

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/CS/SB 736

INTRODUCER: Rules Committee; Health Policy Committee; Banking and Insurance Committee; and Senator Diaz

SUBJECT: Coverage for Air Ambulance Services

DATE: March 4, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Kibbey</u>	<u>Brown</u>	<u>HP</u>	<u>Fav/CS</u>
3.	<u>Johnson</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 736 requires health insurers and health maintenance organizations (HMOs) to provide reasonable reimbursement to air ambulances for covered services. The bill defines the term, “reasonable reimbursement” to mean reimbursement that considers the direct cost to provide air ambulance transportation service to an insured or subscriber, the operation of an air ambulance service by a county that operates entirely within a designated area of critical state concern, and in-network reimbursement established by the insurer or HMO for the specific policy or contract. Under the bill, reasonable reimbursement may be reduced only by applicable copayments, coinsurance, and deductibles.

The bill establishes that payment in full by the insured or subscriber of his or her applicable copayment, coinsurance, or deductible constitutes an accord and satisfaction of and a release of any claim for monies owed by the insured or subscriber in connection with 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 established 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 policy or HMO contract.

While states can regulate the medical aspects of air ambulances, the federal Airline Deregulation Act of 1979 (ADA)<sup>1</sup> 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 may affect any Floridian, including the uninsured, privately insured, and those covered by federal health care programs. According to the National Association of Insurance Commissioners, more than 550,000 patients in the U.S. use air ambulances each year.<sup>2</sup> The average air ambulance trip is 52 miles and costs \$12,000 to \$25,000 per flight.

Some of the services an air ambulance may provide include medical care, aircraft operation and maintenance, 24-hour communications and dispatch, and medical billing and collections. The price of a trip must account for the initial aircraft cost which can reach \$6 million, and the associated operating expenses<sup>3</sup> (e.g., fuel, insurance, and maintenance costs), as well as medical equipment.<sup>4</sup> Air ambulance services also have to factor in the cost of round-the-clock availability for medical personnel and pilots, including salaries and benefits. Contingent on the severity of the medical condition, the number and type of medical staff (paramedics, doctors, or nurses) on board can vary, further influencing the flight price. Further, air ambulances incur overhead expenses<sup>5</sup> or indirect costs, such as executive management, legal, accounting and finance, billing and collections, information services, human resources, associated with providing their services.

### Florida Insurance Consumer Advocate's Working Group

The Insurance Consumer Advocate of the Department of Financial Services<sup>6</sup> 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 that

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<sup>1</sup> Federal Airline Deregulation Act of 1978. Pub. L. No. 95-504, 92 STAT. 1705.

<sup>2</sup> National Association of Insurance Commissioners, *Understanding Air Ambulance Insurance Coverage* (May 2018) [https://www.naic.org/documents/consumer\\_alert\\_understanding\\_air\\_ambulance\\_insurance.htm](https://www.naic.org/documents/consumer_alert_understanding_air_ambulance_insurance.htm) (last visited Feb. 7, 2020).

<sup>3</sup> Form 10K filing, Air Methods Corporation (2014), Securities and Exchange Commission, at [https://www.sec.gov/Archives/edgar/data/816159/000157104915001464/t81389\\_10k.htm](https://www.sec.gov/Archives/edgar/data/816159/000157104915001464/t81389_10k.htm) (last viewed Feb. 28, 2020).

<sup>4</sup> *Id.*

<sup>5</sup> Direct costs are costs that a company can easily allocate to a specific cost object, which may be a product or service. Indirect costs go beyond the expenses associated with creating a particular product or service to include the price of maintaining the entire company. See <https://www.businessnewsdaily.com/5498-direct-costs-indirect-costs.html> (last viewed Feb. 28, 2020).

<sup>6</sup> 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.

provided extensive background information about the EMT industry, ambulance costs, insurance coverage, and the impact on insureds.<sup>7</sup>

Regarding 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<sup>8</sup> provided extensive data to the Insurance Consumer Advocate's report regarding the average bills in Florida. FAIR Health 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, 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, 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:

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<sup>7</sup> Insurance Consumer Advocate, *Emergency Medical Transportation Costs in Florida* (May 2018) at <https://www.myfloridacfo.com/Division/ICA/EMTWhitePaper.pdf> (last visited Feb. 7, 2020). The data is indicative of information for the period of October 1, 2015 through September 30, 2016.

<sup>8</sup> 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 visited Feb. 7, 2020).

- **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 U.S. Department of Transportation (DOT) to provide air transportation.<sup>9</sup> In general, courts have held that air ambulances are considered air carriers under the ADA’s preemption provision. The 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.<sup>10</sup>
- **McCarran-Ferguson Act of 1945.** This act affirms that states have the authority to regulate the business of insurance.<sup>11</sup> 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.<sup>12</sup> 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<sup>13</sup> for insureds or subscribers who receive ambulance services from an out-of-network provider.<sup>14</sup> In the case of air ambulances, these protections are applied only when the service is affiliated with a hospital and thus considered an extension of the emergency department service.<sup>15</sup>

## 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 medical 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

<sup>9</sup> Pub. L. No. 95-504, s. 4, 92 Stat. 1705, 1707 (codified as revised and amended at 49 U.S.C. s. 41713(b)).

<sup>10</sup> General Accounting Office, *Air Ambulances: Available Data Show Privately-Insured Patients Are at Financial Risk* (March 20, 2019) available at <https://www.gao.gov/products/GAO-19-292> (last visited Feb. 7, 2020).

<sup>11</sup> Act of Mar. 9, 1945, Ch. 20, s. 2, 59 Stat. 33, 34 (codified as amended at 15 U.S.C. s. 1012).

<sup>12</sup> See, Pub. L. No. 93-406, 88 Stat. 646 (codified as amended at 29 U.S.C. ss. 1001 et seq.).

<sup>13</sup> 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.

<sup>14</sup> 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.”

<sup>15</sup> National Association of Insurance Commissioners, *Air Ambulance Regulation*, (Jan. 2019) at [https://www.naic.org/documents/government\\_relations\\_air\\_ambulance\\_regulation\\_issue\\_brief.pdf](https://www.naic.org/documents/government_relations_air_ambulance_regulation_issue_brief.pdf) (last visited Feb 7, 2020).

requests, the hospital must transfer the patient to another appropriate facility.<sup>16</sup> A hospital that violates EMTALA is subject to civil monetary penalty<sup>17</sup> or civil suit by a patient who suffers personal harm.<sup>18</sup>

Florida law imposes a similar duty.<sup>19</sup> 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 statute are also subject to disciplinary action against their license or civil action by another hospital or physician suffering financial loss.

### ***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 licensure and operational requirements for emergency medical services, including air ambulances.<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup>

### ***Regulation of Insurance***

The Office of Insurance Regulation (OIR) licenses and regulates insurers, HMOs, and other risk-bearing entities.<sup>23</sup> To operate in Florida, an insurer or HMO must obtain a certificate of authority from the OIR.<sup>24</sup> 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

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<sup>16</sup> 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 Feb. 7, 2020).

<sup>17</sup> 42 U.S.C. s. 1395dd(d)(1).

<sup>18</sup> 42 U.S.C. s. 1395dd(d)(2).

<sup>19</sup> *See* s. 395.1041, F.S.

<sup>20</sup> Section 401.251, F.S.

<sup>21</sup> Section 401.23, F.S.

<sup>22</sup> *Id.*

<sup>23</sup> Section 20.121(3)(a)1., F.S.

<sup>24</sup> Section 641.21(1), F.S.

from the OIR, an HMO must receive a Health Care Provider Certificate from the AHCA.<sup>25</sup> 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.<sup>26</sup>

### **Federal Reports Relating to Air Ambulance Costs**

A 2017 U.S. Government Accountability 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.<sup>27</sup> 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.<sup>28</sup> 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 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 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.<sup>29</sup> 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.

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<sup>25</sup> Sections 624.401 and 641.49, F.S.

<sup>26</sup> Section 641.495, F.S.

<sup>27</sup> Government Accountability Office, *Data Collection and Transparency Needed to Enhance DOT Oversight* (GAO-17-637) (July 2017) available at <https://www.gao.gov/assets/690/686167.pdf> (last visited Feb. 7, 2020).

<sup>28</sup> Government Accountability Office, *Air Ambulances: Available Data Show Privately-Insured Patients Are at Financial Risk* (Mar. 20, 2019) available at <https://www.gao.gov/products/GAO-19-292> (last visited Feb. 7, 2020).

<sup>29</sup> *Id.*

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

On October 5, 2018, President Donald Trump signed the FAA Reauthorization Act of 2018 (FAA Act).<sup>30</sup> The FAA Act requires the Secretary of Transportation, in consultation with the Secretary of Health and Human Services, to establish an advisory committee<sup>31</sup> 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*<sup>32</sup>, 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)<sup>33</sup> reimbursement under the Florida Motor Vehicle No-Fault Law.<sup>34</sup> Under PIP, a medical provider may not bill the insured for any amount in excess of such limits, except for amounts that are not covered by the insured's PIP coverage due to the coinsurance amount or maximum policy limits.<sup>35</sup>

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 U.S. 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.<sup>36</sup>

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<sup>30</sup> See Pub. L. No. 115-254, 132 Stat. 3186 (2018).

<sup>31</sup> U.S. Department of Transportation, *Air Ambulance and Patient Billing Advisory Committee (AAPB Advisory Committee)* (updated February 7, 2020) available at <https://www.transportation.gov/airconsumer/AAPB> (last visited Feb. 7, 2020).

<sup>32</sup> *Bailey v. Rocky Mountain Holdings, LLC*, 889 Fed 1259 (11<sup>th</sup> Cir. 2018).

<sup>33</sup> 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.

<sup>34</sup> Florida's Motor Vehicle No-Fault Law, ss. 627.730-627.7405, F.S.

<sup>35</sup> Section 627.736(5), F.S.

<sup>36</sup> *Bailey v. Rocky Mountain Holdings, LLC*, 136F.Supp.3d 1376.

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 U.S. 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.<sup>37</sup>

### ***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.<sup>38</sup>

### ***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.<sup>39</sup> The air ambulances subsequently challenged the law in January 2018. In January 2019, the federal court concluded that this payment provision is preempted by the ADA.<sup>40</sup> In February 2019, the state Insurance Commissioner announced plans for North Dakota to appeal this ruling to the U.S. Circuit Court of Appeals.

### ***Texas***

Legislation was enacted, relating to the Texas workers' compensation program, which provided if payments for patients were made pursuant to applicable rate guidelines, the payment must be accepted as payment in full.<sup>41</sup> The Division of Workers' Compensation of the Texas Department of Insurance 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.<sup>42</sup>

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<sup>37</sup> *Bailey v. Rocky Mountain Holdings*, 889 F. 3d 1259 (11<sup>th</sup> Cir. 2018).

<sup>38</sup> Mont. Code Ann. ss. 33-2-2302 and 33-2-2305 (as added by S.B. 44 (2017)).

<sup>39</sup> N.D. Cent. Code s. 26.1-47-09 (as added by S.B. 2231 (2017)).

<sup>40</sup> See *Guardian Flight LLC v. Godfread*, No. 1:18-cv-007 (D.N.D. order filed Jan. 14, 2019).

<sup>41</sup> Tex. Lab. Code s. 413.011 (2017); 28 Tex. Admin. Code ss. 134.1(a), 134.203(d) (2017).

<sup>42</sup> *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).



### Areas of Critical State Concern

Florida's Administration Commission, which is composed of the Governor and Cabinet, designates areas of critical state concern.<sup>43</sup> 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.<sup>44</sup>

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.<sup>45</sup> 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,<sup>46</sup> the Green Swamp Area,<sup>47</sup> the Apalachicola Bay Area,<sup>48</sup> and the Florida Keys Area.<sup>49</sup>

### III. Effect of Proposed Changes:

**Section 1** creates s. 627.42397, F.S., to require each health insurer 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. Payment in full by the insured or subscriber of his or her applicable copayment, coinsurance, or deductible constitutes an accord and satisfaction of and a release of any claim for monies owed by the insured or subscriber to the health insurer or to any person or entity in connection with 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 direct cost to provide air ambulance transportation service to an insured; 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 in-network reimbursement established by the insurer for the specific policy.

**Section 2** creates s. 641.514, F.S., to apply the provisions of Section 1 to HMOs.

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<sup>43</sup> Section 380.05, F.S.

<sup>44</sup> Section 380.05(2), F.S.

<sup>45</sup> Section 380.05(6), F.S.

<sup>46</sup> Section 380.055, F.S.

<sup>47</sup> Section 380.0551, F.S.

<sup>48</sup> Section 380.0555, F.S.

<sup>49</sup> Section 380.0552, F.S.

**Section 3** provides that if any provision of s. 627.42397, F.S., (Section 1 of the bill) or s. 641.514, F.S., (Section 2 of the bill) is determined to be invalid or inoperative, the remaining provisions are deemed void and of no effect. Under the bill, the Legislature finds that the two provisions are not severable.

**Section 4** provides that nothing in this act shall be construed to give retroactive application or to impair any contract existing on or before the effective date of the act, or to otherwise restrict the ability of the air ambulance service to contract for emergency and nonemergency services.

**Section 5** 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<sup>50</sup> via 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.

**VI. Technical Deficiencies:**

Sections 1 and 2 of the bill define "reasonable reimbursement" to require that the amount "considers" the direct cost to provide air ambulances service to an insured or subscriber, the operation of an air ambulance service, by a county that operates entirely within a designated area of critical state concern, and in-network reimbursement by the insurer or HMO, respectively. It is unclear how an insurer or HMO 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.

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.<sup>51</sup>

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates sections 627.42397 and 641.514 of the Florida Statutes.

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<sup>50</sup> The Employee Retirement Income Security Act of 1974 (ERISA).

<sup>51</sup> The Florida Office of Insurance Regulation, *Agency Legislative Analysis of SB 736* (Nov. 19, 2019).

**IX. Additional Information:**

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

**CS/CS/CS by Rules on March 2, 2020:**

The CS/CS/CS:

- Provides that nothing in this bill shall be construed to give retroactive application or to impair any contract existing on or before the effective date of the act, or to otherwise restrict the ability of the air ambulance service to contract for emergency and nonemergency services.
- Clarifies that payment by the insured or subscriber of his or her applicable cost-sharing obligation constitutes an accord and satisfaction of, and constitutes release of, any claim for additional moneys owed by the insured or subscriber to the health insurer, or to any person or entity in connection with the air ambulance service.

**CS/CS by Health Policy on February 11, 2020:**

The CS/CS:

- Defines “reasonable reimbursement” to require that the amount considers the “direct cost to provide air ambulance transportation service to an insured,” rather than the “actual cost of services rendered,” as in the underlying bill. This excludes consideration of all indirect costs, which may include, but are not limited, to costs accrued from: staffing, accounting and billing, pilot training, health care practitioner training, operations command centers, aviation maintenance, and helipad maintenance.
- Establishes that payment in full by the insured or subscriber of his or her applicable copayment, coinsurance, or deductible constitutes an accord and satisfaction of and a release of any claim for monies owed by the insured or subscriber in connection with the air ambulance service.
- Removes a provision from the underlying bill that established that the reasonable reimbursement paid by the health insurer or health maintenance organization to the air ambulance service constitutes full and final payment to the air ambulance service.

**CS by Banking and Insurance on January 21, 2020:**

The CS clarifies the application of the bills’ provisions to health maintenance organizations and provides other technical changes.

- B. **Amendments:**

None.