

Legislative Analysis



REQUIREMENTS AND COST NOTIFICATION FOR AIR MEDICAL SERVICE TRANSPORTATION

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<http://www.house.mi.gov/hfa>

House Bill 5217 reported as H-2
Sponsor: Rep. Joseph N. Bellino, Jr.

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5218 reported w/o amendment
Sponsor: Rep. Tom Barrett

House Bill 5219 reported w/o amendment
Sponsor: Rep. Beau Matthew LaFave

Committee: Insurance
Complete to 12-4-17

BRIEF SUMMARY: House Bills 5217, 5218, and 5219 would each amend Article 17 of the Public Health Code (Facilities and Agencies) to implement protocols for medical service transportation, including requirements to use motor vehicle transportation in most instances and to notify patients and patients' representatives about the costs of, and health benefit coverage for, different modes of transportation. The bills would also prescribe certain payment amounts to air medical service providers and hospitals, require recordkeeping, and provide for sanctions for various situations involving air medical transportation.

FISCAL IMPACT: The bills would have no fiscal impact on the Department of Health and Human Services, which administers the Emergency Medical Services Program under Part 209 of the Public Health Code. The bills may have a modest fiscal impact on local governments that provide EMS services.

House Bills 5218 and 5219 would have a negligible fiscal impact on the Department of Licensing and Regulatory Affairs. The department would be able to take disciplinary action against licensed entities for failing to comply with the new requirements; however, these costs would likely be supported by existing department resources.

THE APPARENT PROBLEM:

The air medical services industry (e.g., helicopter ambulance) is expanding across the country and in Michigan. What was once an industry with service providers linked to hospitals or affiliated medical entities is now a competitive marketplace with private providers. Many of the private air transportation companies are contracted with insurance companies or hospitals and receive reimbursement for transportation as in-network providers. There are, however, companies that are not contracted with insurers and that charge out-of-network rates. These companies are allowed to bill both insurance companies and patients: after an insurance company pays its rate, the patient receives a bill for the remainder. This is often referred to as "balance billing."

Reportedly, the balance bills sent to patients for air medical services can range into the tens of thousands of dollars. In many instances, patients are unaware of the cost of air

transportation and the applicable benefits under their insurance plan. Worse yet, in some instances, the patients could be transported safely through another means of transportation, but are not informed of this option. Legislation has been introduced to require health facilities to prioritize ground transportation over air and to require hospitals and transportation providers to provide patients with cost and benefit information for various forms of transportation.

THE CONTENT OF THE BILLS:

House Bill 5217 would amend the Public Health Code to stipulate that written protocols adopted by a medical control authority for the practice of life support agencies and emergency medical services personnel must require that a patient be transported by a motor vehicle ambulance, rather than an aircraft transport vehicle or rotary aircraft ambulance, unless transporting the patient by aircraft or rotary aircraft is medically necessary for the patient.

(Under the Code, the Department of Health and Human Services (DHHS) designates a medical control authority as the medical control for emergency medical services for a particular geographic region. The medical control authority then develops and adopts required written protocols for life support agencies and emergency medical services personnel in accordance with procedures adopted by DHHS.)

The bill would also add a new Section 21540 to the Code. Under this section, a hospital would have to require that a patient be transported by a motor vehicle ambulance rather than an aircraft transport vehicle or rotary aircraft ambulance, unless transporting the patient by aircraft or rotary aircraft is medically necessary.

If a hospital were to determine that ordering an aircraft transport vehicle or rotary aircraft ambulance is medically necessary to transport a *nonemergency* patient, the hospital would be required to first order the transportation from an aircraft transport operation or ambulance operation that is a participating provider with the patient's health benefit plan, before ordering the aircraft or rotary aircraft ambulance from an operation that is not a participating provider with the person's health benefit plan.

A hospital that violated this proposed section would be liable to the aircraft transport operation or ambulance operation for the cost of transportation to the extent that the cost exceeds the amount covered by the patient's health benefit plan. This liability would be in addition to the sanctions provided by Section 20165 of the Code.

(Section 20165 allows the Department of Licensing and Regulatory Affairs, after providing notification and an opportunity for a hearing, to deny, limit, suspend, or revoke the license or certification of, or impose an administrative fine on, a licensee for certain actions, failures, and violations.)

MCL 333.20919 and proposed MCL 333.21540

House Bill 5218 would add definitions to Section 21501 of the Public Health Code. It would also add a new Section 21541 to the Code (this section would come immediately after Section 21540 proposed in HB 5217).

The bill would require that, before ordering an aircraft transport vehicle or a rotary aircraft ambulance to transport a *nonemergency* patient, a hospital must disclose to the patient or “patient’s representative” all of the following:

- Whether the aircraft transport operation or ambulance operation is a participating provider with the patient’s health benefit plan.
- A good-faith estimate of the cost of using the aircraft transport operation or ambulance operation to transport the patient.
- That the patient has a right to be transported by a method other than an aircraft transport vehicle or rotary aircraft ambulance.
- Upon request, a good-faith estimate of the costs of using each other method of transportation.

(The bill would define “patient’s representative” as any of the following: (1) a person to whom the patient has given express written consent to represent the patient; (2) a person authorized by law to provide consent for a patient; (3) a patient’s treating health professional, only if the patient is unable to provide consent. The bill would also define “health benefit plan” and “participating provider” and reference definitions found elsewhere in the Code.)

The bill would also require a hospital to complete a **notice**, in a form prescribed by the bill, and obtain the signature of the patient or patient’s representative acknowledging that the patient or representative has received, read, and understands the notice. Generally speaking, the notice would provide information regarding the costs and benefit coverage of aircraft and rotary aircraft transportation for the patient, and the rights of the patient. A hospital would be required to keep a copy of this notice for at least 7 years.

Upon request of the *nonemergency* patient’s health benefit plan or third party administrator, the hospital would be required to provide a copy of the notice to the person designated in the patient’s health benefit plan or by the third party administrator. Within 10 days after ordering an aircraft or rotary aircraft ambulance for an *emergency* or *nonemergency* patient, the hospital would be required to provide the same person with written documentation explaining why transporting the patient by motor vehicle ambulance was medically inappropriate.

A hospital that violated this proposed section would be liable to the aircraft transport operation or ambulance operation for the cost of transportation to the extent that the cost exceeds the amount covered by the patient’s health benefit plan. This liability would be in addition to the sanctions provided by Section 20165 of the Code.

MCL 333.21501 and proposed MCL 333.21541

House Bill 5219 would also amend the Public Health Code, to require an ambulance operation to provide information similar to that required of hospitals in HB 5218, specifically, information related to costs of and insurance coverage for rotary aircraft ambulance transportation. It would also require an aircraft transport operation to provide similar information, specifically, information related to costs of and insurance coverage for aircraft transport vehicle transportation.

The bill would require that, before transporting a *nonemergency* patient in a rotary aircraft ambulance, an ambulance operation must provide to the patient or patient's representative all of the following:

- Whether the ambulance operation is a participating provider with the nonemergency patient's health benefit plan.
- A good-faith estimate of the cost for transporting the patient.
- That the patient has a right to be transported by a method other than a rotary aircraft ambulance.

The bill would require the ambulance operation to complete a **notice**, in a form prescribed by the bill, and obtain the signature of the patient or patient's representative acknowledging that the patient or representative has received, read, and understands the notice. Generally speaking, the notice would provide information regarding a cost estimate of the rotary aircraft transportation, health benefit coverage, and rights of the patient. An ambulance operation would be required to keep a copy of this notice for at least 7 years.

Upon request of the *nonemergency* patient's health benefit plan or third party administrator, the ambulance operation would be required to provide a copy of the notice to the person designated in the plan or by the administrator. If an ambulance operation failed to provide a *nonemergency* patient with the required notice, the ambulance operation would be required to accept the amount covered by the patient's health benefit plan as payment in full, other than coinsurance, copayments, or deductibles.

For an *emergency* patient, the ambulance operation would be required to accept the amount covered by the patient's health benefit plan as payment in full.

Under the bill, if a patient at a hospital requested transportation from an ambulance operation that is a participating provider with the patient's health benefit plan, a rotary aircraft ambulance operated by the ambulance operation would have the right to land at a destination hospital, regardless of whether the ambulance operation was a contracted provider with the originating or destination hospital.

The bill would place similar information requirements on aircraft transport operations that transport *nonemergency* patients by aircraft transport vehicle. Before transporting the patient, the aircraft transport operation would be required to provide to the patient or patient's representative all of the following:

- Whether the aircraft transport operation is a participating provider with the patient's health benefit plan.
- A good-faith estimate of the cost for transporting the patient.
- That the patient has a right to be transported by a method other than an aircraft transport vehicle.

The bill would also require an aircraft transport operation to complete a **notice**, in a form prescribed by the bill, and obtain the signature of the patient or patient's representative acknowledging that the patient or representative has received, read, and understands the notice. Generally speaking, the notice would provide information regarding a cost estimate of the aircraft vehicle transportation, health benefit coverage, and rights of the patient. An aircraft transportation operation would be required to keep a copy of this notice for at least 7 years.

The bill would include the same provision requiring that the notice must be provided to a health benefit plan or third party administrator upon request; the same provision requiring that, for *nonemergency* transportation, the operation must accept the amount covered by the health benefit plan if the operation fails to provide the required notice; and the same provision requiring that, for *emergency* transportation, the operation must accept the amount covered by the health benefit plan as payment in full.

The bill would also include the same provision stipulating that an aircraft transport vehicle would have the right to land at the destination hospital, regardless of whether the ambulance operation was a contracted provider with the originating or destination hospital.

Finally, the bill would stipulate that if a hospital had the infrastructure to land an aircraft or rotary aircraft ambulance, the hospital would be required to grant the right to land at the hospital to an aircraft or rotary aircraft ambulance that is a participating provider with the patient's health benefit plan. If a hospital denied an aircraft the right to land, the hospital would be required to provide written documentation explaining the denial to the person's health benefit plan within 10 days. Additionally, a hospital would not be able to deny an aircraft the right to land for the purpose of allowing an aircraft that is a contracted provider to remain on standby.

A hospital that violated this proposed section would be liable to the aircraft transport operation or ambulance operation for the cost of transportation to the extent that the cost exceeds the amount covered by the patient's health benefit plan. This liability would be in addition to the sanctions provided by Section 20165 of the Code.

Each bill would take effect 90 days after being enacted into law. The bills are tie-barred to each other, meaning that none could take effect unless all were enacted into law.

Proposed MCL 333.20921b et al.

ARGUMENTS:

For:

The bills are a clear win for consumers. The notification requirements in the bills will educate consumers about transportation costs and alternatives and allow them to select the option that best fits their needs. Providing a cost estimate is commonplace for many other business transactions and should be extended to this area of the health care sector. The bills also require certain medical providers to prioritize ground transportation over air in nonemergency situations, which will again protect consumers and could eliminate any potential overuse of expensive air transportation. Additionally, these provisions might limit hardship and costs in other sectors. Employees will be able to return to work and not be saddled with medical transportation bills, and the health care sector could see additional benefits from the cost-containment provisions.

Finally, the bills only require the patient notification of costs and benefits and use of ground transportation in nonemergency situations; the bills do not take away or limit emergency care, but simply protect consumers from potentially unexpected, unnecessary, and excessive medical bills.

Against:

The bills require that an air medical services provider accept as payment in full the amount paid by the patient's insurer in two instances: for an *emergency* flight, and for a *nonemergency* flight in which the required notice is not provided. These provisions provide no flexibility for negotiation or resolution in the payment process, and essentially become rate controls for air medical transportation. This could potentially violate the federal airline deregulation law. Currently, there is a national effort underway to develop model legislation that would provide for a dispute resolution process between air ambulance providers and commercial insurers. Michigan should look at this model legislation or include some type of dispute resolution process in these bills.

Neutral:

The bills should make clear whether the penalties regarding improper use of air transportation and failure to provide cost notification can be applied retroactively. For instance, a hospital is subject to sanctions in the Public Health Code if it requires a patient to be transported by air ambulance when that transportation is not medically necessary. Can this decision be reviewed? Who conducts any potential review, and what is the lookback period? Ordering an air ambulance can be an urgent and critical decision by a medical professional, and there will always be instances in which the situation ends better or worse than originally thought. These complicated decisions should not be second-guessed after the fact, and medical professionals should not be influenced in their decisions by the potential for future penalties.

Neutral:

While the bills are well-intentioned, they could be more clearly directed to address the balance billing practices of the out-of-service providers that are the root cause of the problem. There could be unintended consequences from the patient notification

requirements, including medical care delays as doctors or other providers seek insurance information, provide cost estimates, and complete paperwork.

POSITIONS:

Representatives of the following entities testified in support of the bills:

Blue Cross Blue Shield of Michigan (11-9-17)
Economic Alliance for Michigan (11-9-17)
Michigan Chamber of Commerce (11-9-17)

Representatives of the following entities indicated support for the bills:

Michigan AFL-CIO (11-9-17)
Michigan Manufacturers Association (11-9-17)
Ford Motor Company (11-9-17)
General Motors (11-9-17)
Michigan Association of Health Plans (11-30-17)

Representatives of the following entities testified with a neutral position on the bills:

Department of Insurance and Financial Affairs (11-9-17)
Superior AirMed – Henry Ford Health System (11-9-17)
Survival Flight – Michigan Medicine (11-9-17)

Representatives of the following entities testified in opposition to the bills:

PHI Air Medical/LifeFlight of Michigan (11-9-17; and indicated opposition on 11-30-17)

Representatives of the following entities indicated opposition to the bills:

Michigan Health and Hospital Association (11-9-17)
Michigan Professional Fire Fighters Union (11-30-17; HB 5217)

Legislative Analyst: Patrick Morris
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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.