

JAN 25 2017

A BILL FOR AN ACT

RELATING TO AIR AMBULANCE SERVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that patients are able to
2 receive care in emergency situations at health care facilities
3 that serve communities throughout the State. However, sometimes
4 a patient may need to be transferred to another health care
5 facility in order to receive continuing care or a higher level
6 of care. Because of the unique geography of Hawaii, many of
7 these patients must be transferred to another health care
8 facility by air ambulance services. These transfers can be very
9 costly, considering the specialized equipment and technology
10 that is required.

11 While many patients are covered by their health benefits
12 insurance for these services, there have been cases where
13 patients are transported using an air ambulance service that
14 does not contract with the covered patient's health insurance
15 carrier. In a case where a non-contracted air ambulance service
16 is used, the health carrier determines an appropriate payment
17 for the air ambulance provider. The patient is then expected to



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1 cover the difference between what the provider charged and what
2 the health carrier pays. This places the patient in the middle
3 between the health carrier and the non-contracted air ambulance
4 service when the non-contracted air ambulance service bills the
5 patient for the difference. This practice is referred to as
6 balance billing. Balance bills can cause a significant
7 financial burden on patients. The legislature believes that
8 transferring health care facilities should utilize air ambulance
9 services that are covered by the person's health insurance
10 carrier, except as otherwise permitted in this Act.

11 The purpose of this Act is to require all health care
12 facilities, when transferring a patient to another health care
13 facility via air ambulance for receiving continuing or higher
14 level care, to first request transport services from an air
15 ambulance that is contracted with the patient's health carrier.
16 If the contracted air ambulance service is not available, then
17 the transferring health care facility must notify the health
18 carrier of the use of a non-contracted air ambulance service to
19 transport the patient. Exceptions are made to ensure the safety
20 of a patient if a contracted air ambulance service is not



1 available in a reasonable amount of time based on the acuity of
2 the patient's condition.

3 SECTION 2. Chapter 321, Hawaii Revised Statutes, is
4 amended by adding a new part to be appropriately designated and
5 to read as follows:

6 "PART . TRANSFERS UTILIZING
7 AEROMEDICAL AMBULANCE SERVICES PROVIDERS

8 §321-A Definitions. For purposes of this chapter:

9 "Air ambulance" means any privately or publicly owned fixed
10 wing or rotor wing aircraft that is specially designed or
11 constructed, equipped pursuant to section 11-72-29, Hawaii
12 Administrative Rules, intended to be used for and maintained or
13 operated for the transportation of patients with medical
14 conditions who are unable to use other means of transportation.

15 "Contracted air ambulance service" means an air ambulance
16 service that is contracted with a health carrier.

17 "Covered person" means a policyholder, subscriber,
18 enrollee, or other individual participating in a health benefit
19 plan, offered or administered by a person or entity, including
20 an insurer governed by chapter 431, mutual benefit society



1 governed by chapter 432, and health maintenance organization
2 governed by chapter 432D.

3 "Facility" means a hospital licensed under section 321-
4 14.5.

5 "Health carrier" means the covered person's health plan,
6 including mutual benefit society, and a health maintenance
7 organization.

8 "Non-contracted air ambulance service" means an air
9 ambulance service that is not contracted with a health carrier.

10 "Notification" means the transferring facility contacts the
11 covered patient's health carrier about the use of a non-
12 contracted air ambulance service for the transfer of a covered
13 person.

14 "Receiving facility" means the facility to which the
15 covered person is being transported.

16 "Transfer" means the transportation of a covered person, by
17 air ambulance from the transferring facility to the receiving
18 facility for a transfer.

19 "Transferring facility" means the facility from which the
20 covered person is being transported.



1 "Transferring physician" means the physician at the
2 transferring facility who is responsible for the care of the
3 covered person who is being transferred.

4 **§321-B Contracted air ambulance service notification.**

5 Health carriers shall provide a list of all contracted air
6 ambulance services in the area to facilities on an annual basis
7 and as necessary to update changes in contracted air ambulance
8 services. Health carriers shall also provide to facilities
9 contact information for notification purposes if a non-
10 contracted air ambulance service will be used to transport a
11 covered person.

12 **§321-C Utilizing contracted air ambulance services.**

13 Transferring facilities shall utilize an air ambulance service
14 that contracts with the covered person's health carrier, except
15 as provided in section 321-D.

16 **§321-D Transport by contracted air ambulance service not**
17 **timely available.** (a) If, in the opinion and medical judgment
18 of the transferring physician:

- 19 (1) The health carrier's contracted air ambulance
20 service's estimate of the covered person's pick up
21 time at the transferring facility, as documented by



1 the transferring facility in the covered person's
2 medical record or in writing by the covered person's
3 contracted air ambulance service, including the
4 timeframe for other forms of transportation such as
5 the use of ground ambulance from the transferring
6 facility to an airport; or

7 (2) The transit time is not medically indicated for the
8 covered person, taking into account the acuity of the
9 covered person's medical condition,
10 the transferring facility, prior to commencing a transfer of the
11 covered person using a non-contracted air ambulance service,
12 shall notify the health carrier of the use of a non-contracted
13 ambulance service.

14 (b) The receipt of the notification pursuant to subsection
15 (a) shall not be considered:

16 (1) An agreement by the health carrier or the transferring
17 or receiving facility to pay the non-contracted
18 ambulance service's charge as billed; or

19 (2) A waiver of the health carrier's right to pursue the
20 dispute resolution process described in section 321-E.



1 (c) If the health carrier acknowledges the use of a non-
2 contracted ambulance service, this acknowledgement shall not be
3 considered to be:

4 (1) An agreement by the health carrier or the transferring
5 or receiving facility to pay the non-contracted
6 ambulance service's charge as billed; or

7 (2) A waiver of the health carrier's right to pursue the
8 dispute resolution process described in section 321-E.

9 **§321-E Dispute resolution.** (a) If the health carrier
10 disagrees with the transferring facility's use of a non-
11 contracted air ambulance service because the health carrier
12 believes that the use of a non-contracted air ambulance service
13 does not meet the criteria established under this part, a health
14 carrier and the transferring facility shall first attempt to
15 mediate the matter before engaging in binding arbitration
16 proceedings.

17 (b) Mediation. The parties shall first meet and confer
18 and attempt to resolve the matter. If the matter has not been
19 resolved after thirty calendar days from the date of the first
20 meet and confer, the health carrier may submit the matter to



1 binding arbitration by providing written notice to the
2 transferring facility.

3 (c) Binding Arbitration. The binding arbitration shall be
4 conducted in accordance with chapter 658A, the selected
5 arbitration service's arbitration rules, and any other
6 arbitration rules mutually agreed upon by the parties. The
7 binding arbitration shall be conducted in accordance with the
8 following:

- 9 (1) The arbitration shall be conducted by an independent
10 arbitration service mutually selected by the parties
11 and shall be held in Honolulu;
- 12 (2) If the parties are unable to agree upon an arbitration
13 service within thirty calendar days of the date of
14 health carrier's notice of binding arbitration, the
15 health carrier shall select an arbitration service to
16 conduct the arbitration;
- 17 (3) If the parties are unable to agree upon an arbitrator
18 within thirty calendar days following the submission
19 of the claim to the arbitration service, then the
20 parties shall select an arbitrator in accordance with



1 the arbitration service's arbitrator selection
2 procedures. Once selected:

3 (A) The arbitrator may hear and determine motions for
4 summary disposition pursuant to section 658A-
5 15(b); and

6 (B) The arbitrator shall hear and determine any
7 challenges to the arbitration agreement and any
8 disputes regarding whether a controversy is
9 subject to an agreement to arbitrate;

10 (4) In order to make the arbitration hearing fair,
11 expeditious, and cost-effective, discovery shall be
12 limited to requests for production of documents
13 material to the claims or defenses in the arbitration;

14 (5) Limited depositions for use as evidence at the
15 arbitration hearing may occur as authorized by section
16 658A-17(b);

17 (6) The health carrier and transferring facility shall pay
18 its own attorney and witness fees; provided that the
19 arbitrator shall award to a prevailing party those
20 attorney fees and costs, in an amount authorized by
21 law, related to any claim or contention of a non-



1 prevailing party that the arbitrator determines was
2 frivolous or wholly without merit;

3 (7) The decision of the arbitrator shall be limited to the
4 question of whether or not the transferring facility's
5 use of a non-contracted air ambulance service was
6 appropriate under this part. If the arbitrator
7 determines that the use of a non-contracted air
8 ambulance service was not appropriate under this part,
9 the arbitrator shall order the transferring facility
10 to pay to the non-contracted air ambulance service the
11 difference between the non-contracted air ambulance
12 service's billed charge and the amount paid by the
13 covered person's health carrier to the non-contracted
14 air ambulance service. The judgment shall be final
15 and binding on the health carrier and transferring
16 facility, and judgment shall be entered thereon upon
17 timely motion by either party in a court of competent
18 jurisdiction. The arbitrator shall only award the
19 remedy described in this subsection;



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- 1 (8) No other action may be brought in any court in
2 connection with this decision, except as provided
3 under chapter 658A;
- 4 (9) The health carrier and transferring facility shall
5 take appropriate precautions to protect the
6 confidentiality of any personal health information
7 related to the arbitration proceeding;
- 8 (10) Following completion of the arbitration process, the
9 cost of arbitration, including fees and costs of the
10 arbitrator and arbitration service, shall be split
11 evenly and paid by the health carrier and the
12 transferring facility; and
- 13 (11) The rights and remedies provided under this subsection
14 to covered persons shall be in addition to and shall
15 not preempt any other rights and remedies available to
16 covered persons under state or federal law."

17 SECTION 3. This Act shall take effect upon its approval
18 and shall apply to all transfers occurring on or after the date
19 of approval regardless of any existing arrangements that the
20 transferring facility may have with an ambulance service unless
21 otherwise prohibited by law.



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1 SECTION 4. This Act shall take effect upon its approval.

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Report Title:

Emergency Health Care; Air Ambulance Units; Balance Billing

Description:

Requires health care facilities to first request transport services from an air ambulance that is contracted with the patient's health carrier when transferring a patient to another health care facility via air ambulance. Requires notification if a non-contracted air ambulance service is utilized. Establishes a procedure for dispute resolutions.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

