

1 HOUSE BILL 402

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO HEALTH COVERAGE; REGULATING REIMBURSEMENT FOR AIR
12 AMBULANCE SERVICES BY HEALTH CARRIERS; HOLDING CONSUMERS
13 HARMLESS FOR BALANCE BILLING FOR AIR AMBULANCE SERVICES UNDER
14 HEALTH CARE PLAN CONTRACTS; ESTABLISHING PENALTIES.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. A new section of the New Mexico Insurance Code
18 is enacted to read:

19 "[NEW MATERIAL] SHORT TITLE.--This act may be cited as the
20 "Air Ambulance Reimbursement Act"."

21 SECTION 2. A new section of the New Mexico Insurance Code
22 is enacted to read:

23 "[NEW MATERIAL] DEFINITIONS.--As used in the Air Ambulance
24 Reimbursement Act:

25 A. "air ambulance provider" means any government or

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1 private transportation entity designated and used or intended
2 to be used for the transportation of sick or injured persons by
3 air;

4 B. "air ambulance services" means ambulance
5 services provided by aircraft;

6 C. "balance billing" means the practice of an air
7 ambulance provider billing a covered person for the difference
8 between the air ambulance provider's charge for air ambulance
9 services and the amount the covered person's health benefits
10 policy allows to be billed for those air ambulance services;

11 D. "claim" means a request from an air ambulance
12 provider for payment for services;

13 E. "coinsurance" means the percentage of costs of a
14 covered health care service that a covered person pays after
15 the covered person pays the covered person's deductible;

16 F. "copayment" means a fixed amount a covered
17 person pays for a health care service either before or after
18 the deductible is paid;

19 G. "cost-sharing" means a copayment, coinsurance,
20 deductible or any other form of financial obligation of a
21 covered person other than premium or share of premium, or any
22 combination of any of these financial obligations as defined by
23 the terms of a health benefits policy;

24 H. "covered benefits" means the specific health
25 services provided under a health benefits policy;

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1 I. "covered person" means a policyholder,
2 subscriber, enrollee or any individual who, as a principal or
3 dependent under the terms of a health benefits policy, is
4 entitled to have health care expense payments made on the
5 individual's behalf or to the individual according to the terms
6 of a health benefits policy;

7 J. "covered service" means a health care service
8 reimbursable by a health carrier pursuant to a health benefits
9 policy;

10 K. "deductible" means a fixed dollar amount that
11 the covered person may be required to pay during the benefit
12 period before a health carrier begins payment for covered
13 benefits in accordance with the terms of a health benefits
14 policy; provided that a health benefits policy may:

15 (1) require payment both of an individual and
16 a family deductible or a separate deductible for specific
17 services; and

18 (2) offer first-dollar items or services
19 without requiring a covered person to meet a deductible before
20 the health benefits policy covers the covered benefit;

21 L. "health benefits policy" means a policy,
22 contract, certificate or agreement entered into, offered or
23 issued in the state by a health carrier to provide, deliver,
24 arrange for, pay for or reimburse any of the costs of health
25 care services. "Health benefits policy" does not include any

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1 of the following:

- 2 (1) a credit-only policy;
- 3 (2) a medicare supplement policy;
- 4 (3) a TRICARE policy, including a civilian
5 health and medical program of the uniformed services supplement
6 policy;
- 7 (4) a fixed indemnity policy;
- 8 (5) a dental-only policy;
- 9 (6) a vision-only policy;
- 10 (7) an automobile medical payment policy; or
- 11 (8) any other policy specified in rules of the
12 superintendent;

13 M. "health carrier" means a person that has a valid
14 certificate of authority in good standing issued pursuant to
15 the New Mexico Insurance Code to act as an insurer, including a
16 health insurance company, fraternal benefit society, vision
17 plan or pre-paid dental plan, a health maintenance
18 organization, a hospital and health service corporation, a
19 provider service network, a nonprofit health care plan, a third
20 party or any other entity that contracts or offers to contract,
21 or enters into agreements to provide, deliver, arrange for, pay
22 for or reimburse any costs of health care services or that
23 provides, offers or administers health benefit policies and
24 managed health benefits plans in the state;

25 N. "medicare" means health care coverage pursuant

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1 to Part A or Part B of Title 18 of the federal Social Security
2 Act, as amended;

3 O. "nonparticipating provider" means an air
4 ambulance services provider that is not a participating
5 provider;

6 P. "participating provider" means an air ambulance
7 provider that, under express contract with a health carrier or
8 with its contractor or subcontractor, has agreed to provide air
9 ambulance services to covered persons with an expectation of
10 receiving payment directly or indirectly from the health
11 carrier, subject to copayments, coinsurance, deductibles or
12 other cost-sharing provisions;

13 Q. "prior authorization" or "pre-certification"
14 means a pre-service determination made by a health carrier
15 regarding a covered person's eligibility for services, medical
16 necessity, benefit coverage, location and appropriateness of
17 services, pursuant to the terms of a health benefits policy;
18 and

19 R. "superintendent" means the superintendent of
20 insurance or the office of superintendent of insurance."

21 SECTION 3. A new section of the New Mexico Insurance Code
22 is enacted to read:

23 "[NEW MATERIAL] AIR AMBULANCE SERVICES--CAPPED
24 REIMBURSEMENT--OVERPAYMENT.--

25 A. A health benefits policy that is delivered,

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1 issued for delivery or renewed in this state that covers air
2 ambulance services shall cap reimbursement for air ambulance
3 services at two hundred fifty percent of the rate at which
4 medicare makes reimbursement for the same air ambulance
5 services. This capped reimbursement amount shall include any
6 deductible, coinsurance or copayment paid by the covered person
7 under the terms of the covered person's health benefits policy.

8 B. The cap for reimbursement for air ambulance
9 services applies to both participating and nonparticipating
10 providers.

11 C. If a covered person pays an air ambulance
12 provider more than the capped reimbursement amount, the air
13 ambulance provider shall refund to the covered person within
14 one hundred business days of receipt any amount paid in excess
15 of the in-network cost-sharing amount.

16 D. If an air ambulance provider has not made a full
17 refund of any amount paid in excess of the in-network cost-
18 sharing amount to the covered person within thirty business
19 days of receipt, the air ambulance provider shall owe the
20 covered person the amount paid in excess plus interest.
21 Interest shall accrue at the rate of ten percent per year
22 beginning with the first calendar day after the thirty-
23 business-day period."

24 SECTION 4. A new section of the New Mexico Insurance Code
25 is enacted to read:

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1 "[NEW MATERIAL] AIR AMBULANCE SERVICES--COVERED PERSONS--
2 HOLD HARMLESS--CREDIT AGAINST MAXIMUM OUT-OF-POCKET COST-
3 SHARING AMOUNT.--

4 A. A health carrier shall make reimbursement for
5 air ambulance services provided to a covered person if the air
6 ambulance provider agrees:

7 (1) to hold the covered person harmless for
8 any balance billing; or

9 (2) not to advance to collections any charges
10 above the capped reimbursement amount for which the air
11 ambulance provider has billed a covered person.

12 B. A health carrier shall count toward a covered
13 person's in-network deductible and maximum out-of-pocket
14 cost-sharing amount each payment that a covered person makes to
15 satisfy a nonparticipating provider claim subject to the Air
16 Ambulance Reimbursement Act."

17 SECTION 5. A new section of the New Mexico Insurance Code
18 is enacted to read:

19 "[NEW MATERIAL] REBATES AND INDUCEMENTS PROHIBITED.--A
20 nonparticipating provider may not, either directly or
21 indirectly, knowingly waive, rebate, give, pay or offer to
22 waive, rebate, give or pay all or part of a cost-sharing amount
23 owed by a covered person pursuant to the terms of the covered
24 person's health benefits policy as an inducement for the
25 covered person to seek a health care service from that

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1 nonparticipating provider."

2 SECTION 6. A new section of the New Mexico Insurance Code
3 is enacted to read:

4 "[NEW MATERIAL] LIMITATIONS.--Nothing in the Air Ambulance
5 Reimbursement Act shall be construed to prohibit a health
6 carrier from:

7 A. using reasonable medical management techniques,
8 including prior authorization or pre-certification, of air
9 ambulance services; or

10 B. excluding coverage of air ambulance services
11 under the terms of a health benefits policy."

12 SECTION 7. A new section of the New Mexico Insurance Code
13 is enacted to read:

14 "[NEW MATERIAL] ENFORCEMENT.--

15 A. The superintendent shall ensure compliance with
16 the provisions of the Air Ambulance Reimbursement Act. In
17 order to ensure compliance with the provisions of that act, the
18 superintendent may investigate potential violations of that act
19 based upon information received from covered persons, health
20 carriers, providers and other sources.

21 B. Upon satisfactory evidence that a health carrier
22 has violated a provision of the Air Ambulance Reimbursement
23 Act, the superintendent may, at the superintendent's
24 discretion, pursue any one of the following courses of action:

25 (1) enter a cease and desist order against the

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1 health carrier;

2 (2) impose a civil penalty of not more than
3 five thousand dollars (\$5,000) for each action in violation of
4 the Air Ambulance Reimbursement Act; provided that any action
5 taken to impose a civil penalty shall comply with applicable
6 state and federal law;

7 (3) impose a civil penalty of not more than
8 ten thousand dollars (\$10,000) for each action in willful
9 violation of the Air Ambulance Reimbursement Act; or

10 (4) impose any other penalty or remedy,
11 including restitution, that the superintendent deems
12 appropriate.

13 C. A fine that the superintendent imposes against
14 any individual health carrier pursuant to the Air Ambulance
15 Reimbursement Act shall not exceed three hundred thousand
16 dollars (\$300,000) in the aggregate during a single calendar
17 year.

18 D. The enforcement remedies under this section are
19 in addition to any other remedies or penalties that may be
20 imposed under any other applicable statute."

21 **SECTION 8.** A new section of the New Mexico Insurance Code
22 is enacted to read:

23 "[NEW MATERIAL] NO PRIVATE CAUSE OF ACTION.--Nothing in
24 the Air Ambulance Reimbursement Act shall be construed to
25 create or imply a private cause of action for a violation of

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1 that act."

2 SECTION 9. SEVERABILITY.--If any part or application of
3 the Air Ambulance Reimbursement Act is held invalid, the
4 remainder or its application to other situations or persons
5 shall not be affected.

6 SECTION 10. APPLICABILITY.--The provisions of the Air
7 Ambulance Reimbursement Act apply to following health coverage
8 delivered or issued for delivery in this state:

9 A. group health coverage governed by the provisions
10 of the Health Care Purchasing Act;

11 B. individual health insurance policies, health
12 benefits policies and certificates of insurance governed by the
13 provisions of Chapter 59A, Article 22 NMSA 1978;

14 C. group and blanket health insurance policies,
15 health benefits policies and certificates of insurance governed
16 by the provisions of Chapter 59A, Article 23 NMSA 1978;

17 D. individual and group health maintenance
18 organization plan contracts governed by the provisions of the
19 Health Maintenance Organization Law; and

20 E. individual and group nonprofit health care plan
21 contracts governed by the provisions of the Nonprofit Health
22 Care Plan Law.