

September 24, 2019

Wyoming Health Department
2300 Capitol Ave. Ste. 401
Cheyenne, WY 82001

Dear Mr. Fuchs,

On behalf of The ERISA Industry Committee (ERIC), thank you for the opportunity to submit comments on Wyoming's Air Ambulance Medicaid Waiver to improve the delivery and affordability of air ambulance services. We share your concern about the surprise medical billing crisis, especially as it relates to air ambulance transport.

ERIC is the only national association that advocates exclusively for large employers on health, retirement, and compensation public policies at the federal, state, and local levels. Our member companies are leaders in every sector of the economy with workers, retirees, and their families located in every community in the nation. We speak in one voice for large employers on their employee benefit and compensation public policy interests, including many member companies with employees and retirees in Wyoming.

Large employers like ERIC member companies self-insure their health care plans and as plan sponsor fiduciaries, strive to provide the best health care possible to their employees, retirees, and families at an affordable cost. ERIC advocates for federal and state policies that support and enhance the ability of our member companies to provide high-quality, affordable health care.

One such critical area relates to air ambulance or emergent transport. We recognize the significant opportunity available to leverage more efficient regulation of emergent transport to modernize health care delivery and improve access to quality medical care, especially for workers and dependents in rural states. As such, we commend the Wyoming Department of Health's diligent and innovative efforts to find a state-administered solution to the current surprise billing crisis, particularly as it arises from the air ambulance industry.

As you are no doubt aware, the air ambulance industry has undergone significant changes over the past decade, especially as air ambulance providers have been bought up by private equity companies. These Wall Street investment firms have found ways to enhance their profits by keeping air ambulances out of traditional health care networks, either by directly refusing network contracts, or by demanding unreasonable reimbursement rates that no reasonable plan fiduciary could agree to. At the same time, these actors have flooded the market with many more aircraft and air ambulance bases than are needed and used this oversaturation as justification for unsustainably high prices. The status quo is completely untenable, and solutions are badly needed. Wyoming deserves serious credit for taking the issue on directly, especially as the federal government has yet to act.


ERIC supports the overall innovative efforts to reduce air ambulance surprise bills and offers the following comments with requests that certain measures in the proposal be considered and modified as they relate to federally-regulated health plans:

One tenet of the proposal specifies that private health insurers, including self-funded plans governed under the federal Employee Retirement Income Security Act (ERISA), who do not “opt-in” to Medicaid expansion for air ambulances would be required to reimburse the state on a fee-for-service basis to ensure that the financial burden is evenly divided to the population. We urge you to consider that the large, national health care plans offered by ERIC members are regulated exclusively by the federal Department of Labor. Any state law that attempts to regulate, or relates to, an ERISA plan could be subject to federal preemption, and struck down.

On page 26 of the proposal, the state acknowledges they cannot mandate employers “opt-in” but rather can collect reimbursement from employers who choose not to “opt-in” through Medicaid’s “pay and chase” authority. Based on discussions with our large employer member companies, in our judgement employers will have to closely assess the costs they currently incur via their pre-existing contracts with air ambulance companies, the toll the current system is taking on their plan’s beneficiaries, the costs of opting in, and any potential liability under Medicaid’s “pay and chase” authority for employers that choose to not opt in. ERIC believes that the volume of Wyoming air ambulance patients enrolled in ERISA plans is low, and that the inclusion of self-insured ERISA plans (beyond an option to opt-in) may be counterproductive. As such, we request that the reference to charging self-insured, non-participating plans be removed.

Ultimately, ERIC shares your goal of decreasing surprise medical bills for Wyoming residents. We appreciate this opportunity to express our thoughts and concerns as you continue to develop the proposed 1115 waiver and look forward to working with the state to ensure that the program implemented will align both with the best interests of patients, and with applicable laws including ERISA. If you have any questions concerning our comments, or if we can be of further assistance, please contact me at 202.627.1914 or cssternberg@eric.org.

Sincerely,



Carly Sternberg