

Atlantic Corporate Center
2317 Route 34, Suite 2B
Manasquan, NJ 08726
732-201-4133
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Model Act Regarding Air Ambulance Patient Protections

**Sponsored by Del. Steve Westfall (WV); Rep. Thaddeus Jones (IL); Rep. Deanna Frazier (KY); Rep. Tom Oliverson, M.D. (TX) – Co-Sponsors*

**Draft as of ~~October 19, 2021~~ ~~November 9, 2020~~. To be ~~introduced and discussed and considered during the Health Insurance & Long Term Care Issues Committee on November 18, 2021~~ ~~July 17, 2021~~ ~~April 17, 2021~~ ~~December 10, 2020~~.*

AN ACT to amend the insurance law, in relation to private air ambulance services and consumer protections

Section 1. Short Title

This Act may be cited as the Air Ambulance Patient Protection Act.

Section 2. Purpose

This Act is intended to help preserve the long-standing jurisdiction that states have over the regulation of the business of insurance as expressly established by the McCarran-Ferguson Act (15 U.S.C. 1011 et seq., 1945), and to affirm the ability of states to regulate the business of insurance without threat of Federal obstruction.

Moreover, the intent of this Act is to uphold a state's role in our nation's federalism system of government and prevent any interpretation of the McCarran-Ferguson Act that narrows or precludes a state's ability to protect its consumers and regulate the business of insurance, including the definition thereof.

Section 31. Section (X) of the insurance law is amended by adding a new subsection (X) to read as follows:

(a) An air ambulance service provider or any affiliated entity who solicits air ambulance membership subscriptions, accepts membership applications, or charges membership fees, is deemed to be engaged in the business of insurance to the extent that it contracts, promises, guarantees, or in any other way claims to pay, reimburse, or indemnify the copayments, deductibles or other cost-sharing amounts of a patient relating to the air ambulance transport as determined or set by the patient's health insurance provider,

~~health care provider or other third parties or, any post-service payments of costs to third parties relating to the transport or other entity that directly or indirectly, whether through an affiliated entity, agreement with a third party entity, or otherwise, solicits air ambulance membership subscriptions, accepts membership applications, or charges membership fees, is an insurer.~~

(b) To the extent that an air ambulance membership subscription falls within the business of insurance described in paragraph (a) of this section, it ~~An air ambulance membership~~ shall be considered insurance and an insurance product and may be considered secondary insurance coverage or a supplement to any insurance coverage and shall be regulated accordingly by the State Department of Insurance.;

Section 42. Air Ambulance Patient Billing Consumer Protections:

(a) An entity operating an air ambulance membership program pursuant to Section 3(a) of this Act ~~air carrier operating air ambulance operations~~ shall, within one year of enactment of this Act, implement a patient advocacy program, which shall include, at a minimum, the following components:

(1) A dedicated patient hotline number and dedicated patient resource email address to process patient billing and claims, and to address patient questions, complaints and concerns;

(2) A dedicated patient advocacy page on the air medical provider's website that is clearly marked as the "patient portal" or "patient advocacy" page, which is easily navigated to and contains clearly-written and comprehensive resources for patients, including:

(A) A layperson's explanation of what to expect during the claims process,

(B) Frequently asked questions and answers,

(C) Frequently used forms,

(D) Information regarding the air ambulance provider's financial assistance or charity care program, and

(E) Additional resources for patients, including but not limited to contact information for the DOT Consumer Affairs Division, state and federal health and insurance regulatory agencies and departments, and other health consumer informational resources;

(3) Dedicated individuals assigned to review patient complaints and disputes about air ambulance billing and to respond to patients, governmental agencies and any other concerned parties no later than 3 months from the date the complaint is received;

(4) The inclusion of the patient hotline number and email address required by paragraph (1) and patient advocacy webpage address required by paragraph (2) on all patient communication materials, including but not limited to websites, brochures, letters, invoices or billing statements that are sent to or made available to patients;

(5) Mandatory yearly patient advocacy training for all air medical provider personnel who have direct interaction with patients and/or their family members via written, verbal or electronic communications; and

(6) A financial assistance or charity care program to assist patients suffering financial hardship with resolving any unpaid balance owed to the air medical provider.

(b) This provision shall not be enforced in a manner that conflicts with federal law, including the federal preemption of state regulation of air carriers.

Section 53. Consumer disclosures.

(a) An entity selling air ambulance membership products pursuant to Section 3(a) of this Act shall make the following general disclosures in writing in bold type and not less than twelve (12) point font on any advertisement, marketing material, brochure or contract terms and conditions made available to prospective members or the public:

(1) if eligible and covered by Medicaid or Medicaid managed care, the prospective member is already covered with no out of pocket cost liability for air ambulance services; and-

(2) if eligible and covered under Medicare and/or a Medicare supplemental plan, the prospective member might already be covered for air ambulance services and should consult with a representative of the Medicare program or a representative of their Medicare Advantage or Medicare Supplemental Plan to determine the level of existing coverage they have for air ambulance and out of pocket costs and whether their plan provider recommends additional supplemental insurance coverage.

Section 6. Severability

If any provision, part or clause of this Act is declared invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections or provisions of this article or the article in its entirety.

Section 74. This Act shall take effect one year after enactment.