

1 HOUSE BILL NO. 73

2 INTRODUCED BY R. LYNCH

3 BY REQUEST OF THE ECONOMIC AFFAIRS INTERIM COMMITTEE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR REGULATION UNDER THE INSURANCE CODE
6 FOR CERTAIN PRIVATE AIR AMBULANCE SERVICE MEMBERSHIP AGREEMENTS; REMOVING AN
7 EXEMPTION FROM INSURANCE REGULATION; ESTABLISHING FEES, LICENSING, TRADE, FORM FILING,
8 AND RECORDKEEPING REQUIREMENTS; GRANTING RULEMAKING AUTHORITY; AMENDING SECTIONS
9 33-1-102 AND 50-6-320, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY
10 DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 NEW SECTION. Section 1. Certificate of authority required. (1) A private air ambulance service
15 subject to [sections 1 through 9] shall obtain a certificate of authority from the commissioner prior to selling,
16 soliciting, or negotiating a membership agreement in Montana.

17 (2) A private air ambulance service applying for a certificate of authority shall submit an application on
18 a form prescribed by the commissioner.

19 (3) The commissioner may issue a certificate of authority if the private air ambulance service has
20 complied with the applicable provisions of Title 50 and this title unless the commissioner finds that issuance of
21 the certificate of authority is contrary to the public interest.

22 (4) A private air ambulance service may renew its certificate of authority upon payment of the annual fee
23 specified in [section 2] on or before March 1 of each year and upon continued compliance with the applicable
24 provisions of Title 50 and this title.

25 (5) The requirements of this section are in addition to any other licensing or registration requirements
26 that apply to the private air ambulance service.

27
28 NEW SECTION. Section 2. Fees. A private air ambulance service subject to [sections 1 through 9] shall
29 pay the following fees to the commissioner for services rendered:

30 (1) issuance of a certificate of authority, \$300;

- 1 (2) annual renewal fee, \$300; and
- 2 (3) filing of a membership agreement or other forms, \$50.

3

4 **NEW SECTION. Section 3. Filings.** (1) Pursuant to Title 33, chapter 1, part 5, a private air ambulance
 5 service subject to [sections 1 through 9] shall file for approval any membership agreement, including any rider
 6 or endorsement.

7 (2) A filing under subsection (1) must include all fee schedules associated with the membership
 8 agreement.

9

10 **NEW SECTION. Section 4. Suspension or revocation.** (1) The commissioner may suspend or revoke
 11 a private air ambulance service certificate of authority if the private air ambulance service:

- 12 (a) no longer meets the requirements for the certificate of authority;
- 13 (b) materially fails to comply with a membership agreement issued to residents of Montana;
- 14 (c) is in unsound fiscal condition or is demonstrated to be using methods or practices in the conduct of
 15 its business that render its further transaction of insurance in this state injurious or hazardous to its members or
 16 to the public; or
- 17 (d) violates an applicable provision of law.

18 (2) Unless otherwise provided in the order of suspension or revocation, the private air ambulance service
 19 shall continue to honor membership agreements that are in force at the time of revocation or suspension.

20

21 **NEW SECTION. Section 5. Trade practices.** (1) A private air ambulance service subject to [sections
 22 1 through 9] may not use health status as a reason to:

- 23 (a) refuse to issue or renew a membership agreement;
- 24 (b) assess a differing rate or charge for the membership agreement; or
- 25 (c) exclude a specific individual for a membership agreement issued for a household or other group of
 26 individuals.

27 (2) A private air ambulance service subject to [sections 1 through 9] may not sell, solicit, negotiate, or
 28 advertise a membership program in a geographic area for which the private air ambulance does not routinely
 29 provide service.

30 (3) Except as provided in subsection (4)(b), if membership coverage of a transport is conditioned on a

1 finding of medical necessity, a qualified medical professional shall render the determination.

2 (4) A membership agreement requirement of medical necessity is satisfied if:

3 (a) the treating physician requesting the transport certifies that the transport is medically necessary; or

4 (b) the member's insurer determines that the transport is medically necessary.

5

6 **NEW SECTION. Section 6. Membership agreement -- contents.** A membership agreement issued
7 under [sections 1 through 9] must contain:

8 (1) the effective dates of the membership agreement;

9 (2) a grace period of 30 days for payment of a renewal membership fee;

10 (3) a description of what constitutes acceptable insurance coverage if eligibility for the membership
11 agreement is conditioned on the member's current and continuing health insurance coverage;

12 (4) a statement that, except for decisions made as provided in 33-1-102(6), individuals enrolled in
13 medicare, medicaid, or the healthy Montana kids plan under Title 53, chapter 4, part 11, are not subject to
14 charges billed by a private air ambulance service in excess of applicable deductibles, coinsurance, and
15 copayments;

16 (5) a statement that the membership agreement is an insurance contract;

17 (6) a description and graphic illustration of the base locations and effective coverage area of the private
18 air ambulance service;

19 (7) a list of other private air ambulance services with which reciprocity exists under 50-6-320;

20 (8) a statement that:

21 (a) participation in a membership program does not guarantee that in the event of a transport, the private
22 air ambulance service will provide the transport; and

23 (b) unless reciprocity exists under 50-6-320, if another private air ambulance service provides the
24 transport, the individual will not receive the benefits provided under the membership agreement; and

25 (9) a definition of "medical necessity" if membership coverage of a transport is conditioned on a finding
26 of medical necessity.

27

28 **NEW SECTION. Section 7. Recordkeeping requirements.** (1) A private air ambulance subject to
29 [sections 1 through 9] shall keep records of:

30 (a) all insurance transactions conducted in Montana; and

1 (b) all transports provided to individuals entering into membership agreements.

2 (2) A private air ambulance service subject to this section shall make the records under subsection (1)
3 available to the commissioner on request.

4
5 **NEW SECTION. Section 8. Relationship to other laws.** (1) Except as provided in subsection (2), the
6 chapters and provisions of this title do not apply to a private air ambulance service.

7 (2) Title 33, chapter 1, parts 3, 4, 5, 12, and 13, chapter 18, parts 2 and 10, and chapter 19 as well as
8 [sections 1 through 9] apply to a private air ambulance service that offers a membership program covering
9 out-of-pocket expenses in excess of deductibles, copays, and coinsurance incurred for out-of-network services
10 using the private air ambulance service or to private air ambulance services that are out-of-network and with
11 which the membership program has reciprocity.

12 (3) A membership program of the type described in subsection (2) is insurance as defined in 33-1-201.

13
14 **NEW SECTION. Section 9. Rulemaking authority.** The department shall adopt rules necessary to
15 implement this part.

16
17 **Section 10.** Section 33-1-102, MCA, is amended to read:

18 **"33-1-102. (Temporary) Compliance required -- exceptions -- health service corporations -- health**
19 **maintenance organizations -- governmental insurance programs -- service contracts.** (1) A person may not
20 transact a business of insurance in Montana or a business relative to a subject resident, located, or to be
21 performed in Montana without complying with the applicable provisions of this code.

22 (2) The provisions of this code do not apply with respect to:

23 (a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

24 (b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

25 (c) fraternal benefit societies, except as stated in chapter 7.

26 (3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the
27 corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

28 (4) Except as provided in Title 33, chapter 40, part 1, this code does not apply to health maintenance
29 organizations to the extent that the existence and operations of those organizations are governed by chapter 31.

30 (5) This code does not apply to workers' compensation insurance programs provided for in Title 39,

1 chapter 71, part 21, and related sections.

2 (6) The department of public health and human services may limit the amount, scope, and duration of
3 services for programs established under Title 53 that are provided under contract by entities subject to this title.
4 The department of public health and human services may establish more restrictive eligibility requirements and
5 fewer services than may be required by this title.

6 (7) This code does not apply to the state employee group insurance program established in Title 2,
7 chapter 18, part 8, or the Montana university system group benefits plans established in Title 20, chapter 25, part
8 13.

9 (8) This code does not apply to insurance funded through the state self-insurance reserve fund provided
10 for in 2-9-202.

11 (9) (a) Except as otherwise provided in Title 33, chapters 22 and 28, this code does not apply to any
12 arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political
13 subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention,
14 deductible, or self-insurance plan.

15 (b) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement,
16 plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program
17 of a single political subdivision of this state in which the political subdivision provides to its officers, elected
18 officials, or employees disability insurance or life insurance through a self-funded program.

19 (10) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making
20 of, proposal to make, and administration of a service contract.

21 (b) A "service contract" means a contract or agreement for a separately stated consideration for a
22 specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair,
23 replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or
24 manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or
25 indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service.
26 A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from
27 power surges or accidental damage from handling. A service contract does not include motor club service as
28 defined in 61-12-301.

29 (11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance
30 services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable for

1 the financial risk under the contract with the third party as provided in 7-34-103.

2 (b) If the financial risk for ambulance service insurance is with an entity other than the county, city, or
3 town, the entity is subject to the provisions of this code.

4 (12) Except as provided in Title 33, chapter 40, part 1, this code does not apply to the self-insured student
5 health plan established in Title 20, chapter 25, part 14.

6 (13) ~~This~~ Except as provided in [section 8], this code does not apply to private air ambulance services
7 that are in compliance with 50-6-320 and that solicit membership subscriptions, accept membership applications,
8 charge membership fees, and provide air ambulance services to subscription members and designated members
9 of their households.

10 (14) This code does not apply to guaranteed asset protection waivers that are governed by 30-14-151
11 through 30-14-157. (Terminates December 31, 2017--sec. 14, Ch. 363, L. 2013.)

12 **33-1-102. (Effective January 1, 2018) Compliance required -- exceptions -- health service**
13 **corporations -- health maintenance organizations -- governmental insurance programs -- service**
14 **contracts.** (1) A person may not transact a business of insurance in Montana or a business relative to a subject
15 resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

16 (2) The provisions of this code do not apply with respect to:

17 (a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

18 (b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

19 (c) fraternal benefit societies, except as stated in chapter 7.

20 (3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the
21 corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

22 (4) This code does not apply to health maintenance organizations to the extent that the existence and
23 operations of those organizations are governed by chapter 31.

24 (5) This code does not apply to workers' compensation insurance programs provided for in Title 39,
25 chapter 71, part 21, and related sections.

26 (6) The department of public health and human services may limit the amount, scope, and duration of
27 services for programs established under Title 53 that are provided under contract by entities subject to this title.
28 The department of public health and human services may establish more restrictive eligibility requirements and
29 fewer services than may be required by this title.

30 (7) This code does not apply to the state employee group insurance program established in Title 2,

1 chapter 18, part 8, or the Montana university system group benefits plans established in Title 20, chapter 25, part
2 13.

3 (8) This code does not apply to insurance funded through the state self-insurance reserve fund provided
4 for in 2-9-202.

5 (9) (a) Except as otherwise provided in Title 33, chapters 22 and 28, this code does not apply to any
6 arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political
7 subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention,
8 deductible, or self-insurance plan.

9 (b) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement,
10 plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program
11 of a single political subdivision of this state in which the political subdivision provides to its officers, elected
12 officials, or employees disability insurance or life insurance through a self-funded program.

13 (10) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making
14 of, proposal to make, and administration of a service contract.

15 (b) A "service contract" means a contract or agreement for a separately stated consideration for a
16 specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair,
17 replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or
18 manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or
19 indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service.
20 A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from
21 power surges or accidental damage from handling. A service contract does not include motor club service as
22 defined in 61-12-301.

23 (11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance
24 services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable for
25 the financial risk under the contract with the third party as provided in 7-34-103.

26 (b) If the financial risk for ambulance service insurance is with an entity other than the county, city, or
27 town, the entity is subject to the provisions of this code.

28 (12) This code does not apply to the self-insured student health plan established in Title 20, chapter 25,
29 part 14.

30 (13) ~~This~~ Except as provided in [section 8], this code does not apply to private air ambulance services

1 that are in compliance with 50-6-320 and that solicit membership subscriptions, accept membership applications,
 2 charge membership fees, and provide air ambulance services to subscription members and designated members
 3 of their households.

4 (14) This code does not apply to guaranteed asset protection waivers that are governed by 30-14-151
 5 through 30-14-157."
 6

7 **Section 11.** Section 50-6-320, MCA, is amended to read:

8 **"50-6-320. Private air ambulance service -- findings -- exemptions from insurance code.** (1) The
 9 legislature finds that there is a need to assist Montana consumers with regard to the availability and affordability
 10 of air ambulance service.

11 (2) ~~A~~ Except as provided in subsection (3), a private air ambulance service that solicits membership
 12 subscriptions, accepts membership applications, charges membership fees, and provides air ambulance services
 13 to subscription members and designated members of their households is not an insurer as defined in 33-1-201,
 14 a health carrier as defined in 33-36-103, a health service corporation as defined in 33-30-101, or a health
 15 maintenance organization as defined in 33-31-102 if the private air ambulance service:

- 16 (a) is licensed in accordance with 50-6-306;
 17 (b) has been in operation in Montana for at least 2 years; and
 18 (c) has submitted evidence of its compliance with this section to the department.

19 (3) The provisions of Title 33 prescribed in [section 8] apply to a private air ambulance service that offers
 20 a membership program covering out-of-pocket expenses in excess of deductibles, copays, and coinsurance
 21 incurred for out-of-network services using the private air ambulance service or to private air ambulance services
 22 that are out-of-network and with which the membership program has reciprocity.

23 ~~(3)(4) Any~~ A private air ambulance service membership program must have ~~arrangements~~ RECIPROCITY
 24 AGREEMENTS with ALL other air ambulance service providers in Montana ~~to the extent reasonably possible~~ WITH
 25 AIR AMBULANCE SERVICE MEMBERSHIP PROGRAMS to ensure maximum geographic coverage within the state for the
 26 subscribers to the program."
 27

28 NEW SECTION. Section 12. Codification instruction. [Sections 1 through 9] are intended to be
 29 codified as an integral part of Title 33, chapter 2, and the provisions of Title 33, chapter 2, apply to [sections 1
 30 through 9].

1

2 NEW SECTION. **Section 13. Severability.** If a part of [this act] is invalid, all valid parts that are
3 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
4 the part remains in effect in all valid applications that are severable from the invalid applications.

5

6 NEW SECTION. **Section 14. Effective date -- applicability.** [This act] is effective on passage and
7 approval and applies to private air ambulance membership agreements sold, solicited, or negotiated on or after
8 [the effective date of this act] for purposes of out-of-network coverage of out-of-pocket expenses in excess of
9 deductibles, copays, and coinsurance.

10

- END -