PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

Economic Affairs Interim Committee

64th Montana Legislature

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as of 2/1/2016

Options to Consider for Air Ambulance Study HJR 29

The Economic Affairs Interim Committee has been looking at air ambulance service in Montana, its costs, the types of providers, their billing practices and membership offerings, licensing, protocols for responding to emergency calls, and at the insurance industry's interaction with air ambulance providers and employer plan documents that outline payment plans. The committee also has heard from various representatives about legal constraints imposed by the Airline Deregulation Act and subsequent U.S. Supreme Court decisions that emphasize federal preemption of state laws "related to a price, route, or service of an air carrier that may provide air transportation." See 49 U.S.C. Section 41713(b)(1).

In addition, there are various letters or legal opinions on specific cases in which the U.S. Department of Transportation has said whether state laws are preempted or not. These letters offer guidance to other states but have influence only related to the specifics presented in the proposal or enacted laws on which the letters comment.

The question before the Economic Affairs Interim Committee is whether to:
- ask for more information;
- draft legislation for possible changes in current statute or additions to statute, specifying what areas of interest;
- request a letter to Montana's congressional delegation for changes in federal law to allow more state influence related to balance billing or other concerns; or
- consider the study to be complete with no recommendations but possible findings and comments.

The options below and a draft bill attached as an Appendix are for the committee's consideration. If the committee wants to address any of these options, two committee meetings remain to further explore or discuss the option(s) with a last meeting in August for a final decision on whether to take any of the options.

As a reminder, the study planned called for the following:
- Briefing papers providing background information on costs, operational data regarding membership or subscription services, insurance-related information, regulation, and health care industry impacts plus research from other states, if available.
- Panel presentations indicating:
  - legal concerns related to regulating air ambulances;
  - pros and cons of various types of regulation, and by whom, as perceived by stakeholders;
  - hospital issues regarding costs of affiliation with air ambulance services and their responsibility vis-a-vis patients when transfers are needed or may be needed;
  - insurers' perspectives of membership-based services and how best to recognize and deal with them as a noninsurance, separate product or in another manner; and
  - differences between membership-based and other types of ambulance services from the perspectives of ambulance providers, consumers, and emergency room personnel who

may be calling for transport to a larger hospital. Is a list of preferred providers a possibility or too complicated for an emergency situation in a hospital?

Topic Area	Proposal	Current Situation	Potential Impact
Air Ambulance Licensing	Tiered licenses - based on level of care offered onboard	All ambulances, including air ambulances, pay $35 for a 2-year license.	• Could add costs to charges • Could encourage use of responders with higher level care
	If charge more for high-level care license, could use money for fund to supplement Medicaid payments for air ambulances.	Medicaid pays less than Medicare and, some say, less than the cost of service.	• Could be used to offset state share of air ambulance Medicaid costs
Dispatch Protocols	Include in training of 9-1-1 emergency dispatchers and EMTs a requirement for appropriate dispatching of air ambulances, to avoid "air ambulance shopping"		
	Require hospital facility-to-facility dispatchers to first call in-network air ambulances, subject to informed patient choice. (ND approach)		
Regulation of Memberships	• Regulate air ambulance memberships the same way as motor club memberships are under T 61, ch. 12, part 3	There is no regulation of air ambulance memberships except to say they are not insurance and they should, to the extent feasible, provide reciprocity to cover Montana's geographic areas.	• Adds to regulation costs. • Provides office that can keep track of and have licensing impact on entities that receive the most complaints.
	• Require as part of licensing that air ambulances that have memberships to report fee schedules and network affiliations to insurance commissioner. (in bill draft LCaram)	Licensing now requires no reports other than some safety inspections.	• May increase compliance cost. • Might be challenged but does not specifically deal with rates, just transparency.

	• Require all air ambulances [or just those that offer memberships] to be in-network for at least one health insurer in the state. (in bill draft LCaram)	There is no regulation related to air ambulance memberships.	• As the insurance regulator, the commissioner has authority to determine network adequacy. Saying air ambulances are included is one way of having network adequacy. Most insurers already do this.
Insurance Networks	• Networks must include an appropriate (local?) air ambulance provider in-network. (Opposite but same result as option above)		
	• Base network adequacy on average usual and customary cost. (in bill draft LCaram)		

Legislation Drafted in Other States Regarding Air Ambulances

State	Status	Major Provisions
Arizona		Lists fee schedules. See website.
Florida - S0516 and H0681 - 2015 2016 proposals: FL S 742 / H 517	Neither passed	--Prohibits health insurance policies from requiring preauthorization for emergency services. --Allows for coinsurance, copayment or certain limits regardless of whether in or out of network. --Provides options for billing by non-networked providers -- 1) same as in-network providers; 2) usual, customary, and reasonable amounts; 3) Medicare's allowable rate. --Says "a nonparticipating provider may not be reimbursed ... and may not collect or attempt to collect... any excess amount." H0681 was similar but allowed the "greater" of the three options for providers not under contract with a health maintenance organization. --Requires a certificate of need/public necessity
Kentucky H 273 in House Banking/Ins.	pending	Requires Board of Emergency Medical Services to obtain charges bill by all air ambulance providers licensed and operating in the state. Allows information to be proprietary but requires average cost to be determined and public information.

New Mexico - SB 51 - 2015 2016 Study Bill - SM 62	Postponed indefinitely Introduced	SB 51 directed creation of a fee schedule for intrastate air ambulance services, included air ambulance services in peer group utilization review, and established a fee schedule with maximums for air ambulance services. The link provides a synopsis of a proposed study bill as well as workers' compensation costs in New Mexico for air ambulances.
New York - SB 790 - 2015 AB 2438 - 2015	Introduced, in recess (both bills)	SB 790 exempted private, nonprofit air ambulances from being an insurer if they sell memberships and have a valid operating certificate issued by the Department of Health and have been in service in the state for 2 years. Requires notice that membership is not insurance. AB 2438 exempts air ambulances from workers' compensation fee schedule listing.
North Dakota - HB 1255 - 2015	Enacted	• Required N.D. health department to create and maintain a primary call list and a secondary call list of air ambulance providers operating in North Dakota. To be on the primary call list a provider has to be in-network with insurers covering 75% of the insured population. • Also required creation of air ambulance zones for rotary wing based on response time and patient safety. • Required dispatchers to inform requester of both air and ground projected response times. • Required at request of health department that an air ambulance provider list prices for services. • Defined difference between emergency response and immediate response.
South Carolina - H 3448 introduced 2015	Out of first committee now in House.	Air Ambulance Affordability Act. Defines "condition requiring an emergency response" and "emergency transport". Requires individual and group health insurance policies to pay for the Medicare rate for air ambulance services plus 15%.
West Virginia - SB 97 - 2015. Reintroduced as WV H4315 in 2016	Introduced; Legislature adjourned	HB 4315 sets a maximum amount for air ambulance services that may be collected from an employee/dependent covered under the state's Public Employee Insurance. Also requires subscription service fee or cost for members in good standing to be payment in full for air ambulance/services.
U.S. H 822 Introduced in 2015	in House Energy and Commerce Committee	Requires reporting of data by air ambulance service providers for the purposes of reforming Medicare reimbursements.

Appendix -- Bill Draft Suggested for Discussion Purposes

A Bill for an Act entitled: "An Act revising laws related to determination of network adequacy for insurers by revising

licensing and reporting requirements for air ambulances and determination of an average fee schedule."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Air ambulance postings -- average calculation.** (1) The commissioner of insurance shall post for each air ambulance service licensed in this state a list of its most recent fee schedules, provided under and each insurer or insurance plan with which the air ambulance service has a network agreement.

(2) The commissioner of insurance shall annually compile an average fee schedule [or an average percent of Medicare] from the list of fee schedules provided under subsection (1) to be used in making a determination of network adequacy as provided in [section 2].

NEW SECTION. **Section 2. Network adequacy to include air ambulance coverage -- definition.** (1) To have network adequacy a plan of insurance coverage must include at least one in-network air ambulance service.

(2) Network adequacy is achieved for air ambulance service on emergency transports only if the insurer's and the policyholder's combined payment is equal to or less than the amount determined by the commissioner of insurance in [section 1(2)].

(3) The insurance payment under subsection (2) must be treated for an air ambulance service as provided in 33-32-215.

(4) For the purposes of this section, the term "emergency transport" refers to the transfer of a patient from the scene of an accident or a traumatic event or from a hospital or critical access hospital to another hospital because the patient's life is at risk without the transfer and may be saved by the transfer, as determined by the first responder at the scene or by the treating physician in the hospital or critical access hospital. An insurer or insurance plan shall consider the emergency transport as defined in this section to be an in-network transfer.

NEW SECTION. **Section 3. Licensing requirements.** To be licensed as an air ambulance in this state, an air ambulance provider shall upon applying for a license:

(1) give proof to the licensing agent that the air ambulance provider has supplied its current fee structure to the insurance commissioner. If prices change in the year after submission, the air ambulance provider shall provide an update to the insurance commissioner, who shall notify the department.

(2) pay the application fee set by rule and provide proof of having met department regulations set by rule.

Section 4. Section 50-6-306, MCA, is amended to read:

"50-6-306. License required. (1) A person may not conduct or operate an emergency medical service without first obtaining a license from the department. A separate license is required for each type and level of service.

(2) Applications for a license must be made in writing to the department on forms specified by the department.

(3) (a) ~~Each~~ Except as provided in subsection (3)(b), each license must be issued for a specific term not to exceed 2 years. Renewal may be obtained by paying the required license fee and demonstrating compliance with department rules.

(b) An air ambulance provider must be licensed annually and must meet the provisions of [section 3].

(4) The license is not transferable."

{*Internal References to 50-6-306:*
50-6-320 *50-6-323* }

NEW SECTION. **Section 5. {standard} Codification instruction.** (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 33, chapter 16, and the provisions of Title 33, chapter 16, apply to [sections 1 and 2].

(2) [Section 3] is intended to be codified as an integral part of Title 50, chapter 6, and the provisions of Title 50, chapter 6, apply to [section 3].

DRAFT DRAFT DRAFT - END - DRAFT

Dear (Senator Tester, Senator Daines, Congressman Zinke):

The Economic Affairs Interim Committee (the EAIC) of the Montana Legislature has been studying air ambulance issues as directed under House Joint Resolution No. 29 from Montana's 2015 Legislature. The EAIC is concerned about the high costs that have been passed along by air ambulances to patients. The EAIC also recognizes the importance of air ambulances and the service that they provide, particularly in a rural state like Montana, where high adventure combines with high risk and vast distances between hospitals that can provide appropriate medical care.

The EAIC has been told as part of its study of air ambulances that the Airline Deregulation Act preempts any efforts to regulate air ambulance rates. The EAIC also has been told that Medicare reimbursement rates for air ambulances are inappropriately low in relation to costs experienced by air ambulance providers. The issue is complex in that many insurance companies use Medicare as a basis for their reimbursements. If those reimbursement levels are too high, insurance companies face greater outlays, which means higher premiums. If those reimbursement costs are too low, air ambulance providers may be unwilling to participate in an insurance network because by remaining out-of-network the air ambulance provider can charge the full price to a patient. In that case, the patient who already has suffered traumatically from an emergency or life-threatening illness also suffers economically, even while grateful to the air ambulance provider for helping to save the patient's life (if that is the outcome).
If federal legislation related to air ambulances comes before one of your committees this session or in your future sessions, please consider the following actions:

- Revise the Airline Deregulation Act to allow rate setting regulation by states through insurance laws for air ambulances either as part of insurance networks or through guidelines that establish reasonable and customary billing or billing based on a percentage of Medicare;
- Revise the Airline Deregulation Act to prevent balance billing on truly emergency transports.
- Revise the Airline Deregulation Act to recognize that air ambulance providers that sell memberships may do so without preemption and may be regulated by the state, much as automobile clubs now are regulated; and
- Require more timely changes to Medicare reimbursement rates for air ambulances to keep up with medical inflation so that air ambulances are not cost-shifting to non-Medicare patients the cost of serving Medicare patients. This is one focus of H 822 currently before the House Energy and Commerce Committee.

Thank you for your consideration of these concepts. The HJR 29 study of air ambulances in Montana has shown that approximately 3,000 patients had to be transported in 2014 by air ambulances in or out of Montana. Not all of these patients had insurance, but of those that did, the impact fell not only on a patient who might have been balance-billed but on the employer's premiums and the insurer.

The EAIC recognizes the importance of regulation that treats all parties fairly in the high-cost environment of maintaining a 24-7 air ambulance that can help save lives. But having federal regulation that preempts efforts to provide reasonable controls through memberships or payment guidelines may, in Western terms, be giving too much rope to a situation and ultimately wind up in court, Your actions in Congress may help to bring more sanity to this situation. Thank you for your service.

Sincerely,

Economic Affairs Interim Committee