

KOEHLER FITZGERALD

| REFERENCE-BASED PRICING NEWSLETTER |

Koehler Fitzgerald

Koehler Fitzgerald LLC provides highly specialized legal services to TPAs and Plan Sponsors offering reference-based medical plans.

Central to those services are the defense of balance billing claims, from provider billing to jury trial, utilizing the firm's highly rated trial lawyers, nationally recognized experts and affiliated local counsel throughout the U.S.

Koehler Fitzgerald's multilingual services are supported by the use of a proprietary and customized database to track and support group calendaring, task management, contact management, conflicts checking, integrated document assembly and customized weekly reports of the status of claims and activity.

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Air Ambulance Billing (Part 2)

State legislatures are beginning to act in response to the rising costs of air ambulances. As noted in our April newsletter, the typical per-flight cost may rise above \$25,000.

Last month, the Montana House of Representatives passed a bill that would remove the financial responsibility from patients who are forced to use out-of-network air ambulances. Under the Montana bill,¹ patients would only be responsible for their deductibles, co-pays, and co-insurance costs. Disputes between insurers and air ambulance companies over costs would be referred to a binding arbitration process. Versions of the bill have passed both the Montana House and Senate, and the Senate must now agree with the House's amendments before it is submitted to the governor. North Dakota recently passed a law (Senate Bill 2231) requiring hospitals to notify patients which air ambulance providers have a contractual agreement with the patient's insurance company, in non-emergency situations.²

The assorted attempts to curb costs through legislation face additional hurdles, including preemption under the Airline Deregulation Act of 1978 (92 Stat. 1705). Air





#63

On May 4, 2017, the U.S. House of Representatives, by a 217 to 213 vote, approved the American Health Care Act, H.R. 1628, to repeal and replace the Affordable Care Act (ACA). It was the 63rd such bill to be passed in the House. A celebration ensued at the White House on President Trump's 105th day in office.

At the writing of this newsletter, the bill has not yet been sent to the U.S. Senate because the Congressional Budget Office has not completed its "scoring" of the bill and it may become necessary to revise the bill and conduct yet another vote in the House. Officially, the latest action on the bill was a May 4 House motion to reconsider laid on the table and agreed to without objection.

Meanwhile, reports from Washington indicate the U.S. Senate has formed a committee to write its own repeal and replace legislation. Will H.R. 1628 fare better than the 62 previous bills? Probably not.

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ambulance providers argue that the Airline Deregulation Act forbids any state challenge to fees because only the Federal Aviation Administration may regulate air transport rates. Federal courts have recently agreed: last year, U.S. District Judge Alan B. Johnson held that a Wyoming statute attempting to cap air ambulance fees, according to a fixed fee schedule, was preempted by the Airline Deregulation Act.³

In litigation, air ambulance collectors, relying on the Airline Deregulation Act, have attempted to dismiss court challenges to air ambulance fees, arguing that a state court lacks jurisdiction to determine the reasonableness of the fees. The results have been mixed. At least one Ohio county court has declined to dismiss a challenge on that basis.⁴ In March, however, an Oklahoma federal court held that a class action challenging fees was preempted.⁵

The preemption debate has prompted federal legislation. U.S. Sen. Jon Tester (D-Montana) introduced a bill known as the Isla Rose Life Flight Act⁶ to Congress that would allow states to regulate air ambulance billing. It remains to be seen whether any legislation will actually succeed in lowering patient costs.

1. <https://legiscan.com/MT/text/SB44/id/1437966>.

2. <http://www.insurancejournal.com/news/midwest/2017/04/19/448378.htm>.

3. *Eaglemed, LLC v. Wyoming*, Case No. 15-CV-26-ABJ (D. Wyo. May 16, 2016)

4. *Walunis v. Air Methods Corporation*, Portage County Case No. 2013 CV 00726, Order and Journal Entry dated July 31, 2014.

5. *Schnegerger v. Air Evac EMS, Inc.*, Case No. CIV-16-843 (W.D. Okla. March 15, 2017).

6. <https://www.govtrack.us/congress/bills/115/s471>.



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