

**FISCAL NOTE**  
**Requested by Legislative Council**  
**03/31/2017**

Amendment to: SB 2231

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2231 adds definitions and requirements regarding air ambulance services and preferred provider arrangements to chapter 26.1-47 of the Century Code.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill, as written, will have no fiscal impact.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

This bill, as written, will have no fiscal impact on revenues.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

This bill, as written, will have no fiscal impact on expenditures.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

This bill, as written, will have no fiscal impact on appropriations.

**Name:** Melissa Seifert

**Agency:** Insurance Department

**Telephone:** 328-2930

**Date Prepared:** 04/03/2017

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/16/2017**

Bill/Resolution No.: SB 2231

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2231 adds definitions and requirements regarding air ambulance services and preferred provider arrangements to chapter 26.1-47 of the Century Code.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill, as written, will have no fiscal impact.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

This bill, as written, will have no fiscal impact on revenues.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

This bill, as written, will have no fiscal impact on expenditures.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

This bill, as written, will have no fiscal impact on appropriations.

**Name:** Melissa Seifert

**Agency:** Insurance Department

**Telephone:** 328-2930

**Date Prepared:** 01/19/2017



**2017 SENATE HUMAN SERVICES**

**SB 2231**

# 2017 SENATE STANDING COMMITTEE MINUTES

Human Services Committee  
Red River Room, State Capitol

SB 2231  
1/31/2017  
Job Number 27627

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Maria Johnson*

## Explanation or reason for introduction of bill/resolution:

A bill relating to preferred provider arrangement requirements for insurance prior authorization for air ambulance services; relating to preferred provider organizations and to provide an effective date.

## Minutes:

5 Attachments

**Chair J. Lee:** Brought the public hearing on SB 2231 to order. All members were present.

**Chair J. Lee:** Introduced the bill (1:00-8:30) She explained balanced billing and the airline deregulation act; and walked through the bill.

**Senator Heckaman:** Do you know why the effective date is January 1, 2018?

**Chair J. Lee:** I don't, I'll defer.

**Jeff Ubben, Deputy Commissioner ND Insurance Department (9:40-18:30) Testified in support as amended, please see attachment #1, 5.** The reason Jan 1<sup>st</sup> 2018 is the effective date is because the bill and amendments all require amendments to health insurers plans, those plans are already in effect for 2017. The only practical way to do it, is to make it for 2018 because those plans have not been filed, and insurers can build that into their plan and their rating.

**Senator Heckaman:** On the issue of out of network providers, what do you know about their current practice of going into facilities and leaving documents that say you can now buy insurance from them? There is a document that says make sure you don't have a huge ambulance bill by paying so much a month. There was a county that did something similar for all their residents.

**Mr. Ubben:** I believe you're correct, these are referred to as subscription plans, the insurance department has looked at these plans, we've determined that they are not insurance, we do not regulate them.

**Senator Heckaman:** If they aren't regulated, are they legal?

**Mr. Ubben:** I just don't want speak to that, because I don't have all the facts.

**Senator Heckaman:** Is it something to put into this bill?

**Mr. Ubben:** If you want to put something into the bill to clarify whether they are legal or not or how they should be regulated, we aren't going to be opposed to that.

**Chair J. Lee:** Explain why don't we want the paragraph at the end of section 5, page 7 about federal action. Do we need to amend that?

**Mr. Ubben:** The reason we suggest that be removed if the amendment pass we've solved the problem, the Federal Government doesn't need to solve it for us. That's why we have a provision allowing what we've put in to be taken out if a Federal court would declare what we're doing to be not allowed under the ADA.

**Amendments arrive 22:00**

**Chair J. Lee:** We'll let you look them over before you pass them out.

**Senator Piepkorn:** Can't we just set a rate?

**Mr. Ubben:** The amendments, that's essentially what we're doing. We're providing a rate that's considered an in network rate between the health insurance company and the air ambulance company, and we're doing it so that we're regulating the business of insurance. That rate and provision go into the health insurance policy; so long as we're regulating the business of insurance, the McCarran- Ferguson Act says the provisions of the airline deregulation act that say you can't set a rate, those don't matter because we've got McCarran-Ferguson to reverse preempt. The answer is yes, however, disclaimer, case law has pathways for us to be successful, and also for us to not be. This is something to be pursued, and see how much authority states have when we regulate the business of insurance.

**Chair J. Lee:** Describe for us what the department's role is in ability of health insurers to set rates themselves and your responsibility to approve those.

**Mr. Ubben:** health insurance rates are subject to prior approval, before health insurance company can use a rate, they have to file with the insurance commissioner, they will analyze it, and approve it before they can use it.

**Chair J. Lee:** So the language that is in the amendments will be parallel to circumstances in place right now for insurers to apply to you for approval on rates that might be adjusted.

**Mr. Ubben:** They are allowed to build this into the rates they file with us, that's another good reason for effective date, allow them to decipher how this will affect them.

**Chair J. Lee:** My point is insurers already have to apply to the department to have rate increase approval. This is something if an insurer saw a reason to increase for service would they go through the same process or is it different?



**Mr. Ubben:** No, that is a different process, the insurance department doesn't directly get involved with the rate negotiations between third parties. When the air ambulance and the health insurer are negotiating a rate, we won't get involved with that. This bill as amended would set the rate, so there would be no ability for the two parties to disagree.

**Chair J. Lee:** This is different from the way it works with other kinds of things covered by health insurance policies.

**Mr. Ubben:** That's correct, prior approval doesn't apply to rates a health insurance company agrees to with a third party.

**Senator Piepkorn:** The process, did the insurance company and the air ambulance providers work things out?

**Mr. Ubben:** We did that at one point, talked to the parties involved encouraged them to work out the rates, that didn't happen, we continued to get more complaints.

**V-Chair Larsen:** Of that \$1.2 million, co-op, has anybody under that umbrella been in a co-op were those bills paid?

**Mr. Ubben:** My consumer assistance director, he's not aware of anything like that.

**V-Chair Larsen:** It's an additional essential benefit, what's the premium cost per policy holder? Has that been determined?

**Mr. Ubben:** That has not been determined.

**Tim Meyer, Enterprise Clinical Director for Sanford AirMed (30:35-34:18) testified in support as (differently) amended, please see attachment #2.**

**V-Chair Larsen:** Would you be ok with the full cut of those sections that the previous speaker talked about?

**Mr. Meyer:** I'd have to see the cuts, I believe all the elements putting the burden on the hospital are putting it in the wrong place, it's too much.

**Chair J. Lee:** What we'll do is offer the amendments to everybody. If you have amendments, email them please, so we can work this out. Would you support the service itemized statement?

**Mr. Meyer:** We would support that. We do that now.

**Senator Piepkorn:** (36:25-37:20) He stated that he felt was the committee's duty to do something.

**Chair J. Lee:** When the Medicare rates for reimbursement for these services went up, that the number of providers, number of flights and the costs went up. It takes 6 flights a day to

break even, and some have 1.5 flights a day. I don't know if the private pay patients, or balance bill patients should have to support the burden of underutilized services.

**Mr. Meyer:** We believe in air ambulance, there's a point where it doesn't make sense, that's why Sanford supports the big institution, the volume is there.

**Chair J. Lee:** Sometimes the ground ambulance is at least as appropriate. That needs to be left to the professional attending the patient.

**Dan Hannaher, Senior Legislative Affairs Specialist, Sanford Health (39:05-39:45) testified in favor, please see attachment #3.**

**V-Chair Larsen:** What's the data on premium increase to embed this into a policy? There's got to be some sort of number of what we're going to charge our policy holders?

**Mr. Hannaher:** I'm sure that there are such numbers, I don't have them on hand.

**Chair J. Lee:** The \$12,000 example is already embedded in there, so what you're talking about then is if we're going to the higher, what the cost to embed that? Then why wouldn't everybody charge it?

**V-Chair Larsen:** I'll save it for committee discussion.

**Jerry Junera, President of NDHA, (42:45-43:25) Testified in opposition, please see attachment #4.** We were opposed before amendments. At this point there are some concerns from the rural areas about getting all the things required done, as well as concerns about balanced billing. We're in support of what's been said, but we'll have to read the amendments.

**Matt Grimshaw (43:39-47:25)** The original bill stands opposed to those of us who live in Western ND. Unlike hospitals who own air ambulance services, we don't, we lease our helipad for their access. He described Williston's air ambulance mechanism and history; stated that it is illegal to talk to their patients about their costs. Asked the committee to consider what will happen in his region if the air ambulance service leaves. He thinks this was a thinly veiled attempt to limit competition in the state.

**Chair J. Lee:** This is my bill, and I have no motivation to limit competition. We are trying to figure out how to prevent extraordinary balance billing charges for people who can be served for less money.

**Mr. Grimshaw:** Stated that he hopes they will think about his area, and consider appropriate reimbursements, so they will not lose providers.

**Senator Clemens:** You're from Williston, what's the majority of your air ambulance calls? Are they coming in to the facility or they transporting out to Fargo or wherever?

**Mr. Grimshaw:** I don't have accurate statistics, I would guess that more patients are flown out, than in. That's why we want helicopter and fixed wing. A fixed wing plane allows

transport to places all over the nation. Many of our patients are flown in from scene, stabilized, then flown out. Far more are flown out, than flown in.

**No neutral testimony.**

**Chair J. Lee: Closed pub hearing.** Asked all parties with amendments, to chat in the hallway, to find something that works for all.



# 2017 SENATE STANDING COMMITTEE MINUTES

Human Services Committee  
Red River Room, State Capitol

SB 2231  
2/6/2017  
Job Number 27923

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

A bill relating to preferred provider arrangement requirements for insurance prior authorization for air ambulance services; relating to preferred provider organizations; and to provide an effective date.

## Minutes:

No attachments

**Chair J. Lee:** We're looking at Tim Meyer's testimony from 1/31 (please see attachment #2, Minutes for 1/31, Job Number 27627). Welcomed the nurses. (1:10-4:46). Recapped the testimony for this bill. (4:50-7:30) Tim Meyer's testimony page 2, where he added another element, read the section aloud (7:45-8:30), Mr. Ubben, have you looked at Mr. Meyers amendments, do you have any comment.

**Mr. Ubben:** I have not, it sounds like our amendments would render theirs obsolete, unless the 1002 amendments, would be overturned by federal court, then our original language would come back into the bill, then these would have some relevance. If 1002 is enacted and survives a legal challenge, I believe that would render their amendments moot.

**Chair J. Lee:** Do we need to pass those amendments, to address the situation if a federal court throws out what we're trying to do?

**Mr. Ubben:** If you want that in the bill, then yes. You'll need to have the special enacting clause, to make sure that the amendments come in if the federal courts don't agree with our legislation. That clause is at the very end of the amendments, section 8, just have to incorporated the effective date in to the Sanford amendments if fed courts didn't find plan a valid under the airline deregulation act.

**Senator Heckaman:** If this goes into court is there a fund already available to protect this in court, or do we have to put an appropriation in for that?

**Mr. Ubben:** I don't believe an appropriation is necessary, two years ago we had a bill go through the legal process, the AG defended it, the insurance department helped, I don't see it as necessary to have an appropriation for that.

**Chair J. Lee:** Would the committee be interested in amending in those recommendation of Mr. Meyers, as a backup?

**Senator Heckaman:** I'll move that.

**V-Chair Larsen:** Second.

**Chair J. Lee:** add that in to the amendment we already see. 01002 Do we want to have the amendment state that 1002 would include reference to the amendment of Mr. Meyers that we've got it all in one amendment. Would you be willing to help with that?

**Mr. Ubben:** Yes. If it's the will of the committee to adopt the Sanford amendments, to adopt it into the 1002, and make it clear that this Sanford amendment also falls under section 8, and would only become effective on the date the insurance commissioner certifies the invalidity of section 5 to the secretary of state?

**Chair J. Lee:** Would you be willing to withdraw motion Senator Heckaman?

**Senator Heckaman:** withdrawn.

**Chair J. Lee:** When is it possible to wrap it up?

**Mr. Ubben:** I'll had up to counsel right now.

**Chair J. Lee:** Closed the hearing on committee work on SB 2231.



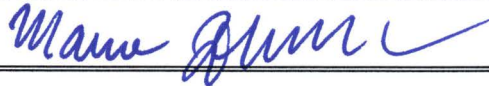
# 2017 SENATE STANDING COMMITTEE MINUTES

Human Services Committee  
Red River Room, State Capitol

SB 2231  
2/6/2017  
Job Number 27961

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

A bill relating to preferred provider arrangement requirements for insurance prior authorization for air ambulance services; relating to preferred provider organizations; and to provide an effective date.

## Minutes:

2 Attachments.

**Mr. Jeff Ubben:** The amendment we're looking at should end in 01003 (please see attachment #1). The committee remembers from this morning Sanford AirMed was looking to pursue some amendments to what the insurance department had proposed. First of all, I talked with Mr. Hannaher I don't think they're wanting to pursue the amendments any farther, but I also want to say that the part of Sanford AirMed was looking for was struck down in our 2015 law that we passed by Judge Hovland. The amendments before you only have the provisions that were not touched by Judge Hovland. The health care provider only has to seek to obtain prior authorization if health and safety of the patient is not critical. It's a consideration that goes into the law, and this only comes into play if the Federal Court strikes down plan A.

**Chair J. Lee:** Could that be on page 4 line 30, where it says may include the health and safety of the patient?

**Mr. Ubben:** Yes, I believe so.

**Chair J. Lee:** I had note about the Sanford amendment going in on line 10, but that must be the one that we can't put back in again. Is that right?

**Mr. Ubben:** The part about publishing or requesting the rates, that's the part we can't do.

**Chair J. Lee:** So everything is the same in 1003, compared to 1002 with exception of what?

**Mr. Ubben:** The exception of the part you had cited it earlier on page 3 where we add page 3 line 23 replace before with except as otherwise provided under this section. Then we've got the next 3 lines down are also amendments that are new. This allows the health care provider not have to go and obtain a prior authorization if it's going to affect the health or safety of patient.

**Chair J. Lee:** The other thing would be the effective date and contingent effective date.

**Mr. Ubben:** The contingent effective date that's the language that allows the plan B to come in if plan A, the rate-setting part does not pass judicial muster.

**Senator Kreun:** What does plan B read after section 8?

**Mr. Ubben:** Section 8 doesn't change because new language was incorporated into the sections listed there on section 8. Plan B, if you look on the Christmas tree version (please see attachment #2) the parts in grey are what would survive. Plan B is non-grey, I'm sorry. Plan A is the grey. Plan B is everything else.

**(Audio recording stops, the meeting continues)**

**Chair J. Lee:** Why do we have a delayed effective date again?

**Mr. Ubben:** The delay date is so that the insurance companies can update their health plans. Jan. 1<sup>st</sup>, 2018 is the earliest it can go in the plans.

**Chair J. Lee:** There's a lot of technical stuff in here.

**Senator Anderson:** I move adopt amendment 1003.

**V-Chair Larsen:** Second.

A roll call vote was taken.

Motion passes. 7-0-0.

**Senator Anderson:** I move do pass as amended.

**V-Chair Larsen:** Second.

A roll call vote was taken.

Motion passes. 7-0-0.

**Chair J. Lee will carry.**

**Chair J. Lee:** Closed the hearing.

February 6, 2017

CT  
2-6-17  
p. 1 of 3

PROPOSED AMENDMENTS TO SENATE BILL NO. 2231

Page 1, line 1, replace "two" with "three"

Page 1, line 5, remove "and"

Page 1, line 5, after "date" insert "; and to provide a contingent effective date"

Page 1, after line 7, insert:

**"SECTION 1. AMENDMENT.** Section 26.1-47-01 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-47-01. Definitions.**

As used in this chapter, unless the context indicates otherwise:

1. "Air ambulance" means a specially equipped aircraft licensed by the state department of health for transporting patients.
2. "Air ambulance provider" means a publicly or privately owned organization that is licensed or applies for licensure by the state department of health to provide transportation and care of patients by air ambulance.
3. "Commissioner" means the insurance commissioner of the state of North Dakota.
- ~~2-4.~~ "Covered person" means any person on whose behalf the health care insurer is obligated to pay for or provide health care services.
- ~~3-5.~~ "Health benefit plan" means the health insurance policy or subscriber agreement between the covered person or the policyholder and the health care insurer which defines the services covered.
- ~~4-6.~~ "Health care insurer" includes an insurance company as defined in section 26.1-02-01, a health service corporation as defined in section 26.1-17-01, a health maintenance organization as defined in section 26.1-18.1-01, and a fraternal benefit society as defined in section 26.1-15.1-02.
- ~~5-7.~~ "Health care provider" means licensed providers of health care services in this state.
- ~~6-8.~~ "Health care services" means services rendered or products sold by a health care provider within the scope of the provider's license. The term includes hospital, medical, surgical, dental, vision, chiropractic, and pharmaceutical services or products.
9. "In-network payment" means a full and final payment for air ambulance services pursuant to a network plan.
10. "Network" means a group of preferred providers providing services under a network plan.



- 11. "Network plan" means a health benefit plan that requires a covered person to use, or creates incentives, including financial incentives, for a covered person to use health care providers managed by, owned by, under contract with, or employed by the health care insurer.
- 12. "Out-of-network" means a provider that is not providing the service under a network plan.
- 7-13. "Preferred provider" means a duly licensed health care provider or group of providers who have contracted with the health care insurer, under this chapter, to provide health care services to covered persons under a health benefit plan.
- 8-14. "Preferred provider arrangement" means a contract between the health care insurer and one or more health care providers which complies with all the requirements of this chapter."

Page 2, line 1, replace "5." with "4."

Page 2, line 4, replace "6." with "5."

Page 2, line 5, replace "7." with "6."

Page 2, line 7, replace "8." with "7."

Page 2, line 9, replace "9." with "8."

Page 2, line 12, replace "10." with "9."

Page 2, line 16, replace "11." with "10."

Page 2, line 17, replace "12." with "11."

Page 2, line 20, replace "13." with "12."

Page 2, line 22, replace "14." with "13."

Page 2, after line 25, insert:

"14. "Out-of-network" means a provider that is not providing the service under a network plan."

Page 3, after line 15, insert:

**"SECTION 5.** A new section to chapter 26.1-47 of the North Dakota Century Code is created and enacted as follows:

**Air ambulances.**

- 1. A health benefit plan may not be issued in this state unless the plan provides the reimbursement rate for out-of-network air ambulance providers is two hundred percent of the medical assistance reimbursement rate allowed for air ambulance services. For purposes of billing the insured for air ambulance services, a payment made under this provision of the plan is deemed to be the same as an in-network payment.
- 2. This section does not apply to a policy or certificate of insurance, whether written on a group or individual basis, which provides coverage limited to:



- a. A specified disease, a specified accident, or accident-only coverage;
- b. Credit;
- c. Dental;
- d. Disability;
- e. Hospital;
- f. Long-term care insurance as defined by chapter 26.1-45;
- g. Vision care or any other limited supplemental benefit;
- h. A medicare supplement policy of insurance, as defined by the commissioner by rule or coverage under a plan through medicare;
- i. Medicaid;
- j. The federal employees health benefits program and any coverage issued as a supplement to that coverage;
- k. Coverage issued as supplemental to liability insurance, workers' compensation, or similar insurance; or
- l. Automobile medical payment insurance."

Page 3, line 23, replace "Before" with "Except as otherwise provided under this section, before"

Page 3, line 27, after "to" insert "request or"

Page 4, line 29, after "to" insert "provide the written disclosure or"

Page 4, line 30, after "which" insert "may include the health and safety of the patient. The health care provider documentation"

Page 6, line 27, replace "and" with "or"

Page 7, replace line 5 with:

**"SECTION 8. EFFECTIVE DATE - CONTINGENT EFFECTIVE DATE.** Sections 1, 3, 4, and 5 of this Act become effective January 1, 2018. If section 5 of this Act is declared invalid, sections 2, 6, and 7 of this Act become effective on the date the insurance commissioner certifies the invalidity of section 5 to the secretary of state and the legislative council."

Renumber accordingly

Date: 2/6 2017

Roll Call Vote #: 1

2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2231

Senate Human Services Committee

Subcommittee

Amendment LC# or Description: 17.0231 . 01003

- Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Sen Anderson Seconded By Sen. Larson

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)	X		Senator Joan Heckaman	X	
Senator Oley Larsen (Vice-Chair)	X		Senator Merrill Piepkorn	X	
Senator Howard C. Anderson, Jr.	X				
Senator David A. Clemens	X				
Senator Curt Kreun	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 2/6 2017

Roll Call Vote #: 2

2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2231

Senate Human Services Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar

Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Sen. Anderson Seconded By Sen. Larsen

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)	X		Senator Joan Heckaman	X	
Senator Oley Larsen (Vice-Chair)	X		Senator Merrill Piepkorn	X	
Senator Howard C. Anderson, Jr.	X				
Senator David A. Clemens	X				
Senator Curt Kreun	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Lee

If the vote is on an amendment, briefly indicate intent:



REPORT OF STANDING COMMITTEE

SB 2231: Human Services Committee (Sen. J. Lee, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2231 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "two" with "three"

Page 1, line 5, remove "and"

Page 1, line 5, after "date" insert "; and to provide a contingent effective date"

Page 1, after line 7, insert:

**"SECTION 1. AMENDMENT.** Section 26.1-47-01 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-47-01. Definitions.**

As used in this chapter, unless the context indicates otherwise:

1. "Air ambulance" means a specially equipped aircraft licensed by the state department of health for transporting patients.
2. "Air ambulance provider" means a publicly or privately owned organization that is licensed or applies for licensure by the state department of health to provide transportation and care of patients by air ambulance.
3. "Commissioner" means the insurance commissioner of the state of North Dakota.
- 2-4. "Covered person" means any person on whose behalf the health care insurer is obligated to pay for or provide health care services.
- 3-5. "Health benefit plan" means the health insurance policy or subscriber agreement between the covered person or the policyholder and the health care insurer which defines the services covered.
- 4-6. "Health care insurer" includes an insurance company as defined in section 26.1-02-01, a health service corporation as defined in section 26.1-17-01, a health maintenance organization as defined in section 26.1-18.1-01, and a fraternal benefit society as defined in section 26.1-15.1-02.
- 5-7. "Health care provider" means licensed providers of health care services in this state.
- 6-8. "Health care services" means services rendered or products sold by a health care provider within the scope of the provider's license. The term includes hospital, medical, surgical, dental, vision, chiropractic, and pharmaceutical services or products.
9. "In-network payment" means a full and final payment for air ambulance services pursuant to a network plan.
10. "Network" means a group of preferred providers providing services under a network plan.
11. "Network plan" means a health benefit plan that requires a covered person to use, or creates incentives, including financial incentives, for a

covered person to use health care providers managed by, owned by, under contract with, or employed by the health care insurer.

12. "Out-of-network" means a provider that is not providing the service under a network plan.
- ~~7-13.~~ "Preferred provider" means a duly licensed health care provider or group of providers who have contracted with the health care insurer, under this chapter, to provide health care services to covered persons under a health benefit plan.
- ~~8-14.~~ "Preferred provider arrangement" means a contract between the health care insurer and one or more health care providers which complies with all the requirements of this chapter."

Page 2, line 1, replace "5." with "4."

Page 2, line 4, replace "6." with "5."

Page 2, line 5, replace "7." with "6."

Page 2, line 7, replace "8." with "7."

Page 2, line 9, replace "9." with "8."

Page 2, line 12, replace "10." with "9."

Page 2, line 16, replace "11." with "10."

Page 2, line 17, replace "12." with "11."

Page 2, line 20, replace "13." with "12."

Page 2, line 22, replace "14." with "13."

Page 2, after line 25, insert:

"14. "Out-of-network" means a provider that is not providing the service under a network plan."

Page 3, after line 15, insert:

**"SECTION 5.** A new section to chapter 26.1-47 of the North Dakota Century Code is created and enacted as follows:

**Air ambulances.**

1. A health benefit plan may not be issued in this state unless the plan provides the reimbursement rate for out-of-network air ambulance providers is two hundred percent of the medical assistance reimbursement rate allowed for air ambulance services. For purposes of billing the insured for air ambulance services, a payment made under this provision of the plan is deemed to be the same as an in-network payment.
2. This section does not apply to a policy or certificate of insurance, whether written on a group or individual basis, which provides coverage limited to:
  - a. A specified disease, a specified accident, or accident-only coverage;
  - b. Credit;

- c. Dental;
- d. Disability;
- e. Hospital;
- f. Long-term care insurance as defined by chapter 26.1-45;
- g. Vision care or any other limited supplemental benefit;
- h. A medicare supplement policy of insurance, as defined by the commissioner by rule or coverage under a plan through medicare;
- i. Medicaid;
- j. The federal employees health benefits program and any coverage issued as a supplement to that coverage;
- k. Coverage issued as supplemental to liability insurance, workers' compensation, or similar insurance; or
- l. Automobile medical payment insurance."

Page 3, line 23, replace "Before" with "Except as otherwise provided under this section, before"

Page 3, line 27, after "to" insert "request or"

Page 4, line 29, after "to" insert "provide the written disclosure or"

Page 4, line 30, after "which" insert "may include the health and safety of the patient. The health care provider documentation"

Page 6, line 27, replace "and" with "or"

Page 7, replace line 5 with:

**"SECTION 8. EFFECTIVE DATE - CONTINGENT EFFECTIVE DATE.** Sections 1, 3, 4, and 5 of this Act become effective January 1, 2018. If section 5 of this Act is declared invalid, sections 2, 6, and 7 of this Act become effective on the date the insurance commissioner certifies the invalidity of section 5 to the secretary of state and the legislative council."

Renumber accordingly



**2017 HOUSE HUMAN SERVICES**

**SB 2231**

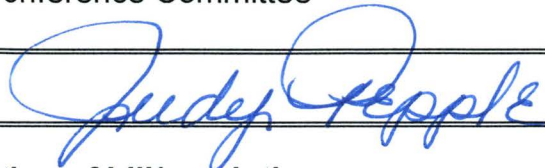
# 2017 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee  
Fort Union Room, State Capitol

SB 2231  
3/7/2017  
28803

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to preferred provider arrangement requirements for insurance prior authorization for air ambulance services; relating to preferred provider organizations; to provide an effective date; and to provide for a contingent effective date.

## Minutes:

1, 2, 3, 4

Chairman Weisz: Called the committee to order.  
Opened the hearing on SB 2231.  
Is there any testimony in support of SB 2231?

Sen. Judy Lee  
(Attachment 1)

I am here to introduce to you SB 2231 and to bring our amendments.

9:00

Chairman Weisz: Are there any questions from the committee?

Vice Chairman Rohr: Since that incident with that family has there been any improvement in the situation with that particular air ambulance company?

Sen. Lee: They are now in network.

Vice Chairman Rohr: Their prices have not come down?

Sen. Lee: They are in network now, but we are not sure that will continue.

Vice Chairman Rohr: So their prices still haven't come down?

J. Lee: Now they are accepting what the reimbursement is from the major insurance providers, but we have no assurance that they will continue to do that. This is happening all over the country. It is also affecting Worker's Comp. The same balanced bills are being sent to them as well.

Chairman Weisz: Where is the section where it preempts the prior authorization.

J. Lee: It is in the amendments that I will bring right back to you.  
12:13

Chairman Weisz: Are there further questions from the committee?

Chairman Weisz: Is there further testimony in support of SB 2231?

Jeff Ubben, Deputy Commissioner/ General Counsel ND Insurance Dept.  
(Attachment 2)

12:48

21:42

J. Ubben: I want to address a few things that you might be thinking about.

Plan A sets a rate for reimbursement. This is a specific and unique problem that is attempting to be solved with specific and unique legislation. Balanced billing is not a problem with other healthcare providers in the state. We only have massive balanced billing issues with certain air ambulance companies.

Secondly, if we are concerned about whether this law would survive a legal challenge in the court I would point out in the 2015 decision where the judge ruled on our case and not in our favor, but he did give us a roadmap to victory in his opinion. That is very unique, but he went out of his way to commend the legislature for enacting a law that protects citizens, but essentially said even in the provisions of the airline regulation act my hands are tied and I cannot find in your favor. I have to follow the law, but he said if you give me a law that regulates the business of insurance, which SB2231 does, my decision could be different.

The third argument that may come up is that the rates are inadequate. I have spoken with our health insurance companies. I know the rates that the air ambulances have agreed to. The rates in this bill are in line with the rates that have been agreed to by the air ambulance companies.

Fourth is the argument that the air ambulance companies will leave certain areas of ND if they are required to be reimbursed at the levels in this bill. Certain ambulance companies have been operating here at a level that is in line with this bill for the last 2 years. They are still here. If one of the air ambulance companies would choose to leave the state, one of the other air ambulance companies in the state would see if there is a need in that part of the state and if there is they would fill that need.

25:10

Chairman Weisz: Are there questions from the committee?

Concerning section 5 and your 200%. If that rate had to be increased at some point, it would have to come back to the legislature to do that, correct?

J. Ubben: Yes, that is correct.

Chairman Weisz: How does it actually prevent balanced billing? Just because it is deemed an in network provider. How do we make sure that out of network provider accepts the 200%?

J. Ubben: That is a good question. We need to continue to regulate the business of insurance in order to deal with the airline regulations act. In terms of the health policy we are saying



this is the rate that you will be reimbursed at, this is your in network payment, and that means that no balanced billing is allowed.

Chairman Weisz: How does it really bind them if they are not in the network? I know that this is saying that it is deemed to be the same as an in network payment, but even though the health plan is not paying any more does this really prevent that provider from balanced billing?

J. Ubben: We believe that this bill will do that. It binds the company in contract to the in network payment.

Chairman Weisz: But if they are out of network you are saying if they want to take the payment from the health plan they have to accept it as payment in full, otherwise they don't get the payment from the health plan? So how does this really bind them if they don't have a contract and they are not in network?

J. Ubben: We believe the law binds them to the 200% as an in network payment even though they are out of network. The reason we cannot put anything in here to say that they are not permitted to balance bill the customer is because then we are no longer regulating insurance.

Chairman Weisz: I understand that but I am still trying to figure out if this language will do what we are hoping it we do.

J. Ubben: The best answer that I can give you is that we are piecing the language together through regulating the business of insurance and we believe that those pieces fit together and do not allow balanced billing.

Representative P. Anderson: How many air ambulance providers do we have and where are they located?

29:26

J. Ubben: We have four air ambulance providers and they are located in all of the major cities in ND.

Representative Skroch: Can you explain to me balanced billing. Does that include the deductible? Would a patient that is air lifted be expected to take a small share in the cost of that ambulance ride?

J. Ubben: The first question the difference between balanced billing and a person that has to pay a deductible on their bill. The deductible is capped at a certain number. Your health plan says how much your deductible is and it doesn't change. A balanced bill would bill out whatever the difference is between what the insurance pays and what they would bill. That balanced bill for air ambulance is a lot larger than what the deductible would be.

Representative Skroch: In this bill, will the patient be required to pay any of this bill at all?

J. Ubben: No, they don't have to pay any of the bill from the air ambulance other than the deductible that might be due to your insurance plan.

Vice Chairman Rohr: In your section called plan B where services are provided for non-emergent situations, is it usually cheaper for the air ambulance flight and you mentioned that there are four air ambulance companies. So under plan B they would all be able to engage in balanced billing then.

J. Ubben: Yes, they would if they decided to go out of network. As was mentioned earlier, two of the four have been in network for some time and I don't foresee that happening. Although they could they have continued to stay in network because it is in their best interest to do that. The way the law is now they could do that and they haven't.

Vice Chairman Rohr: So in terms of the fees is it more expensive for not emergent situations? Do we have patients then that do have out of pocket expenses that could cause bankruptcy?

J. Ubben: I couldn't tell you that, but I can tell you that the folks that are out of network charge double what the folks that are in network charge.

Representative McWilliams: Would this bill change what the air ambulances that are in network are reimbursed?

J. Ubben: If they are in network this would not apply to them. This allows the out of network to be reimbursed at the same level as the in network.

Representative McWilliams: Does this bill carry over into other areas than air ambulance.

J. Ubben: This bill does not do that.

Chairman Weisz: Further questions from the committee?

Chairman Weisz: Is there further testimony in support of SB 2231?

Megan Haun, Blue Cross and Blue Shield.

We are not usually involved in rate setting, but we are supporting this. Of the 4 ambulance companies in ND they are all in network and participate.

Chairman Weisz: Questions?

Representative McWilliams: What are the collection laws in relation to balanced billing? Is that something that is pretty stringent or can consumers just ignore those bills or what?

Megan: I am not an attorney, but the experience of people in the state are that they are very aggressive. They are quick to put a lean against the farm or whatever. They come to the table asking for a great deal and are typically willing to negotiate down to about half. The interesting piece is that often times they are eventually paid the same. The only difference in participating and not participating is the ability to balance bill.

Representative McWilliams: Would that be a different avenue to look at then? Not in this bill but to address the practices of collection of balanced billing.



Megan: I think this is trying to prevent what could happen if they decide to go out of network. Right now we don't have an issue, but we were in a situation where we had one air ambulance company that was not participating and we had over 140 balanced bills of our members that often were between \$26,000 and \$40,000. One of them was for hundreds of thousands of dollars so it is significant.

Representative Westlind: What is the reimbursement of an air ambulance ride from say Devils Lake to Fargo? Like say if the bill was \$30,000, what would BC/BS reimburse? Do other insurance companies go after the air ambulance to negotiate?

Megan: That is a tough question, but often times there is a base rate and mileage. The insurance department has collected information on that and that is how they have come up with the rates they are using. BC/BS doesn't typically give that information out, because it is contractual. I think our rate is the same for all of the air ambulance companies in the state, but I can't speak to other companies.

Representative Westlind: Can you give me a percentage maybe? Like at the hospital we get about 60%.

Megan: That is not my department, but that is in line with what we currently do.

Vice Chairman Rohr: Are we the only state that is putting this into effect for not emergent services?

Megan: Yes, I believe so. We are the only state that have all of the companies in network. I think we are just working with other states that maybe don't have any companies that are in network to figure out a solution.

Vice Chairman Rohr: So would it be wise to look at this in two years and see what is going on?

Megan: Yes, it is interesting, because if we don't do something we risk some of our ND companies going out of network again.

Chairman Weisz: Are there any further questions from the committee?

Chairman Weisz: Further testimony in support of SB 2231?

Is there any opposition to SB 2231?

44:52

Jerry E. Jurena, President of ND Hospital Association  
(Attachment 3)

49:34

Chairman Weisz: Are there questions from the committee?

Chairman Weisz: Why do you think the numbers have dropped off?

J. Jurena: Perhaps, but that bill was found to be invalid.



Chairman Weisz: I am aware of that.

Vice Chairman Rohr: So your position is because of the critical access hospitals or does this include the urban hospitals as well?

J. Jurena: We had a conference call on Friday and I am not sure how many members were on the call, but we did have concerns from Williston which is a critical access hospital and we did have concerns from Grand Forks.

Chairman Weisz: Further questions from the committee?

Representative Porter: Explain to the committee how a city like Williston has a connection to the air ambulance. From a business model standpoint.

J. Jurena: I am not sure how Williston works, but when I was in Rugby, we had a list of air ambulances and when the need arose we started at the top of the list and worked our way down. If something happened like a car accident or an incident in the hospital that became an emergency and we had to transport somebody the doctor would order an immediate transport, the nurses would start working down the list to see who was available. They are not employed by us. They were just individuals that were available to us to utilize.

Representative Porter: One of the unique arrangements for Rugby, but Rugby never had an air ambulance operate out of their facility as an independent entity, did they?

J. Jurena: No they did not.

Representative Porter: Explain to me inside of your membership how the arrangement works where, like in Williston, an independent company is functioning with the direct referral system inside of those company owned physicians.

J. Jurena: I can get you that information if you like, but I do not have it.

Vice Chairman Rohr: I find it interesting because Altrue is considered one of the big six in ND and they have complaints about this bill. What specifically?

J. Jurena: They were concerned about the 200% of Medicaid.

Chairman Weisz: Further testimony in opposition to SB 2231?  
53:32  
Courtney Koebele, Exe. Director of ND Medical Association  
(Attachment 4)  
56:18

Chairman Weisz: Are there any questions from the committee?

Chairman Weisz: Further testimony in opposition of SB 2231

Angellia Svhovec, CHI St Alexius Health

I concur with the previous testimony. We have two concerns regarding the current language in this bill. This first is the rate setting. We want to make sure that the rates allow our current air care providers to remain in the state, especially in the remote areas where there is only one air care provider. The second concern is regarding preauthorization. Again in many of our hospitals across the state we don't have the resources or the time to obtain that authorization. The federal law that we abide by we often cannot even ask these patients if they are insured, so to get prior authorization is impossible.

Chairman Weisz: Questions?

Representative McWilliams: Would you mind walking me through a prior authorization.

A Svhovec: The way the bill states, prior to calling air ambulance provider, the hospital would have to contact the insurance company and see if there is coverage and provide that information to the patient. That all takes time, even in the day time.

Chairman Weisz: Further testimony in opposition?

Tom Nehring, Dir. of the Emergency Medical Systems at the ND Dept. of Health

Representative Porter: Inside of 2014 when the complaints started happening, I am more interested from the standpoint of utilization. Your department tracks statistical information about air ambulance utilization. It is supposed to be reported by law. I don't know if you have the information on the top of your head or if you have to get the information for us. I think it would be interesting for the committee to see the utilization increases over the last 7 or 8 years.

T. Nehring: I do not have that information on the top of my head, but I can tell you that there has been a huge increase in air ambulance usage all over the country. I don't have specific numbers, but I can say we have seen the same increase in the state of ND depending on the number of providers that come into the state of ND.

Representative Porter: In your experience, have any of the complaints come from the Dept. of Health since you used to think you regulated air ambulances?

T. Nehring: We have gotten complaints, but we have not made them.

Representative Porter: From the Health Dept. standpoint was there ever any getting back to those rural facilities that were sponsoring the air ambulances to say, "What are you guys up to that you are doing this to you patients?"

T. Nehring: The insured people knew what they had to be responsible for until they received a balanced bill.

Representative Porter: Last session specifically there was direct discussion dealing with the sponsoring entity of a business that was collocated on their facility and the consumer



complaints that came from that and if there was any discussion back to those sponsoring entities in those areas about the complaints and the situation the patients are being put into. When someone called to complain, who did you tell them to complain to, the hospital administrator, the air ambulance company, were you telling them to call both, or what? Who were they supposed to complain to? They were under duress in the first place by being told we are going to ship you to this place in this way without having the financial implications discussed with them. It was almost like shove them out the door and they are not our problem anymore.

T. Nehring: I think what you are describing was a lot of the discussion we had last session. The reason why is that one of the things the legislation was based on was that the insured didn't have any idea what they were going to get in balanced billing. Parts of the legislation last session was to basically have a fee schedule for the air ambulance providers. It was to make that fee schedule public and to have it at the hospitals and that patients could be informed as to what lied before them with regards to any financial liability.

Vice Chairman Rohr: When you talked about the utilization numbers would those only be emergency?

T. Nehring: We would have all of the runs that are taken no matter whether they are emergency or not.

Vice Chairman Rohr: Could some of those air ambulance runs been ground?

T. Nehring: I am not going there.  
108:25

Representative Porter: I have a question for WSI.

Jodi Bjornson, ND Work Force Safety General Counsel

Representative Porter: A while back in the newspaper, I read about a lawsuit that involved WSI and as a rate payer to WSI that currently concerns me when I read about those things after the whole other federal lawsuit was thrown out. My question is with or without this bill what is the risk to WFS inside of air ambulances and the current ruling that WFS isn't really an insurance but just an employer created fund that has a non-sue clause for employee related incidences.

J. Bjornson: This does not affect us at all. We do support it. After the last lawsuit we were told that our fee schedule was not legal, so we ended up paying whatever the bill was. We are still trying to get this figured out through administrative rule using our managed care statute to require somewhat of a preauthorization as you are seeing here before you as well. That is in the rulemaking process right now. We are also still engaged in a lawsuit with an air ambulance after the lawsuit in federal court they sued us in district court for all the back bills that were not paid prior to the federal lawsuit.

Representative Porter: From the increased utilization standpoint in the last 7-8 years, what have you seen in regards to increased utilization and then more on the medical necessity



review of life and death? Was the air ambulance necessary or could ground have been enough but they chose to use a different provider out of convenience?

J. Bjornson: I am not directly involved in that, but my colleague can probably answer that.

Representative Schneider: On the preauthorization that you alluded to that you are trying to institute are there provisions for emergency situations and if so what would those look like?

J Bjornson: I don't have that with me today, but I can get you a copy of that. Tim may be able to talk to that as well.

Tim Wallene, WFS Insurance

Representative Porter: What have you seen in regard to increased utilization and were they always needed.

T. Wallene: We have seen a great increase in utilization. We don't do medical necessity on those transfers. An emergent transfer would be from field to hospital. There is another group that does that. We do more with the facility to facility transfer with a closer eye on cost. A facility to facility transfer requires that the patient is stable.

Representative Schneider: To confirm then. Do you have something in the proposed preauthorization that allows for air ambulance in emergency?

T. Wallene: Not directly it would be an indirect review whether or not air ambulance transfer from facility to facility are required and to the extent that they are required as opposed to a far cheaper form of transfer. Those emergent transfers are not going to be reviewed. They would be from field to hospital. They are not currently under consideration at this point for review.

Representative Porter: Could you get us a breakdown on the %. We heard that 95% of the transports that hospitals were dealing with were emergent. Could you get us your breakdown from WSI on the number of calls from the scene to the hospital and then the number of inter facility transfers?

T. Wallene: We have that information, but I want to go back and be sure we aren't violating privacy.

Chairman Weisz: Are there further questions from the committee?

Representative Kiefert: Can you give us an example of what the 200%?

T. Wallene: No I can't give you that information. We don't have that now since our fee schedule was struck down.

Chairman Weisz: Any further questions? Seeing none, we will close the hearing on SB 2231.

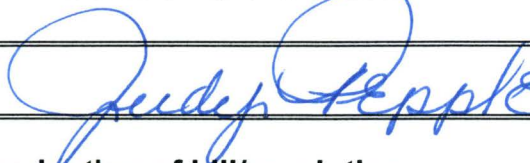
# 2017 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee  
Fort Union Room, State Capitol

SB 2231  
3/29/2017  
29810

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to preferred provider arrangement requirements for insurance prior authorization for air ambulance services; relating to preferred provider organizations; and to provide an effective date.

## Minutes:

1, 2, 3

Chairman Weisz: Representative Devlin, do you want to pass out your amendments? Hand them all out.

Chairman Weisz: to refresh you. This is an ugly issue. Some of you weren't here two years ago and on the human services committee, but this is the balanced billing air ambulance bill that we thought we passed that fixed things last session, but the court struck it down. The bill in front of you that we heard does go in a direction that we haven't done before which is setting rates. I don't know what to do. There are several amendments some of which might be considered extreme. Just because they have my name on them doesn't mean anything. There are also amendments from the insurance department and that was the 200%. There were further amendments that changed that to 270% and then further amendments. Here is the issue. There is a lot of resistance from some for setting rates no matter how we do it. There is also an issue of whether we will get back into court regardless if we do that. Representative Devlin, do you want to weigh in here? Did you hand out the other two sets. (Attachment 1)

Representative Devlin: My amendment is not any more palatable. The department, we were using the department of health, but it could be the dept. of insurance. We used the department of health because they have the regulation for the ambulances. The department would provide on their website a complete list of ambulance rate, network data, and what they charge. Then they would provide them to the hospitals in the state and the hospitals would then hand the link or the printout to the families of the patients that need them.

Chairman Weisz: That is the most benign amendment.



Representative Devlin: I am sure the hospitals aren't going to like that, but there is a responsibility there that if the hospitals are having people go on an air ambulance that is costing \$100,000 and not telling them that the potential is there that it might cost you that I think they have a responsibility.

Vice Chairman Rohr: So the list would be available on the website, the family would be given the list, but it is just a list of the providers. It won't tell them if they are actually available if they would be needed.

Representative Devlin: They would be provided with a list that includes the fee schedule and told whether they are in the network or not.

Chairman Weisz: What my amendment says is that if you are out of network you have to accept whatever the insurance accepts. You can't get anything more than the in network can get.

Representative Devlin: The first one that I sent out actually requires the hospital to pay the difference if they don't notify the patients. They would be pretty impressed with that. The second one is the one that keeps them exempt from any of that type of thing that I assume would be more palatable to the committee.

Chairman Weisz: I wish we could sit here and say this is a good solution and we don't have to worry about lawsuits or anything else, but we don't have any answers. I seem to feel that it is everyone's impression that if we do nothing, it probably will all be out of network in a short amount of time. Right now they are in network, so they are not balanced billing as of today. You can correct me if you disagree, but if we kill the bill and say we can't fix it they will probably be out of network in 60 days or whatever. So can we find something in here?

Representative P. Anderson: Can we say that if you are not in network you can't operate in the state?

Chairman Weisz: No

Representative P. Anderson: Can we say then if you are out of network that the hospital has to pay some of that?

Chairman Weisz: Yes, we can say that, but the hospitals certainly won't like that. It is true that the hospitals should have some responsibility. Especially on the ones that are in the hospital and stable. They just want to transfer them from one facility to another. Why are we using air ambulance? It is for certain that the use of air ambulance is going up. That alone to me is somewhat disturbing, because that is by far the most expensive mode of transport. They are going up.

Representative D. Anderson: Helicopter costs about \$27/ mile; fixed wing is about \$11 /mile; and ground is about \$7/mile. I think just to send a helicopter out there it is \$8700 and for a fixed wing it is about \$5200.



Chairman Weisz: That is part of the issue here. The utilization is way up first of all. Of course this bill is trying to address the balanced billing. We aren't getting into the utilization, but still why are we using them so much. I agree the hospitals bare a little bit of responsibility. Are they utilizing them when they shouldn't and are they checking to see if they are in network and can they use an in network provider? Especially when they are doing a stable transport. We need to kick this out and I really don't think that we should kill the bill.

Representative P. Anderson: Right now we have four air ambulances operating in the state and we have one bad actor?

Chairman Weisz: No, we have 2 bad actors. Right now they are all playing ball.

Representative P. Anderson: But we can't kill the bill with 50%.

Chairman Weisz: we can do whatever we feel will be the least objectionable or whatever. It will be in conference. We will have to continue the discussion to see if there is some answer.

Representative McWilliams: What would Representative Porter's opinion be?

Chairman Weisz: He is trying to stay out of this because he definitely has a conflict here. It would be easy for him to say what to do, because it could be to his advantage since he owns an air ambulance.

Representative Seibel: After reading through these as quickly as I could, I find 2003 is the most palatable of any of them. The hospital doesn't have to pay the balanced bill. Can they even be required to give out their fee schedule?

Chairman Weisz: Montana is doing it. That is a question that has come up. Montana has a webpage.

Jeff Ubben, Deputy Insurance Commissioner

As part of the 2015 law we did require these folks to publish their rates. That was struck down by the federal court. This would seem to touch a lot on what was struck down by the federal court unfortunately.

Representative D. Anderson: Was this bill number 1255?

J. Ubben: Yes.

Representative Seibel: Could we make the hospital let people know who is in network and who is out? Would that solve part of the problem?

J. Ubben: Yes, but that would not help the main use of air ambulance which is out in the field and not in the hospital. You would be missing a large number of the people that are getting hurt by this. For inter facility transfers I would think that would be permissible. The only way that the state can really regulate air ambulance business is by regulating the business of insurance. That is kind of what the amendments in 02004 do in the second part of that.  
(Attachment 2)

Representative Seibel: So if we kept that part and took out the part about the hospital having to pay the balanced billing amount that might be a good amendment. I could never vote for the hospital or ems having to pay the balanced billing.

Chairman Weisz: That really raises a lot of issues.

J. Ubben: If we do pass the first part though that eliminates the balanced bill, so there shouldn't be any balanced bill left over for anyone to pay.

Representative D. Anderson: Jeff, on .02004. What if you took "for future contractual rates out of there? Page 5 item 2.

Chairman Weisz: That is just to be sure that they can't force a lower contract with this service. What it is trying to get at is that some insurance doesn't have a range of rates. They negotiate the rate with each company and yet they cannot make someone else's rate less just because they negotiated a lower rate with someone else. I don't know if there is a good answer. So committee whatever you think we will send out.

Representative P. Anderson: Jeff, which one do you think is best?

J. Ubben: I think 2004. If you wanted to remove the hospital liability, we would be ok with that. I think our solution here is to prevent any balanced bills and I think the language in section one coming out we would still be in the right place to getting to no balanced billing.

Chairman Weisz: In theory if we would adopt 2004 it would eliminate balanced billing if you have insurance, but it wouldn't help if you don't have insurance. Under this bill if it works and it holds up, because it would require that the out of network wouldn't be any greater than the in network. They couldn't send you a bill. Part of the whole discussion is whether it would hold up.

Representative Seibel: We still need to get rid of the paragraph air ambulance liabilities. I would make a motion to get rid of the portion that says "Air ambulance liabilities" and adopt the rest of 2004.

Representative P. Anderson: I will second it.

Chairman Weisz: Ok committee we do have a motion and a second. Is there further discussion?

Representative Skroch: I was contemplating perhaps replacing that section with under section 2 in 2003 and using that instead of sub section 1. I don't know if that is still in the original bill or not, but I like the language in the amendment provided by Representative Devlin, (02003) in section 2 subsection 1 and replace the part we are eliminating on 02004.

Representative Devlin: Representative Skroch, I hate to point this out, but although you and I love that language, the court did not.



Chairman Weisz: Under the deregulation again I think didn't think the court would interpret that to be regulating rates, but obviously they do. It is a real stretch that they go that far, but that is what the judge said.

Representative McWilliams: Could you just have the list of providers and use one dollar sign for the lowest one, two dollar signs for the next one, etc. So if you gave someone a list of providers from highest to lowest without actually publishing their rates, does that accomplish the same thing?

Chairman Weisz: Let's be realistic. How many people will go on line to look up on the air ambulance rates. People don't plan to use an air ambulance until they really need it and then they don't care, they just want the service. They really don't care, because why do I need one until I need one? Then I don't have time to look up the rates when I am lying in the ditch or whatever.

Representative Skroch: I am saying that we replace section 1 of 02004 with section 2 of 02003.

Chairman Weisz: This would just say basically that they inform the patient whether they are in network or out of network. The hospital should know. They know whether you have insurance or not when you are sitting in there.

Melissa Hauer, General Counsel for the Hospital Association

The question that I have relates to EMTALA, Emergency Medical Treatment and Labor Act, If you are working on a patient, you cannot ask if the person has insurance or anything about payment until they are stable. The ER doctors that I worked with didn't know whether someone had insurance or not. As they are treating they can't ask. If it is not an emergency situation, EMTALA wouldn't apply.

Representative Devlin: Did you get a second for Representative Seibel's motion?

Chairman Weisz: Yes, we did, but if we do this, we will have to have them withdraw it.

Chairman Weisz: Are there more questions from the committee? Ok Melissa you can sit down.

John Godfrey, Insurance Commissioner

If what Representative Skroch was just saying is Section 2 on 2003 if you would include all three parts, that would alleviate the EMTALA concerns. Point 3 exempts that emergency situation.

Representative Seibel: Do you think we should get rid of the fee schedule and just say in network or out of network.

J. Godfrey: I think the in network or out of network would be fine and then add in there the 2 and 3.



Chairman Weisz: So it would basically say that the hospital has to provide the information as to whether they are in network or out of network and then 3 would exempt them if it is an emergency situation. It doesn't maybe do a lot, but it is something.

Representative Seibel: I with draw my motion

Representative P. Anderson: I with draw my second.

Chairman Weisz: So does everyone understand then if we go with this amendment, we will use 2003, remove section 1, and then we will add in on 2003 section 2 with the change of just in network or out of network. There wouldn't be any fee schedule.

Representative Skroch: I move the amendment.

Chairman Weisz: It would be amendment number 2004 with the deletion of section 1 and add the language on 2003 section 2, subsection 1, 2, and 3, with the striking of the fee schedule and replace it with "in network or out of network".

Chairman Weisz: We would have to remove the air ambulance data in subsection 2.

Representative Seibel: Do we still want to look at section 3 on the back. Or isn't that anything to worry about.

Chairman Weisz: We do have a motion. Did we get a second? Ok a second by Representative P. Anderson.

Chairman Weisz: the motion is to take 2004, strike section 1 of the liabilities section for the hospitals, and replace it with 2003's language in section 2, 1, 2, and 3 with removing the fee schedule language.

Representative D. Anderson: If you look on 2004 page 5 basically the insurance is setting the rates. Do you think this is going to be a problem with other providers?

J. Godfrey: No, because no one else does balance billing.

Chairman Weisz: Ok committee this is the motion. Let's try a voice vote.  
Voice vote carried to adopt the amendment. Ok we have an amended bill in front of us. It is ours so be proud. What are the committee's wishes?

Representative Seibel: I move a do pass as amended on SB 2231.

Chairman Weisz: We have a motion. Is there a second?

Representative D. Anderson: second

Chairman Weisz: Any further discussion? Seeing none the clerk will call the roll for a do pass as amended on SB 2231.

Roll call taken Yes 9 No 4 Absent 1

Chairman Weisz: Motion carried. Do I have a volunteer to carry it?

Representative D. Anderson, thank you.

Chairman Weisz: I will get up and support you if you need it.

Done  
3/30/17  
182

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2231

Page 1, line 1, replace "three" with "a new section to chapter 23-16 and four"

Page 1, line 2, after "to" insert "informed decisionmaking for choosing air ambulance service providers,"

Page 1, line 3, after "services" insert ", and air ambulance subscriptions"

Page 1, after line 7, insert:

"**SECTION 1.** A new section to chapter 23-16 of the North Dakota Century Code is created and enacted as follows:

**Air ambulances - Informed Decisions - Publication.**

1. Before a hospital refers a patient to an air ambulance service provider or initiates contact with an air ambulance service provider for air transport of the patient, the hospital shall inform the patient, or the patient's representative, of the air ambulance service provider's health insurance network status for the purpose of allowing the patient or the patient's representative to make an informed decision on choosing an air ambulance service provider or form of transportation.
2. A hospital is presumed in compliance with subsection 1 if the hospital provides the patient, or the patient's representative, the health insurance network status published by the insurance department under subsection 4.
3. A hospital is exempt from complying with this section if the hospital determines and documents that due to emergency circumstances, compliance might jeopardize the health or safety of the patient.
4. At least quarterly, the insurance department shall publish on the insurance department's website data regarding the health insurance network status of each air ambulance service provider authorized to operate in the state."

Page 4, line 30, remove "providers is two hundred percent"

Page 4, remove line 31

Page 5, remove lines 1 and 2

Page 5, line 3, replace "2." with "provider services is equal to the average of the insurer's in-network rates for air ambulance providers in the state.

2. An insurer may not use the average of an insurer's in-network rates for air ambulance providers in the state in order to decrease current or future contractual rates between an insurer and an air ambulance provider.
3. For purposes of settling a claim made by the insured for air ambulance services, a payment made by an insurer under the plan in compliance with this section is deemed to be the same as an in-network payment and is



considered a full and final payment by the insured for out-of-network air ambulance services billed to the insured.

2/2

4."

Page 8, line 14, replace "pre-empt" with "preempt"

Page 9, after line 10, insert:

"**SECTION 9.** A new section to chapter 26.1-47 of the North Dakota Century Code is created and enacted as follows:

**Air ambulance subscription agreements - Prohibition.**

An air ambulance provider, or an agent of an air ambulance provider, may not sell, solicit, or negotiate a subscription agreement or contract relating to services or the billing of services provided by an air ambulance provider. An air ambulance provider, or agent of an air ambulance provider, which violates this section is subject to a civil fine in an amount not to exceed ten thousand dollars for each violation. The fine may be collected and recovered in an action brought in the name of the state."

Page 9, line 11, remove "1, 3, 4, and"

Page 9, line 12, replace the first "5" with "2, 4, 5, and 6"

Page 9, line 12, replace the second "5" with "6"

Page 9, line 13, replace "2, 6, and 7" with "3, 7, and 8"

Page 9, line 14, replace "5" with "6"

Renumber accordingly

Date: 3/29/17  
 Roll Call Vote #: 11

2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. SB. 2231

House Human Services Committee

Subcommittee

Amendment LC# or Description: 17.0231.02004

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Rep. Skroch Seconded By Rep. P. Anderson

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz			Rep. P. Anderson		
Vice Chairman Rohr			Rep. Schneider		
Rep. B. Anderson					
Rep. D. Anderson					
Rep. Damschen					
Rep. Devlin					
Rep. Kiefert					
Rep. McWilliams					
Rep. Porter					
Rep. Seibel					
Rep. Skroch					
Rep. Westlind					

*Vote to adopt the amendment. Motion carried.*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_  
 Absent \_\_\_\_\_  
 Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:  
Strike section 1 and replace it with 2003's language in Section 2-1.2. +3 with removing the fee schedule language.

Date: 3/29/17  
 Roll Call Vote #: 2

2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. SB 2231

House Human Services Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar

Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep. Seibel Seconded By Rep. P. Anderson

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz		✓	Rep. P. Anderson	✓	
Vice Chairman Rohr		✓	Rep. Schneider	✓	
Rep. B. Anderson	✓				
Rep. D. Anderson	✓				
Rep. Damschen	✓				
Rep. Devlin		✓			
Rep. Kiefert	✓				
Rep. McWilliams	✓				
Rep. Porter	ab.				
Rep. Seibel	✓				
Rep. Skroch	✓				
Rep. Westlind		✓			

Total (Yes) 9 No 4

Absent \_\_\_\_\_

Floor Assignment Rep. D. Anderson

If the vote is on an amendment, briefly indicate intent:



**REPORT OF STANDING COMMITTEE**

**SB 2231, as engrossed: Human Services Committee (Rep. Weisz, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2231 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "three" with "a new section to chapter 23-16 and four"

Page 1, line 2, after "to" insert "informed decisionmaking for choosing air ambulance service providers,"

Page 1, line 3, after "services" insert ", and air ambulance subscriptions"

Page 1, after line 7, insert:

**"SECTION 1.** A new section to chapter 23-16 of the North Dakota Century Code is created and enacted as follows:

**Air ambulances - Informed Decisions - Publication.**

1. Before a hospital refers a patient to an air ambulance service provider or initiates contact with an air ambulance service provider for air transport of the patient, the hospital shall inform the patient, or the patient's representative, of the air ambulance service provider's health insurance network status for the purpose of allowing the patient or the patient's representative to make an informed decision on choosing an air ambulance service provider or form of transportation.
2. A hospital is presumed in compliance with subsection 1 if the hospital provides the patient, or the patient's representative, the health insurance network status published by the insurance department under subsection 4.
3. A hospital is exempt from complying with this section if the hospital determines and documents that due to emergency circumstances, compliance might jeopardize the health or safety of the patient.
4. At least quarterly, the insurance department shall publish on the insurance department's website data regarding the health insurance network status of each air ambulance service provider authorized to operate in the state."

Page 4, line 30, remove "providers is two hundred percent"

Page 4, remove line 31

Page 5, remove lines 1 and 2

Page 5, line 3, replace "2." with "provider services is equal to the average of the insurer's in-network rates for air ambulance providers in the state."

2. An insurer may not use the average of an insurer's in-network rates for air ambulance providers in the state in order to decrease current or future contractual rates between an insurer and an air ambulance provider.
3. For purposes of settling a claim made by the insured for air ambulance services, a payment made by an insurer under the plan in compliance with this section is deemed to be the same as an in-network payment and is considered a full and final payment by the insured for out-of-network air ambulance services billed to the insured.

4."

Page 8, line 14, replace "pre-empt" with "preempt"

Page 9, after line 10, insert:

"**SECTION 9.** A new section to chapter 26.1-47 of the North Dakota Century Code is created and enacted as follows:

**Air ambulance subscription agreements - Prohibition.**

An air ambulance provider, or an agent of an air ambulance provider, may not sell, solicit, or negotiate a subscription agreement or contract relating to services or the billing of services provided by an air ambulance provider. An air ambulance provider, or agent of an air ambulance provider, which violates this section is subject to a civil fine in an amount not to exceed ten thousand dollars for each violation. The fine may be collected and recovered in an action brought in the name of the state."

Page 9, line 11, remove "1, 3, 4, and"

Page 9, line 12, replace the first "5" with "2, 4, 5, and 6"

Page 9, line 12, replace the second "5" with "6"

Page 9, line 13, replace "2, 6, and 7" with "3, 7, and 8"

Page 9, line 14, replace "5" with "6"

Renumber accordingly

2017 TESTIMONY

SB 2231



SB 2231  
Attache #1  
1/31

**SENATE BILL NO. 2231**

**Presented by:** Jeff Ubben  
Deputy Commissioner/General Counsel  
North Dakota Insurance Department

**Before:** Senate Human Services Committee  
Senator Judy Lee, Chairman

**Date:** January 31, 2017

**TESTIMONY**

Good Morning Madam Chair and members of the committee. My name is Jeff Ubben and I am Deputy Insurance Commissioner and General Counsel for the North Dakota Insurance Department.

I appear before you today in support of SB 2231, as amended. The bill as amended is specifically tailored to address a serious consumer protection issue here in North Dakota that has been made more complicated by the federal Airline Deregulation Act (ADA) and by the behaviors of certain air ambulance providers.

Over the past few years, the North Dakota Insurance Department ("Department") has been fielding complaints related to large remaining or unpaid balances from charges not covered by insurance companies for air ambulance services because the insured person's insurance company does not have a contract with the air ambulance provider. This practice is also known as "balance billing." To date, there are 27 different complaints with the Department totaling over \$1.2 million in unreimbursed charges stemming from air ambulance providers that do not sign preferred provider or "in-network" agreements with the state's health insurers. It is important to note that while a state agency can calculate the number of complaints that have been submitted, we do not know how many more people have paid these bills without seeking assistance from the Department.

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Air ambulance providers that do not sign agreements with insurers, and are therefore considered out-of-network providers, often charge more than their counterparts that are in-network. This leads to extremely large balance billed charges. In North Dakota, this has meant many patients have been sent bills for \$10,000, \$20,000 and in two cases, over \$60,000 of charges not covered by their insurance policy.

The health insurers have continued to attempt to negotiate usual and customary rates by bringing these providers in-network and have been successful to some degree. However, air ambulance providers who are currently in-network with the state's health insurers could easily leave their contracts with the state's health insurers, become out-of-network providers, and send North Dakotans balance bills.

We know from our conversations with our colleagues in the insurance and health industries in other states that this problem is not North Dakota's alone. Complaints about large balance bills resulting from an air medical transport entirely outside the control of the financially responsible party exist across the United States.

However, states have consistently run into a roadblock in attempting to protect their citizens. The federal Airline Deregulation Act (ADA) prohibits states from regulating the rates, routes and services of airlines and unfortunately through decisions from the federal government, air ambulances are included in the definition of airlines. The ADA was enacted in 1977 as a pro-consumer piece of legislation that encourages competitive pricing by fostering competition among the airlines. However, the irony is this law is now being used by certain air ambulance providers to cause harm to consumers.

I am sure you can appreciate that when an air ambulance is called, it is not a typical airline shopping experience. The choice of air ambulance is not made by the person that is responsible for paying the bill and most of the time, the purchase is confirmed because there is no other choice or because time is of the essence. In contrast, when a North Dakotan is purchasing a flight to Orlando, he or she controls the situation and



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cost by shopping for the best price, the best route and possibly avoids less desirable carriers. The purchasers know what to expect and what they will pay.

These factors clearly do not exist when you have a severely injured person laying in a ditch in rural North Dakota. Treating emergency air medical transport like ordinary passenger air transportation in today's marketplace does not make sense and allows the opportunity for air ambulance providers to take advantage of helpless people.

Senate Bill No. 2231 as amended solves the balance billing problem and protects these helpless people. It provides a rate that will be accepted as the full and final payment by the insurer on behalf of the insured and makes it clear that balance billing the insured is not allowed.

This bill is also different from previous approaches taken by the states to solve the balance billing problem because it regulates the business of insurance. This is important because the Congress has said through the federal McCarran-Ferguson Act that the states, and not the federal government, are the regulators of insurance business and that if a state enacts a law regulating the business of insurance, the provisions of another federal law like the ADA cannot be used to invalidate the state law regulating insurance. In other words, if a state enacts legislation regulating the business of insurance, the provisions of the McCarran-Ferguson Act reverse-preempt the provisions of the federal ADA, meaning the ADA's provisions do not apply and cannot be used to invalidate a state's law.

The proposed amendments to Senate Bill No. 2231 remove Sections 4 and 5 of the bill along with the related definitions because these sections of the bill are aimed at remedying issues that arise from balance billing. Once the balance billing problem is eliminated, the provisions of law in Sections 4 and 5 and the related definitions that were crafted to address this problem are no longer necessary.



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Also, in the event the provisions of amended Senate Bill No. 2231 are invalidated by a court of law, the amendments allow the provisions of unamended Senate Bill No. 2231 to become law. While the provisions of unamended Senate Bill No. 2231 do not remedy or eliminate the balance billing issue, they do have the potential to limit balance billing practices to some extent.

In conclusion, passing this bill with the proposed amendments would protect North Dakota consumers from balance bills when they receive air ambulance services. In considering this bill, I ask you to consider your fellow North Dakotan who has worked hard all their life, has been financially responsible, has a health insurance policy, and then one day through no fault of their own encounters a serious medical issue that requires transportation by an air ambulance provider that just so happens to be out-of-network with this person's insurance company. Suddenly, this lifelong hard-working, financially responsible, insured North Dakotan receives a balance bill demanding tens of thousands of dollars. This person is now facing bankruptcy. Without this bill, the majority of North Dakotans are an air ambulance ride away from just that—bankruptcy. This bill provides the needed protection so that this situation does not continue to become a reality for North Dakotans in the future. Therefore, I respectfully request a “do pass” recommendation from this committee on Senate Bill No. 2231 as amended and am happy to take any questions the committee may have.

Testimony  
Senate Bill 2231  
Senate Human Services Committee  
Tuesday, January 31 2017; 9 a.m.  
Sanford Health

SB 2231  
Attachment #2  
1/31

Good morning, Chairman Lee and members of the committee. My name is Tim Meyer, and I am the Enterprise Clinical Director for Sanford AirMed. I am here today in support of SB 2231.

Sanford AirMed is a hospital based licensed air-ambulance provider that has been operating in North Dakota for 33 years. In that time we have transported more than 30,000 patients from our North Dakota bases. We were the very first accredited air-ambulance flight program in the United States. Offering the highest standard of patient care has always been central to our mission.

Sanford Health got into the air-ambulance business to fill a need. At first the need was to transport neonates from small town hospitals to the larger tertiary care centers. Not long after we began transporting patients of all ages that needed critical care transport. Hospital-based air-ambulance programs were the norm. Very few stand-alone programs existed in the 80's and 90's. Hospital-based flight programs generally have in-network agreements with insurance providers as part of their hospital contracting. That is true for Sanford AirMed.

The number of medical helicopters in the U.S. has grown three to four-fold since the early 2000's. This has been due to a change in CMS' fee schedule for air-ambulance. Simply put, it's more attractive financially to operate these services. Over the last decade the independent operators have changed their tactics to get even more money. By refusing to have in-network agreements with insurance carriers independent operators can charge anything and often heap a very large balance bill onto the patient or their family members. This practice has made its way into North Dakota.

Although we support this bill we feel the change really needs to be made at the Federal level to permanently fix this issue. The Airline Deregulation Act of 1978 keeps states from substantially regulating this industry like states do for much of healthcare. We need to ask ourselves, are we an aviation industry that added a healthcare component or are we a healthcare industry that uses aviation to save time in order to achieve the greatest outcome possible for a patient. Shopping for an air ambulance service is not like shopping airline ticket prices on Orbitz. If states had proper authority, they could find reasonable middle ground on this issue.



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That being said we'd ask for the following amendments to the bill. In Section 4, add another element for the requirements for accessing air ambulance providers. On page 3, line 23 insert "2. Each air ambulance provider shall provide every facility that would reasonably be expected to utilize air ambulance services a copy of their billing rates for out-of-network patients. In addition each air ambulance provider shall provide a list of health insurers that the air ambulance provider has in-network agreements with." On page 3, line 23 add. "2-3. If practical and if it will not endanger the health or well being of the patient," before a health care provider arranges for...

Often times there are scant resources in a small town hospital and the medical team is very busy taking care of a critically ill or injured patient. We don't want a paperwork process to distract them from their important work.

Also on page 4 subsection (4) we'd ask for this amendment: A description of the range of the charges for the out-of-network air ambulance services for which the covered person may be responsible A list of the actual out-of-network charges provided by each air ambulance provider and a list of insurance carriers that each air ambulance provider has an in-network agreement with;

This will give some of the burden back to the air ambulance operators to provide this information to referring facilities so that they can make an informed decision on how the patient is transported to definitive care.

This concludes my testimony. I'd be happy to answer any questions you may have.



## SB 2231 Testimony

### Senate Human Services Committee

January 31, 2017

Chairman Lee and members of the committee. I am Dan Hannaher, Senior Legislative Affairs Specialist with Sanford Health.

Sanford Health supports SB 2231 related to preferred provider arrangement requirements for insurance and prior authorization for air ambulance services. It's important that our patients have a fully transparent and communicative process for air ambulance insurance coverage.

A few thoughts, however, for your consideration:

- We would recommend adding a definition of "out-of-network" since there are a number of references throughout the bill.
- The bill might also include a written disclosure, such as; "The facility has made reasonable attempts to obtain Prior Authorization from the Covered Person's Health Care Insurer, including leaving a voicemail with the Health Care Insurer outside of the Insurer's business hours of operation. The voicemail shall include the member's pertinent information and information on the air ambulance services being provided."
- Consider language requiring the Department of Insurance to maintain, and post online, a list of Air Ambulance providers and the insurers with whom they contract.
- Where possible, the Covered Person or their authorized representative should be provided a range of charges for which they could be responsible.
- Out-Of-Network Air Ambulance billing notices should include the option to exercise rights to Air Ambulance mediation.
- We would recommend any mediation process be conducted by the Department of Insurance.

Thank you. I'm happy to try and answer any questions.

SB 2231

Attach #4

1/31



**Vision**

*The North Dakota Hospital Association will take an active leadership role in major Healthcare issues.*

**Mission**

*The North Dakota Hospital Association exists to advance the health status of persons served by the membership.*

**Testimony: 2017 SB 2231**  
**Senate Human Services Committee**  
**Senator Judy Lee, Chairman**  
**January 31, 2017**

Good morning Chairman Lee and Members of the Senate Human Services Committee. I am Jerry E. Jurena, President of the North Dakota Hospital Association. I am here to testify regarding 2017 Senate Bill 2231 and ask that you give this bill a **Do Not Pass** recommendation.

NDHA supports the intent of the bill to improve the transparency of air ambulance costs. It raises concerns, however, about the steps hospitals would have to take in order to abide by its requirements and it is not clear whether the purpose of the bill could even be achieved in these emergency situations.

The bill requires health care providers to obtain prior authorization from the patient's insurer before arranging for air ambulance services. These are situations where the patient's medical condition requires immediate and rapid ambulance transportation that cannot be provided by ground ambulance, which raises concerns about whether there will be time in which to secure prior authorization from the patient's insurer. In these emergency situations, the health care provider may not even know whether the patient has insurance, much less which insurance company issued it. We are concerned that such onerous and potentially time consuming requirements could pose a threat to the patient's survival or seriously endanger the patient's health.

If prior authorization cannot be obtained, the health care provider must provide the patient or



authorized representative an “out-of-network services written disclosure”, that must provide all of the following:

1. That certain air ambulance providers may be called on to provide care to the patient during the course of treatment;
2. These air ambulance providers might not have contracts with the patient's health care insurer and are, therefore, considered to be out of network;
3. If these air ambulance providers do not have contracts with the patient's health care insurer, the air ambulance services will be provided on an out-of-network basis;
4. A description of the range of the charges for the out-of-network air ambulance services for which the patient may be responsible;
5. A notification the patient or authorized representative may agree to accept and pay the charges for the out-of-network air ambulance services, contact the patient's health care insurer for additional assistance, or rely on other rights and remedies that may be available under state or federal law; and
6. A statement indicating the patient or authorized representative may obtain a list of air ambulance providers from the patient's health care insurer which are preferred providers and the patient or representative may request those participating air ambulance providers be accessed by the health care provider.

How are hospitals to know what the range of charges will be for an out-of-network air ambulance provider and provide it quickly in these emergent situations? Will hospitals have the time to discuss with the patient or authorized representative the option for the patient or authorized representative to contact the health care insurer to request a list of participating air ambulance providers?

Health care providers must also obtain the patient or authorized representative's signature on the disclosure document. What if the situation does not allow for this step to be completed? What if the patient is unconscious and it is unclear who the next of kin is or who the insurer is?

The bill provides that if a health care provider is unable to obtain the signature required, the health care provider shall document the reason. In these situations, health care providers are focused on stabilizing the patient and ensuring medically appropriate care. These additional prior authorization and documentation requirements pose a threat to patients' health and potentially to their survival and they do not solve the problem the bill is designed to address.



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1/31

Without further clarification of these burdens on health care providers, we oppose this bill and ask that you give this it a **Do Not Pass** recommendation.

I would be happy to try to answer any questions you may have. Thank you.

Respectfully Submitted,

Jerry E. Jurena, President  
North Dakota Hospital Association

January 31, 2017

SB 2231  
Attachments  
1/31

PROPOSED AMENDMENTS TO SENATE BILL NO. 2231

Page 1, line 1, replace "two" with "three"

Page 1, line 5, remove "and"

Page 1, line 5, after "date" insert "; and to provide a contingent effective date"

Page 1, after line 6, insert:

**"SECTION 1. AMENDMENT.** Section 26.1-47-01 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-47-01. Definitions.**

As used in this chapter, unless the context indicates otherwise:

1. "Air ambulance" means a specially equipped aircraft licensed by the state department of health for transporting patients.
2. "Air ambulance provider" means a publicly or privately owned organization that is licensed or applies for licensure by the state department of health to provide transportation and care of patients by air ambulance.
3. "Commissioner" means the insurance commissioner of the state of North Dakota.
- ~~2.4.~~ "Covered person" means any person on whose behalf the health care insurer is obligated to pay for or provide health care services.
- ~~3.5.~~ "Health benefit plan" means the health insurance policy or subscriber agreement between the covered person or the policyholder and the health care insurer which defines the services covered.
- ~~4.6.~~ "Health care insurer" includes an insurance company as defined in section 26.1-02-01, a health service corporation as defined in section 26.1-17-01, a health maintenance organization as defined in section 26.1-18.1-01, and a fraternal benefit society as defined in section 26.1-15.1-02.
- ~~5.7.~~ "Health care provider" means licensed providers of health care services in this state.
- ~~6.8.~~ "Health care services" means services rendered or products sold by a health care provider within the scope of the provider's license. The term includes hospital, medical, surgical, dental, vision, chiropractic, and pharmaceutical services or products.
9. "In-network payment" means a full and final payment for air ambulance services pursuant to a network plan.
10. "Network" or "in-network" means a group of preferred providers providing services under a network plan.

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11. "Network plan" means a health benefit plan that requires a covered person to use, or creates incentives, including financial incentives, for a covered person to use health care providers managed by, owned by, under contract with, or employed by the health care insurer.
12. "Out-of-network" means a provider that is not providing the service under a network plan.
- 7-13. "Preferred provider" means a duly licensed health care provider or group of providers who have contracted with the health care insurer, under this chapter, to provide health care services to covered persons under a health benefit plan.
- 8-14. "Preferred provider arrangement" means a contract between the health care insurer and one or more health care providers which complies with all the requirements of this chapter."

Page 2, line 1, replace "5." with "4."

Page 2, line 4, replace "6." with "5."

Page 2, line 5, replace "7." with "6."

Page 2, line 7, replace "8." with "7."

Page 2, line 9, replace "9." with "8."

Page 2, line 12, replace "10." with "9."

Page 2, line 16, replace "11." with "10."

Page 2, line 17, replace "12." with "11."

Page 2, line 20, replace "13." with "12."

Page 2, line 22, replace "14." with "13."

Page 2, after line 25 insert:

"14. "Out-of-network" means a provider that is not providing the service under a network plan."

Page 3, after line 15, insert:

**"SECTION 5.** A new section to chapter 26.1-47 of the North Dakota Century Code is created and enacted as follows:

**Air ambulances.**

1. A health benefit plan may not be issued in this state unless the plan provides the reimbursement rate for out-of-network air ambulance providers is two hundred percent of the medical assistance reimbursement rate allowed for air ambulance services. For purposes of billing the insured for air ambulance services, a payment made under this provision of the plan is deemed to be the same as an in-network payment.
2. This section does not apply to a policy or certificate of insurance, whether written on a group or individual basis, which provides coverage limited to:



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- a. A specified disease, a specified accident, or accident-only coverage;
- b. Credit;
- c. Dental;
- d. Disability;
- e. Hospital;
- f. Long-term care insurance as defined by chapter 26.1-45;
- g. Vision care or any other limited supplemental benefit;
- h. A medicare supplement policy of insurance, as defined by the commissioner by rule or coverage under a plan through medicare;
- i. Medicaid;
- j. The federal employees health benefits program and any coverage issued as a supplement to that coverage;
- k. Coverage issued as supplemental to liability insurance, workers' compensation, or similar insurance; or
- l. Automobile medical payment insurance."

Page 6, line 27, replace "and" with "or"

Page 7, replace line 5 with:

**"SECTION 8. EFFECTIVE DATE - CONTINGENT EFFECTIVE DATE.** Sections 1, 3, 4, and 5 of this Act become effective January 1, 2018. If section 5 of this Act is declared invalid, sections 2, 6, and 7 of this Act become effective on the date the insurance commissioner certifies the invalidity of section 5 to the secretary of state and the legislative council."

Renumber accordingly

February 6, 2017

SB 2231  
Attch #1  
2/6

PROPOSED AMENDMENTS TO SENATE BILL NO. 2231

Page 1, line 1, replace "two" with "three"

Page 1, line 5, remove "and"

Page 1, line 5, after "date" insert "; and to provide a contingent effective date"

Page 1, after line 6, insert:

**"SECTION 1. AMENDMENT.** Section 26.1-47-01 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-47-01. Definitions.**

As used in this chapter, unless the context indicates otherwise:

1. "Air ambulance" means a specially equipped aircraft licensed by the state department of health for transporting patients.
2. "Air ambulance provider" means a publicly or privately owned organization that is licensed or applies for licensure by the state department of health to provide transportation and care of patients by air ambulance.
3. "Commissioner" means the insurance commissioner of the state of North Dakota.
- ~~2.4.~~ "Covered person" means any person on whose behalf the health care insurer is obligated to pay for or provide health care services.
- ~~3.5.~~ "Health benefit plan" means the health insurance policy or subscriber agreement between the covered person or the policyholder and the health care insurer which defines the services covered.
- ~~4.6.~~ "Health care insurer" includes an insurance company as defined in section 26.1-02-01, a health service corporation as defined in section 26.1-17-01, a health maintenance organization as defined in section 26.1-18.1-01, and a fraternal benefit society as defined in section 26.1-15.1-02.
- ~~5.7.~~ "Health care provider" means licensed providers of health care services in this state.
- ~~6.8.~~ "Health care services" means services rendered or products sold by a health care provider within the scope of the provider's license. The term includes hospital, medical, surgical, dental, vision, chiropractic, and pharmaceutical services or products.
9. "In-network payment" means a full and final payment for air ambulance services pursuant to a network plan.
10. "Network" or "in-network" means a group of preferred providers providing services under a network plan.

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- 11. "Network plan" means a health benefit plan that requires a covered person to use, or creates incentives, including financial incentives, for a covered person to use health care providers managed by, owned by, under contract with, or employed by the health care insurer.
- 12. "Out-of-network" means a provider that is not providing the service under a network plan.
- 7-13. "Preferred provider" means a duly licensed health care provider or group of providers who have contracted with the health care insurer, under this chapter, to provide health care services to covered persons under a health benefit plan.
- 8-14. "Preferred provider arrangement" means a contract between the health care insurer and one or more health care providers which complies with all the requirements of this chapter."

Page 2, line 1, replace "5." with "4."

Page 2, line 4, replace "6." with "5."

Page 2, line 5, replace "7." with "6."

Page 2, line 7, replace "8." with "7."

Page 2, line 9, replace "9." with "8."

Page 2, line 12, replace "10." with "9."

Page 2, line 16, replace "11." with "10."

Page 2, line 17, replace "12." with "11."

Page 2, line 20, replace "13." with "12."

Page 2, line 22, replace "14." with "13."

Page 2, after line 25 insert:

"14. "Out-of-network" means a provider that is not providing the service under a network plan."

Page 3, after line 15, insert:

**SECTION 5.** A new section to chapter 26.1-47 of the North Dakota Century Code is created and enacted as follows:

**Air ambulances.**

- 1. A health benefit plan may not be issued in this state unless the plan provides the reimbursement rate for out-of-network air ambulance providers is two hundred percent of the medical assistance reimbursement rate allowed for air ambulance services. For purposes of billing the insured for air ambulance services, a payment made under this provision of the plan is deemed to be the same as an in-network payment.
- 2. This section does not apply to a policy or certificate of insurance, whether written on a group or individual basis, which provides coverage limited to:



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- a. A specified disease, a specified accident, or accident-only coverage;
- b. Credit;
- c. Dental;
- d. Disability;
- e. Hospital;
- f. Long-term care insurance as defined by chapter 26.1-45;
- g. Vision care or any other limited supplemental benefit;
- h. A medicare supplement policy of insurance, as defined by the commissioner by rule or coverage under a plan through medicare;
- i. Medicaid;
- j. The federal employees health benefits program and any coverage issued as a supplement to that coverage;
- k. Coverage issued as supplemental to liability insurance, workers' compensation, or similar insurance; or
- l. Automobile medical payment insurance."

Page 3, line 23, replace "Before" with "Except as otherwise provided under this section, before"

Page 3, line 27, after "to" insert "request or"

Page 4, line 29, after "to" insert "provide the written disclosure or"

Page 4, line 30, after "which" insert "may include the health and safety of the patient. This health care provider documentation"

Page 6, line 27, replace "and" with "or"

Page 7, replace line 5 with:

**"SECTION 8. EFFECTIVE DATE - CONTINGENT EFFECTIVE DATE.** Sections 1, 3, 4, and 5 of this Act become effective January 1, 2018. If section 5 of this Act is declared invalid, sections 2, 6, and 7 of this Act become effective on the date the insurance commissioner certifies the invalidity of section 5 to the secretary of state and the legislative council."

Renumber accordingly

SB 2231  
Attach #2  
2/6

Sixty-fifth  
Legislative Assembly  
of North Dakota

SENATE BILL NO. 2231

Introduced by

Senators J. Lee, Schaible

Representative Weisz

1 A BILL for an Act to create and enact ~~two~~three new sections to chapter 26.1-47 of the North  
2 Dakota Century Code, relating to preferred provider arrangement requirements for insurance  
3 prior authorization for air ambulance services; to amend and reenact section 26.1-47-01,  
4 subsection 6 of section 26.1-47-02, and section 26.1-47-07 of the North Dakota Century Code,  
5 relating to preferred provider organizations; ~~and~~ to provide an effective date; and to provide a  
6 contingent effective date.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** Section 26.1-47-01 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **26.1-47-01. Definitions.**

11 As used in this chapter, unless the context indicates otherwise:

12 1. "Air ambulance" means a specially equipped aircraft licensed by the state department  
13 of health for transporting patients.

14 2. "Air ambulance provider" means a publicly or privately owned organization that is  
15 licensed or applies for licensure by the state department of health to provide  
16 transportation and care of patients by air ambulance.

17 3. "Commissioner" means the insurance commissioner of the state of North Dakota.

18 ~~2.4.~~ "Covered person" means any person on whose behalf the health care insurer is  
19 obligated to pay for or provide health care services.

20 ~~3.5.~~ "Health benefit plan" means the health insurance policy or subscriber agreement  
21 between the covered person or the policyholder and the health care insurer which  
22 defines the services covered.

23 ~~4.6.~~ "Health care insurer" includes an insurance company as defined in section 26.1-02-01,  
24 a health service corporation as defined in section 26.1-17-01, a health maintenance



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- 1 organization as defined in section 26.1-18.1-01, and a fraternal benefit society as
- 2 defined in section 26.1-15.1-02.
- 3 ~~5-7.~~ "Health care provider" means licensed providers of health care services in this state.
- 4 ~~6-8.~~ "Health care services" means services rendered or products sold by a health care
- 5 provider within the scope of the provider's license. The term includes hospital, medical,
- 6 surgical, dental, vision, chiropractic, and pharmaceutical services or products.
- 7 9. "In-network payment" means a full and final payment for air ambulance services
- 8 pursuant to a network plan.
- 9 10. "Network" or "in-network" means a group of preferred providers providing services
- 10 under a network plan.
- 11 11. "Network plan" means a health benefit plan that requires a covered person to use, or
- 12 creates incentives, including financial incentives, for a covered person to use health
- 13 care providers managed by, owned by, under contract with, or employed by the health
- 14 care insurer.
- 15 12. "Out-of-network" means a provider that is not providing the service under a network
- 16 plan.
- 17 ~~7-13.~~ "Preferred provider" means a duly licensed health care provider or group of providers
- 18 who have contracted with the health care insurer, under this chapter, to provide health
- 19 care services to covered persons under a health benefit plan.
- 20 ~~8-14.~~ "Preferred provider arrangement" means a contract between the health care insurer
- 21 and one or more health care providers which complies with all the requirements of this
- 22 chapter.

23 **SECTION 2. AMENDMENT.** Section 26.1-47-01 of the North Dakota Century Code is  
24 amended and reenacted as follows:

25 **26.1-47-01. Definitions.**

26 As used in this chapter, unless the context indicates otherwise:

- 27 1. "Air ambulance" means a specially equipped aircraft licensed by the state department
- 28 of health for transporting patients.
- 29 2. "Air ambulance provider" means a publicly or privately owned organization that is
- 30 licensed or applies for licensure by the state department of health to provide
- 31 transportation and care of patients by air ambulance.



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- 1        3.    "Authorized representative" means:
- 2            a.    A person to which a covered person has given express written consent to
- 3                    represent the covered person;
- 4            b.    A person authorized by law to provide substituted consent for a covered person;
- 5                    or
- 6            c.    If a covered person is unable to provide consent, the covered person's treating
- 7                    health care professional or a family member of the covered person.
- 8        ~~5.4.~~ "Balance billing" means the practice of an air ambulance provider billing for the
- 9                    difference between the air ambulance provider's charge and the health care insurer's
- 10                   allowed amount.
- 11        ~~6.5.~~ "Commissioner" means the insurance commissioner of the state of North Dakota.
- 12        ~~2.7.6.~~ "Covered person" means ~~any person~~ an individual on whose behalf the health care
- 13                    insurer is obligated to pay for or provide health care services.
- 14        ~~3.8.7.~~ "Facility" means an institution or other immobile health care setting providing physical,
- 15                    mental, or behavioral health care services.
- 16        ~~9.8.~~ "Health benefit plan" means the health insurance policy or subscriber agreement
- 17                    between the covered person or the policyholder and the health care insurer which
- 18                    defines the services covered.
- 19        ~~4.10.9.~~ "Health care insurer" includes an insurance company as defined in section 26.1-02-01,
- 20                    a health service corporation as defined in section 26.1-17-01, a health maintenance
- 21                    organization as defined in section 26.1-18.1-01, and a fraternal benefit society as
- 22                    defined in section 26.1-15.1-02.
- 23        ~~5.11.10.~~ "Health care provider" means licensed providers of health care services in this state.
- 24        ~~6.12.11.~~ "Health care services" means services rendered or products sold by a health care
- 25                    provider within the scope of the provider's license. The term includes hospital, medical,
- 26                    surgical, dental, vision, chiropractic, and pharmaceutical services or products.
- 27        ~~7.13.12.~~ "Network" means a group of preferred providers providing services under a network
- 28                    plan.
- 29        ~~14.13.~~ "Network plan" means a health benefit plan that requires a covered person to use, or
- 30                    creates incentives, including financial incentives, for a covered person to use health

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1 care providers managed by, owned by, under contract with, or employed by the health  
2 care insurer.

3 14. "Out-of-network" means a provider that is not providing the service under a network  
4 plan.

5 15. "Preferred provider" means a duly licensed health care provider or group of providers  
6 who have contracted with the health care insurer, under this chapter, to provide health  
7 care services to covered persons under a health benefit plan.

8 ~~8-16.~~ "Preferred provider arrangement" means a contract between the health care insurer  
9 and one or more health care providers which complies with all the requirements of this  
10 chapter.

11 17. "Prior authorization" means confirmation by the covered person's health care insurer  
12 that the air ambulance services sought to be provided by the air ambulance provider  
13 meet the criteria for coverage under the covered person's health benefit plan as  
14 defined by the provisions of the covered person's health benefit plan.

15 **SECTION 3. AMENDMENT.** Subsection 6 of section 26.1-47-02 of the North Dakota  
16 Century Code is amended and reenacted as follows:

17 6. A health care insurer may not penalize a provider because the provider, in good faith,  
18 reports to state or federal authorities any act or practice by the health ~~carrier that~~care  
19 insurer which jeopardizes patient health or welfare.

20 **SECTION 4. AMENDMENT.** Section 26.1-47-07 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22 **26.1-47-07. Penalty.**

23 The commissioner may levy an administrative penalty not to exceed ten thousand dollars  
24 for a violation of this chapter. ~~Any person who violates this chapter is guilty of a class A~~  
25 ~~misdemeanor.~~

26 **SECTION 5.** A new section to chapter 26.1-47 of the North Dakota Century Code is created  
27 and enacted as follows:

28 **Air ambulances.**

29 1. A health benefit plan may not be issued in this state unless the plan provides the  
30 reimbursement rate for out-of-network air ambulance providers is two hundred percent  
31 of the medical assistance reimbursement rate allowed for air ambulance services. For



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- 1 purposes of billing the insured for air ambulance services, a payment made under this
- 2 provision of the plan is deemed to be the same as an in-network payment.
- 3 2. This section does not apply to a policy or certificate of insurance, whether written on a
- 4 group or individual basis, which provides coverage limited to:
- 5 a. A specified disease, a specified accident, or accident-only coverage;
- 6 b. Credit;
- 7 c. Dental;
- 8 d. Disability;
- 9 e. Hospital;
- 10 f. Long-term care insurance as defined by chapter 26.1-45;
- 11 g. Vision care or any other limited supplemental benefit;
- 12 h. A medicare supplement policy of insurance, as defined by the commissioner by
- 13 rule or coverage under a plan through medicare;
- 14 i. Medicaid;
- 15 j. The federal employees health benefits program and any coverage issued as a
- 16 supplement to that coverage;
- 17 k. Coverage issued as supplemental to liability insurance, workers' compensation,
- 18 or similar insurance; or
- 19 l. Automobile medical payment insurance.

20 **SECTION 6.** A new section to chapter 26.1-47 of the North Dakota Century Code is created  
21 and enacted as follows:

22 **Preferred provider arrangements - Requirements for accessing air ambulance**  
23 **providers.**

- 24 1. In addition to the other preferred provider arrangement requirements under this
- 25 chapter, a preferred provider arrangement must require the health care insurer and
- 26 health care provider comply with this section.
- 27 2. Before a health care provider arranges for air ambulance services for an individual the
- 28 health care provider knows to be a covered person, the health care provider shall
- 29 request a prior authorization from the covered person's health care insurer for the air
- 30 ambulance services to be provided to the covered person. If the health care provider is
- 31 unable to obtain prior authorization from the covered person's health care insurer:



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- 1           a. The health care provider shall provide the covered person or the covered  
2           person's authorized representative an out-of-network services written disclosure  
3           stating the following:
- 4           (1) Certain air ambulance providers may be called upon to render care to the  
5           covered person during the course of treatment;
- 6           (2) These air ambulance providers might not have contracts with the covered  
7           person's health care insurer and are, therefore, considered to be out of  
8           network;
- 9           (3) If these air ambulance providers do not have contracts with the covered  
10           person's health care insurer, the air ambulance services will be provided on  
11           an out-of-network basis;
- 12           (4) A description of the range of the charges for the out-of-network air  
13           ambulance services for which the covered person may be responsible;
- 14           (5) A notification the covered person or the covered person's authorized  
15           representative may agree to accept and pay the charges for the out-of-  
16           network air ambulance services, contact the covered person's health care  
17           insurer for additional assistance, or rely on other rights and remedies that  
18           may be available under state or federal law; and
- 19           (6) A statement indicating the covered person or the covered person's  
20           authorized representative may obtain a list of air ambulance providers from  
21           the covered person's health care insurer which are preferred providers and  
22           the covered person or the covered person's representative may request  
23           those participating air ambulance providers be accessed by the health care  
24           provider.
- 25           b. Before air ambulance services are accessed for the covered person, the health  
26           care provider shall provide the covered person or the covered person's  
27           authorized representative the written disclosure, as outlined by subdivision a and  
28           obtain the covered person's or the covered person's authorized representative's  
29           signature on the disclosure document acknowledging the covered person or the  
30           covered person's authorized representative received the disclosure document  
31           before the air ambulance services were accessed. If the health care provider is

1                   unable to obtain the signature required under this subdivision, the health care  
2                   provider shall document the reason, which satisfies the requirement under this  
3                   subdivision.

4           3. This section does not:

5           a. Preclude a covered person from agreeing to accept and pay the charges for the  
6           out-of-network services and not access the covered person's health care  
7           insurer's out-of-network air ambulance billing process described under this  
8           section.

9           b. Preclude a covered person from agreeing to accept and pay the bill received  
10           from the out-of-network air ambulance provider or from not accessing the air  
11           ambulance provider mediation process described under this section.

12           c. Regulate an out-of-network air ambulance provider's ability to charge certain fees  
13           for services or to charge any amount of fee for services provided to a covered  
14           person by the out-of-network air ambulance provider.

15           4. A health care insurer shall develop a program for payment of out-of-network air  
16           ambulance bills submitted under this section. A health benefit plan may not be issued  
17           in this state without the terms of the health benefit plan including the provisions of the  
18           health care insurer's program for payment of out-of-network air ambulance bills.

19           a. A health care insurer may elect to pay out-of-network air ambulance provider bills  
20           as submitted, or the health care insurer may elect to use the out-of-network air  
21           ambulance provider mediation process described in subsection 5.

22           b. This section does not preclude a health care insurer and an out-of-network facility  
23           air ambulance provider from agreeing to a separate payment arrangement.

24           5. A health care insurer shall establish an air ambulance provider mediation process for  
25           payment of out-of-network air ambulance provider bills. A health benefit plan may not  
26           be issued in this state if the terms of the health benefit plan do not include the  
27           provisions of the health care insurer's air ambulance provider mediation process for  
28           payment of out-of-network air ambulance provider bills.

29           a. A health care insurer's air ambulance provider mediation process must be  
30           established in accordance with mediation standards recognized by the  
31           department by rule.



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Sixty-fifth  
Legislative Assembly

- 1            b. If the health care insurer and the out-of-network air ambulance provider agree to  
2            a separate payment arrangement or if the covered person agrees to accept and  
3            pay the out-of-network air ambulance provider's charges for the out-of-network  
4            services, compliance with the air ambulance provider mediation process is not  
5            required.
- 6            c. A health care insurer shall maintain records on all requests for mediation and  
7            completed mediation under this subsection for one year and, upon request of the  
8            commissioner, submit a report to the commissioner in the format specified by the  
9            commissioner.
- 10          6. The rights and remedies provided under this section to covered persons are in  
11          addition to and may not pre-empt any other rights and remedies available to covered  
12          persons under state or federal law.
- 13          7. The department shall enforce this section and shall report a violation of this section by  
14          a facility to the state department of health.
- 15          8. This section does not apply to a policy or certificate of insurance, whether written on a  
16          group or individual basis, which provides coverage limited to:
- 17            a. A specified disease, a specified accident, or accident-only coverage;  
18            b. Credit;  
19            c. Dental;  
20            d. Disability;  
21            e. Hospital;  
22            f. Long-term care insurance as defined by chapter 26.1-45;  
23            g. Vision care or any other limited supplemental benefit;  
24            h. A medicare supplement policy of insurance, as defined by the commissioner by  
25            rule or coverage under a plan through medicare;  
26            i. Medicaid;  
27            j. The federal employees health benefits program and any coverage issued as a  
28            supplement to that coverage;  
29            k. Coverage issued as supplemental to liability insurance, workers' compensation,  
30            or similar insurance; and/or  
31            l. Automobile medical payment insurance.



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1        9.    The commissioner may adopt rules to implement this section.

2        **SECTION 7.** A new section to chapter 26.1-47 of the North Dakota Century Code is created  
3 and enacted as follows:

4        **Rules.**

5        If an action of Congress, the president of the United States, or a federal agency allows the  
6 state to regulate the rates, routes, or services of air ambulance providers, the commissioner  
7 may adopt rules consistent with the action taken.

8        ~~SECTION 10. EFFECTIVE DATE. This Act becomes effective January 1, 2018.~~

9        **SECTION 8. EFFECTIVE DATE - CONTINGENT EFFECTIVE DATE.** Sections 1, 3, 4, and  
10 5 of this Act become effective January 1, 2018. If section 5 of this Act is declared invalid,  
11 sections 2, 6, and 7 of this Act become effective on the date the insurance commissioner  
12 certifies the invalidity of section 5 to the secretary of state and the legislative council.

*delayed is because  
benefits need to be  
built into health benefits  
plans.*

Att. 1 SB 2231  
3/7/17

**SB 2231**

**House Human Services**

**March 7, 2017**

**Senator Judy Lee**

SB 2231 is a continuing effort to address the problem of large bills for air ambulance services by an ambulance provider who does not accept the reimbursement paid by insurers.

Here is an example. An individual is injured, and the helicopter comes to transport the patient to the hospital, a 45- minute trip. The family gets a bill for \$56,000, \$12,000 of which is paid by the insurance company. After efforts to work with the insurer and the Dept. of Insurance, the family learns that their only recourse is to negotiate with the ambulance company. Even if the \$44,000 balance is reduced by half, it is still \$22,000. Whether the family can pay is irrelevant. The question is whether they should have to pay this bill, when the other 2 providers serving that area accept the reimbursement paid by insurers.

In the last legislative session, we tried to address this problem in a different way, but the ambulance company sued and won. The barrier is the Airline Deregulation Act, a federal law passed in the 70's, intended to increase competition among commercial air carriers, but at a time when an air ambulance, particularly a helicopter, was rare. Some air ambulance services say that they are commercial air carriers and are exempt from any regulation of their rates.

Federal law does, however, enable states to regulate insurance, and that is the approach in 2231. An ambulance ride after an accident is not the same as planning a trip to Florida. One can check the competition and choose what services and rates are acceptable. In an emergency, one is grateful to have the service available.

The purpose of SB 2231 is to stop the out-of-network providers from charging big balance bills beyond the insurance company reimbursement. A suggestion was made to me that, rather than 200% of Medicaid as the rate, since Medicaid rates have been reduced, that perhaps the Dept. of Insurance could be instructed to develop a formula. I encourage you to make the bill better by changing the formula for developing the rate, as requested by some of the stakeholders, but to find a way through regulation of insurance that will protect our neighbors from these overcharges.



March 6, 2017

A.H.1.  
SB2231  
3-7-17

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2231

Page 3, remove lines 8 through 10

Page 3, line 11, replace "5." with "4."

Page 3, line 12, replace "6." with "5."

Page 3, line 14, replace "7." with "6."

Page 3, line 16, replace "8." with "7."

Page 3, line 19, replace "9." with "8."

Page 3, line 23, replace "10." with "9."

Page 3, line 24, replace "11." with "10."

Page 3, line 27, replace "12." with "11."

Page 3, line 29, replace "13." with "12."

Page 4, line 3, replace "14." with "13."

Page 4, line 5, replace "15." with "14."

Page 4, line 8, replace "16." with "15."

Page 4, line 11, replace "17." with "16."

Page 7, line 7, after "3." insert "A health care provider making arrangements for air ambulance services for an individual experiencing an emergency medical condition is exempt from the requirements of subsection 2."

4."

Page 7, line 18, replace "4." with "5."

Page 7, line 24, replace "5." with "6."

Page 7, line 25, remove "facility"

Page 7, line 27, replace "5." with "6."

Page 8, line 13, replace "6." with "7."

Page 8, line 14, replace "pre-empt" with "preempt"

Page 8, line 16, replace "7." with "8."

Page 8, line 18, replace "8." with "9."

Page 9, line 4, replace "9." with "10."

Renumber accordingly

Att. 2  
SB 2231  
3/7/17

SENATE BILL NO. 2231

**Presented by:** Jeff Ubben  
Deputy Commissioner/General Counsel  
North Dakota Insurance Department

**Before:** House Human Services Committee  
Representative Robin Weisz, Chairman

**Date:** March 7, 2017

TESTIMONY

Good Morning Chairman Weisz and members of the committee. My name is Jeff Ubben and I am Deputy Insurance Commissioner and General Counsel for the North Dakota Insurance Department.

I appear before you today in support of Engrossed Senate Bill No. 2231. This bill is specifically tailored to address a serious consumer protection issue here in North Dakota that has been made more complicated by the federal Airline Deregulation Act (ADA) and by the behaviors of certain air ambulance providers.

Over the past few years, the North Dakota Insurance Department (“Department”) has been fielding complaints related to large remaining or unpaid balances from charges not covered by insurance companies for air ambulance services because the insured person’s insurance company does not have a contract with the air ambulance provider. This practice is also known as “balance billing.” To date, there are 28 different complaints with the Department totaling over \$1.2 million in unreimbursed charges stemming from air ambulance providers that do not sign preferred provider or “in-network” agreements with the state’s health insurers. It is important to note that while a state agency can calculate the number of complaints that have been submitted, we do not know how many more people have paid these bills without seeking assistance from the Department.

Air ambulance providers that do not sign agreements with insurers, and are therefore considered out-of-network providers, charge more than their counterparts that are in-network. This leads to extremely large balance billed charges. In North Dakota, this has meant many patients have been sent bills for \$10,000, \$20,000 and in some cases, over \$60,000 of charges not covered by their insurance policy.

The health insurance companies have continued to attempt to negotiate usual and customary rates by bringing these providers in-network and have been successful to some degree. However, air ambulance providers who are currently in-network with the state's health insurance companies could easily leave their contracts with the state's health insurance companies, become out-of-network providers, and send North Dakotans balance bills.

We know from our conversations with our colleagues in the insurance and health industries in other states that this problem is not North Dakota's alone. Complaints about large balance bills resulting from an air medical transport entirely outside the control of the financially responsible party exist across the United States.

However, states have consistently run into a roadblock in attempting to protect their citizens. The federal Airline Deregulation Act (ADA) prohibits states from regulating the rates, routes and services of airlines and unfortunately through decisions from the federal government, air ambulances are included in the definition of airlines. The ADA was enacted in 1978 as a pro-consumer piece of legislation that encourages competitive pricing by fostering competition among the airlines. However, the cruel irony is this law is now being used by certain air ambulance providers to cause harm to consumers when they are most vulnerable.

The ADA was enacted to promote competition amongst the airlines when a consumer is shopping for a commercial flight. I am sure you can appreciate that when a person needs an air ambulance, it is not a typical airline shopping experience. The choice of air ambulance is not made by the person that is responsible for paying the bill (instead it is



made by a health care facility or emergency operator) and most of the time, the selection is made when the person ultimately responsible for the bill is in an extremely vulnerable position. In contrast, when a North Dakotan is purchasing a flight to Orlando, he or she controls the situation and cost by shopping for the best price, the best route and possibly avoids less desirable air carriers. The purchasers know what to expect and what they will pay.

These factors clearly do not exist when you have a severely injured person laying in a ditch in rural North Dakota. Treating emergency air medical transport like ordinary passenger air transportation in today's marketplace does not make sense and allows the opportunity for certain air ambulance providers to take advantage of helpless people.

Engrossed Senate Bill No. 2231 solves the balance billing problem and protects these helpless people by providing a reimbursement rate that will be accepted as the full and final payment from the insurance company on behalf of the insured and states that this payment will be considered an in-network payment, meaning no balance billing of the patient can occur.

This bill is also different from previous approaches taken by the states to solve the balance billing problem because it regulates the business of insurance. This is important because the Congress has said through the federal McCarran-Ferguson Act that the states, and not the federal government, are the regulators of insurance business and that if a state enacts a law regulating the business of insurance, the provisions of another federal law like the ADA cannot be used to invalidate the state law regulating insurance. In other words, if a state enacts legislation regulating the business of insurance, the provisions of the McCarran-Ferguson Act reverse-preempt the provisions of the federal ADA, meaning the ADA's provisions do not apply and cannot be used to invalidate a state's law.

Engrossed Senate Bill No. 2231 currently has what I call a “Plan A” and a “Plan B.” Plan A becomes effective January 1, 2018, and is the rate setting piece I just testified to. Plan A also removes Sections 4 and 5 of the bill along with the related definitions because these sections of the bill are aimed at remedying issues that arise from balance billing.

Also, in the event the provisions of “Plan A” are invalidated by a court of law, Engrossed Senate Bill No. 2231 has a “Plan B”. While “Plan B” does not eliminate the balance billing issue, it does have the potential to limit balance billing practices to some degree as it requires a health care provider to attempt to obtain a prior authorization from the insured’s health insurance company prior to calling an air ambulance provider in nonemergency situations. If a prior authorization cannot be obtained, this bill would require a health care provider to educate the patient or the patient’s representative, again in nonemergency situations, about the potential for balance billing from an air ambulance provider prior to calling the air ambulance.

In conclusion, passing this bill with the proposed amendments would protect North Dakota consumers from balance bills when they receive air ambulance services. In considering this bill, I ask you to consider your fellow North Dakotan who has worked hard all their life, has been financially responsible, has a health insurance policy, and then one day through no fault of their own encounters a serious medical issue that requires transportation by an air ambulance provider that just so happens to be out-of-network with this person’s insurance company. Suddenly, this lifelong hard-working, financially responsible, insured North Dakotan receives a balance bill demanding tens of thousands of dollars. This person is now facing bankruptcy. Without this bill, the majority of North Dakotans are an air ambulance ride away from just that—bankruptcy. This bill provides the needed protection so that this situation does not continue to become a reality for North Dakotans in the future. Therefore, I respectfully request a “do pass” recommendation from this committee on Engrossed Senate Bill No. 2231 and am happy to take any questions the committee may have.



Att. 3 3/7/17  
SB2231



**Vision**

*The North Dakota Hospital Association will take an active leadership role in major Healthcare issues.*

**Mission**

*The North Dakota Hospital Association exists to advance the health status of persons served by the membership.*

**Testimony: 2017 SB 2231**  
**House Human Services Committee**  
**Representative Robin Weisz, Chairman**  
**March 7, 2017**

Good morning Chairman Weisz and Members of the House Human Services Committee. I am Jerry E. Jurena, President of the North Dakota Hospital Association. I am here to testify regarding 2017 Engrossed Senate Bill 2231 and ask that you give this bill a **Do Not Pass** recommendation.

NDHA supports the intent of the bill to improve the transparency of air ambulance costs. And while the amendments approved in the Senate do lessen our concerns in some respects, they raise other concerns.

The Senate amendments require all health plans issued in the state to pay out-of-network air ambulance providers two hundred percent of the Medicaid reimbursement rate. The out-of-network air ambulance provider must accept this as payment in full and cannot bill the patient for any amount that payment does not cover. Medicaid rates are among the lowest of all payers. NDHA is concerned that if out-of-network air ambulance providers are limited to two hundred percent of Medicaid for all their flights, they will either close shop or move elsewhere. For certain portions of the State, there is only one provider operating a helicopter in that region. If that one provider leaves, patients in the area will not have access to the quick air transport that only helicopters can provide.

Our members are also concerned about the State dictating the rates that a health insurer must pay to a health care provider. The bill as introduced did not set the rate but instead focused on informing the consumer about the potential out of pocket costs for air ambulance services. Our

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members believe that is a better approach. The government dictating the rate that a healthcare provider must be paid means that insurance companies and providers cannot respond to shifts in the market. If you pass this bill, you will be setting air ambulance rates. In 2019, will the legislature set ground ambulance rates? In 2021, will you set provider rates? This is a slippery slope we do not wish to go down.

The Senate amendments also provide that if section 5 is declared invalid (i.e., because it is struck down in a lawsuit), section 6 of the bill would only then come into effect, which would require health care providers to obtain prior authorization from the patient's insurer before arranging for air ambulance services or provide the patient with written notice of the potential range of cost for such services. We expressed concern in the Senate that these are situations where the patient's medical condition requires immediate and rapid ambulance transportation. In such situations, there is no time to secure prior authorization or give written notice to the patient and those steps could likely not be taken without violating the requirements of federal law such as the Emergency Medical Treatment and Labor Act (EMTALA).

We did consider amendments to clarify that this portion of the bill would not apply in emergency situations. That apparently was never the intent and it was only designed to deal with non-emergent transfers. About 95% of these situations are emergent and therefore the requirements of the bill would not even come into play in most cases. In other words, in the vast majority of cases, prior authorization or notice would not be required. This seems like a lot of regulatory burden for a very few cases.

From a consumer complaint standpoint, this bill is also unnecessary. There was a significant drop in complaints after an air ambulance services bill was passed in 2015. Over the past few years, the Insurance Department has received the following complaints about out-of-network air ambulance services:

2014	15
2015	8
2016	3
2017	1

As you can see, since 2015, complaints about out-of-network air ambulance services have dropped off almost entirely. We question why such a complex scheme of provider

reimbursement rate setting and prior authorization and notification to patients in a very small number of non-emergent situations is necessary.

For all these reasons, we oppose this bill and ask that you give this it a **Do Not Pass** recommendation.

I will try to answer any questions you may have. Thank you.

Respectfully Submitted,

Jerry E. Jurena, President  
North Dakota Hospital Association

Att. 4  
SB 2231  
3/7/17



**House Human Services Committee**

**SB 2231**

**March 7, 2017**

Chairman Weisz and Committee Members, I'm Courtney Koebele and I serve as executive director of the North Dakota Medical Association. The North Dakota Medical Association is the professional membership organization for North Dakota physicians, residents and medical students. NDMA is opposed to SB 2231.

The intent of the bill to lower out-of-pocket costs for air ambulance costs is appreciated, however, NDMA has reservations about the provider mandates contained in the bill.

NDMA has concerns about the language in section 5 which sets the reimbursement rate for out-of-network air ambulance providers at 200% of the medical assistance reimbursement rate allowed for air ambulance services. This is a very low rate that cannot be changed except by legislation. Regulating prices for a private insurer contracting with a private health care provider is new territory in our state. We are concerned that the rate setting will be expanded to other health care providers in subsequent years.



Furthermore, as has been discussed, if section 5 is found to be invalid by the courts, then section 6 is activated. My members have very grave concerns about section 6. To require a prior authorization for a time sensitive medical condition is impractical at best and dangerous at worst. Section 6 at page 5, lines 29 and 30 state that a health care provider shall request a prior authorization from the covered person's health care insurer for the air ambulance services to be provided. One of my officers who practices medicine in a rural clinic indicated that it takes a week plus to get a prior authorization for simple procedures in the clinic. He asked me how long would it take to get authorization for an air ambulance transport at 2:00 a.m. on a Sunday morning?

It is our understanding that the intent of the bill is to not apply in emergent situations, and we have discussed amendments stating as such. However, the reason an air ambulance is called is almost always an emergency, so the question arises, when would the requirements in the bill be applicable?

Based on these objections, and those stated by the hospital association, NDMA requests a DO NOT PASS on SB 2231. Thank you for the opportunity to address this committee. I would be happy to answer any questions.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2231

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 23-01, a new section to chapter 23-16, and a new section to chapter 23-27 of the North Dakota Century Code, relating to informed decisionmaking for choosing air ambulance service providers.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

**Air ambulances - Publication of rates and network status.**

1. The state department of health shall publish and maintain on the department's website the air ambulance rate and network data required under this section. The data published must include a list of air ambulance providers authorized to operate in the state; data regarding the fee schedule for these air ambulance providers; and whether these air ambulance providers have entered preferred provider arrangements with health care insurers in this state and if so, the identity of the health care insurers.
2. At least quarterly, the insurance department shall survey health care insurers in the state to gather the data required under subsection 1 and shall provide this data to the state department of health.

**SECTION 2.** A new section to chapter 23-16 of the North Dakota Century Code is created and enacted as follows:

**Air ambulances - Informed decisions - Liability.**

1. Before a hospital refers a patient to an air ambulance service provider or initiates contact with an air ambulance service provider for air transport of the patient, the hospital shall inform the patient, or the patient's representative, of the air ambulance service provider's fee schedule and health insurance network status for the purpose of allowing the patient or the patient's representative to make an informed decision on choosing an air ambulance service provider or form of transportation.
2. A hospital is presumed in compliance with subsection 1 if the hospital provides the patient, or the patient's representative, the air ambulance data published under section 1 of this Act.
3. If a hospital fails to comply with subsection 1 and the patient is subject to balance billing liability, the hospital is liable for payment of that balance billing liability. As used in this section, "balance billing" means the practice of an air ambulance provider billing for the difference between the air



ambulance provider's charge and the health care insurer's allowed amount.

4. A hospital is exempt from complying with this section if the hospital determines and documents that due to emergency circumstances, compliance might jeopardize the health or safety of the patient.

**SECTION 3.** A new section to chapter 23-27 of the North Dakota Century Code is created and enacted as follows:

**Air ambulances - Informed decisions.**

1. Before an emergency medical services operation refers a patient to an air ambulance service provider or initiates contact with an air ambulance service provider for air transport of the patient, the emergency medical services operation shall inform the patient, or the patient's representative, of the air ambulance service provider's fee schedule and health insurance network status for the purpose of allowing the patient or the patient's representative to make an informed decision on choosing an air ambulance service provider or form of transportation.
2. An emergency medical services operation is presumed in compliance with subsection 1 if the emergency medical services operation provides the patient, or the patient's representative, the air ambulance data published under section 1 of this Act.
3. If an emergency medical services operation fails to comply with subsection 1 and the patient is subject to balance billing liability, the emergency medical services operation is liable for payment of that balance billing liability. As used in this section, "balance billing" means the practice of an air ambulance provider billing for the difference between the air ambulance provider's charge and the health care insurer's allowed amount.
4. An emergency medical services operation is exempt from complying with this section if the emergency medical services operation determines and documents that due to emergency circumstances, compliance might jeopardize the health or safety of the patient."

Renumber accordingly



PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2231

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2. At least quarterly, the insurance department shall survey health care insurers in the state to gather the data required under subsection 1 and shall provide this data to the state department of health.

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2. A hospital is presumed in compliance with subsection 1 if the hospital provides the patient, or the patient's representative, the air ambulance data published under section 1 of this Act.
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**Air ambulances - Informed decisions.**

1. Before an emergency medical services operation refers a patient to an air ambulance service provider or initiates contact with an air ambulance service provider for air transport of the patient, the emergency medical services operation shall inform the patient, or the patient's representative, of the air ambulance service provider's fee schedule and health insurance network status for the purpose of allowing the patient or the patient's representative to make an informed decision on choosing an air ambulance service provider or form of transportation.
2. An emergency medical services operation is presumed in compliance with subsection 1 if the emergency medical services operation provides the patient, or the patient's representative, the air ambulance data published under section 1 of this Act.
3. An emergency medical services operation is exempt from complying with this section if the emergency medical services operation determines and documents that due to emergency circumstances, compliance might jeopardize the health or safety of the patient."

Renumber accordingly



PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2231

Page 1, line 1, replace "three" with "a new section to chapter 23-01 and four"

Page 1, line 2, after "to" insert "hospital and emergency medical services operation utilization of air ambulances,"

Page 1, line 3, after "services" insert ", and air ambulance subscriptions"

Page 1, after line 7, insert:

"**SECTION 1.** A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

**Air ambulances - Liabilities.**

If a hospital or an emergency medical services operation refers a patient to an air ambulance service or initiates contact with an air ambulance service provider for air transport of the patient which results in the patient being subject to a balance billing liability for the air ambulance services, the hospital or emergency medical service operation shall pay the balance billing amount. As used in this section, "balance billing" means the practice of an air ambulance provider billing a patient for the difference between the air ambulance provider's charge and the health care insurer's allowed amount."

Page 4, line 30, remove "providers is two hundred percent"

Page 4, remove line 31

Page 5, remove lines 1 and 2

Page 5, line 3, replace "2." with Provider services is equal to the average of the insurer's in-network rates for air ambulance providers in the state.

2. An insurer may not use the average of an insurer's in-network rates for air ambulance providers in the state in order to decrease current or future contractual rates between an insurer and an air ambulance provider.
3. For purposes of settling a claim made by the insured for air ambulance services, a payment made by an insurer under the plan in compliance with this section is deemed to be the same as an in-network payment and is considered a full and final payment by the insured for out-of-network air ambulance services billed to the insured.

4."

Page 9, after line 10, insert:

"**SECTION 9.** A new section to chapter 26.1-47 of the North Dakota Century Code is created and enacted as follows:



**Air ambulance subscription agreements - Prohibition.**

An air ambulance provider, or an agent of an air ambulance provider, may not sell, solicit, or negotiate a subscription agreement or contract relating to services or the billing of services provided by an air ambulance provider. An air ambulance provider, or agent of an air ambulance provider, which violates this section is subject to a civil fine in an amount not to exceed ten thousand dollars for each violation. The fine may be collected and recovered in an action brought in the name of the state."

Page 9, line 11, remove "1, 3, 4, and"

Page 9, line 12, replace the first "5" with "2, 4, 5, and 6"

Page 9, line 12, replace the second "5" with "6"

Page 9, line 13, replace "2, 6, and 7" with "3, 7, and 8"

Page 9, line 14, replace "5" with "6"

Renumber accordingly