



NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

June 17, 2021

Members of the Air Ambulance and Patient Billing Advisory Committee
In Care of: Lisa Swafford, Chair
Office of the General Counsel
U.S. Department of Transportation
1200 New Jersey Avenue, SE
West Building 96-413
Washington, DC 20590

Dear Members of the Advisory Committee:

Thank you for your careful work to develop recommendations to improve air medical services and manage their impacts on consumer costs. On behalf of NAIC members, we urge you to include in the Advisory Committee's report a recommendation to Congress to clarify states' authority to protect consumers from unfair billing practices on the part of air ambulance providers.

Commissioner Godfreed has ably represented state insurance regulators' perspectives on the Advisory Committee and has informed us of recent Committee deliberations regarding the Airline Deregulation Act (ADA). We wish to add our voices in support of his to encourage the Committee to acknowledge the limitations current federal law places on effective consumer protection by the states. States should have the authority to shield consumers from unfair trade practices of air ambulance providers as they do in nearly every other industry. The Committee's recommendations on patient billing and protecting against balance billing will be incomplete if they do not point out the effects of the ADA and suggest a way to address them.

Under the ADA, Congress recognizes air ambulance providers as air carriers. The Act prohibits states from regulating the rates, routes, and services of air carriers. Courts have found a variety of state consumer protection laws to violate the ADA because they impose limits on the billing practices of air ambulance providers. In light of these court rulings, it is up to Congress to clarify that states may step in to protect consumers from economic harms, even if the aviation aspects of air ambulance service remain under exclusive federal jurisdiction.

State insurance regulators have not sought wholesale changes to the ADA that would upend the current regulatory structure or revoke air ambulances' status as federally regulated air carriers. Rather, we have supported efforts to clarify the law and recognize that states' traditional consumer protection authority extends to the billing practices of air ambulance providers as it does to other industries. The Isla Rose Life Flight Act (S. 417 of the 115th Congress) provides an example of a limited amendment to the ADA to further state consumer protection efforts that state regulators have supported. It updates the ADA to permit state

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laws only relating to “network participation, reimbursement and balance billing, or transparency for an air carrier that provides air ambulance service.” The report of the Advisory Committee should make similar targeted, specific recommended changes to the ADA.

State consumer protection laws address a wide range of other services but have not been permitted to reach air ambulance providers due to the categories constructed by the ADA. The ADA was enacted long before the air ambulance industry reached its current extent and now requires an update to address prevailing conditions and the impact those conditions have on consumers. Congress created the Advisory Committee recognizing that changes in policy may be needed from several entities, including states, federal executive branch agencies, and Congress itself. We believe it wholly necessary and appropriate for the Committee to ask Congress to consider changes to the ADA that would recognize states’ authority to regulate air ambulance billing practices.

We strongly believe that such a request would fall under the Advisory Committee’s charge to make recommendations to protect consumers from balance billing. That charge remains relevant even with the passage of the No Surprises Act. The No Surprises Act (NSA) offers significant balance billing protections for consumers, but it also acknowledges the ongoing authority of states to take an active role in consumer protection. It gives states key roles in resolving balance bills and enforcing the law. In setting payment amounts for out-of-network services, the NSA defers to any existing state process for determining a payment amount. Further, the NSA explicitly grants authority to states to enforce its provisions on air ambulance providers at new section 2799B-4 of the Public Health Service Act (“Each State may require a provider or health care facility (including a provider of air ambulance services) subject to the requirements of this part to satisfy such requirements”). Implementing this new section of law together with the existing ADA and its judicial interpretations requires additional clarification from Congress—the Advisory Committee should encourage it to make such clarification.

States’ capacity to protect consumers while ensuring accessible air medical services should not be thwarted by federal aviation law. State laws are key to regulating the insurance policies that cover many air ambulance services. In enforcing these laws, state insurance regulators seek to protect not just consumers who must use air medical services, but all insurance premium payers in their states. They cannot do so if some insured medical bills are beyond their reach. Both the authorizing language for the Advisory Committee and the No Surprises Act recognize the important role of states in establishing consumer protections in this area. We encourage the Committee to recommend the action needed to allow states to properly fulfill this role—enactment of a narrow revision to the ADA on billing practices.

We look forward to reading the Committee’s full recommendations. Thank you again for your work on this important issue.



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Sincerely,

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