

April 23, 2020

U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
West Building Ground Floor, Room W12-140  
Washington, DC 20590-0001

Via regulations.gov  
Re: Docket Number DOT-OST-2019-0182

To whom it may concern:

On behalf of the membership of the National Association of Insurance Commissioners<sup>1</sup>, we offer comments on the Department of Transportation's (DOT's) proposed rule that would define unfair and deceptive practices in air transportation. Like DOT, state insurance regulators have extensive experience in balancing the needs of consumers and other stakeholders in a highly regulated industry. Further, state regulators have a keen interest in air ambulances due to the billing practices of some providers which have led to scores of complaints to NAIC members.

Air ambulance bills almost always stem from situations when consumers cannot reasonably choose their provider. In both emergency and non-emergency situations, consumers are rarely able to seek out and utilize an in-network air ambulance. After they are transported, air ambulance consumers are frequently presented with surprise bills for tens of thousands of dollars, even after their insurer pays the provider.

State regulators have sought to protect consumers from air ambulance balance billing but have been prevented from doing so because certain courts have interpreted the Airline Deregulation Act of 1978 (ADA) to preempt state regulation of air ambulance providers. Under Section 41712, DOT has clear authority to protect consumers from unfair practices on the part of air carriers. We believe that DOT should use this authority to address air ambulance balance billing since states are, to date, blocked from doing so.

The proposed rule seeks comment on whether its definitions are "sufficient to provide the regulated entities, consumers and other stakeholders sufficient notice of what constitutes an unfair or deceptive practice in" specialized subject areas including air ambulances. We recommend that the definitions be modified because they are not sufficient—they should explicitly identify practices of balance billing by air ambulances as unfair.

We believe that the practice of balance billing consumers for tens of thousands of dollars meets the proposed definition of unfair practice when the consumer has no choice in whether they will be transported or in the network status of the provider and when the air ambulance company receives a fair payment from insurance. Consumers are injured by large balance bills and attempts to collect them. Consumers cannot reasonably avoid these bills because they are not in control of the decision to initiate air transport or able to select the provider. This consumer harm is not outweighed by benefits to the air ambulance providers

or the markets in general—many air ambulance providers do not balance bill, showing that markets can operate effectively without balance billing.

While balance billing fits the proposed definition of unfair practice, stakeholders would benefit from a more explicit and detailed statement in the final rule that references air ambulances directly. We suggest that DOT address the specialized subject of air ambulances by stating that balance billing, when a consumer has no choice of provider and no reasonable advance knowledge of the amount of the uncovered balance of their bill, and when the covered amount of the bill is reasonable (covering the reasonable costs of providing services, taking into account unpaid services, plus a reasonable profit), is an unfair practice.

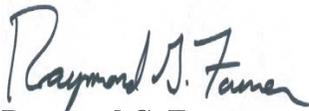
Establishing a common understanding of this unfair practice would avoid likely disputes among stakeholders over whether balance billing practices fall under the proposed definition, should it be finalized. More importantly, it would protect consumers from a practice that has affected individuals in every region of the country.

We continue to reject the argument that ending balance billing by air ambulances will leave rural Americans without access to air ambulance services. Rural residents are at risk for excessive balance bills under the status quo and deserve protection that can only be provided by federal action due to the current preemption of any effective state action. Attached is a letter sent by 35 commissioners representing states with rural areas to House leaders in support of eliminating air ambulance surprise billing practices and refuting the argument that this would harm their rural residents.

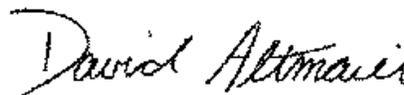
We recognize that determining balance billing to be an unfair practice is not the only reform necessary to ensure a stable and effective market for medical air transport services. Nonetheless, we urge DOT to take this important step in its current rulemaking. We look forward to continuing the work of NAIC and our member regulators with DOT and other federal officials to ensure that all stakeholders can participate in this market on fair terms.

We appreciate your attention to air ambulance issues as you work to better define the provisions of Section 41712. We urge you to use this opportunity to enhance consumer protection by making a clear statement identifying balance billing as unfair to consumers.

Sincerely,



**Raymond G. Farmer**  
NAIC President  
Director  
South Carolina Department of Insurance



**David Altmaier**  
NAIC President-Elect  
Commissioner  
Florida Office of Insurance Regulation



**Dean L. Cameron**  
**NAIC Vice President**  
Director  
Idaho Department of Insurance



**Chlora Lindley-Myers**  
**NAIC Secretary-Treasurer**  
Director  
Missouri Department of Commerce and  
Insurance



**Michael F. Consedine**  
**Chief Executive Officer**  
National Association of Insurance  
Commissioners

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<sup>1</sup> Founded in 1871, the NAIC is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and the five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.

November 7, 2019

The Honorable Bobby Scott  
Chairman  
House Committee on Education and Labor  
2176 Rayburn House Office Building  
Washington, DC 20515

The Honorable Virginia Foxx  
Ranking Member  
House Committee on Education and Labor  
2462 Rayburn House Office Building  
Washington, DC 20515

The Honorable Frank Pallone, Jr.  
Chairman  
House Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

The Honorable Greg Walden  
Ranking Member  
House Committee on Energy and Commerce  
2185 Rayburn House Office Building  
Washington, DC 20515

The Honorable Richard Neal  
Chairman  
House Committee on Ways and Means  
1102 Longworth House Office Building  
Washington, DC 20515

The Honorable Kevin Brady  
Ranking Member  
House Committee on Ways and Means  
1139 Longworth House Office Building  
Washington, DC 20515

Dear Chairmen Scott, Pallone, and Neal and Ranking Members Foxx, Walden, and Brady:

Thank you for your efforts to move legislation to lower health care costs and protect consumers from surprise bills. We write today to urge you to include in any surprise bill legislation crucial protections against surprise billing by air ambulance providers. As regulators of state insurance markets, we want to reassure you that preventing surprise bills from air ambulances will benefit rural Americans and maintain their access to needed medical transport. Rural Americans today face the risk of a bankrupting surprise air ambulance bill and deserve protection from these excessive bills.

State insurance commissioners have been fighting for years to protect consumers from outrageous surprise bills from some air ambulance providers. After conducting extensive investigations, numerous state insurance regulators have determined that many air ambulance operators who are not affiliated with hospitals choose not to negotiate contracts with insurance carriers. Negotiating contracts with insurance companies would result in fair payment rates, reasonable costs for the consumer, and no surprise bills. Currently, states have very limited authority to regulate air ambulances; states have been unable to enact meaningful legislation to protect consumers because certain courts have interpreted that the federal Aviation Deregulation Act of 1978 (ADA) preempts state regulations on air ambulance providers. This interpretation of the ADA protects air carriers' prices, routes, and services from state regulation. That's why a federal solution is needed.

We are encouraged that your committees are seeking to protect consumers in cases when they cannot choose their health care provider. An air ambulance transport is not something any consumer arranges for themselves; choice of providers based on network status is all but impossible. Prohibiting balance bills and establishing a process for determining out-of-network payment amounts would be a prudent, fair, and equitable way to resolve the crisis consumers are facing at the hands of a few bad actors in the air ambulance industry. We urge you to act in the best interests of consumers and add provisions to surprise bill legislation that provide reasonable payment to air ambulance providers, incentive for entering into network agreements, and for the first time, offer the consumer protections our citizens need.

We reject the argument that ending surprise billing will leave consumers in our states without access to needed air ambulance services. Commissioners from across the country have learned from the experience of North Dakota—the state faced the same claims about access in rural areas in 2015 and 2017 when it debated state law protections. Upon

passage of those laws in 2015 and 2017, no air ambulance providers left the state. North Dakota is about as rural as you can get and we write to tell you from our perspective, the air ambulance companies themselves have dispelled the myth that they will flee from the rural areas if these reasonable regulations are passed by Congress.

Rural Americans are the most at risk under the status quo that allows surprise bills. With air ambulance charges unconstrained, rural residents are paying more and more of their health care dollars to air ambulance operators, through surprise bills for those who need air medical transport and through premiums for everyone else. With all the strains our rural health care system is facing, we cannot allow these providers to charge unlimited amounts, particularly as Congress works to limit balance bills generally.

Provisions like those in the Senate's *Lower Health Care Costs Act*, and specifically section 105 regarding air ambulance protections, allows the marketplace to work. Under this legislation, the providers can negotiate contracts with health insurers at rates the market deems appropriate. If an air ambulance company chooses not to negotiate with health insurers or is unable to reach agreement, this legislation ensures the market average rate of payment is provided for their services, meaning this legislation allows those rates to move over time and adjusts as the marketplace changes.

Should a state find that it has an inadequate number of providers under this market-based solution, an outcome we find very unlikely, state insurance regulators would be happy to work with federal officials to make geographic adjustments to the required payment rates. We suggest establishing geographic regions in consultation with the National Association of Insurance Commissioners. We would also support amendment to allow individual insurance commissioners to request an adjustment to their state's geographic regions or payment methodology. Allowing for such adjustments would enable states and the federal government to work together to assure that rural areas continue to receive the air ambulance services they need.

Our states have a mix of air ambulance providers; some are independent, stand-alone operators and some are hospital-affiliated providers. Most of these providers are good actors and provide necessary service to our consumers. The bad actors in our states tend to be stand-alone operators who use the balance billing method as a business model to prey on people during their most vulnerable time. Under current laws, they pass on massive surprise bills to private market consumers and expect them to make up the claimed difference. It is not the government's job to keep bad business models in business. It's the government's job to protect consumers, particularly when they have no choice of the provider who serves them. This is precisely what surprise bill legislation gives you the opportunity to do for our rural consumers and all Americans.

The time to act on this issue is now, even with the coming deliberations of the Air Ambulance and Patient Billing Advisory Committee. Further inaction by Congress will only continue to put our rural consumers at risk. If an air ambulance section is not a part of this legislation, Congress will leave an enormous loophole in balance billing protections. The tactics that are being employed by the bad actors within the air ambulance industry are nothing but a delay strategy to allow them to continue to use balance billing as a business model. We know that is wrong, you know that is wrong, and consumers desperately need your action to protect them from these massive surprise balance bills.

We recognize the challenge of balancing consumer protection and effective markets for highly regulated services—insurance commissioners do this every day for insurance products. We strongly believe that, in this case, the need for greater consumer protection is pressing and the risk of market exit by providers is small and manageable. Please add the air ambulance surprise billing prohibition to the legislation and take swift action to pass it.

We would like to offer support for these needed consumer protections in any way possible. If we can be of assistance, please do not hesitate to reach out to any or all of us.

Sincerely,



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North Dakota Insurance Department



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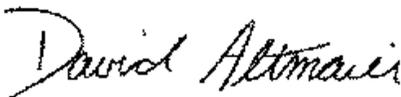
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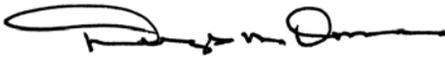
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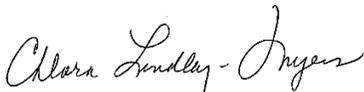
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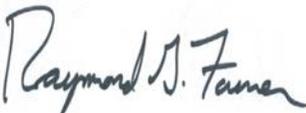
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