

# COMMISSIONER OF SECURITIES & INSURANCE

MONICA J. LINDEEN  
COMMISSIONER



OFFICE OF THE MONTANA  
STATE AUDITOR

**TO:** EAIC Air Ambulance Working Group Members  
**FROM:** Jesse Laslovich, Chief Counsel; Nick Mazanec, Attorney  
**DATE:** March 11, 2016  
**RE:** Preparation for March 18, 2016, meeting

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The Economic Affairs Interim Committee (EAIC) established the Air Ambulance Working Group to "address possible solutions to air ambulance issues that have come before the EAIC." Economic Affairs Interim Committee Letter to Jesse Laslovich (Feb. 5, 2016). The Working Group is meeting on March 18 from 8:30 a.m. to 12:00 p.m. During the three previous EAIC hearings, interested parties have identified a number of potential legislative and non-legislative solutions. This document summarizes those options, and others identified while researching this issue. No one has evaluated the merits or legality of these proposals. Rather, they are offered as a starting point for the Working Group. Please come to the March 18 meeting prepared to discuss these potential solutions.

## I. DISCLOSURE

The following disclosure options have been proposed to inform decision-making by both insurance consumers and facilities making air ambulance transport determinations:

- Air Ambulance Provider insurance network participation list
- Air Ambulance Provider fee schedules
- Air Ambulance Provider ownership structures
- Contractual or financial arrangements with facilities or other parties making transport determinations
- Insurer reimbursement rates
- Insure pre-authorization and network confirmation contact list
- Charity care program standards and application requirements
- Contract limitations/conditions relating to subscription services

Disclosure methods may vary depending upon the type of disclosed information, and may include:

- Posting on Office of the Montana State Auditor website
- Prominent placement in facility emergency/waiting rooms
- Mailing to facilities

- Inclusion in insurance policies
- Mailing to subscription service participants
- Disclosure/consent forms from Air Ambulance Providers to patients (non-emergent transport)
- Mandatory facility counseling/informed consent for patients (non-emergent transport)

## II. INSURER/PAYER REIMBURSEMENT and PROVIDER COMPENSATION

A number of proposals address insurer/payer reimbursement rates, as well as Air Ambulance Provider compensation.

1. Hold Harmless Requirement: Require insurers to stand in shoes of patient for Air Ambulance Provider bills in excess of patient's deductibles and co-payments; may encourage network negotiations and balance bill settlements.
2. Allowable vs. UCR: Require insurers to base allowable charges on "usual, customary, and reasonable" rates.
  - Other related proposals: require prompt payment, direct provider payments; prohibit insurance policy non-assignment clauses; Medicare Deemed Medical Necessity rules.
3. Mandatory Benefit: Establish a minimum required insurer reimbursement rate for air ambulance charges.
  - South Carolina legislation introduced to require minimum payment of a percentage of Medicare.
4. Medicare/Medicaid Reimbursement: Increase reimbursement rates for Medicare (federal solution) and Medicaid (state solution). Theory: to lessen burden on other patients currently subsidizing inadequate Medicare/Medicaid transport rates.
5. Compensation Restriction: Restrict compensation for out-of-network Air Ambulance Providers to the in-network rate of the insurer.
  - West Virginia legislation introduced (died) to limit out-of-network Air Ambulance Provider compensation to the current Medicare rate.
6. Lien Law: Modify Montana lien law, Mont. Code Ann. § 71-3-1114, to prohibit Air Ambulance Providers from obtaining liens against patients.

## III. MEMBERSHIP PROGRAMS

Proposals addressing Air Ambulance Provider subscription services:

1. Subscriptions = Insurance: Place subscription products within the Montana Insurance Code, Title 33 of Montana Code Annotated.

- Potentially allows for regulation of (a) rates, (b) disclosure/forms, (c) conditions of service.
2. Alaska Solution: Passed legislation and adopted administrative rules extensively regulating memberships:
- Classifies subscription products as insurance.
  - Extensive registration requirements, including membership agreement review, disclosure of agreements ancillary to membership agreements, disclosure of applicant requirements.
  - Air Ambulance Provider bonding requirement (\$100,000).
  - Membership agreement requirements, including definitions of medical necessity.
  - Recordkeeping requirements.

#### IV. MISCELLANEOUS

1. Certificates of Need: Issue certificates of need to Air Ambulance Providers; providers cannot operate without certificate.
- US Department of Transportation has opined that this requirement is unenforceable.
2. Network Adequacy: Establish Air Ambulance Provider network adequacy requirements for insurers.
3. North Dakota Solution: State establishes primary/secondary facility call list based upon in-network market share report (but still prioritizes health and safety of patient over economic considerations).
4. Centralized Dispatch: Establish a centralized dispatch system enabling facilities to quickly identify available Air Ambulance Providers; potentially include criteria enhancing patient ability to select in-network providers.

cc: The Honorable Ryan Lynch, Chairman of EAIC and State Representative  
The Honorable Tom Facey, State Senator  
The Honorable Vince Ricci, State Representative  
The Honorable Mike Lang, State Representative  
Mr. Jim DeTienne, Department of Public Health and Human Services  
Ms. Patricia Murdo, EAIC Lead Staff