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COVID-19 Regulations for Taxi, For-Hire & TNC Transportation Providers – *Mandates, Resurgences & Vaccines*

Since the COVID-19 pandemic began, the U.S. Centers for Disease Control and Prevention (“CDC”) and state and local governments and public health authorities have issued guidelines to minimize the risk of transmission of the virus. Published CDC guidelines applicable to the taxi, limousine, rideshare, and non-emergency vehicle for-hire industries include *Cleaning and Disinfection for Non-emergency Transport Vehicles*¹ and *What Rideshare, Taxi, Limo, and other Passenger Drivers-for-Hire Need to Know about COVID-19*.² The U.S. Department of Labor Occupational Safety and Health Administration (“OSHA”) also issued *Guidance for Rideshare, Taxi, and Car Service Workers*.³ The following is a list of mitigation strategies for taxi, limousine, rideshare, and other non-emergency vehicle for-hire drivers and passengers that appear in CDC and OSHA guidelines and guidance from other public health authorities:⁴

- Drivers who have COVID-19 symptoms (fever, cough, difficulty breathing, *etc.*) should stay home and not come to work/drive their vehicle;
- Passengers and drivers should wear cloth face coverings while in the vehicles;
- Avoid transporting passengers together who are not from the same household or cohort family or who would not otherwise be riding together (*i.e.*, pooled rides);
- Consider installing a shield or barrier between the front and back seats, or around the driver;
- Passengers should sit in the back seat, six feet/two meters from the driver when possible.
- Lower vehicle windows to increase airflow;
- Avoid using the recirculated air option for the car’s ventilation during passenger transport;
- Clean and disinfect frequently touched surfaces (*e.g.*, door handles, arm rests, seatbelts, buttons for windows and locks) at the beginning and end of each shift and between transporting passengers who are sick;

¹ U.S. CDC, *Cleaning and Disinfection for Non-emergency Transport Vehicles* (updated Apr. 14, 2020), www.cdc.gov/coronavirus/2019-ncov/community/organizations/disinfecting-transport-vehicles.html.

² U.S. CDC, *What Rideshare, Taxi, Limo, and other Passenger Drivers-for-Hire Need to Know about COVID-19* (updated Apr. 17, 2020), www.cdc.gov/coronavirus/2019-ncov/community/organizations/rideshare-drivers-for-hire.html.

³ U.S. Dept. of Labor, OSHA, *COVID-19 Guidance for Rideshare, Taxi, and Car Service Workers* (May 14, 2020), www.osha.gov/Publications/OSHA4021.pdf.

⁴ See, e.g., N.Y.C. Dep’t of Health, *COVID-19: General Guidance for Vehicle Operators* (Jun. 29, 2020), www1.nyc.gov/assets/doh/downloads/pdf/imm/covid-19-guidance-for-vehicle-operators.pdf; Colorado Dep’t of Pub. Health and Env’t, *COVID-19: Guidelines for Public Transportation 060520*, <https://covid19.colorado.gov/guidance-resources>; N.Y.C. Taxi & Limousine Comm’n, *COVID-19: General Guidance for Vehicle Operators*, www1.nyc.gov/site/tlc/drivers/coronavirus-information.page. See also Gov’t of Alberta, *COVID-19 Guidance for Taxis, Limos and Rideshares and Commuting* (Jun. 26, 2020), <https://open.alberta.ca/dataset/0baee684-64f7-4d0a-bce6-001555394f12/resource/6a98d2ae-b95d-4cb9-842a-7708e7b789bb/download/covid-19-relaunch-guidance-taxis-limos-rideshares-2020-0629.pdf>; National de Santé Publique, *COVID-19: Interim Recommendations for Drivers in the Taxi and Ride-sharing Industry, such as UBER or The Volunteer Bureau/Transportation (CAB) and Paratransit* (May 11, 2020), www.inspq.gc.ca/en/publications/2938-drivers-taxi-ride-sharing-industry-covid19; Toronto Pub. Health, *COVID-19 Guidance for Taxi and Ride Share Vehicles* (Jul. 31, 2020), www.toronto.ca/wp-content/uploads/2020/03/8d19-COVID-19-Guidance-for-Taxi-Ride-Share-Employers-Drivers-Vehicle-Owners.pdf/.

- Use appropriate disinfectants for hard non-porous surfaces; and
- Direct passengers to handle their own bags and belongings.

Guidance issued by state and local health agencies typically mirrors and often cites U.S. CDC and other official guidance.⁵ Many taxi, limousine, ride-sourcing (TNC), and other for-hire vehicle regulators have communicated official guidance, government directives, and other important COVID-19 information and updates to their licensees through industry notices, social media, and other mediums instructing viewers to visit the local health authority’s website for the most up-to-date information because recommendations may change as the situation evolves.⁶ By relaying information in this manner, it helps ensure licensees rely on advice from public health officials. However, a few regulators have made it mandatory for licensees to comply with U.S. CDC guidance, as well as applicable guidance and orders issued by state or local government, including the *California Public Utilities Commission (“CPUC”)*, the *Nevada Transportation Authority (“NTA”)*, and the *Philadelphia Parking Authority (“PPA”)*. This article will detail these unique approaches to pandemic related health and safety regulation, and whether it is indicative of a sign of more widespread mandates across the United States and beyond.

Requiring Passenger Carriers to Comply with CDC and State Health COVID-19 Prevention Guidelines

In August 2020, the *California* Public Utility Commission passed a Resolution (TL-19131) requiring passenger carriers under its jurisdiction—which includes TNCs, airport shuttles, and limousines—to comply with all CDC COVID-19 prevention guidelines and California Department of Public Health (“CDPH”) Guidance, and any revisions and/or updates to those guidelines, as practicable to commercial passenger transportation.⁷ The CPUC further requires carriers to provide training on these guidelines to their drivers and to “offer, make available, and supply upon request” all personal protective equipment (e.g., cloth face coverings and non-surgical masks) recommended by those guidelines.⁸ In *Nevada*, the NTA requires that all carriers under its jurisdiction apply the recommendations outlined in the CDC’s “What Rideshare, Taxi, Limo and other Passenger Drivers-for-Hire Need to Know about COVID-19.”⁹ In *Philadelphia*, PPA issued

⁵ See, e.g., Toronto Pub. Health, *COVID-19 Guidance for Taxi and Ride Share Vehicles* (Jul. 31, 2020), www.toronto.ca/wp-content/uploads/2020/03/8d19-COVID-19-Guidance-for-Taxi-Ride-Share-Employers-Drivers-Vehicle-Owners.pdf; Colorado Dep’t of Pub. Health and Env’t, *COVID-19: Guidelines for Public Transportation 060520*, <https://covid19.colorado.gov/guidance-resources>; N.Y.C. Dep’t of Health, *COVID-19: General Guidance for Vehicle Operators* (Jun. 29, 2020), www1.nyc.gov/assets/doh/downloads/pdf/imm/covid-19-guidance-for-vehicle-operators.pdf.

⁶ N.Y.C. Taxi & Limousine Comm’n, *COVID-19: General Guidance for Vehicle Operators*, www1.nyc.gov/site/tlc/drivers/coronavirus-information.page.

⁷ CPUC Resolution TL-19131, *Resolution Requiring Passenger Carriers to Comply With Covid-19 Prevention Guidelines and Temporarily Modifies the Procedures Used by Carriers to Reinstate Their Authorities* (Aug. 6, 2020), available at <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M344/K842/344842850.PDF>. The CPUC has regulatory and safety oversight over for-hire passenger carriers (limousines, airport shuttles, charter and scheduled bus operators) and TNCs.

⁸ *Id.* at 16.

⁹ See Nevada Transp. Auth., *State Requirement for Carrier Reopening Plan* (May 4, 2020), <http://nta.nv.gov/uploadedFiles/ntanvgov/content/Home/ReopeningRequirmentNotice.pdf>. The NTA regulates airport transfer services, charter buses, charter limousines, contract carriers, consent and non-consent tow carriers, non-emergency medical transportation, employer van pools, household goods movers, special service carriers, tour

a notice warning licensees that failure to follow and adhere to orders related to COVID-19 issued by Pennsylvania Governor Tom Wolf and the Secretary of Pennsylvania Department of Health Dr. Rachel Levine “may result in the issuance of a penalty and possibly being placed out of service.”¹⁰ In March 2020, the governor issued an order closing non-life sustaining businesses, while directing life sustaining businesses—including taxis, limousines, and other ground transportation of passengers—to “follow, at a minimum, measures defined by the Centers for Disease Control to protect workers and patrons.”¹¹

Mandatory Workplace Safety Plans

Some state and local governments require businesses, in general, to have in place a plan outlining how it will prevent the spread of COVID-19 in the workplace.¹² A few jurisdictions or regulators require regulated entities to submit such workplace health and safety plans to the regulators. In *California*, the CPUC requires carriers under its jurisdiction to have in place a written COVID-19 emergency plan detailing how the carrier will ensure the safety of its drivers and passengers.¹³ Carriers must submit these plans to the Commission in a “public non-redacted format” so that the CPUC may make them public. The State of *Nevada* also requires that all entities under its jurisdiction, including motor carriers, submit to their regulating agencies a plan for operation as the COVID-19 restrictions are gradually lifted.¹⁴

Temporarily Extending Permit Suspension/Compliance Periods and Waiving Related Fees

Many regulators have taken measures to ease the burden that the COVID-19 pandemic and stay-at-home orders placed on drivers and operators by reducing, suspending, or waiving fees and fines. In California, the CPUC’s Resolution extended the period for a carrier to remedy deficiencies that caused the carrier’s operating authority to be suspended and reduced or waived the fee to reinstate a revoked operating authority.¹⁵ The CPUC Resolution extends the suspension

companies, warehouse permits, and Taxi Cabs outside of Clark County pursuant to Nevada Revised Statutes § 706 and Nevada Administrative Code § 706. The NTA regulates TNCs pursuant to NRS 706A, a statute which allows more limited regulatory enforcement from the NTA.

¹⁰ See Philadelphia Parking Auth., *Reminder of Health Safety Measures Concerning For-Hire Vehicles & Transportation* (May 13, 2020), <http://philapark.org/2020/05/reminder-of-health-safety-measures-concerning-for-hire-vehicles-transportation/>. The PPA oversees taxicab, limousine, and transportation network companies (“TNC”) operating in Philadelphia.

¹¹ Pennsylvania Governor Tom Wolf, Order, “Closure of All Businesses That Are Not Life Sustaining” (Mar. 18, 2020), www.governor.pa.gov/wp-content/uploads/2020/03/20200319-TWW-COVID-19-business-closure-order.pdf (internal quotes omitted); see also Pennsylvania Dep’t of Health Sec’y, Order, “Directing Public Health Safety Measures for Businesses Permitted to Maintain In-person Operations” (Apr. 15, 2020), www.governor.pa.gov/wp-content/uploads/2020/04/20200415-SOH-worker-safety-order.pdf.

¹² See e.g., N.Y.S., “Business Reopening Safety Plan Template,” www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/NYS_BusinessReopeningSafetyPlanTemplate.pdf?fbclid=IwAR0-ccsUuOmhCm9UIQNtdz8ufxdPtQFXzKUpSiSzf9Ie9vv4hZumc-BUlyl.

¹³ See CPUC Resolution TL-19131.

¹⁴ Nevada Transp. Auth., *State Requirement for Carrier Reopening Plan* (May 4, 2020), <http://nta.nv.gov/uploadedFiles/ntanvgov/content/Home/ReopeningRequirmentNotice.pdf>.

¹⁵ CPUC Resolution TL-19131.

period to 180 days for specific causes for suspension of a carrier’s permit or certificate prior to its revocation and suspends the \$125 reinstatement fee. The extension applies to any carrier suspended between March 19, 2020 (when the California stay-at-home order was issued) until California reaches Stage 4 of the state’s reopening plan, Roadmap to Recovery. The fees will be waived until 90 days after the state reaches Stage 4. This is in line with measures taken by other jurisdictions to ease the burden that the COVID-19 pandemic and resultant stay-at-home orders have placed on passenger carriers.

What Other Regulators Are Doing – Or NOT Doing

Surveys conducted by the *International Association of Transportation Regulators (“IATR”)* found that most regulators do not favor mandating compliance with government and public health authority guidelines, and prefer encouraging licensees to adhere to such guidelines.

In April 2020, the IATR conducted a global survey of its members on the actions regulators were taking in response to the emerging COVID-19 pandemic.¹⁶ The initial comprehensive survey received responses from nearly all of the largest cities in the U.S. and Canada and collected information about their approaches to communicating with the regulated community, vehicle cleaning and disinfecting, pooled trips, licensing and renewals, fees, insurance, and enforcement, among other topics. Many regulators who IATR surveyed reported that they were communicating COVID-19 preparedness and cleanliness information to licensees, and nearly all of the regulators stated that licensees were essentially following CDC guidelines on social distancing (*e.g.*, encouraging passengers to sit in the back, removing the middle row in minivans) and regularly cleaning and disinfecting high touch surfaces in vehicles (*e.g.*, door handles, seat belts).¹⁷ Approximately 27 percent of regulators reported increasing enforcement of existing vehicle cleanliness rules.¹⁸

Many regulators have made it easier for licensees to follow CDC guidelines on maintaining distance. For example, in response to requests from for-hire vehicle (“FHV”) operators to install temporary barriers between the driver and passengers, the New York City Taxi and Limousine Commission (“TLC”) eased its vehicle partition requirements to allow TLC-approved partitions in FHVs.¹⁹ In addition, a few jurisdictions, including New York City and Nevada, prohibited pooled rides.²⁰

An August 2020 IATR survey of regulators found that most regulators do *not* favor mandating compliance with government and public health authority guidelines and prefer encouraging licensees to adhere to such guidelines. In contrast to California and Nevada, most of

¹⁶ See Matthew M. Daus, *What the IATR and Transportation Regulators Are Doing to Respond to the COVID-19 Pandemic* (June 2, 2020), available at <https://bit.ly/304XkYi>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See New York City Taxi and Limousine Commission, *TLC Updates During COVID-19*, www1.nyc.gov/site/tlc/drivers/coronavirus-information.page.

²⁰ City of New York, Emergency Executive Order No. 101 (March 17, 2020), www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-101.pdf; Nevada Declaration of Emergency, Directive 003 (March 20, 2020), <https://nvhealthresponse.nv.gov/wp-content/uploads/2020/03/3.20-Emergency-regulations.pdf>.

the regulators said that workplace safety plans are not required in their jurisdiction. The majority of regulators (75%) who responded to IATR's survey said they do *not* favor regulations governing maintaining distance between drivers and passengers or limiting the number of passengers that may be transported at a time but that licensees should be encouraged to follow applicable government or public health authority recommendations regarding the same. Over half of the respondents gave a similar response regarding banning shared rides specifically and said they would recommend certain precautions, such as following applicable government or public health authority guidelines (87.5%), use of face coverings by drivers (81%) and passengers (69%), seating requirements for in-vehicle distancing (56%), and partitions between passengers (25%).

IATR's Model Regulations & Best Practices

The IATR has been at the forefront of COVID-19, providing advice and assistance to transportation regulators through its various resources. The IATR submitted comments on the CPUC's Draft Resolution and has convened a COVID-19 Task Force to develop model regulations for for-hire ground transportation regulators to address the current pandemic and to create a plan in case of either a COVID-19 resurgence or the emergence of another highly transmissible disease emergency. The task force is comprised of chairs of the IATR's committees, including the Technology & Innovation, Health & Safety, Canadian Regulators, Accessible Transportation, and the TNC Regulator Working Group. The model regulations will address, among other subjects, safety plans to prevent the spread of the virus, cleaning and disinfecting vehicles, PPE, use of face coverings by drivers and passengers, maintaining distance between drivers and passengers, pooled rides, protective barriers/partitions, and conducting health checks.

The goal of the model regulations is to provide regulators with specific rules and guidelines based on best and/or accepted practices that regulators may implement through their jurisdiction's legislative and/or rulemaking process. To collect the best data, regulatory and policy information, and opinions of regulators from around the world, the COVID-19 Task Force is conducting an international regulator survey that will form the basis of the model regulations. The task force will also collaborate with and seek input from members of the IATR's Advisory Board as well as other government, academic, and non-profit transportation organizations.²¹ As we learn to live with the pandemic, the IATR model regulations will continue to help regulators apply best practices.

Where Do Transportation Regulators Go From Here? – *COVID-19 Vaccines, Resurgences & Beyond*

²¹ The IATR's Advisory Board members include American Association of Motor Vehicle Administrators; American Association of State Highway and Transportation Officials; Airport Ground Transportation Association; American Public Transportation Association; Alliance for Transportation Innovation; City Innovate; The Eno Center for Transportation; Keroul; The Institutes Griffith Foundation; Intelligent Transportation Systems of America; International Association of Public Transport; International Transport Forum, Organization for Economic Cooperation and Development; National Conference of State Transportation Specialists; National Conference on Weights and Measures; National Institute for Occupational Safety and Health within the CDC; Responsible Hospitality Institute; Shared Use Mobility Center; Transportation Sustainability Research Center at the University of California, Berkeley; University Transportation Research Center at City College, City University of NY; and Womanium.

Local conditions will influence the decisions that public health officials make regarding community-level strategies. Public health authorities continually revise their guidelines as their understanding of the virus evolves, and considering the circumstances of their particular location. To prevent ordering licenses to continue to follow outdated guidelines, regulators may choose, for now, to avoid mandating specific health and safety requirements relating to the pandemic, including: vehicle cleaning and disinfecting (including use of certain cleaning products), use of PPE, maintaining distance between drivers and passengers, workplace safety plans, COVID-19 health checks and testing, and use of physical barriers. Instead, regulators could either encourage or require licensees to follow applicable Official Guidance or government directives, and any revisions or updates to those guidelines that can be applied to their regulated industries.

Regulators in the United States have not yet penalized licensees for failing to adhere to CDC or state-issued guidelines, which are continually revised as the understanding of the virus evolves. Oftentimes, these guidelines and subsequent amendments and updates take effect without notice to or input from the regulators. Furthermore, potential tort liability for not complying with the duty of care set by official guidance might be a significant enough incentive for transportation businesses to comply right now, without the intervention of licensing regulators or other government agencies. However, we are in uncharted regulatory waters and anything could change the direction that regulatory winds might blow. As we enter the winter and fall, possible resurgences and reported transmissions through transportation services could lead to reactionary measures that are more draconian. While regulators have taken the approach of working with rather than penalizing the industry, and trying to be supportive of the drivers and transportation businesses through economic relief and waiver of fees and regulatory requirements, the real challenge would be how or whether to enforce health and safety mandates through fines, license suspension and/or revocation if significant non-compliance results. Many regulators are still watching, waiting and learning, and most have not enacted mandates, but that could change quickly depending on the political environment, as well as mounting government revenue shortfalls.

While regulators continue to grapple with the moving targets of re-openings, resurgence related shutdowns, back to school transportation plans, there is hope that vaccines are on the way. However, the introduction of a vaccine, even if effective, is not a final automatic solution to many of the problems being faced and which will continue in the transport sector for a long-time to come. At the request of the CDC and the National Institutes of Health (“NIH”), the National Academies of Sciences, Engineering, and Medicine formed a committee to recommend a framework for equitable allocation of vaccines against COVID-19 when they are available.²² In the draft framework, the Committee on Equitable Allocation of Vaccine for the Novel Coronavirus recommends a four-phased approach to allocating vaccines.²³ Passenger transportation workers would be prioritized in Phase 2, which includes workers who are both in industries essential to the functioning of society and at high risk of exposure. The IATR submitted comments on the draft report to aid the Committee’s decision-making on this important topic, and in support of the transportation workers being designated as essential workers and included in Phase 2 of COVID-

²² National Academies of Sciences, Engineering, and Medicine, *A Framework for Equitable Allocation of Vaccine for the Novel Coronavirus*, www.nationalacademies.org/our-work/a-framework-for-equitable-allocation-of-vaccine-for-the-novel-coronavirus.

²³ National Academies of Sciences, Engineering, and Medicine, *Discussion Draft of the Preliminary Framework for Equitable Allocation of COVID-19 Vaccine*, The National Academies Press (2020), <https://doi.org/10.17226/25914>.

19 vaccination, as provided in the Committee's framework for vaccinations. The final report will help inform the development of federal guidance on how a vaccine will be allocated in the United States and will also be useful to state and local policy makers and health officials.

In addition to the above, whether a vaccine is deployed, how effective it is, and whether transportation drivers, as essential workers, are on the priority list to be some of the first recipients, may well chart the course for the short-term future of the industry's recovery, as well as the need for regulators to mandate and enforce health and safety requirements. There is now the new question of whether regulators will mandate that drivers must be vaccinated at some point in order to drive – leading to all sorts of tricky legal issues. Just as one door may close and we think we are on a path to transportation normalcy, another one opens. The twists and turns of this pandemic will leave lasting changes – some good and many bad – for the transportation sector. It will now be up to regulators to exercise sound judgment and walk the line between promoting and ensuring public health and safety, while also lending a helping hand to the riding public and the industry so that it can survive economically. These are daunting tasks, but so far, regulators have shown restraint, innovation and flexibility, and have wisely not been precipitous in light of the changing facts and circumstances of this new world in which we all live. That could change, but for now, the transportation regulation environment remains relatively stable as society continues to find its way through the pandemic.