



# North Dakota Insurance Department

Jon Godfread, Commissioner



July 2, 2019

The Honorable Mitch McConnell  
U.S. Senate Majority Leader  
Washington, DC 20510

The Honorable Charles Schumer  
U.S. Senate Minority Leader  
Washington, DC 20510

Dear Leaders McConnell and Schumer:

I write today to express my appreciation for your efforts to address the underlying cost drivers of health care. Specifically, I wish to express my strong support for one particular measure of the *Lower Health Care Costs Act* – section 105 - prohibiting surprise bills from air ambulance providers. I am encouraged that this bill passed by the Senate HELP committee includes protections for consumers with health insurance from balance billing by air ambulance providers and urge you to maintain these protections as the bill moves forward. This section mirrors a law we passed in North Dakota in 2017. And while we are currently facing litigation from the air ambulance industry over the passage of this, we nonetheless believe this is a prudent, fair and equitable way to resolve the crisis consumers are facing at the hands of a few bad actors in the air ambulance industry.

State insurance regulators across the country have received a high volume of complaints from consumers who have utilized air ambulance flights and were then burdened with a surprise bill for tens of thousands of dollars, even though the consumer had health insurance. In North Dakota, from 2013 through July 2017, the North Dakota Insurance Department received 32 complaints totaling \$1.77 million in uncovered charges for air ambulance services. Based upon these complaints, each air ambulance ride has cost the consumer \$55,341 on average.

After conducting extensive investigations, numerous state insurance regulators have determined that many air ambulance operators who are not affiliated with hospitals choose not to negotiate contracts with insurance carriers. Negotiating contracts with insurance companies would result in fair reimbursement rates, reasonable costs for the consumer and no surprise bills. Currently, states have very limited authority to regulate air ambulances. We have been unable to enact meaningful legislation to protect consumers with insurance from surprise bills because of the preemption clause of the federal Aviation Deregulation Act of 1978 (ADA), which protects an air carrier's price, route or service from being subject to state regulation.

In North Dakota, we have enacted laws and regulations that have attempted to provide transparency and protection to our consumers from large, surprise bills. One law has been struck down in federal court, another is currently tied up in litigation before the 8<sup>th</sup> Circuit Court of Appeals. The only other solution is action by Congress.

I want to encourage you to maintain section 105 of the *Lower Health Care Costs Act* and offer my strong support on behalf of all consumers. This section will likely be opposed by those in the air ambulance industry who have no desire to contract with health insurance companies and want to continue a business model that preys on people when they are at their most vulnerable. I implore you to act in the best interests of our consumers and resist any attempt to remove these provisions which provide reasonable reimbursement to air ambulance providers, incentive for entering into network agreements, and for the first time, offer the consumer protections our citizens need.

As this issue will be strongly contested by the bad actors in the air ambulance industry, I want to dispel the main argument you will hear against these reasonable regulations.

**Rural Access will not diminish**

If section 105 of the *Lower Health Care Costs Act* is maintained, this is a common threat made by the independent air ambulance industry when any changes are proposed. We faced the same claims in 2015 and 2017 when our laws were debated by our Legislative Assembly. Upon passage of those laws in 2015, no air ambulance providers have left our state. North Dakota is about as rural as you can get and I write to tell you from our prospective, the air ambulance companies themselves have dispelled the myth that they will flee from the rural areas if these reasonable regulations are passed by Congress. The only real change achieved by our law was the protection of our consumers from outrageous balance bills. We envision a similar result with the passage of the *Lower Health Care Costs Act* including the protections in section 105.

In North Dakota, we have nine air ambulance providers; some are independent, stand-alone and some are hospital affiliated providers. Most of these providers are good actors and provide a service to our consumers. The bad actors in our state tend to be stand-alone operators who use the balance billing method as a business model to prey on people during their most vulnerable time. They pass on massive surprise bills to private market consumers and expect them to make up the claimed difference. It is not the government's job to keep bad business models in business. It's the government's job to protect consumers from these very situations where consumers are being taken advantage of by these operators. This is precisely what section 105 of the *Lower Health Care Costs Act* does for our consumers.

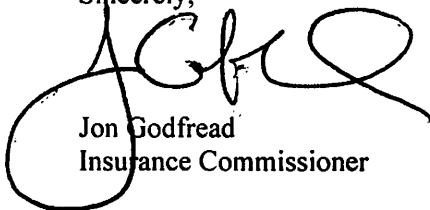
The *Lower Health Care Costs Act*, and specifically section 105 regarding air ambulance protections, allows the marketplace to work. Under this legislation, the providers can negotiate contracts with health insurers at rates the market deems appropriate. If an air ambulance company chooses not to negotiate with health insurers, this legislation ensures the market average rate of reimbursement is provided for their services, meaning this legislation allows those rates to move over time and adjusts as the marketplace influences.

The air ambulance industry has vigorously opposed every effort to implement a change that would allow states to regulate this area of health care. As an insurance commissioner, I will always advocate for more state-based regulation as I believe it's a fundamental principle to successful regulation of our insurance industry. In this instance we are willing to compromise. That is what section 105 of this bill is, a compromise. It allows the states flexibility to solve problems if the median rates are not adequate. But ultimately, it's a federal solution with continued federal oversight to an issue that has negatively impacted so many consumers.

If the air ambulance industry will not support this compromise, it begs the question, what will they support? The "solutions" they have proposed either continue to give themselves a blank check for their services on the backs of vulnerable, unsuspecting consumers or forces insurance carriers to pay the full unreasonable price, which will ultimately be passed on to all health insurance policyholders and drive up the cost of health insurance. In short, their "solution" is to do nothing and allow them to continue to gouge consumers, who are unable to have a choice in this matter.

I again applaud you for taking on this difficult task and ask for swift action on this critical piece of consumer protection legislation. I would like to offer my support in any way possible. If I or any of my colleagues can be of assistance, please do not hesitate to reach out.

Sincerely,



Jon Godfread  
Insurance Commissioner

CC: The Honorable John Hoeven, United States Senator, North Dakota  
The Honorable Kevin Cramer, United States Senator, North Dakota  
The Honorable Kelly Armstrong United States Representative, North Dakota  
The Honorable Governor Doug Burgum, Governor, North Dakota