

ENROLLED ACT NO. 112, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2019 GENERAL SESSION

AN ACT relating to Medicaid; making legislative findings; providing for air ambulance transport coverage under Medicaid as specified; requiring a copay; creating an account; imposing a premium assessment on certain insurers for the purposes of this act; requiring reimbursements from state agencies for air ambulance transport services; authorizing the submission of federal Medicaid state plan amendments and other necessary waivers and agreements; classifying air ambulance subscription plans as disability insurance; making conforming amendments; requiring reports and certain other actions; requiring the promulgation of rules; specifying applicability; providing sunset dates; and providing for effective dates.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1.

(a) The legislature finds it necessary, through this act, to ensure affordable air ambulance transport services are provided in this state and to safeguard the future health and safety of Wyomingites for the following reasons:

(i) Air ambulance transport expenses cost Wyomingites a significant portion of their yearly income, often ranging from twenty-five thousand dollars (\$25,000.00) to seventy-five thousand dollars (\$75,000.00), with no ability to compare air ambulance providers or negotiate costs because of an emergency or medically necessary situation;

(ii) The Airline Deregulation Act, 49 U.S.C. § 41713, broadly preempts state regulation of air ambulance providers, but does not extend to Medicaid;

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(iii) Both private and public payors, including workers' compensation and private health benefit plans, often only pay a portion of air ambulance providers' fees, frequently resulting in Wyomingites receiving a large bill from these providers for unpaid fees;

(iv) As a result, most Wyomingites cannot reasonably afford to pay air ambulance providers' fees and often face significant financial challenges, including bankruptcy, as the result of medical costs they cannot reasonably control or predict;

(v) Many insurers who provide private health benefit plans are forced to charge higher premiums and deductibles because of the exceptional cost of air ambulance transport services;

(vi) Wyoming's Medicaid program, in partnership with the federal government, is designed to assist individuals and families who cannot reasonably afford basic medical care, including air ambulance transport services;

(vii) Because of the unusual and extraordinary nature of air ambulance costs in Wyoming, air ambulance transport services are generally beyond the financial means of the vast majority of Wyoming's population, representing a serious concern to the health and safety of this state;

(viii) Providing air ambulance coverage to additional Wyoming residents through Medicaid, while charging a reasonable copay and limiting the total amount that can be charged in both emergency and medically necessary situations, will enable many Wyomingites to receive the medical care they need while not forcing them into financial hardship.

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Section 2. W.S. 9-3-219 and 42-4-123 are created to read:

9-3-219. Air ambulance transport services for employees, officials and dependents; reimbursement; sunset.

(a) Emergency and medically necessary air ambulance transport services for employees, officials and their dependents shall be covered under W.S. 42-4-123, subject to availability and any limitations specified by the department of health under W.S. 42-4-123(a).

(b) The department of administration and information shall pay reimbursement for services under this section to the department of health, as specified under W.S. 42-4-123.

(c) This section is repealed effective July 1, 2023.

42-4-123. Air ambulance transport services for Wyoming residents; sunset.

(a) With the consent of the governor, the department shall apply, in the form of any necessary federal waiver, state plan amendment or other agreement, to the United States department of health and human services and endeavor to make coverage of air ambulance transport services through Medicaid available to all Wyoming residents, except that coverage may be limited to specified groups of Wyoming residents as necessary to obtain approval.

(b) Contingent on federal approval under subsection (a) of this section, there is created the air ambulance transport services program under the department.

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(c) Coverage for air ambulance transport services under this section shall be provided through retroactive eligibility. A Wyoming resident or air ambulance provider may make a claim for payment of air ambulance transport services to the department. A claim shall be submitted within ninety (90) days of air ambulance transport services occurring, except for good cause as determined by the department. An air ambulance provider shall provide services under this section if the provider otherwise makes air ambulance transport services available to persons in Wyoming who are eligible for Medicaid independent of the coverage provided by this section. Except as otherwise provided in subsection (d) of this section, an air ambulance provider who provides services under this section shall accept payment under this subsection as full satisfaction of all charges, costs and fees relating to air ambulance transport services.

(d) An air ambulance provider shall collect a copay or other cost sharing requirement for services covered under this section, as established by the department and consistent with federal requirements, based on the following:

(i) For persons who are eligible for Medicaid independent of the coverage provided by this section, any copay or other cost sharing requirement shall be consistent with the copay or cost sharing requirement specified for other services under Medicaid;

(ii) For persons who are not eligible for Medicaid independent of the coverage provided by this section, any copay or cost sharing requirement shall be proportionate, based on income and shall not be greater than fifty percent (50%) of the allowable costs for air ambulance transport under this section, as determined by the department.

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(e) All premium assessments and reimbursements received under this section shall be deposited into the air ambulance coverage account and shall be used by the department to pay air ambulance transport claims covered under this section, as well as to administer this section.

(f) Consistent with subsection (a) of this section, all air ambulance transport services otherwise provided or covered by any program administered by the state of Wyoming, including, but not limited to, the State Employees and Officials Group Insurance Act and the Wyoming Worker's Compensation Act, shall be covered under this section. Other than paying reimbursements under this section, state agencies shall not have a duty to provide or cover air ambulance transport services after the department begins providing services under this section, except for persons otherwise not covered pursuant to subsection (a) of this section.

(g) To facilitate coverage under this section, the department of workforce services, the department of administration and information and other state agencies that are otherwise responsible for coverage of air ambulance transport services shall pay reimbursement for these services to the air ambulance coverage account, in the manner prescribed by the department of health after consultation with the relevant state agency. As a component of reimbursement under this section, the department of health shall require a state agency to pay, on a proportional basis, administrative costs necessary to implement this section.

(h) The department may enter into agreements with the following persons for the purposes of this section:

(i) Air ambulance providers;

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(ii) Persons who provide dispatch for air ambulance transport services;

(iii) A third party administrator;

(iv) Any other person or entity necessary to implement this section, except as otherwise provided by subsection (j) of this section.

(j) The insurance commissioner may enter into agreements with employee welfare benefit plans, as defined in 29 U.S.C. § 1002, and other health insurance plans operating in this state not subject to state regulation, in order to make air ambulance transport coverage available under this section to insured persons covered by those plans. If a plan enters into an agreement under this paragraph, the plan shall pay an assessment on net premiums and net considerations in this state to the insurance commissioner as otherwise provided in W.S. 26-4-103(n) but shall not be required to file a report under W.S. 26-4-103(a).

(k) There is created the air ambulance coverage account. Premium assessments collected by the insurance commissioner and state agency reimbursements paid to the department of health under this section shall be deposited into the account and used by the department to cover air ambulance transport services under this section and to implement this section. Other funds used to provide air ambulance coverage, including federal funds, may be deposited into the account. The account may be divided into subaccounts for purposes of administrative management. Funds in the account and any amounts earned from those funds are continuously appropriated and shall not lapse at the end of any fiscal period. For accounting and investing only, subaccounts shall be treated as separate accounts.

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(m) The rules of the department governing administrative hearings under Medicaid shall apply to any action of the department under this section. The department may, if appropriate, establish a managed care program under this section.

(n) Federal funds shall only be expended under this section for persons who are eligible for Medicaid independent of the coverage provided by this section, or as otherwise provided by federal law or any waiver, state plan amendment or agreement executed with the federal government.

(o) This section shall not apply to Wyoming residents eligible for Medicare.

(p) The department shall adopt all necessary rules to implement this section, including:

(i) Payment rates, which shall be set as a percentage multiplier of current Medicare air ambulance transport service rates applicable to rural Wyoming, and which shall balance the following priorities:

(A) The financial risk to Wyoming residents, including potential cost sharing requirements;

(B) Adequate air ambulance service provider participation and access to services;

(C) Quality of services;

(D) Availability of program funding; and

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(E) Unnecessary utilization and cost growth in the industry.

(ii) Procedures for filing a claim for payment under this section.

(q) As used in this section:

(i) "Air ambulance coverage account" means the account created by subsection (k) of this section;

(ii) "Air ambulance provider" means a person who provides air ambulance transport services in Wyoming;

(iii) "Air ambulance transport" means medical conveyance by air in the following situations:

(A) Emergency circumstances;

(B) Nonemergency, but medically necessary circumstances, as determined by a licensed health care provider, pursuant to rule of the department.

(iv) "Emergency" means a situation in which immediate medical care is necessary to prevent death or serious injury, or additional serious injury, pursuant to rule of the department;

(v) "Wyoming resident" means a natural person who is either of the following:

(A) Domiciled in Wyoming;

(B) Covered by the Wyoming Worker's Compensation Act.

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(r) This section is repealed effective July 1, 2023.

Section 3. W.S. 9-3-203(a)(xvii), 26-4-102(b) by creating a new paragraph (iii), 26-4-103(m) and by creating a new subsection (n), 26-5-103(a)(ii), 27-14-401(e) and by creating a new subsection (j) and 42-4-103(a) by creating a new paragraph (xxxii) are amended to read:

9-3-203. Definitions.

(a) As used in this act:

(xvii) "This act" means W.S. 9-3-202 through ~~9-3-218~~ 9-3-219.

26-4-102. Record of receipts; payment to treasurer; credit to fund.

(b) The commissioner shall promptly deposit all monies he receives from any charges to the general fund, with receipt and acknowledgement submitted to the state treasurer, except that:

(iii) Premium assessments collected under W.S. 26-4-103(n), which shall be transferred to the air ambulance coverage account not more than thirty (30) days after receipt.

26-4-103. Premium taxes; generally; preemption by state.

(m) The amount of tax credits for which an insurer qualifies under W.S. 9-12-1301 through 9-12-1312 shall be allowed as a credit against premium tax owed by the insurer under subsections (a) through (k) of this section.

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(n) At the same time a report under subsection (a) of this section is filed, an insurer making private health benefit plans available in this state, and any plan which has entered into agreement under W.S. 42-4-123(j), shall pay to the commissioner a three-quarter percent (.75%) assessment upon net premiums and net considerations. The commissioner shall, not more than thirty (30) days after receipt, transfer premium assessments paid under this subsection to the air ambulance coverage account.

26-5-103. "Disability insurance" defined.

(a) Disability insurance is insurance of any kind on human beings against:

(ii) Disablement or expense resulting from sickness, including subscription or membership plans relating to air ambulance transport services.

27-14-401. Medical, hospital and ambulance expenses; review of claim; employer and division designated providers; contracts for bill review, case management and related programs; air ambulance reimbursement.

(e) If transportation by ambulance is necessary, the division shall allow a reasonable charge for the ambulance service at a rate not in excess of the rate schedule established by the director under the procedure set forth for payment of medical and hospital care, provided this subsection shall not apply to air ambulance transport services.

(j) Emergency and medically necessary air ambulance transport services for an employee shall be covered under

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W.S. 42-4-123, subject to availability and any limitations specified by the department under W.S. 42-4-123(a). The department of workforce services shall pay reimbursement for services under this section to the department of health as specified under W.S. 42-4-123.

42-4-103. Authorized services and supplies.

(a) Services and supplies authorized for medical assistance under this chapter include:

(xxxii) Air ambulance transport services, consistent with W.S. 42-4-123.

Section 4. The department of the health, with the consent of the governor, shall pursue all necessary and prudent state plan amendments, federal waivers under 42 U.S.C. §§ 1315 and 18052 and other agreements necessary to implement this act and to access all available federal funds, which may include modifying eligibility under Medicaid for specified income groups for air ambulance transport services only. The department is also authorized to take all necessary actions to obtain an exemption for insurers, plans who enter into an agreement under W.S. 42-4-123(j) and other qualified health plans from essential benefits requirements specified by federal law. Any action taken under this section shall only relate to the coverage of air ambulance transport services as provided by this act. Upon applying for a state plan amendment, waiver or other agreement under this section, the department of health shall provide a report to the joint labor, health and social services interim committee and the joint appropriations committee detailing the reasons for the application and the reasons why the state plan amendment, waiver or agreement is viable and fiscally advantageous for

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the state of Wyoming and its residents. A report shall be submitted as soon as possible after an application is made.

Section 5.

(a) The department of health shall seek approval from the governor to proceed under section 4 of this act on or before April 1, 2019.

(b) The department of health shall transmit a copy of this act to the Wyoming congressional delegation. The department shall seek the support of the Wyoming congressional delegation in relation to any necessary state plan amendments, federal waivers or other agreements with the federal government.

(c) As soon as possible after the effective date of this act, the director of the department of health shall convene an unpaid working group of stakeholders, which may include legislators, insurers, health care facilities, air ambulance providers and state agency representatives, to provide feedback to the department regarding the implementation of this act.

Section 6. This act applies to air ambulance transport services provided on or after April 1, 2020.

Section 7.

(a) Sections 4, 5 and 7 of this act are effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

ORIGINAL HOUSE
BILL NO. HB0194

ENGROSSED

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(b) Except as otherwise provided in subsection (a) of this section, this act is effective April 1, 2020.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk