

Legislative Analysis



AIR MEDICAL SERVICE TRANSPORTATION

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5217 as enacted
Public Act 383 of 2018
Sponsor: Rep. Joseph N. Bellino, Jr.

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

House Bill 5218 as enacted
Public Act 384 of 2018
Sponsor: Rep. Tom Barrett

House Bill 5219 as enacted
Public Act 385 of 2018
Sponsor: Rep. Beau Matthew LaFave

House Committee: Insurance
Senate Committee: Insurance

Complete to 1-7-19

BRIEF SUMMARY:

House Bills 5217, 5218, and 5219 each amend the Public Health Code 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 different modes of transportation and their potential for out-of-pocket costs. The bills also prescribe certain payment amounts, require recordkeeping, and provide sanctions for various situations involving air medical transportation. The bills take effect March 19, 2019.

BACKGROUND INFORMATION:

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. This bill package requires health facilities to prioritize ground transportation over air and requires hospitals and transportation providers to provide patients with information for various forms of transportation.

DETAILED SUMMARY:

House Bill 5217 adds a new Section 21540 to the Public Health Code to require that a nonemergency 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 an aircraft transport vehicle or rotary aircraft ambulance is determined to be medically necessary, the transportation must first be ordered from an aircraft transport operation or ambulance operation that is a participating provider with the patient's health benefit plan before ordering an aircraft or rotary aircraft ambulance from an operation that is not a participating provider with the person's health benefit plan.

However, the provisions described above do not apply if the hospital does not have electronic access to whether the patient's health benefit plan provides such coverage or a list of all the aircraft transport operations and ambulance operations that are fully contracted with the patient's health benefit plan and do not participate with the plan on only a per-claim basis.

A hospital that violates this new section is liable to the aircraft transport operation or ambulance operation for the reasonable cost of transporting the patient, as negotiated between the hospital and the applicable operation, to the extent that the cost exceeds the amount covered by the patient's health benefit plan.

MCL 333.20919 and 333.21540

House Bill 5218 adds definitions to Section 21501 of the Public Health Code and adds a new Section 21541 to the Code.

The new section requires 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. (This provision does not apply if the hospital does not have electronic access to whether the patient's health benefit plan provides such coverage or a list of all the aircraft transport operations and ambulance operations that are fully contracted with the patient's health benefit plan and do not participate with the plan on only a per-claim basis.)
- That the patient has a right to be transported by a method other than an aircraft transport vehicle or rotary aircraft ambulance.

Patient's representative is defined to mean any of the following:

- A person to whom the patient has given express written consent to represent the patient.
- A person authorized by law to provide consent for a patient.

- A patient's treating health professional, but only if the patient is unable to provide consent.

The new section also requires a hospital to complete a notice and obtain the signature of the patient or patient's representative acknowledging that the patient or representative has received, read, and understands the notice. The notice must be in at least 12-point type and contain the following information:

- That the patient's physician has ordered transport by an aircraft transport vehicle or rotary aircraft ambulance, that the patient's health benefit plan may or may not cover that transportation, and that the patient may be responsible for any costs of the transportation that are not covered by his or her plan.
- That the hospital has conducted a good-faith search to determine whether the patient's health benefit plan covers the transportation and to order the transportation from a provider that participates with his or her plan.
- That the patient has the right to be transported by another form of transportation.
- That the hospital and ordering physician are immune from liability for injuries or damages arising from the patient's decision to use a form of transportation other than the one ordered by the physician.

A hospital would be required to keep a copy of this notice for at least seven years.

Upon request of the patient's health benefit plan or third party administrator, the hospital must provide a copy of the notice to the person designated in the plan or by the administrator.

The bill provides, as described in the notice, that a hospital and ordering physician are immune from liability for injuries or damages arising from the decision of a patient or patient's representative to use a form of transportation other than the one ordered by the physician.

A hospital that violates this new section is liable to the aircraft transport operation or ambulance operation for the reasonable cost of transporting the patient, as negotiated between the hospital and the applicable operation, to the extent that the cost exceeds the amount covered by the patient's health benefit plan.

MCL 333.21501 and 333.21541

House Bill 5219 amends the Public Health Code to require that, before transporting a nonemergency patient in a rotary aircraft ambulance or an aircraft transport vehicle, an ambulance operation or aircraft transport operation, as applicable, must provide to the patient or patient's representative all of the following information:

- Whether the ambulance operation or aircraft transport 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 or aircraft transport vehicle, as applicable.

The bill requires the ambulance operation or aircraft transport operation to complete a notice and obtain the signature of the patient or patient's representative acknowledging that the patient or representative has received, read, and understands the notice. The notice must be in at least 12-point type and provide for the patient to acknowledge all of the following:

- That the patient has been provided a specifically recorded good-faith estimate of the cost of transportation by the ambulance or aircraft transport operation.
- That the patient has been notified as to whether the ambulance or aircraft transport operation is a participating provider with the patient's health benefit plan.
- That the patient has been informed of his or her right to request transportation from an ambulance or aircraft transport operation that is a participating provider with his or her plan.
- That the patient is aware of his or her potential responsibility for a deductible, copayment, or coinsurance if the transportation is covered by his or her plan or for the costs of the transportation that are not covered by the plan.
- That the patient has been informed of his or her right to be transported by another method.

The ambulance operation or aircraft transport operation must keep a copy of this notice for at least seven years.

Upon request of the patient's health benefit plan or third party administrator, the ambulance operation or aircraft transport operation must provide a copy of the notice to the person designated in the plan or by the administrator. If an ambulance operation or aircraft transport operation, as applicable, fails to provide a nonemergency patient with the required notice, the operation must 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 or aircraft transport operation, as applicable, must accept the amount covered by the patient's health benefit plan as payment in full, other than coinsurance, copayments, or deductibles. However, if the ambulance operation or aircraft transport operation is not a participating provider with the patient's health benefit plan, the operation must accept as payment in full the greater of the following (excluding any in-network coinsurance, copayments, or deductibles):

- The average amount negotiated by the emergency patient's health benefit plan with participating providers for transporting the patient.
- 150% of the amount that would be covered by Medicare for the emergency service.

If a patient at a hospital requests 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 is a contracted provider with the originating or destination hospital.

Finally, the bill stipulates that if a hospital has the infrastructure to land an aircraft transport vehicle or rotary aircraft ambulance, the hospital must grant the right to land at the hospital

to an aircraft or rotary aircraft ambulance that is a participating provider with a patient's health benefit plan. If a hospital denies such a vehicle the right to land, the hospital must provide written documentation explaining the denial to the person's health benefit plan within 10 days. Additionally, a hospital cannot 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 violates the above provisions 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 333.20921b et al.

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.

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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.