

116TH CONGRESS
2D SESSION

S. 4185

To establish an independent dispute resolution process for surprise air ambulance bills, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 2, 2020

Mr. WICKER introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To establish an independent dispute resolution process for surprise air ambulance bills, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “End Surprise Medical
5 Bills for Air Ambulances Act of 2020”.

6 **SEC. 2. ENDING SURPRISE AIR AMBULANCE BILLS.**

7 Part A of title XXVII of the Public Health Service
8 Act (42 U.S.C. 300gg et seq.) is amended by inserting
9 after section 2719A the following:

1 **“SEC. 2719B. AIR AMBULANCE SURPRISE MEDICAL BILL**
2 **DISPUTE RESOLUTION.**

3 “(a) ESTABLISHMENT OF INDEPENDENT DISPUTE
4 RESOLUTION PROCESS.—

5 “(1) ESTABLISHMENT.—Not later than 30 days
6 after the date of enactment of this section, the Sec-
7 retary, in consultation with the Secretary of Trans-
8 portation, shall establish an independent dispute res-
9 olution process for resolving balance bills between a
10 health plan or a health insurance issuer offering
11 health insurance coverage (in this section collectively
12 referred to as a ‘health insurance issuer’) and an
13 out-of-network air ambulance providers in accord-
14 ance with this section (referred to in this section as
15 the ‘IDR process’).

16 “(2) INDEPENDENT DISPUTE RESOLUTION EN-
17 TITY.—Under the IDR process, the Secretary in co-
18 ordination with the Secretary of Transportation,
19 shall establish a list of qualified entities to serve as
20 Independent Dispute Resolution Entities. In estab-
21 lishing this list of qualified entities, the Secretary
22 shall require that the qualified entities have arbitra-
23 tors who have—

24 “(A) a minimum of 10 years of experience
25 in health care litigation but whom have not rep-

1 resented a health insurance issuer or an air am-
2 bulance provider in the preceding 5 years; or

3 “(B) a minimum of 15 years of experience
4 in providing mediation and arbitration services.

5 “(3) ARBITRATION PARAMETERS.—The IDR
6 process shall require an arbitrator to do the fol-
7 lowing:

8 “(A) Render a written decision resolving
9 all disputes that designates 1 party as the ‘pre-
10 vailing party’.

11 “(B) Use the following factors in deter-
12 mining the reasonable value of the services pro-
13 vided:

14 “(i) The nature of the services pro-
15 vided and equipment used, including the
16 care capability and scope of practice of the
17 out-of-network air ambulance provider.

18 “(ii) A comprehensive accounting of
19 the out-of-network air ambulance pro-
20 vider’s costs, payor mix, revenue mix, and
21 other economic factors of the out-of-net-
22 work air ambulance provider’s service.

23 “(iii) Amounts paid (in- and out-of-
24 network) to the out-of-network provider.

1 “(iv) Amounts paid (in- and out-of-
2 network) to similar out-of-network air am-
3 bulance providers in the same geographic
4 region if such data is available.

5 “(v) Information provided by Federal
6 data collection and reporting requirements,
7 when available.

8 “(vi) If available for the geographic
9 area in which the flight took place, the me-
10 dian in-network rate.

11 “(C) Not take into consideration bill
12 charges when considering the amount to award.

13 “(4) PROCESS REQUIREMENTS.—The IDR
14 process shall require an arbitrator and parties ad-
15 here to the following process and timelines:

16 “(A) The parties shall submit written sub-
17 missions to the arbitrator on or before the 30th
18 day after initiating the IDR process.

19 “(B) The arbitrator’s decision shall include
20 written findings and be issued within 45 days
21 after receipt of the parties’ written submissions.

22 “(C) Any amount awarded by the arbi-
23 trator shall be paid within 20 days of the arbi-
24 trator’s final decision.

1 “(D) All proceedings and the arbitrator’s
2 decisions made under the IDR process shall be
3 confidential in nature and not subject to any
4 disclosure requirements.

5 “(E) The nonprevailing party shall be re-
6 sponsible for paying all fees charged by the ar-
7 bitrator.

8 “(5) OTHER CONSIDERATIONS.—The IDR proc-
9 ess shall allow the arbitrator in making the arbitra-
10 tor’s final decision to take into consideration the
11 number of previous instances in which the parties
12 involved have had to undergo the IDR process.

13 “(b) INDEPENDENT DISPUTE RESOLUTION PROC-
14 ESS.—

15 “(1) IN GENERAL.—When an out-of-network
16 air ambulance provider bills a health insurance
17 issuer for an air ambulance service provided to a
18 participant, beneficiary, or enrollee of the issuer, the
19 health insurance issuer shall pay the billed amount
20 or determine that the health insurance issuer con-
21 siders some or all of the claim to be disputed within
22 30 days from receipt of the bill. If a claim is dis-
23 puted, the health insurance issuer shall notify—

24 “(A) the out-of-network air ambulance pro-
25 vider in writing within 30 days of receipt of the

1 bill why the claim is disputed (in this subsection
2 referred to as the ‘notice of dispute’); and

3 “(B) the patient who received the out-of-
4 network air ambulance transport that the bill is
5 disputed, that the health insurance issuer, and
6 not the patient, is responsible for the disputed
7 bill, and that the disputed bill will be resolved
8 through the IDR process.

9 “(2) RESOLUTION PROCESS.—The health insur-
10 ance issuer and the out-of-network air ambulance
11 provider have 90 days from the date on which the
12 provider receives a notice of dispute from the issuer
13 to come to a settlement agreement for the disputed
14 bill.

15 “(3) ARBITRATOR SELECTION.—If the health
16 insurance issuer and the air ambulance provider do
17 not come to an agreement under paragraph (2) with-
18 in such 90-day period, the issuer and provider shall
19 enter into the IDR process with an Independent Dis-
20 pute Resolution Entity selected at random from the
21 list established under subsection (a)(2). Within 5
22 business days of being selected, the Independent
23 Dispute Resolution Entity shall assign an arbitrator
24 to make a determination in the matter.

1 “(c) EFFECT OF DETERMINATION.—A final deter-
2 mination of the arbitrator assigned under subparagraph
3 (b)(3) shall be binding on the issuer and provider.

4 “(d) PRIVACY LAWS.—An arbitrator shall comply
5 with all applicable Federal and State privacy laws in con-
6 ducting an IDR process under this section.

7 “(e) PUBLIC AVAILABILITY.—The amount deter-
8 mined with respect to any claim by an arbitrator con-
9 ducting an IDR process under this section shall be con-
10 fidential, except that an arbitrator may access the
11 amounts determined in any previous claims involving the
12 health insurance issuer or the out-of-network air ambu-
13 lance provider that was resolved through the IDR process.

14 “(f) AIR AMBULANCE ENFORCEMENT.—The Sec-
15 retary of Transportation shall require all air ambulance
16 providers to participate in good faith in the IDR process.
17 If an air ambulance provider fails to abide by the timelines
18 established in this section during the IDR process, the
19 Secretary of Transportation shall issue a fine of \$20,000
20 against the air ambulance provider unless the provider’s
21 failure to abide by the timelines is attributable to the ac-
22 tions or inactions of the health insurance issuer.

23 “(g) INSURERS ENFORCEMENT.—The Secretary shall
24 require all health insurance issuers to participate in good
25 faith in the IDR process. If an insurer fails to abide by

1 the timelines established in this section during the IDR
 2 process, the Secretary shall issue a fine of \$20,000 against
 3 the health insurance issuer unless the issuer's failure to
 4 abide by the timelines is attributable to the actions or in-
 5 actions of the air ambulance provider.

6 “(h) REEVALUATION.—Not later than 3 years after
 7 the establishment of the IDR process, the Secretary and
 8 the Secretary of Transportation jointly shall—

9 “(1) conduct an evaluation of the process; and

10 “(2) based on the results of such evaluation, de-
 11 termine whether to continue or terminate the IDR
 12 process (after resolution of all disputed claims that
 13 are pending on the date the determination to termi-
 14 nate the process is made).

15 “(i) DEFINITION.—For purposes of this section, the
 16 term ‘air ambulance service’ means medical transport by
 17 helicopter or airplane for patients.”.

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