

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2776

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[Introduced February 26, 2021; referred to the Committee on Health and
Human Resources then the Judiciary]

1 A BILL to amend and reenact the Code of West Virginia, 1931, as amended, by adding thereto a
2 new article, designated §33-11B-1, §33-11B-2, §33-11B-3, §33-11B-4, §33-11B-5, §33-
3 11B-6, and §33-11B-7, relating to the creation of the Air Ambulance Patient Protection
4 Act, declaring that an air ambulance service provider who solicits air ambulance
5 membership subscriptions, accepts membership applications, or charges membership
6 fees, is an insurer and shall be regulated by the commissioner, including an air ambulance
7 patient bill of rights, providing for certain patient disclosures and consumer protections
8 regarding existing coverage for air ambulance services, out-of-pocket costs or cost-
9 sharing, advising patients of his or her rights pursuant to Section 105 of the federal No
10 Surprises Act, providing for rulemaking by the commissioner, and providing for severability
11 and internal effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11B. WEST VIRGINIA AIR AMBULANCE PATIENT PROTECTION ACT.

§33-11B-1. Short title.

1 This article may be cited as the “West Virginia Air Ambulance Patient Protection Act.”

§33-11B-2. Declaration of air ambulance membership products as insurance.

1 (a) An air ambulance provider or other entity that directly or indirectly, whether through
2 an affiliated entity, agreement with a third party entity, or otherwise, solicits air ambulance
3 membership agreements or subscriptions, accepts membership applications, or charges
4 membership fees, is an insurer and shall be regulated by the commissioner pursuant to the
5 provisions of this chapter.

6 (b) An air ambulance membership agreement or subscription for air ambulance services
7 for which a fee is collected from a member or member entity and which a fee is received by an air
8 ambulance provider or air ambulance network is insurance and may be considered secondary
9 insurance coverage or a supplement to any insurance coverage, and shall be subject to regulation
10 by the commissioner pursuant to the provisions of this chapter.

11 (c) No person or entity, whether directly or indirectly through an affiliated entity, agreement
12 with a third party entity, or otherwise, may solicit or sell air ambulance membership agreements
13 or subscriptions, accept membership applications, or charge membership fees except as
14 authorized by a valid license or licenses issued by the commissioner pursuant to the provisions
15 of this chapter.

§33-11B-3. Air ambulance consumer patient protections.

1 (a) An air ambulance provider operating air ambulance operations shall, no later than
2 January 1, 2022, implement a patient advocacy program, which shall include, at a minimum, the
3 following components:

4 (1) A dedicated patient hotline number and dedicated patient resource email address to
5 process patient billing and claims, and to address patient questions, complaints and concerns;

6 (2) A dedicated patient advocacy page on the provider's website that is clearly marked as
7 the "patient portal" or "patient advocacy" page, which is easily navigated to and contains clearly-
8 written and comprehensive resources for patients, including the following:

9 (A) A layperson's explanation of what to expect during the claims process,

10 (B) Frequently asked questions and answers,

11 (C) Frequently used forms,

12 (D) Information regarding the provider's financial assistance or charity care program, and

13 (E) Additional resources for patients, including but not limited to, contact information for
14 the United States Department of Transportation Consumer Affairs Division and for the Consumer
15 Services Division of the Insurance Commissioner's office;

16 (3) Dedicated individuals assigned to review patient complaints and disputes about air
17 ambulance billing and to respond to patients, governmental agencies, and any other concerned
18 parties no later than 90 days from the date a complaint is received by the air ambulance provider;

19 (4) The inclusion of the patient hotline number and patient advocacy website required by
20 this section on all patient communication materials, including, but not limited to, websites,
21 brochures, letters, invoices, or billing statements that are sent to or made available to patients;

22 (5) Mandatory yearly patient advocacy training for all provider personnel who have direct
23 interaction with patients and/or their family members via written, verbal or electronic
24 communications; and

25 (6) A financial assistance or charity care program to assist patients suffering financial
26 hardship with resolving any unpaid balance owed to the air ambulance provider.

27 (b) The provisions of this section shall not be enforced in a manner that conflicts with
28 federal law, including the federal preemption of state regulation of air carriers.

§33-11B-4. Required consumer disclosures in agreements or subscriptions.

1 An entity selling air ambulance membership agreements or subscriptions shall make the
2 following general disclosures in the agreements or subscriptions in writing in bold type and not
3 less than 12 point font on any advertisement, marketing material, brochure, or contract terms and
4 conditions made available to prospective members or the public:

5 (1) If eligible and covered by Medicaid or Medicaid managed care, that the prospective
6 member is already covered with no out-of-pocket cost or cost-sharing liability for air ambulance
7 services.

8 (2) If eligible and covered under Medicare and/or a Medicare Advantage or Medical
9 Supplement Plan, that the prospective member may already be covered for air ambulance
10 services and should consult with a representative of their Medicare program or insurance carrier
11 to determine the level of existing coverage they have for air ambulance services and what out-of-
12 pocket costs or cost-sharing they may be responsible for without supplemental insurance
13 coverage.

14 (3) If eligible and covered under a commercial health insurance policy or private health
15 insurance plan, including the Public Employees' Insurance Agency (PEIA), that the prospective

16 member may already be covered for air ambulance services and should consult with a
17 representative of their insurance carrier or health plan to determine the level of existing coverage
18 they have for air ambulance services and what out-of-pocket costs or cost-sharing they may be
19 responsible for without supplemental insurance coverage.

20 (4) That the prospective member may contact the Consumer Services Division of the
21 Insurance Commissioner's office for free assistance in obtaining information regarding their
22 existing coverage for air ambulance services and what out-of-pocket costs or cost-sharing they
23 may be responsible for without supplemental insurance coverage.

24 (5) That the prospective member be advised of his or her rights pursuant to Section 105
25 of the federal *No Surprises Act*, effective January 1, 2022, which provides that patients who are
26 covered under a group health plan or group or individual health insurance policy are to be held
27 harmless from surprise air ambulance medical bills and are only required to pay the in-network
28 cost-sharing amounts for out-of-network air ambulance services, and further that air ambulances
29 are barred from sending balance bills to these covered patients for more than the in-network cost-
30 sharing amount.

§33-11B-5. Authorization to implement rules.

1 The commissioner may promulgate rules in accordance with chapter twenty-nine-a of this
2 code to effectuate the provisions of this article.

§33-11B-6. Severability.

1 If any provision of this article is for any reason held to be invalid, the remainder of the
2 article shall not be affected thereby.

§33-11B-7. Effective date of this article.

1 Except as otherwise expressly stated herein, the provisions of this article shall become
2 effective on July 1, 2021.

NOTE: The purpose of this bill is to create the Air Ambulance Patient Protection Act and to provide for certain consumer protections for patients of air ambulance services. This legislation declares that any entity, whether directly or indirectly, who solicits air ambulance

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membership subscriptions, accepts membership applications, or charges membership fees, is an insurer and shall be licensed and regulated by the Offices of the Insurance Commissioner.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.