**(The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

| | |
|---|---|
| BILL: | SB 736 |
| INTRODUCER: | Senator Diaz |
| SUBJECT: | Coverage for Air Ambulance Services |
| DATE: | January 17, 2020 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Johnson | Knudson | BI | **Pre-meeting** |
| 2. | | | HP | |
| 3. | | | RC | |

## I. Summary:

SB 736 requires health insurers and health maintenance organizations to provide reasonable reimbursement to air ambulances for covered services. The bill defines the term, "reasonable reimbursement," to mean reimbursement that considers the actual cost of provided services, the operation of air ambulances in areas of critical need, and the operation of an air ambulance service by a county that operates entirely within a designated area of critical state concern. Reasonable reimbursement may be reduced only by applicable copayments, coinsurance, and deductibles, unless the insured or subscriber contracted for a different amount. Such reimbursement must serve as full and final payment to the air ambulance service.

Air ambulances provide emergency services for critically ill patients, primarily in life-threatening situations, regardless of their insurance status or ability to pay. Privately-insured patients who are transported by air ambulance providers that are outside of provider networks of their respective insurer or HMO are at financial risk for balance billing, which is the difference between prices charged by providers and the payment rates agreed upon by insurers or HMOs. Any balance billing incurred by a patient is in addition to copayments or other types of cost-sharing typically paid under the insurance coverage.

While states can regulate the medical aspects of air ambulances, the federal Airline Deregulation Act of 1979 (ADA)[1] preempts states from economic regulation, i.e., regulating rates, routes, and services of air ambulances.

## II. Present Situation:

Emergency medical transportation is a life-saving service that affects all Floridians, including the uninsured, privately insured, and those covered by federal health care programs. According to

[1] Federal Airline Deregulation Act of 1978. Pub.L. 95-504 92 STAT. 1705.

the National Association of Insurance Commissioners, more than 550,000 patients in the U.S. use air ambulances each year.[2] The average air ambulance trip is 52 miles, and costs $12,000 to $25,000 per flight. The significant price accounts for the initial aircraft cost which can reach $6 million as well as medical equipment and maintenance.[3] Also factoring into the price is the cost of round-the-clock availability for medical personnel and pilots. Contingent on the severity of the medical condition, the number and type of medical staff on board can vary, further influencing the flight price.

**Florida Insurance Consumer Advocate's Working Group**

The Insurance Consumer Advocate of the Department of Financial Services[4] created the Emergency Medical Transportation (EMT) Working Group in 2016 to assess the impact of EMT costs to Florida's privately-insured consumers, and to make recommendations to address concerns faced by ground and air ambulance services, the insurance industry, state and local governments, and consumers. In 2018, the Insurance Consumer Advocate released a report, which provided extensive background information about the EMT industry, ambulance costs, insurance coverage, and the impact on insureds.[5]

In regards to licensed air emergency medical services providers, the report noted that there are 37 companies. Typically, three types of business models exist for air ambulances providers, namely, hospital-based, independent, and government operator. The air ambulances provide services using a fixed-wing airplane or a rotary-wing helicopter.

***Average Bill for Air Emergency Transportation in Florida***

FAIR Health provided extensive data to the Insurance Consumer Advocate's report regarding the average bills in Florida. The FAIR Health[6] data indicates that the average bill for a fixed-wing airplane transport in Florida was $15,828, while the U.S. 80th percentile was at $22,500. When comparing Florida to other states, Georgia's average charge was $11,661, New York's was $17,226, and Texas' was $18,238. Comparatively speaking, Florida has a lower average charge than New York and Texas, but Florida's average charge was more than $4,000 higher than Georgia's average charge for a fixed-wing transport.

In the report, the FAIR Health noted that the average bill for a rotary-wing helicopter transport in Florida was $21,221. As with fixed-wing, this is also below the U.S. 80th percentile of $29,036. While Georgia had the lowest average charge for fixed-wing transport of the states analyzed,

[2] National Association of Insurance Commissioners, *Understanding Air Ambulance Insurance Coverage* (May 2018) https://www.naic.org/documents/consumer_alert_understanding_air_ambulance_insurance.htm (last viewed Jan. 13, 2020).
[3] *Id.*
[4] The Florida Insurance Commissioner created the Office of the Insurance Consumer Advocate in 1990. In 1992, the Legislature codified the office under s. 627.0613, F.S.
[5] Insurance Consumer Advocate, *Emergency Medical Transportation Costs in Florida* (May 2018) at https://www.myfloridacfo.com/Division/ICA/EMTWhitePaper.pdf (last viewed Jan. 13, 2020). The data is indicative of information for the period of October 1, 2015 through September 30, 2016.
[6] FAIR Health is an independent nonprofit that collects data for and manages the nation's largest database of privately billed health insurance claims, including Medicare Parts A, B and D claims data for 2013 to the present. *See* https://www.fairhealth.org/about-us (last viewed Jan. 16, 2020).

Florida holds the lowest average charge for rotary-wing transport. Georgia's average charge for rotary-wing transport was $24,660, New York's was $25,857, and Texas was $22,652.

***Recommendations of the Insurance Consumer Advocate***

The report included the following recommendations:

1. Steps must be taken to deregulate the aeromedical industry from federal regulation so that states may regulate the market to address consumer concerns.
2. Consumers should have increased access to in-network EMT providers in order to decrease the likelihood of surprise medical bills.
3. The current billing model used for ground EMT should be revised to allow ambulance companies to charge for medical services and treatments without the requirement of transporting the patient to a medical facility.
4. Stakeholders should commit to improving transparency and consumer education.

**Federal Laws Relating to Air Ambulance Billing**

The authority of states to address issues related to air ambulance balance billing is affected by the following federal laws:

- **Airline Deregulation Act of 1978 (ADA).** A provision in this law preempts state-level economic regulation—i.e., regulating rates, routes, and services—of air carriers authorized by United States' Department of Transportation (DOT) to provide air transportation.[7] In general, courts have held that air ambulances are considered air carriers under the ADA's preemption provision, and courts, the DOT, and state attorneys general have determined specific issues related to the air ambulance industry that cannot be regulated at the state level having a connection with or reference to a carrier's rates, routes, or services.[8]

- **McCarran-Ferguson Act of 1945.** This act affirms that states have the authority to regulate the business of insurance.[9] For example, states may review insurers' health insurance plans and premium rates. In instances of balance billing, states can determine whether the insurer paid a provider in accordance with its policy for paying for out-of-network services.

- **Employee Retirement Income Security Act of 1974 (ERISA).** The ERISA provides a federal framework for regulating employer-based pension and welfare benefit plans, including health plans.[10] Although states may regulate health insurers, the ERISA preemption generally prevents states from directly regulating self-insured employer-based health plans.

- **The Patient Protection and Affordable Care Act**, provides limited balance billing protections[11] for insureds or subscribers who receive ambulance services from an out-of-

[7] Pub. L. No. 95-504, s. 4, 92 Stat. 1705, 1707 (codified as revised and amended at 49 U.S.C. s. 41713(b)).
[8] General Accounting Office, *Air Ambulances: Available Data Show Privately-Insured Patients Are at Financial Risk* (Mar. 20, 2019) at https://www.gao.gov/products/GAO-19-292 (last viewed Jan. 11, 2020).
[9] Act of Mar. 9, 1945, Ch. 20, s. 2, 59 Stat. 33, 34 (codified as amended at 15 U.S.C. s. 1012).
[10] *See*, Pub. L. No. 93-406, 88 Stat. 646 (codified as amended at 29 U.S.C. ss. 1001 et seq.).
[11] The regulations establish minimum payment standards for insurers and HMOs. However, insurers or HMOs are not required to cover amounts that out-of-network providers may "balance bill." See 80 FR 72192.

network provider.[12] In the case of air ambulances, these protections are only applied when the service is affiliated with a hospital and thus considered an extension of the emergency department service.[13]

**State Laws Relating to Emergency Services and Insurance Coverage**

***Access to Emergency Services and Care***

In 1986, Congress enacted the Emergency Medical Treatment and Active Labor Act (EMTALA) to ensure public access to emergency services regardless of ability to pay. The EMTALA imposes specific obligations on hospitals participating in the Medicare program, which offer emergency services. Any patient who comes to the emergency department must be provided with a medical screening examination to determine if the patient has an emergency medical condition. If an emergency condition exists, the hospital must provide treatment within its service capability to stabilize the patient. If a hospital is unable to stabilize a patient or, if the patient requests, the hospital must transfer the patient to another appropriate facility.[14] A hospital that violates EMTALA is subject to civil monetary penalty[15] or civil suit by a patient who suffers personal harm.[16]

Florida law imposes a similar duty.[17] The law requires the Agency for Health Care Administration to maintain an inventory of the service capability of all licensed hospitals that provide emergency care in order to assist emergency medical services (EMS or ambulance) providers and the public in locating appropriate medical care. Hospitals must provide all listed services when requested, whether by a patient, an emergency medical services provider, or another hospital, regardless of the patient's ability to pay. If the hospital is at capacity or does not provide the requested emergency service, the hospital may transfer the patient to the nearest facility with appropriate available services. Each hospital must ensure the services listed can be provided at all times either directly or through another hospital. A hospital is prohibited from basing emergency treatment and care on a patient's insurance status, economic status, or ability to pay. A hospital that violates Florida's access to care statute is subject to administrative penalties; denial, revocation, or suspension of its license; or civil action by another hospital or physician suffering financial loss. In addition, hospital administrative or medical staff are subject to civil suit by a patient who suffers personal harm, and may be found guilty of a second-degree misdemeanor for a knowing or intentional violation. Physicians who violate the act are also subject to disciplinary action against their license or civil action by another hospital or physician suffering financial loss.

---

[12] The Patient Protection and Affordable Care Act (Pub. L. 111–148), was enacted on March 23, 2010; the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) was enacted on March 30, 2010. These statutes are collectively referred to as "PPACA."

[13] National Association of Insurance Commissioners, *Air Ambulance Regulation*, (Jan. 2019) at https://www.naic.org/documents/government_relations_air_ambulance_regulation_issue_brief.pdf (last viewed Jan. 14, 2020).

[14] Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. §1395dd; *see also* CENTERS FOR MEDICARE & MEDICAID SERVICES, *Emergency Medical Treatment & Labor Act (EMTALA)*, http://www.cms.gov/Regulations-and-Guidance/Legislation/EMTALA/index.html?redirect=/emtala/ (last visited Jan. 13, 2020).

[15] 42 U.S.C. s. 1395dd(d)(1).

[16] 42 U.S.C. s. 1395dd(d)(2).

[17] *See* s. 395.1041, F.S.

***Regulation of Emergency Medical Transportation***

Part III of ch. 401, F.S., governs the provision of emergency medical transportation services in Florida, and establishes the licensing and operational requirements for emergency medical services, including air ambulances.[18] Air ambulance service refers to a licensed publicly or privately owned service that operates air ambulances to transport persons requiring or likely to require medical attention during transport.[19] An air ambulance is a fixed-wing or rotary-wing aircraft used for, or intended to be used for, the air transportation of sick or injured persons that require or are likely to require medical attention during transport.[20]

***Regulation of Insurance***

The Office of Insurance Regulation (OIR) licenses and regulates insurers, HMOs, and other risk-bearing entities.[21] To operate in Florida, an HMO must obtain a certificate of authority from the OIR.[22] The Agency for Health Care Administration (AHCA) regulates the quality of care provided by HMOs under part III of ch. 641, F.S. Prior to receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from the AHCA.[23] As part of the certification process used by the AHCA, an HMO must provide information to demonstrate that the HMO has the ability to provide quality of care consistent with the prevailing standards of care.[24]

**Federal Reports Relating to Air Ambulance Costs**

A 2017 General Accounting Office (GAO) report noted that, between 2010 and 2014, the national median prices providers charged for helicopter-air ambulance service approximately doubled, from around $15,000 to about $30,000 per transport.[25] In 2017, the median price charged nationally by air ambulance providers was about $36,400 for helicopter transportation and $40,600 for a fixed wing transport.[26] The total generally includes the costs for both the transportation and the medical care aboard the aircraft. Air ambulance providers may not turn away patients based on their ability to pay. The providers receive payments from many sources depending on the patient's coverage, often at rates lower than the price charged.

Selected providers reported that factors such as transport costs and volume, payer mix, and competition play a role in prices charged. Air ambulance providers' costs for air ambulance service are relatively fixed—meaning they do not increase significantly when they complete more transports. For example, personnel and the costs of helicopter ownership are the same regardless of how often the helicopter is used. Providers contacted by GAO noted that a small portion of their costs—such as fuel—are variable, meaning they increase with the number of

[18] Section 401.251, F.S.
[19] Section 401.23, F.S.
[20] *Id.*
[21] Section 20.121(3)(a)1., F.S.
[22] Section 641.21(1), F.S.
[23] Section 641.49, F.S.
[24] Section 641.495, F.S.
[25] General Accounting Office, *Data Collection and Transparency Needed to Enhance DOT Oversight* (GAO-17-637) (Jul. 2017) at https://www.gao.gov/assets/690/686167.pdf (last viewed Jan. 13, 2020).
[26] General Accounting Office, *Air Ambulances: Available Data Show Privately-Insured Patients Are at Financial Risk* (Mar. 20, 2019) at https://www.gao.gov/products/GAO-19-292 (last viewed Jan. 11, 2020).

transports completed. To be profitable, and thus be in business and provide service, providers must earn sufficient revenues to cover their costs, including their fixed costs. To increase revenue, a provider must increase its number of transports and/or its prices charged. When a provider has a lower transport volume, then that provider must earn higher prices on average across transports in order to be profitable. Representatives from the eight selected providers GAO contacted reported average costs per transport, given current transport volumes, of $6,000 to $13,000 in 2016.[27] Factors such as a provider's proportion of transports provided by payer and competition may play a role in air ambulance prices charged, but data to assess these factors are not available.

Selected stakeholders the GAO contacted proposed actions to address air ambulance pricing issues, including (1) raising Medicare rates; (2) allowing state-level regulation of air ambulance prices; and (3) improving data collection for the purposes of investigations and transparency regarding prices.

**Federal Air Ambulance and Patient Billing Advisory Committee**

On October 5, 2018, President Trump signed the FAA Reauthorization Act of 2018 (FAA Act).[28] The FAA Act requires the Secretary of Transportation, in consultation with the Secretary of Health and Human Services, to establish an advisory committee[29] to review options to improve the disclosure of charges and fees for air medical services, inform consumers of insurance options for such services, and protect consumers from balance billing. The committee held its first meeting on January 15, 2020. The committee must submit a report containing recommendations to the Secretary of Transportation and others no later than 120 days after the first committee meeting.

**Legislation and Litigation Relating to State Regulation of Air Ambulance Rates**

A number of states have attempted to enact laws to protect consumers from balance billings by out-of-network air ambulances through the enactment of laws addressing reimbursement of air ambulance providers, but the Airline Deregulation Act of 1978 has preempted the laws.

***Florida***

*Bailey v. Rocky Mountain Holdings, LLC*[30], concerns whether the ADA preempts a cause of action against an air ambulance provider based on a statutory medical fee schedule for personal injury protection (PIP)[31] reimbursement under the Florida Motor Vehicle No-Fault Law.[32] Under PIP, a medical provider may not bill the insured for any amount in excess of such limits, except

[27] *Id.*
[28] *See* Pub. L. No. 115-254, 132 Stat. 3186 (2018).
[29]Department of Transportation, Air Ambulance and Patient Billing Advisory Committee (AAPB Advisory Committee) at https://www.transportation.gov/airconsumer/AAPB (last viewed Jan. 13, 2020).
[30] Bailey v. Rocky Mountain Holdings, LLC, 889 F.ed 1259 (11th Cir. 2018).
[31] Florida drivers are required to purchase both PIP insurance. The personal injury protection must provide a minimum benefit of $10,000 for bodily injury to any one person who sustains an emergency medical condition and includes emergency transport. *See* ss. 324.022, and 627.736, F.S.
[32] Florida's Motor Vehicle No-Fault Law, ss. 627.730-627.7405, F.S.

for amounts that are not covered by the insured's PIP coverage due to the coinsurance amount or maximum policy limits.[33]

In this case, an air ambulance provider submitted a bill for covered emergency transportation to the insurer; however, the policy limited reimbursement of the services under the fee schedule to less than the invoiced amount. The provider sought payment from the insured for the unpaid portion of its bill. The insured brought a class action suit against the provider seeking a declaration that the balance billing provision limited its reimbursement to the amount fixed in the fee schedule. In response, the provider moved to dismiss the action on grounds that the ADA preempted the enforcement of the balance billing provision. The insured contended that the McCarron-Ferguson Act, which provides that federal laws cannot preempt "any law enacted by any state for the purpose of regulating the business of insurance," precluded the ADA's preemption of the insured's action. The District Court concurred with the provider and held that the ADA preempted the insured's action because it related to the prices of the air carrier.[34] The McCarron-Ferguson Act, the Court determined prevents only inadvertent intrusion from federal legislation, not express preemption such as that of the ADA.

The insured appealed the decision to the Eleventh Circuit Court of Appeals. The panel concurred with the District Court that the (PIP) statute improperly restricted an air ambulance operator's rates by first limiting the reimbursement for such services to a schedule of charges based on Medicare rates, and then prohibiting the operator from billing the insured for the balance of the unpaid invoices.[35]

***Montana***

In 2017, Montana enacted a state law that imposes a hold-harmless requirement on insurers or HMOs for charges pertaining to out-of-network air ambulance transports. Insurers or HMOs assume responsibility for amounts charged to a covered person in excess of both allowed amounts and applicable cost-sharing amounts. It also requires the use of a nonbinding dispute resolution process, including a determination of the fair market price of the services provided, before an aggrieved party may pursue any remedy in court.[36]

***North Dakota***

In 2017 legislation was enacted that provides, effective January 1, 2018, insurers are required to pay for out-of-network air ambulance transports at the average of the insurer's in-network rates for air ambulance providers in the state. The law also provides that this payment is deemed full and final payment by the covered person for the transport.[37] The air ambulances subsequently challenged the law in January 2018. In January 2019, the federal district court concluded that this payment provision is preempted by the ADA.[38] In February 2019, the state Insurance Commissioner announced plans for North Dakota to appeal this ruling to the U.S. Court of Appeals

[33] Section 627.736(5), F.S.
[34] *Bailey v. Rocky Mountain Holdings, LLC,* 136F.Supp.3d 1376.
[35] *Bailey v. Rocky Mountain Holdings,* 889 F. 3d 1259 (11th Cir. 2018).
[36] Mont. Code Ann. ss. 33-2-2302 and 33-2-2305 (as added by S.B. 44 (2017)).
[37] N.D. Cent. Code s. 26.1-47-09 (as added by S.B. 2231 (2017)).
[38] See *Guardian Flight LLC v. Godfread*, No. 1:18-cv-007 (D.N.D. order filed Jan. 14, 2019).

***Texas***

Legislation was enacted that provided if payments for patients in the state's workers' compensation program were made pursuant to applicable rate guidelines, the payment must be accepted as payment in full.[39] The Texas Department of Insurance Division of Workers' Compensation began applying this requirement to air ambulance services in 2016. The air ambulances challenged the law in federal district court, and the court recently decided that the ADA preempts enforcement of workers' compensation rate restrictions on air ambulance services.[40]

**Areas of Critical State Concern**

The Administration Commission, which is composed of the Governor and Cabinet, designate areas of critical state concern.[41] Areas that qualify for designation include only:

> An area containing, or having a significant impact upon, environmental or natural resources of regional or statewide importance, including, but not limited to, state or federal parks, forests, wildlife refuges, wilderness areas, aquatic preserves, major rivers and estuaries, state environmentally endangered lands, Outstanding Florida Waters, and aquifer recharge areas, the uncontrolled private or public development of which would cause substantial deterioration of such resources.[42]

Once designated, the area's land planning regulations must comply with the principles guiding development specified by the Administration Commission, which must be approved by the Department of Economic Development.[43] Several areas have been designated as an area of critical state concern or have had their designations ratified by statute, and include the Big Cypress Area,[44] the Green Swamp Area,[45] the Apalachicola Bay Area,[46] and the Florida Keys Area.[47]

**Areas of Critical Need**

The State Surgeon General is responsible for determining areas of critical need.[48] Such areas may include a health professional shortage area designated by the United States Department of Health and Human Services. [49]

[39] Tex. Lab. Code s. 413.011 (2017); 28 Tex. Admin. Code ss. 134.1(a), 134.203(d) (2017).
[40] *Air Evac EMS, Inc. v. Sullivan*, 331 F. Supp. 3d 650 (W.D. Tex., 2018) (U.S. District Ct. granted injunctive relief, prohibiting state from enforcing rate restrictions).
[41] Section 380.05, F.S.
[42] Section 380.05(2), F.S.
[43] Section 380.05(6), F.S.
[44] Section 380.055, F.S.
[45] Section 380.0551, F.S.
[46] Section 380.0555, F.S.
[47] Section 380.0552, F.S.
[48] Sections 458.315 and 459.0076, F.S.
[49] Health Professional Shortage Areas (HPSAs) are defined in the Public Health Service Act, 42 U.S.C. s. 332.

## III. Effect of Proposed Changes:

**Section 1** creates s. 627.42397, F.S., to require a health insurer or HMO to provide reasonable reimbursement to air ambulance services for covered nonemergency and emergency services provided to an insured or subscriber in accordance with the coverage terms of the policy or contract. Such reimbursement may be reduced only by copayments, coinsurance, and deductibles, unless the insured or subscriber contracted for a different amount. Further, such reimbursement must serve as full and final payment to the air ambulance service.

The bill defines the following terms: "air ambulance service," "health insurer," "health maintenance organization," and "reasonable reimbursement." The term, "reasonable reimbursement," means reimbursement that considers the actual cost of services rendered, the operation of air ambulances in areas of critical need, the operation of 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 usual and customary reimbursement.

**Section 2** provides the bill takes effect upon becoming a law.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds or that limit their ability to raise revenue or receive state tax revenues. Except upon approval of each house of the Legislature by two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandates requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2019-2020 is approximately $2.1 million or less.

Cities or counties that provide such services directly or indirectly may incur an indeterminate fiscal impact due to the implementation of the reasonable reimbursement prescribed in the bill. If the reimbursement by an insurer or health maintenance organization to a county or city providing air ambulance services is decreased as a result, an indeterminate amount of additional funding sources may be necessary to fund these local services.

### B. Public Records/Open Meetings Issues:

None.

### C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Since the bill effectively prohibits balance billing by air ambulance providers, the bill will hold privately-insured patients harmless in the event they incur medical bills from an out-of-network provider.

The provisions of the bill would not apply to coverage offered by self-insured plans[50] offered by employers, which are governed by federal law, or federal programs such as Medicare, Medicaid, or State Children's Health Insurance Program.

C. Government Sector Impact:

None.[51]

## VI. Technical Deficiencies:

The bill amends ch. 627, F.S., relating to insurance policies: however, the bill does not amend ch. 641, F.S., which governs the regulation of contracts issued by health maintenance organizations.

Lines 25-31 defines "reasonable reimbursement" to require that the amount "considers" the operation of air ambulances in areas of critical need and areas of critical state concern. It is unclear how an insurer would demonstrate that consideration when making a rate filing with the Office of Insurance Regulation and whether that consideration should be reflected as an upward or downward deviation in reimbursement.

Lines 32-42 provide that reimbursement may only be reduced by copayments, coinsurance, or deductibles "unless the insured or subscriber has expressly or in fact contracted for a different amount." It is unclear whether the contracted amount is determined between the insurer or HMO and the insured or subscriber or whether the contract may be between the insured or subscriber and a third party. If the intent of the language is to address other coverage that the insured or

[50] The Employee Retirement Income Security Act of 1974 (ERISA).
[51] Department of Management Services, SB 736 Legislative Analysis (Dec. 2, 2019).

subscriber has, such as a prepaid limited health services organization contract, which may provide for air ambulance coverage, the language may need clarification.

Lines 40-42 provide that the reimbursement "must serve as full and final payment to the air ambulance service." Given the generally broad interpretation given to the Airline Deregulation Act of 1978's prohibition on state regulation of airline rates (including air ambulance services), it is unclear whether this would serve as a prohibition on balance billing or would be struck down upon challenge.[52]

## VII. Related Issues:

None.

## VIII. Statutes Affected:

This bill creates section 627.42397 of the Florida Statutes.

## IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

[52] The Florida Office of Insurance Regulation, *Agency Legislative Analysis of SB 736* (Nov. 19, 2019).