

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 747 Coverage for Air Ambulance Services

**SPONSOR(S):** Health Market Reform Subcommittee, Williamson

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 736

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Market Reform Subcommittee	13 Y, 1 N, As CS	Grabowski	Calamas
2) Appropriations Committee	29 Y, 0 N	Keith	Pridgeon
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

Providers of air ambulance services use both helicopter and fixed-wing aircraft to transport patients with time-sensitive medical needs. Air ambulance services can dramatically reduce transport times for critically ill patients during life-threatening emergencies.

The infrequent and unpredictable nature of most air ambulance transports, as well as high prices, reduce the incentives of both air ambulance providers and insurers to enter into contracts with agreed-upon payment rates. This means air ambulance providers are more likely to be out-of-network when compared with other types of providers, and may be more likely to seek reimbursement by balance billing the patient. While Florida law prohibits balance billing in many circumstances, air ambulance services are largely exempt from those prohibitions.

HB 747 requires a commercial health insurer or HMO to provide reasonable reimbursement to an air ambulance service for emergency and nonemergency transport services provided to a covered individual in accordance with the terms of the insurance policy or HMO contract. The bill defines "reasonable reimbursement" as payment that considers the direct cost of services provided, costs incurred by the operation of an air ambulance service by a county which operates entirely within a designated area of critical state concern as determined by the Department of Economic Opportunity, and in-network reimbursement for comparable services.

The bill specifies that reasonable reimbursement to air ambulance service providers may be reduced only by applicable copayments, coinsurance, and deductibles, unless a covered individual has contracted to pay a different amount. The reasonable reimbursement must serve as full and final payment to the air ambulance service provider. Accordingly, the bill would prohibit air ambulance service providers from balance billing insured patients.

The bill has no fiscal impact to the state and an indeterminate impact to local governments.

The bill takes effect upon becoming law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

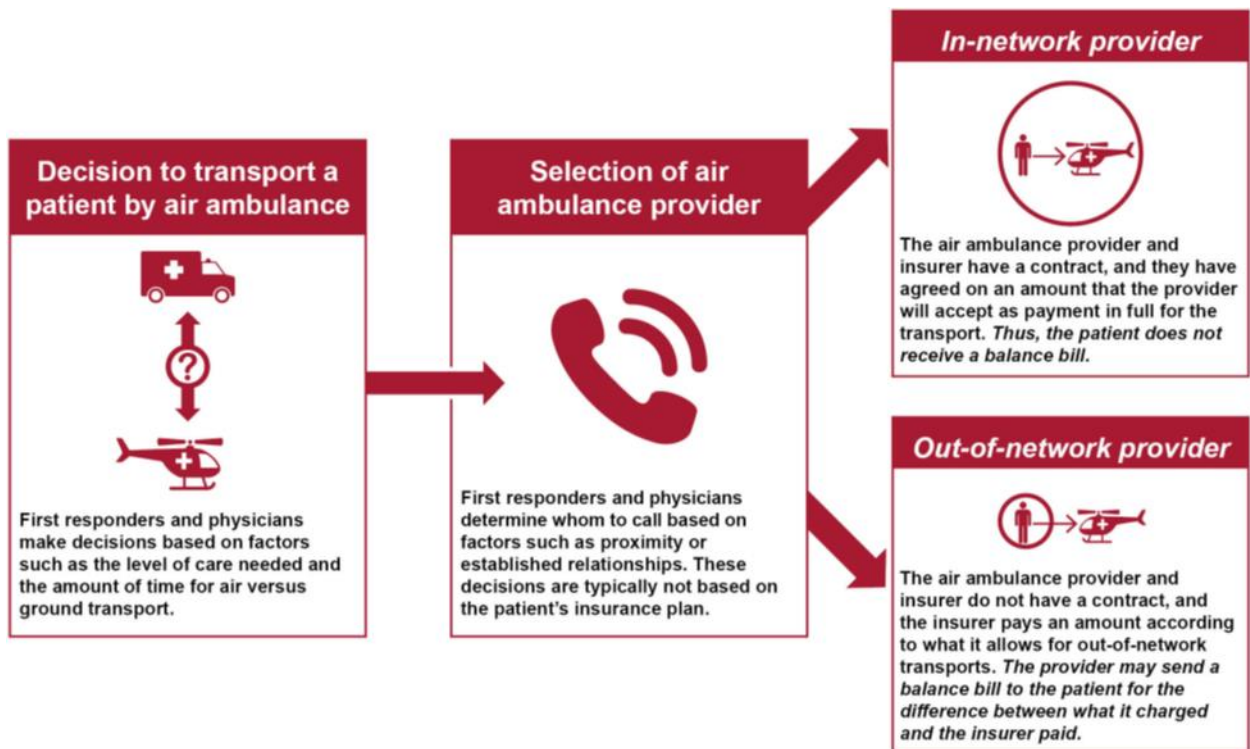
#### Background

##### Air Ambulance Services

Providers of air ambulance services use both helicopter and fixed-wing aircraft to transport patients with time-sensitive medical needs. These two types of aircraft are generally used on different types of missions:

- Helicopters are often used for transports from the scene of the accident or injury to the hospital or for shorter-distance transports between hospitals. Helicopter bases may be at hospitals, airports, or other types of helipads, and a provider may need to fly from its base to the scene or a hospital to pick up the patient being transported.
- Fixed-wing aircraft may be used for longer-distance transports between hospitals. Fixed-wing bases are at airports, and the patient is usually transported by ground ambulance to and from the airports.<sup>1</sup>

Relatively few patients receive air ambulance transports, but those who do generally have no control over the decision to be transported via air ambulance or in the selection of an air ambulance provider.<sup>2</sup>



Source: GAO. | GAO-19-292

<sup>1</sup> U.S. Government Accountability Office, *AIR AMBULANCE – Available Data Show Privately-Insured Patients are at Financial Risk*, GAO-19-292, March 2019, available at <https://www.gao.gov/assets/700/697684.pdf> (last accessed January 24, 2020).

<sup>2</sup> Id.

Air ambulance services can dramatically reduce transport times for critically ill patients during life-threatening emergencies.<sup>3</sup> In the case of on-scene response transports, first responders decide when air ambulance service is needed, while hospital staff primarily make decisions regarding the need for interfacility transports. However, the on-demand nature of air ambulance services, combined with the high fixed costs associated with the transport vehicles, leads to the high cost of air ambulance services.<sup>4</sup> Those costs can vary widely; one source indicates the average air ambulance flight covers 52 miles and costs between \$12,000 and \$25,000.<sup>5</sup> Another source indicates that the median price charged by air ambulance providers was just under \$30,000 per transport in 2014.<sup>6</sup> A study commissioned by the Association of Air Medical Services and Members, an industry trade group, indicates that air ambulance providers earned approximately \$23,500 in median revenue per transport for flights reimbursed under commercial health insurance during fiscal year 2015.<sup>7</sup>

There have been numerous reports of cases where patients have received substantial balance bills from air ambulance providers for services rendered.<sup>8</sup> Balance billing describes a situation where a health care provider seeks to collect payment from a patient for the difference between the provider's billed charges for a covered service and the amount that the insurer or HMO paid on the claim. The infrequent and unpredictable nature of most air ambulance transports, as well as high prices, reduces the incentives of both air ambulance providers and insurers to enter into contracts with agreed-upon payment rates. This means air ambulance providers are more likely to be out-of-network when compared with other types of providers, and may be more likely to seek reimbursement through balance billing.<sup>9</sup>

## Regulation of Air Ambulance Services

### *Federal Regulation*

States generally have the right to regulate the business of insurance.<sup>10</sup> Absent federal intervention, states are responsible for regulating both health plans and service providers. In the case of air ambulance, however, federal law has effectively prevented states from regulating air ambulance services.

The federal Airline Deregulation Act of 1978<sup>11</sup> prohibits states from regulating the price, route, or service of an air carrier for the purposes of keeping national commercial air travel competitive. While the law was intended to shield commercial airlines from state price regulations, it also had the effect of preempting any state regulation of air medical transportation.<sup>12</sup>

Several states have tried to prevent air ambulances from collecting inflated charges by setting maximum prices, prohibiting air ambulances from balance billing, setting reasonable air ambulance rates in workers' compensation claims (which states do for nearly every health care service for

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<sup>3</sup> U.S. Government Accountability Office, *AIR AMBULANCE – Data Collection and Transparency Needed to Enhance DOT Oversight*, GAO-17-637, July 2017, available at <https://www.gao.gov/assets/690/686167.pdf> (last accessed January 24, 2020).

<sup>4</sup> Supra note 1.

<sup>5</sup> National Association of Insurance Commissioners, *Understanding Air Ambulance Insurance Coverage*, May 2018, available at [https://www.naic.org/documents/consumer\\_alert\\_understanding\\_air\\_ambulance\\_insurance.htm](https://www.naic.org/documents/consumer_alert_understanding_air_ambulance_insurance.htm) (last accessed January 24, 2020).

<sup>6</sup> Supra note 3.

<sup>7</sup> Association of Air Medical Services and Members, *Air Medical Services Cost Study Report*, March 24, 2017, available at <http://aams.org/wp-content/uploads/2017/04/Air-Medical-Services-Cost-Study-Report.pdf> (last accessed January 24, 2020).

<sup>8</sup> See, for example, *New York Times*, "Air Ambulances Offer a Lifeline, and Then a Sky-High Bill", May 5, 2015, available at <https://www.nytimes.com/2015/05/06/business/rescued-by-an-air-ambulance-but-stunned-at-the-sky-high-bill.html> (last accessed January 25, 2020); *Kaiser Health News*, "Loopholes Limit New California Law To Guard Against Lofty Air Ambulance Bills," January 14, 2020, available at [https://khn.org/news/loopholes-limit-new-california-law-to-guard-against-lofty-air-ambulance-bills/?utm\\_campaign=KHN%3A%20Daily%20Health%20Policy%20Report&utm\\_source=hs\\_email&utm\\_medium=email&utm\\_content=81882222&\\_hsenc=p2ANqtz-xOXkiliKqycwboslv-ok9ZzPwE0kaWlcuR0C89EQT-IM6DCIHRVYXBUUcRr4Nk\\_Fih6H2L5j\\_boZBH9EpSPpIKcsGeCRPTqKN5nw13yXMsU\\_VTOo&\\_hsmi=81882222](https://khn.org/news/loopholes-limit-new-california-law-to-guard-against-lofty-air-ambulance-bills/?utm_campaign=KHN%3A%20Daily%20Health%20Policy%20Report&utm_source=hs_email&utm_medium=email&utm_content=81882222&_hsenc=p2ANqtz-xOXkiliKqycwboslv-ok9ZzPwE0kaWlcuR0C89EQT-IM6DCIHRVYXBUUcRr4Nk_Fih6H2L5j_boZBH9EpSPpIKcsGeCRPTqKN5nw13yXMsU_VTOo&_hsmi=81882222) (last accessed January 25, 2020).

<sup>9</sup> Supra note 1.

<sup>10</sup> See the McCarran-Ferguson Act of 1945, 15 U.S.C. §§ 1011-1015

<sup>11</sup> P.L. 95-504, 49 U.S.C. § 1301 et seq.

<sup>12</sup> National Association of Insurance Commissioners, *Issue Brief: Air Ambulance Regulation*, January 2019, available at [https://www.naic.org/documents/government\\_relations\\_air\\_ambulance\\_regulation\\_issue\\_brief.pdf](https://www.naic.org/documents/government_relations_air_ambulance_regulation_issue_brief.pdf) (last accessed January 25, 2020).

workplace injuries), or even requiring air ambulance providers to provide fee schedules upon request.<sup>13</sup> In some states, air ambulance providers have successfully challenged state law by relying on the Airline Deregulation Act. For example, A 2017 North Dakota law requires insurers to pay for out-of-network air ambulance transports at the average of the insurer's in-network rate for air ambulance providers in the state. This payment is deemed full and final payment for the services provided.<sup>14</sup> In January 2019, a federal district court concluded that this payment provision is preempted by the ADA, as it has the effect of setting rates for air services.<sup>15</sup>

Alternatively, states have also used coverage mandates on insurers as a vehicle to prevent balance billing by service providers. In Montana, a 2017 law requires insurers and health plans to assume responsibility for amounts charged to a covered individual in excess of both allowed amounts and applicable cost-sharing amounts for air ambulance services. It also requires the use of a nonbinding dispute resolution process to determine the fair market price of services provided before a party may seek any remedy in court.<sup>16</sup> In New Mexico, managed health care plans are required to make emergency care services available to covered individuals without restriction and to ensure the provision of appropriate out-of-network services without additional costs. The Superintendent of Insurance began applying these requirements to air ambulance services in 2017.<sup>17</sup> Laws such as these appear to skirt the Airline Deregulation Act by imposing regulatory requirements on the insurer, rather than the provider.

### *Florida Regulation*

In Florida, the Office of Insurance Regulation (OIR) is responsible for all activities concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, claims, issuance of certificates of authority, solvency, viatical settlements, premium financing, and administrative supervision, as provided under the insurance code.<sup>18</sup>

All health insurance policies issued in Florida, with the exception of certain self-insured policies,<sup>19</sup> must meet certain requirements that are detailed throughout the Florida Insurance Code. Chapter 627, F.S., sets parameters and requirements for health insurance policies and ch. 641, F.S., provides requirements for health plans issued by health maintenance organizations (HMOs). At a minimum, insurance policies must specify premium rates, services covered, and effective dates. Insurers must document the time when a policy takes effect and the period during which the policy remains in effect.<sup>20</sup>

There have been numerous reports of cases where patients have received substantial balance bills from air ambulance providers for services rendered.<sup>21</sup> While Florida law prohibits balance billing in many circumstances, air ambulance services are generally exempt from those prohibitions.

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<sup>13</sup> Are Air Ambulances Truly Flying Out Of Reach? Surprise-Billing Policy And The Airline Deregulation Act, " *Health Affairs* Blog, October 17, 2019, available at <https://www.healthaffairs.org/doi/10.1377/hblog20191016.235396/full/> (last accessed January 25, 2020).

<sup>14</sup> N.D. Cent. Code S 26.1-47-09.

<sup>15</sup> *Guardian Flight LLC v. Godfread*, No. 1:18-cv-007.

<sup>16</sup> Mont. Code Ann. Ss. 33-2-2302 and 33-2-2305.

<sup>17</sup> N.M. Stat. Ann. S. 59A-57-4; N.M. Code R. S. 13.10.21.8.

<sup>18</sup> S. 20.121(3)(a)1., F.S. The OIR's commissioner is the agency head for purposes of final agency action, and its rulemaking body is the Financial Services Commission (the Governor and the Cabinet).

<sup>19</sup> 29 U.S.C. 18 § 1001 et seq. ERISA regulates certain self-insured plans, which represent approximately 50 percent of the insureds in Florida. These plans cannot be regulated by state law.

<sup>20</sup> S. 627.413(1)(d), F.S.

<sup>21</sup> See, for example, *New York Times*, "Air Ambulances Offer a Lifeline, and Then a Sky-High Bill", May 5, 2015, available at <https://www.nytimes.com/2015/05/06/business/rescued-by-an-air-ambulance-but-stunned-at-the-sky-high-bill.html> (last accessed January 25, 2020).

Under current law, balance billing is prohibited for services provided by Medicaid;<sup>22</sup> workers' compensation insurance;<sup>23</sup> an exclusive provider who is part of an EPO;<sup>24</sup> or a provider who is under contract with a prepaid limited service organization.<sup>25</sup> In addition, the law provides that an HMO is liable to pay, and may not balance bill, for covered services provided to a subscriber whether or not a contract exists between the provider and the HMO.<sup>26</sup> Balance billing is also prohibited under commercial insurance in cases when emergency services are provided by an out-of-network provider, and when nonemergency services are provided by an out-of-network provider and the covered individual does not have the ability and opportunity to choose a participating provider at the facility who is available to treat that patient.<sup>27</sup>

Florida law does not address balance billing by air ambulance providers in cases when an air ambulance provider has not contracted with an insurer for reimbursement rates.

## Effect of Proposed Changes

HB 747 requires a commercial health insurer or HMO to provide reasonable reimbursement to an air ambulance service for covered emergency and nonemergency transport services provided to a covered individual in accordance with the terms of the insurance policy or HMO contract. The bill defines "reasonable reimbursement" as payment that considers the direct cost of services provided, costs incurred by the operation of an air ambulance service by a county which operates entirely within a designated area of critical state concern as determined by the Department of Economic Opportunity<sup>28</sup>, and in-network reimbursement for comparable services.

The bill specifies that reasonable reimbursement to air ambulance service providers may be reduced only by applicable copayments, coinsurance, and deductibles, unless a covered individual has contracted to pay a different amount. The reasonable reimbursement must serve as full and final payment to the air ambulance service provider.

The bill would prohibit air ambulance service providers from seeking reimbursement from commercially insured recipients of services, and would thus prohibit balance billing. In cases where an air ambulance provider and an insurer have not contractually agreed to reimbursement rates, the air ambulance provider would be required to accept "reasonable reimbursement" from the insurer. In preventing the use of balance billing practices by air ambulance providers, the bill would reduce the number of insured patients who receive unexpected bills resulting from air medical transport, while changing the balance of contract negotiation between payers and these providers.

The bill also indicates that these provisions are not severable. In other words, if one provision in the bill is invalidated for any reason, the entirety of the bill shall be void.

The bill takes effect upon becoming law.

## B. SECTION DIRECTORY:

**Section 1:** Creates s. 627.42397, F.S., relating to coverage for air ambulance services.

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<sup>22</sup> S. 409.907(3)(j), F.S.; Medicaid managed care plans and their providers are required to comply with the Provider General Handbook, which expressly prohibits balance billing. In addition, the Statewide Medicaid Managed Care Contract (CORE contract) establishes minimum requirements for contracts between plans and providers. The CORE contract requires those contracts to prohibit balance billing, except for any applicable cost sharing.

<sup>23</sup> S. 440.13(13)(a), F.S.

<sup>24</sup> S. 627.6472(4)(e), F.S.

<sup>25</sup> S. 636.035(3) - (4), F.S.

<sup>26</sup> Ss. 641.315(1) and 641.3154(1), F.S.

<sup>27</sup> S. 627.64194, F.S.

<sup>28</sup> The Areas of Critical State Concern Program was created by the Florida Environmental Land and Water Management Act of 1972. The program is intended to protect resources and public facilities of major statewide significance, within designated geographic areas, from uncontrolled development that would cause substantial deterioration of such resources.

**Section 2:** Establishes that the bill's requirements are not severable.

**Section 3:** Provides that the bill takes effect upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

There is no additional cost to the Office of Insurance Regulation associated with the need to amend its form review procedures to account for new requirements in the bill.<sup>29</sup> Additionally, provisions of the bill have no impact on the Department of Management Services' Division of State Group Insurance PPO and HMO health plans.<sup>30</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

At least one county (Monroe) operates an air ambulance service program, and is within a designated area of critical state concern. The bill may have an indeterminate fiscal impact on any county or municipal government operating such a program.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

By preventing the use of balance billing practices by air ambulance service providers, the bill will likely have a negative, indeterminate fiscal impact on those providers. Oppositely, the bill may have a positive fiscal impact on insurers, HMOs, and insureds by limiting payments to air ambulance service providers to "reasonable reimbursement" for services.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

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<sup>29</sup> Florida Office of Insurance Regulation, Agency Analysis of 2020 HB 747, pp. 2-3 (Dec. 10, 2019).

<sup>30</sup> Florida Department of Management Services, Agency Analysis of 2020 HB 747, p.5 (Jan. 23, 2020).

**B. RULE-MAKING AUTHORITY:**

The Office of Insurance Regulation has sufficient authority to implement the provisions of the bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 21, 2020, the Health Market Reform Subcommittee adopted a strike-all amendment to the bill. The strike-all creates equivalent language in both chapters 627 and 641, so that the regulation of air ambulance billing will apply to both insurance carriers and HMOs. The bill as introduced included regulation only in chapter 627.

The strike-all also modifies the set of factors that must be considered when insurers and HMOs determine “reasonable reimbursement” to providers of air ambulance services. Insurers and HMOs are required to consider the “direct” cost of services provided, rather than “actual” cost.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute as passed by the Health Market Reform Subcommittee.