

Appendix C

Study plan for HJR 29 - A Study of Membership-based Health Care, Including Membership-based Air Ambulances

Under existing law, 50-6-320, MCA, private air ambulances may solicit memberships and accept membership fees but are not considered an insurer, a health carrier, a health service corporation, or a health maintenance organization if the insurer is licensed as an emergency medical service under 50-6-306, has been in operation in Montana for at least 2 years, and has submitted to the Department of Public Health and Human Services that it is compliant with 50-6-320, MCA. When HB 177 came before the House Business and Labor Committee in the 2015 session to revise the 2-year experience factor in 50-6-320, MCA, that committee heard testimony from various people about concerns that 50-6-320 did not provide consumer protection and had created possible unintended consequences because of confusion about membership-based services and ambulance services otherwise licensed under Title 50, chapter 6, part 3. The result of the concerns was that HB 177 did not pass and HJR 29 was created.

The issues included in HJR 29 regarding this study seek to address five main topic areas:

Costs and data collection:

- How many membership-based air and ground ambulance services operate in Montana, where are they located, what are their service areas, and how much do they charge for membership (if the costs are available)?
- What are member and nonmember billing rates, if available, and the billing practices for membership-based air and ground ambulances, including rates for flights to regional medical centers, common out-of-network insurance reimbursement rates, and balance-billings amounts, if available?

Operational data regarding membership-based or subscription services:

- What are the terms of reciprocity agreements and the determining factors for reciprocity among membership-based ambulance services and do hospitals have agreements with specific membership-based ambulance services?
- What are the estimated financial impacts (on consumers primarily but health care providers or insurers as well) of membership-based health services, which would include an estimate of out-of-pocket costs for members as compared with nonmembers?

Insurance-related issues

- Do insurers in high-deductible plans differentiate coverage for membership-based ambulance services differently than in other types of plans and explain that clearly to policyholders?
- Can flex spending be used to cover the cost of membership?
- Do insurers try to include membership-based service providers in their preferred provider networks?
- Do insurers work with their policyholders to help pay the costs incurred by a nonmember for services by membership-based ambulance providers?

Regulation

- To whom does a complaint go if a membership-based ambulance service ignores or finds unreasonable an effort to make arrangements with other air ambulance providers to ensure maximum geographic coverage as provided in 50-6-320(3)?
- Is more regulation required in other states and what impacts have membership-based health care services, including air and ground ambulances, had in other states?
- Within the constraints of federal preemption under the Airline Deregulation Act, are other state laws requiring licensure of private ambulance services or exempting them from regulation other than through licensing?

Health Care Industry Impacts

- Are there impacts of membership-based health services on the health care system and health insurance companies?
- Has the ease of transferring critical patients in need of specialized services resulted in hospitals changing their business plans (becoming less likely to care for some patients) or putting some hospitals at financial risk because patients who face higher-than-expected medical bills because of

- transport costs end up not paying the first hospital's bills on time?
- Are hospitals at risk for calling on transport services in critical situations if the consumer is under duress for agreeing to transport by an entity not covered by insurance?
- Are insurers at risk if using an in-network provider results in a delay in service that impacts a patient's health?

Preliminary study approach:

The August 31-September 1 meeting will feature some of the legal constraints regarding state regulation of the air ambulance industry. The purpose of this approach is to let the EAIC members decide whether they want to find areas in which regulation may be permitted or to address areas that may be subject to lawsuit on the theory that if enough states take action on air ambulances then Congress may revise its approaches in various federal laws.

At the August 31-September 1 meeting, the EAIC also will be asked to determine whether to conduct a closed survey, available only to air ambulance providers, to obtain information listed above and in an options paper provided at that meeting. By approving this work plan, the survey will be conducted, although it was not discussed specifically.

Other options for meetings might include hearing from the following:

- Montana's regulators, the EMS and Trauma Systems unit in the Department of Public Health and Human Services;
- the State Auditor's Office, which is currently prohibited from addressing membership-based services of air ambulances but handles insurance-related complaints, particularly as they relate to balance-billed costs;
- the Department of Justice's Consumer Protection Office;
- self-insured public entities responsible for covering air ambulance costs and whose members may be balance-billed if air ambulances are not in their network. These would include state, university, county, and other public entities that provide insurance for their employees.

Deliverables:

- 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?