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*** Bill No. ***

Introduced By *****

By Request of the (Agency or Department)

A Bill for an Act entitled: "An Act [establishing hold harmless requirements and dispute resolution processes for air ambulance insurer claims; prohibiting anti-assignment clauses]; amending section 33-30-102, MCA; amending section 33-31-111, MCA; amending section 33-35-306, MCA; and providing an immediate effective date."

WHEREAS, House Joint Resolution No. 29 (2015) requested a study of the availability, billing practices, and insurer network participation of air ambulance services;

WHEREAS, the study revealed significant gaps between some air ambulances' billed charges and some insurers' reimbursement rates;

WHEREAS, these gaps have resulted in some air ambulance patients receiving crippling balance bills and the proliferation of air ambulance subscription programs;

WHEREAS, this problem is compounded by deficiencies in insurer networks with respect to air ambulances; and

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WHEREAS, certain marketing tactics and a lack of subscription program reciprocity result in consumers purchasing air ambulance subscriptions that lack adequate coverage areas.

Now therefore, be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Legislative findings and purpose.** (1) The legislature finds that air ambulance services provide a necessary, and sometimes lifesaving means of transporting Montanans experiencing health emergencies.

(2) The legislature further finds that Montanans desire adequate access to air ambulance services.

(3) The legislature further finds that in many cases, the high charges assessed by out of network air ambulance services and limited insurer and health plan reimbursements have resulted in Montanans incurring excessive out-of-pocket expenses.

(4) The legislature further finds that the federal Airline Deregulation Act preempts states from enacting any law related to a price, route, or service of an air

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carrier, and that this preemption applies to air ambulance services.

(5) The purpose of this act is to prevent Montanans from incurring excessive out-of-pocket expenses in out-of-network situations in a manner that is not preempted by the Airline Deregulation Act.

NEW SECTION. **Section 2. Hold Harmless.** (1) If a covered person receives services from an out-of-network air ambulance service for an emergency medical condition, an insurer or health plan shall assume the covered person's responsibility, if any, for amounts charged in excess of non-covered services and supplies, applicable copayments, coinsurance, and deductibles.

(2) An insurer or health plan who assumes a responsibility pursuant to subsection (1) shall notify the air ambulance service of that fact no later than the date it issues payment under subsection (4).

(3) If an air ambulance service receives notice pursuant to subsection (2), with the exception of amounts owed for applicable copayments, coinsurance, and deductibles, the air ambulance service may not:

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(a) bill, collect or attempt to collect from the covered person for the responsibility;

(b) report to a consumer reporting agency that the covered person is delinquent on the responsibility; or

(c) obtain a lien on the covered person's property in connection with the responsibility.

(4) In accordance with 33-18-232, after adjusting for applicable non-covered services and supplies, deductibles, coinsurance or copayments that remain the responsibility of the covered person, an insurer or health plan responsible under subsection (1) shall pay directly to the air ambulance service:

(a) the billed charges of the air ambulance service;

(b) another amount negotiated with the air ambulance service; or

(c) the highest amount the insurer or health plan would pay to an in-network air ambulance service for the services performed.

(5) If after payment is made under subsection (4) the insurer or health plan and air ambulance service dispute whether any further payment obligation exists:

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(a) the insurer or health plan and air ambulance service may by mutual agreement enter into the dispute resolution process set forth in this part, or

(b) the aggrieved party may pursue any available remedies in a court of competent jurisdiction.

(6) "Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) so that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in:

(a) Placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;

(b) Serious impairment to bodily functions; or

(c) Serious dysfunction of any bodily organ or part.

NEW SECTION. **Section 3. Independent Dispute**

Resolution. (1) If an insurer or health plan and air ambulance service mutually agree under [Section 1(5)] to enter into dispute resolution, the procedure in [Section 4] shall be used to determine the fair market price of the services that are the subject of the claim.

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(2) Payment of the fair market price calculated pursuant to [Section 4] constitutes payment in full of the claim.

(3) A determination under this section is binding on the insurer or health plan and the air ambulance service.

(4) Unless otherwise agreed to by the parties, each party shall bear its own attorneys' fees and costs incurred under the procedure in [Section 4].

(5) Unless otherwise agreed to by the parties, each party shall equally bear all fees and costs of the independent reviewer.

(6) "Fair market price" means the value of the services provided as agreed upon by the parties or as determined by the independent reviewer based upon the factors provided in [Section 4(6)].

NEW SECTION. Section 4. Independent Dispute Resolution Procedure. (1) To initiate the dispute resolution procedure in accordance with [Section 1(5)], the parties shall file a written notice of dispute with the department.

(2) Except as provided in subsection (3), within 30 days after the date of receipt of the notice of dispute, and if no independent reviewer is mutually agreed to by the

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insurer and air ambulance service under [Section 4(3)], the department shall appoint an independent reviewer having the qualifications listed in [Section 5]. The independent reviewer shall be selected randomly from the list established under [Section 5].

(3) The insurer or health plan and air ambulance provider may by mutual agreement select an independent reviewer. The parties shall notify the department of the mutually agreed independent reviewer prior to the appointment of an independent reviewer under subsection (2).

(4) The sole substantive determination an independent reviewer shall render under this part is the fair market price of the services that are the subject of the claim.

(5) The independent reviewer may make such procedural rulings as are necessary to regulate the proceedings.

(6) The independent reviewer shall render the determination under subsection (4) based upon the following factors:

(a) the training, qualifications, and composition of the air ambulance service personnel;

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(b) the fees usually charged by the air ambulance service for rotor wing or fixed wing services originating or provided entirely within the state of Montana;

(c) the fees usually accepted as payment in full by the air ambulance service for rotor wing or fixed wing services originating or provided entirely within the state of Montana;

(d) the fees usually charged by other air ambulance services doing business in Montana for rotor wing or fixed wing services originating or provided entirely within the state of Montana;

(e) the fees usually accepted as payment in full by other air ambulance services doing business in Montana for rotor wing or fixed wing services originating or provided entirely within the state of Montana;

(f) whether the service was provided in a rural or urban context; and

(g) any other factors the independent reviewer determines to be relevant in determining fair market price in accordance with established precedent.

NEW SECTION. **Section 5. Independent reviewer**

qualifications. (1) The department shall approve

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independent reviewers that are eligible to adjudicate disputes under this part.

(2) The department shall maintain a list of independent reviewers eligible to adjudicate disputes under [Section 4].

(3) An independent reviewer eligible under this part shall be knowledgeable and experienced in applicable principles of contract and insurance law.

(4) If the department determines that an independent reviewer no longer meets the requirements to adjudicate disputes, the department shall terminate the approval of the independent reviewer and remove the independent reviewer from the list of approved independent reviewers maintained by the department pursuant to subsection (2).

NEW SECTION. **Section 6. Prohibition of anti-assignment clauses.** A disability insurance policy, certificate of insurance, membership contract or plan document may not contain a provision prohibiting a covered person from assigning to an air ambulance service any right or obligation with respect to a claim for which the air ambulance service performed the service.

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NEW SECTION. **Section 7. Rulemaking authority.** The department shall adopt rules necessary to implement this part, including rules governing discovery and other procedures regarding the dispute resolution process.

Section 8. Section 33-30-102, MCA, is amended to read:

"33-30-102. Application of this chapter -- construction of other related laws. (1) All health service corporations are subject to the provisions of this chapter. In addition to the provisions contained in this chapter, other chapters and provisions of this title apply to health service corporations as follows: 33-2-1212; 33-3-307; 33-3-308; 33-3-401; 33-3-431; 33-3-701 through 33-3-704; 33-17-101; Title 33, chapter 2, part 19; Title 33, chapter 17, parts 2 and 10 through 12; [Sections 1 through 6]; and Title 33, chapters 1, 15, 18, 19, 22, and 32, except 33-22-111.

(2) A law of this state other than the provisions of this chapter applicable to health service corporations must be construed in accordance with the fundamental nature of a health service corporation, and in the event of a conflict, the provisions of this chapter prevail."

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{Internal References to 33-30-102:

33-1-102 33-1-102 33-1-201 }

Section 9. Section 33-31-111, MCA, is amended to read:

"33-31-111. Statutory construction and relationship to other laws. (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

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(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under Title 33, chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, part 19;

(c) the requirements of 33-22-134 and 33-22-135;

(d) network adequacy and quality assurance requirements provided under chapter 36; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) Title 33, chapter 1, parts 12 and 13, Title 33, chapter 2, part 19, 33-2-1114, 33-2-1211, 33-2-1212, 33-3-401, 33-3-422, 33-3-431, 33-15-308, Title 33, chapter 17, Title 33, chapter 19, 33-22-107, 33-22-129, 33-22-131,

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33-22-136, 33-22-137, 33-22-138, 33-22-139, 33-22-141,
33-22-142, 33-22-152, 33-22-153, 33-22-156 through
33-22-159, 33-22-244, 33-22-246, 33-22-247, 33-22-514,
33-22-515, 33-22-521, 33-22-523, 33-22-524, 33-22-526,
33-22-706, Title 33, chapter 32, [Sections 1 through 6][,
and Title 33, chapter 40, part 1,] apply to health
maintenance organizations."

{*Internal References to 33-31-111:*
50-12-106) }

Section 10. Section 33-35-306, MCA, is amended to
read:

**"33-35-306. Application of insurance code to
arrangements.** (1) In addition to this chapter, self-funded
multiple employer welfare arrangements are subject to the
following provisions:

(a) 33-1-111;

(b) Title 33, chapter 1, part 4, but the examination
of a self-funded multiple employer welfare arrangement is
limited to those matters to which the arrangement is
subject to regulation under this chapter;

(c) Title 33, chapter 1, part 7;

(d) 33-3-308;

(e) Title 33, chapter 18, except 33-18-242;

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(f) Title 33, chapter 19;

(g) 33-22-107, 33-22-131, 33-22-134, 33-22-135,
33-22-138, 33-22-139, 33-22-141, 33-22-142, 33-22-152, and
33-22-153;

(h) 33-22-512, 33-22-515, 33-22-525, and 33-22-526;

and

(i) Title 33, chapter 40, part 1; and

(j) [Sections 1 through 6].

(2) Except as provided in this chapter, other provisions of Title 33 do not apply to a self-funded multiple employer welfare arrangement that has been issued a certificate of authority that has not been revoked.

(Subsection (1)(i) terminates December 31, 2017--sec. 14, Ch. 363, L. 2013."

{*Internal References to 33-35-306:*
50-12-106) }

NEW SECTION. Section 11. {standard} Effective date.

[This act] is effective on passage and approval.

NEW SECTION. Section 12. Applicability. [This act] applies to air ambulance transports occurring on or after the effective date of [this act].

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NEW SECTION. **Section 13. {standard} Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 14. {standard} Codification.** [Sections 1 through 7] are intended to be codified separately as integral parts of Titles 2 and 33, and the respective provisions of Titles 2 and 33, apply to [sections 1 through 7].

-END-