PHI AIR MEDICAL

BEYOND THE CALL

November 8, 2017

To Chairperson Lana Theis and members of the committee:

PHI Air Medical provides service to the citizens of Michigan from our LifeFlight of Michigan base in Troy, Michigan. PHI Air Medical works with local hospitals, fire departments, emergency medical services, and law enforcement agencies to safety transport patients in need of emergency medical care and critical care.

We write to express our concerns regarding legislation recently introduced by Representatives Bellino, Barrett, and LaFave, specifically HB 5217, HB 5218, and HB 5219. Of note, as you are likely aware, the National Conference of Insurance Legislators (NCOIL) has been reviewing the matter of air ambulance balance billing concerns. On October 13, the Health Committee unanimously approved the Model State Legislation language that creates an Independent Dispute Resolution process for these concerns. NCOIL is set to review this language during their meeting in Phoenix, AZ scheduled for the week of November 17.

Regarding HB 5217, HB 5218, and HB 5219, our concerns are outlined below:

1. HB 5217 (Bellino): We have concerns about the need for legislation that duplicates policies already in place for Medicare, Medicaid, and most commercial insurers. CMS, Medicaid, other government payers, and most commercial insurance providers already have medical necessity requirements written into their policies. We have to prove medical necessity every time we transport, and we are also subject to retroactive review for determinations of medical necessity. We believe that this bill should be revised to ensure that retroactive determinations of what transports qualify as "nonemergency" and "emergency" do not expose air medical services or referring hospitals to retroactive penalty or financial liability for decisions made at the bedside regarding the best mode of transport for patients in need of transfer.

2. HB 5218 (Barrett): This legislation requires the hospital to not only provide disclosures about the air ambulance service, but also to retain the copy for seven years, provide a rationale to the patient within ten days of why air ambulance was necessary over ground ambulance, and the hospital is liable for the charge for using a nonparticipating provider. We have concerns that these requirements may cause hospitals to make decisions that could delay transport of critical patients.

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Further, this bill does not clarify if retroactive review of these transports will create the opportunity for a hospital to be subject to retroactive penalties or financial liability for decisions made in the best interest of expediting transport to definitive care.

3. HB 5219 (LaFave): Similar to HB 5217 and HB 5218, we have concerns about the retroactive application of these disclosure requirements that second guess the bedside decision made by the treating physician with the best information available at the time. For a nonemergency flight (again the bill does not make it clear if this determination of "nonemergency" or "emergency" can be done retroactively), if the disclosure is not provided for a nonemergency flight, the air ambulance provider is bound to accepting the insurer's payment as payment in full. Further, if it is an emergency flight, the air ambulance provider must accept the insurer's payment as payment in full. These payment provisions provide no recourse for any dispute of payment received. They simply say that the air ambulance service must accept payment, regardless of what the payment may be. Again, we remind the committee of the Health Committee of the National Conference of Insurance Legislators (NCOIL) to approve Model State Legislation to create an Independent Dispute Resolution process for disputes between air ambulance providers and commercial insurers regarding payments. This bill does not provide for any type of IDR process regarding payment. As such, air ambulance services are at the mercy of whatever arbitrary amount an insurer believes is fair payment for the service. At a time when insurers are ratcheting down reimbursements, this sets a very dangerous precedent that is inconsistent with federal law. The compulsory acceptance of reimbursement as payment in full becomes a defacto rate control, which is preempted by the Airline Deregulation Act.

    a. Page 4, line 13: HB 5219 specifically addresses the ability of an aircraft that is a participating provider to land at a hospital. While this initially appears to be somewhat innocuous here, it is much more ominous on Page 7, line 23, which starts the process of determining eligibility to land at a hospital, based upon the participation of an air ambulance service with a contracted insurer. There exists no legal foundation for this language, which is contrary to existing EMTALA laws. This language sets up the process of forcing air ambulances to either get into contract with an insurer or not be able to land at a hospital, creating delays in patient care. We believe this section should be stricken from the bill, as it sets up delays in patient care that will certainly have a negative effect on patient outcomes.

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We thank you for considering our concerns. While we are willing to work with bill authors and stakeholders on revisions of these bills, we must oppose these bills as written.

Sincerely,

C. Sean O' Neal
Regional Director
PHI Air Medical/LifeFlight of Michigan

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