide general liability insurance, workers compensation coverage, and auto liability coverage, the latter as follows: \$10 million combined single limit; \$10 million each occurrence limit and \$5,000 medical expense limit. The County must be named additional insured. The contractor must also provide \$5 million in umbrella liability, or a total of \$15 million in liability coverage.</p> <p>Arlington County: the contractor must provide workers compensation coverage; auto liability of \$1 million combined single limit; Arlington Co must be named as additional insured.</p>	<p>Fairfax County requires the contractor to have:</p> <ul style="list-style-type: none"> - Workers Compensation and Employer's Liability Insurance of \$100,000. - Auto Liability insurance of \$10,000,000 per occurrence/aggregate. - Commercial General Liability of \$10,000,000. - Contractors Liability insurance of \$10,000,000. <p>The County is to be named additional insured.</p>

Safety and Service Regulations and Standards	TNCs	Taxis	Independent contractors for Medicaid Non-Emergency Transportation (NEMT)	Private Operators/Contractors for ADA Paratransit Service	Private Operators/Contractors for Human Service Transportation
	<p>During time period 1, insurance must include: -Liability coverage, which is secondary, of \$125,000/person; \$250,000/incident, and \$50,000/property damage.</p> <p>After January 1, 2016, the insurance for time period 1 changes to: -\$50,000/person; \$100,000/incident; and \$25,000/property damage -this insurance must be primary.</p>				
Driver Background Checks	<p>TNC must do the following to check each driver, who must be 21 or older with a valid driver's license, before driver starts and then once every two years: 1- obtain a national criminal history records check, to include (i) a Multi-State/Multi-Jurisdiction Criminal Records Database Search or a search of a similar nationwide database with validation (primary source search) and (ii) a search of the Sex Offender and Crimes Against</p>	<p>Driver background checks determined by locality. Localities may adopt an ordinance pursuant to §15.2-1503.1 that requires fingerprinting through the Central Criminal Records Exchange (CCRE) to the FBI to obtain a criminal history record.</p> <p>For example, Arlington County requires: -10 year traffic record (excluding parking tickets) -Document showing prior driving experience</p>	<p>Drivers must be 18 yrs. old and a driver's license holder for at least one yr. Drivers shall have: -no more than 2 chargeable accidents or moving violations in last 3 yrs. -not been convicted of any crime as defined in VA Code S.37.2-314(b). -A DMAS contractor "must require that the transportation provider secure, maintain, and provide criminal background checks to DMAS from Virginia State</p>	<p>Loudoun County: the contractor shall conduct pre-employment DMV checks of the state issuing the driver's license and shall check DMV records every 6 mos. Also, "15 year criminal background and employment checks" are required. Drivers must be 21 yrs. of age. RFP lists other driver requirements, incl. no more than 2 moving violations in last 5 yrs.; never convicted of a felony and no record of alcohol or drug offense.</p>	<p>Fairfax County requires the following for driver background checks: -national background check and motor vehicle record check to include an examination of the statewide Automated Fingerprint Identification System and a sex offender registry record request from the VA State Police and the VA Dept. of Social Services, Child Protective Services Unit. Drivers must be 21 yrs of and no more than 2 moving violation or chargeable</p>

Safety and Service Regulations and Standards	TNCs	Taxis	Independent contractors for Medicaid Non-Emergency Transportation (NEMT)	Private Operators/ Contractors for ADA Paratransit Service	Private Operators/ Contractors for Human Service Transportation
	<p>Minors Registry and the U.S. Department of Justice's National Sex Offender Public Website. Person conducting the background check shall be accredited by the National Association of Professional Background Screeners or a comparable entity approved by VA.</p> <p>2 – Before driver starts and then annually, TNC shall obtain and review a driving history research report from the driver's state of licensure.</p> <p>3 - Before authorizing an individual to act as a TNC partner, and at least once every two years after authorizing a person to act as a TNC partner, a transportation network company shall verify that the person is not listed on the Sex Offender and Crimes Against Minors Registry or on the U.S. Department of Justice's National Sex Offender Public Website.</p>	<p>-Fingerprints, to be reviewed through the Central Criminal Records Exchange (CCRE) to the FBI to obtain a criminal history record, "in accordance with Code of VA."</p> <p>Once authorized as a taxi driver, the license is valid for 1 year with option for 2 years depending on the background check. Renewal requires the same background check as for a new driver.</p>	<p>Police and the national FBI fingerprint database on each driver before the driver transports members under this contract."</p> <p>NOTE: per email from DMAS on 7/15/15, DMAS is not currently enforcing the fingerprint checks because language is needed in the Code of Virginia to authorize the checks.</p>	<p>Arlington County: the contractor shall obtain background checks for each driver to include examination of the statewide Automated Fingerprint Identification System and a sex offender registry record request from the VA State Police and VA Dept. of Social Services-Child Protection Unit. This info. shall include a national background check and motor vehicle record check as well. Drivers must be 25 yrs. of age with no more than 2 chargeable accidents or moving violations in preceding 3 yrs.</p>	<p>accidents in 3-yr period, none of which may involve a DWI or DUI. Driver candidates must show evidence of completion of a defensive driving course within past 1 yr. Drivers must also complete a VA DOT physical exam and drug screen test; instruction in use and securement of portable oxygen; and Passenger Assistance Techniques (PAT) certification or equivalent.</p> <p>Depending on assignment, drivers need to have a CDL (commercial driver's license with P (passenger) endorsement or an S (school bus) endorsement.</p>

Safety and Service Regulations and Standards	TNCs	Taxis	Independent contractors for Medicaid Non-Emergency Transportation (NEMT)	Private Operators/Contractors for ADA Paratransit Service	Private Operators/Contractors for Human Service Transportation
	<p>VA law lists the offenses that disqualify a person as a TNC driver</p> <p>TNC must have zero-tolerance for drivers' use of drugs and alcohol.</p>				
Driver Training	<p>There are no VA regulations on TNC driver training.</p> <p>Uber provides training through videos, see http://video.uber.com/ One of the 7 videos addresses driving safety; the others address other topics, e.g., payment, surge pricing, etc. as well as accommodating riders with disabilities.</p> <p>Lyft has several training videos. Information regarding service to people with disabilities is provided under Lyft's "Driver Center," where the drivers can review several Lyft policies, including:</p> <ul style="list-style-type: none"> -anti-discrimination -service animal policy -wheelchair policy. 	<p>Regulated by the locality; taxi companies may also have their own company requirements.</p> <p>Arlington Co. requires taxi driver applicants to pass a written test with questions on the laws and regulations regarding taxi service in Arlington Co. as well as the street system and locations of significant landmarks. Arlington Co. also requires that before a taxi company can place an accessible taxi into service, it must present proof that the driver has successfully completed training in use of the wheelchair lift.</p> <p>One of the larger taxi companies in Arlington Co. has its own formal training</p>	<p>Driver training:</p> <ul style="list-style-type: none"> -PASS (Passenger Service and Safety) training -Defensive driving -HIPPA training -Wheelchair securement training <p>(From DMAS RFP for NEMT broker)</p> <p>Drivers are required to provide "appropriate level of assistance" to riders, which may include curb-to-curb, door-to-door, or door-through-door assistance. (From DMAS RFP for NEMT broker)</p>	<p>Loudoun County: the drivers must be trained and certified in the use of vehicles; have thorough knowledge of the service area and of the operation as "evidenced by training, testing, and certification prior to operating in revenue service."</p> <p>Arlington County: Each bidder is to list all its mandatory training requirements and frequency of renewal training. All drivers must be trained in: map-reading; providing service to persons with disabilities and older persons; passenger and wheelchair/scooter handling and securement; dealing with difficult passengers. Drivers of dedicated</p>	<p>Fairfax County requires the following driver training for its human service transportation:</p> <ul style="list-style-type: none"> -a training program with at least 80 hrs of training to include classroom instruction, behind-the-wheel training, and in-service training. -there must also be a retraining program. -trained and certified in CPR and basic first aid as well as emergency situations. -Passenger Assistance Training to transport mobility limited passengers. Drivers are required to attend a 4-hr refresher training course if receiving more than 2 verifiable complaints regarding passenger relations or safety within 6-month period.

Safety and Service Regulations and Standards	TNCs	Taxis	Independent contractors for Medicaid Non-Emergency Transportation (NEMT)	Private Operators/ Contractors for ADA Paratransit Service	Private Operators/ Contractors for Human Service Transportation
	<p>Under the wheelchair policy, there are “tips” for serving riders with a wheelchair. There is also information on accessible transportation resources under the heading “Other Helpful Resources;” this is a listing of cities with the name and sometimes web link to various accessible transportation services in that city (including ADA paratransit).</p>	<p>requirements, with length of initial training (up to 3 days) dependent on the driver’s prior driving experience. Also, every driver providing service subsidized by transit agencies for seniors and people with disabilities must take sensitivity training.</p>		<p>vehicles are to be trained in proper use of first aid and biohazard cleanup kits which are required for the vehicles.</p> <p>Driver training requirements apply also to both the van-based private operator and the taxi company.</p> <p>The procurement document also states: Contractor shall comply with the FTA’s drug and alcohol testing requirements.</p>	
<p>Regular Inspection of Vehicles</p>	<p>TNC vehicles must have a current VA State safety inspection, even if the vehicle is not registered in Virginia. Inspections are required annually.</p> <p>Uber: For vehicles registered in Virginia, the only valid inspection is the Virginia State Police Inspection Certificate performed in the past 12 months.</p>	<p>Regulated by the locality.</p> <p>Arlington Co. requires taxi vehicles to undergo the annual state inspection and may require an annual inspection by the county taxi inspector appointed by the police.</p>	<p>Vehicles must comply with all applicable laws, regulations and ordinances. Taxis must be registered in accordance with local or regional taxicab ordinances. Vehicles are to have a first aid kit and fire extinguisher.</p> <p>DMAS requires that the contractor inspect semi-annually each vehicle used for transportation.</p>	<p>Loudoun County: the contractor is responsible for providing the vehicles; the County will conduct a “condition inspection” of the vehicles and has the right to ask for most recent yr. of maintenance records and has the right to require contractor to remove any vehicle from service.</p> <p>Arlington County: the contractor is responsible for</p>	<p>Fairfax County requires the vehicles to have the VA State Safety Inspections. The County will accept no more than a 10% failure rate, after which penalties apply. Full compliance with the Federal Motor Carrier Safety Regulations (49 CFR) pertaining to safety is required, including among others, vehicle maintenance and inspections.</p>

Safety and Service Regulations and Standards	TNCs	Taxis	Independent contractors for Medicaid Non-Emergency Transportation (NEMT)	Private Operators/ Contractors for ADA Paratransit Service	Private Operators/ Contractors for Human Service Transportation
	<p>Lyft: According to the Lyft website “The state of Virginia requires you to complete a safety inspection, and issues you a TNC vehicle registration sticker for your license plate (acquired through the Virginia DMV). You must display this decal in order to give rides in Virginia. No need to worry about contacting the DMV yourself — once we have your registration and inspection, we'll register for you.”</p>			<p>providing all vehicles and for annual inspections of dedicated vehicles, which “may include any of the following-safety, accessibility compliance, passenger comfort and fitness for operation...” The county has the right to inspect all vehicles prior to the 1st day of service and periodically. The county is the sole authority regarding whether a vehicle meets the county’s requirements. The contractor is to provide vehicle maintenance schedules and maintenance records should be available for county review.</p>	<p>The contractor must keep full and complete maintenance records in a computerized system. The County or its designee is to have unfettered access to the computerized records. The County has the authority to inspect any of the vehicles it has provided for the service and can determine an immediate withdrawal from service of any vehicle determined to be unsafe.</p>

Table C-2: Regulations and Standards for ADA Paratransit and Human Service Transportation Provided by Private Operators, including TNCs – Regulations Pertaining to Consumer Protections

Consumer Protection Standards	TNCs	Taxis	Independent Contractors for Medicaid Non-Emergency Transportation (NEMT)	Private Operators/Contractors for ADA Paratransit Service	Private Operators/Contractors for Human Service Transportation
Discrimination	<p>TNC partners are required to comply with all applicable laws regarding nondiscrimination against passengers or potential passengers and to comply with the TNC’s policy of nondiscrimination on the basis of a passenger’s points of departure and destination.</p> <p>TNC partners must comply with all applicable laws relating to accommodation of service animals.</p> <p>A TNC partner may refuse to transport a passenger for any reason not prohibited by law, including any case in which (i) the passenger is acting in an unlawful, disorderly, or endangering manner; (ii) the passenger is unable to care for himself and is not in the charge of a</p>	<p>Discrimination policies are established by the locality. Arlington Co., for example, prohibits a driver from refusing transport a potential passenger for any reason other than 3 specific reasons: (1) taxi is out of service, (2) driver has committed to another passenger or potential passenger, or (3) driver is prohibited from accepting such passenger by regulation.</p> <p>Regulations allow a driver to terminate transportation to a passenger or refuse a passenger if the driver reasonably believes his/her life, safety or property is in danger.</p>	<p>DMAS requires that its broker Conform with</p> <ul style="list-style-type: none"> -the Federal Civil Rights Act of 1964, as amended, -the Virginia Fair Employment Contracting Act of 1975, as amended, -where applicable, the Virginians With Disabilities Act and the Americans With Disabilities Act, and -§2.2-4311 of the Virginia Public Procurement Act (VPPA), and any other applicable laws. <p>(From DMAS RFP for broker)</p>	<p>Loudoun County: Discrimination addressed through RFP language noting that discrimination is prohibited by public entities on the basis of disability by the ADA and that employment discrimination by contractors is prohibited.</p> <p>Arlington County: Discrimination addressed through requirement that discrimination against individuals with disabilities in employment is prohibited. Employment discrimination based on race, religion, color, sex, national origin, age, disability or any other basis prohibited by federal or VA law is also prohibited.</p>	<p>As stated in the RFP for Human Service Transportation, “Fairfax County is committed to a policy of nondiscrimination in all County programs, services, and activities and will provide reasonable accommodation upon request.”</p>

Consumer Protection Standards	TNCs	Taxis	Independent Contractors for Medicaid Non-Emergency Transportation (NEMT)	Private Operators/Contractors for ADA Paratransit Service	Private Operators/Contractors for Human Service Transportation
	responsible companion; or (iii) the TNC partner has already committed to providing a ride for another passenger.				
Accessibility of Vehicles	<p>Required by 7-1 2016, TNC shall provide passengers an opportunity to indicate whether they need a wheelchair-accessible vehicle. If a TNC cannot arrange accessible service in a TNC vehicle, it shall direct the passenger to an alternate accessible service, if available.</p> <p>TNC shall not charge extra for service to persons with disabilities because of those disabilities.</p> <p>The legislation includes language as follows, recognizing that TNCs could have a negative impact on availability of for-hire accessible service: DMV “shall periodically consult with local government officials to determine whether</p>	<p>Localities may mandate or incentivize taxi companies to acquire and operate wheelchair accessible taxis. Arlington Co. uses incentives to ensure accessible service. The county has 97 accessible taxis in service, 11% of total taxis in the county. Fairfax Co., with a different approach, mandates that any taxi co. with 25+ vehicles must ensure 4% are accessible.</p>	<p>DMAS requires that the broker ensure wheelchair accessible transportation.</p>	<p>Loudoun County: All vehicles must meet ADA accessibility requirements with lifts or ramps.</p> <p>Arlington County: All vehicles provided for the service must be wheelchair accessible and meet all ADA requirements. For taxi-dispatched service, wheelchair accessible taxis must also meet ADA requirements.</p>	<p>Fairfax County provides the vehicles for the contractor’s use, which includes cars, vans and buses. The vans are wheelchair accessible.</p>

Consumer Protection Standards	TNCs	Taxis	Independent Contractors for Medicaid Non-Emergency Transportation (NEMT)	Private Operators/Contractors for ADA Paratransit Service	Private Operators/Contractors for Human Service Transportation
	<p>transportation network companies have had an effect on the availability of wheelchair-accessible transportation services. If evidence suggests an effect, the Department shall work collaboratively with appropriate stakeholders to develop recommendations to be submitted to the Chairmen of the House and Senate Committees on Transportation.”</p>				
<p>Compliance with ADA</p>	<p>One of the TNCs, Uber, asserts that the ADA does not apply to the company because it is a technology company and not a transportation company.</p>	<p>Federal law exempts taxis from ADA regulations as long as only sedans are used. Taxi companies are subject to the ADA requirements of private entities primarily engaged in the business of transportation with demand responsive service.</p>	<p>DMAS requires that vehicles comply with the ADA and that the broker ensure compliance with the Virginians With Disabilities Act and the Americans With Disabilities Act.</p>	<p>Loudoun County: the County and through contractual arrangements “may not...avoid compliance with” the ADA and the Virginians with Disabilities Act.</p> <p>Arlington County: the contractor must fully comply with the ADA.</p>	<p>According to the RFP for Human Service Transportation, Fairfax County is “fully committed to the ADA” which guarantees non-discrimination and equal access for people with disabilities in employment, public accommodations, transportation and all county programs, activities and services. “Contractors, subcontractors, vendors, and/or suppliers are subject to this ADA policy. Your acceptance of this contract acknowledges your</p>

Consumer Protection Standards	TNCs	Taxis	Independent Contractors for Medicaid Non-Emergency Transportation (NEMT)	Private Operators/Contractors for ADA Paratransit Service	Private Operators/Contractors for Human Service Transportation
					commitment and compliance with ADA.”
Trip Pricing	<p>VA requires that trip fares are to be collected only via the TNC digital platform. No cash fares are allowed.</p> <p>There are no VA regulations on the cost of trip to be charged to passengers.</p> <p>TNCs use “surge pricing” during periods of heavy demand, so the cost of trips is higher, typically some sort of multiplier of the regular fare.</p>	<p>Trip charges are set by the locality, and are typically based on a taxi meter, which calculates trip costs by a combination of mileage and time. Arlington Co., for example, charges \$2.75 for the first 1/6 mi. (initial drop charge), \$0.35 for each successive 1/6 mi., and \$0.35 for each 56 seconds of wait time.</p>	<p>By federal regulation, there is no charge for Medicaid non-emergency transportation.</p>	<p>Fares for paratransit service are set by the public entity contracting for service and, for ADA paratransit, must comply with the ADA regulation that fares may be no more than twice the undiscounted fare for the fixed route service.</p>	<p>The fare policy is set by Fairfax County.</p>

Appendix D
Federal Certifications and Assurances

11/01/2008
 Rev. 1, 04/14/2009
 Rev. 2, 07/01/2010
 Rev. 3, 02/15/2011
 Rev. 4, 03/18/2013

**PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER --
 MATRICES**

A. THIRD PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

PROVISION	COMMENTS	MASTER AGREEMENT REFERENCE (based on FA MA(17) 10-1-2010)
All FTA Assisted Third Party Contracts and Subcontracts		
No Federal Government Obligations to Third Parties (Use of Disclaimer)		§ 2.f
False or Fraudulent Statements or Claims – Civil and Criminal Fraud		§ 3.f
Access to Third Party Contract Records		§ 15.t
Changes to Federal Requirements		§ 2.c(1)
Civil Rights (Title VI, ADA, EEO (except special DOL construction clause))		§ 12
Disadvantaged Business Enterprises (DBEs)	Contract awarded on the basis of a bid/proposal offering to use DBEs.	§ 12.d
Incorporation of FTA Terms	Per FTA C 4220.1F.	§ 15.a
Awards Exceeding \$10,000		
Terminations	If 49 CFR Part 18 applies.	§ 11 and § 15.a, which incorporate 49 CFR Part 18
Special EEO provision for construction contracts	If 49 CFR Part 18 or Part 19 indicate that the DOL EEOC regulations at 41 C.F.R. Chapter 60 apply.	§ 15.a, which incorporates 49 CFR Part 18 and Part 19
Awards Exceeding \$25,000		
Debarment and Suspension		§ 3.b
Awards Exceeding the Simplified Acquisition Threshold (\$100,000) (As of February 2011, OMB has not to date adopted the FAR clause 2.101 \$150,000 standard for grants.)		
Buy America	When tangible property or construction will be acquired.	§ 14.a
Resolution of Disputes, Breaches, or Other Litigation		§ 56
Awards Exceeding \$100,000 by Statute		
Lobbying	OMB Office of Federal Financial Management has not adopted the FAR clause 2.101 \$150,000 simplified acquisition threshold standard.	§ 3.d
Clean Air		§ 25.b
Clean Water		§ 25.c

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PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER — MATRICES

A. THIRD PARTY CONTRACT PROVISIONS (Continued)

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

PROVISION	COMMENTS	MASTER AGREEMENT REFERENCE (based on FA MA(17) 10-1-2010)
Transport of Property or Persons		
Cargo Preference	When acquiring property suitable for shipment by ocean vessel.	§ 14.b
Fly America	When property or persons are transported by air between U.S. and foreign destinations, or between foreign locations.	§ 14.c
Construction Activities		
Construction Employee Protections – Davis-Bacon Act	For contracts exceeding \$2,000.	§ 24.a(1)
Construction Employee Protections – Contract Work Hours & Safety Standards Act	For contracts exceeding \$100,000. OMB Office of Federal Financial Management has not adopted the FAR clause 2.101 \$150,000 simplified acquisition threshold standard.	§ 24.a(2)
Construction Employee Protections – Sec. 1 Copeland Anti-Kickback Act – Sec. 2 Copeland Anti-Kickback Act	All contracts All construction contracts exceeding \$2,000.	§ 24.a(3)
Bonding for Construction Activities Exceeding \$100,000	5% bid guarantee bond. 100% performance bond. Payment bond equal to: – 50% for contracts < \$1M. – 40% for contracts > \$1M – < \$5M. – \$2.5M for contracts > \$5M.	§ 15.o(1)
Seismic Safety	Construction contracts for new buildings or for existing buildings.	§ 23.e
Nonconstruction Activities		
Nonconstruction Employee Protection – Contract Work Hours & Safety Standards Act	For all turnkey, rolling stock, and operational contracts (except transportation services contracts and open market contracts) exceeding \$100,000. OMB Office of Federal Financial Management has not adopted the FAR clause 2.101 \$150,000 simplified acquisition threshold standard.	§ 24.b
Transit Operations		
Transit Employee Protective Arrangements		§ 24.d
Charter Bus Operations		§ 28
School Bus Operations		§ 29
Drug Use and Testing	Safety sensitive functions.	§ 32.b
Alcohol Misuse and Testing	Safety sensitive functions.	§ 32.b

11/01/2008
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PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

A. THIRD PARTY CONTRACT PROVISIONS (Continued)

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

PROVISION	COMMENTS	MASTER AGREEMENT REFERENCE (based on FA MA(17) 10-1-2010)
Planning, Research, Development, and Demonstration Projects		
Patent Rights		§ 17
Rights in Data and Copyrights		§ 18
Special Notification Requirements for States		
Special Notification Requirement for States		§ 38
Miscellaneous Special Requirements		
Energy Conservation		§ 26
Recycled Products	Contracts when procuring \$10,000 or more per year of items designated by EPA.	§ 15.k
Conformance with National ITS Architecture	Contracts and solicitations for ITS projects.	§ 15.m
ADA Access	Contracts for rolling stock or facilities construction/renovation.	§ 12.g
Assignability Clause	Procurements through assignments.	§ 15.a, which incorporates 49 CFR Part 18 and 49 CFR Part 19