

January 11, 2017

Montana State Legislature
Senate Business, Labor, and Economic Affairs Committee
P.O. Box 200400
Helena, MT 59620-0400

sent via email to:
lkiem@mt.gov

RE: SB 44, Provide process to hold patients harmless from balance billing by air ambulance – NAMIC’s written testimony on legislation

Dear Senator Edward Buttrey, Chair; Senator Dee Brown, Vice-Chair; and honorable members of the Senate Business, Labor, and Economic Affairs Committee:

Thank you for affording the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to the Senate Business, Labor and Economic Affairs Committee on this proposed legislation. I apologize for my tardy submission to the January 10, 2017 public hearing. I ended 2016 and started the New Year off with a bad case of bronchitis, so I am just getting back on my feet health-wise.

The National Association of Mutual Insurance Companies (NAMIC) is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country’s largest national insurers. NAMIC members represent 40 percent of the total property/casualty insurance market, serve more than 170 million policyholders, and write nearly \$225 billion in annual premiums. NAMIC has 134 members who write property/casualty in the State of Montana, which represents 40% of the insurance marketplace.

Although NAMIC supports Senator Gordon’s laudable desire to protect patients from “balanced billing” by air ambulance service providers, NAMIC is concerned that the scope of the proposed legislation is unnecessarily broad and could be interpreted to apply to more than health plans and health insurance providers. “Balanced billing” is really a health insurance and medical services provider accounting and billing practice that does not directly relate to property and casualty insurance or workers’ compensation. Property and casualty insurance coverage is comprehensively governed by contract law, insurance law and legal liability tort law, and workers’ compensation is strictly governed by the detailed provisions of the workers’ compensation statute. Consequently, NAMIC believes that the phrased used throughout the bill, “insurer or health plan” should be amended to read “health insurer or health plan”.

Additionally, NAMIC believes that legal disputes pertaining to the reasonable and necessary medical expenses and medical service rates charged by providers and vendors should be addressed by the judicial system, which is duly authorized to resolve said legal disputes. NAMIC believes that the insurance commissioner's staffing resources should be used to regulate insurance products and activities for the benefit of insurance consumers as opposed to being intricately involved in medical services pricing contract disputes and alternative dispute resolution activities between health insurance companies and medical providers.

NAMIC is also concerned about the provision in the bill that pertains to the prohibition of anti-assignment clauses (New Section 3), because it would establish a public policy doctrine that is inconsistent with the well-established legal doctrine of allowing contracting parties to agree to contractual provisions that restrict the parties' right to assign their legal cause of action to a party not in direct privity to the contractual relationship. Specifically, NAMIC is concerned that this will lead to litigation abuse, because third parties could set up "a cottage industry" of purchasing the legal causes of action of others.

As previously discussed, NAMIC is concerned about the commissioner of insurance getting involved in alternative dispute resolution activities pertaining to pricing disputes between a service provider and an insurer. Consequently, NAMIC is particularly concerned about the prescriptive scope of the provisions (New Sections 5 and 6) relating to the commissioner's extensive participation and broad discretion in the independent resolution process, approval of independent reviewer qualifications, and the selection of independent reviewers. There are already a number of judicial and quasi-judicial alternative dispute resolution options currently available to parties for their use in resolving legal disputes prior to litigation, so NAMIC believes that this legislative proposal is unnecessary, duplicative, and likely to create a needless administrative burden and expense for the insurance commissioner's office.

Further, NAMIC respectfully requests that the proposed legislation clearly state that the parties to the proposed voluntary and mutually agreed upon independent dispute resolution procedure retain their right to withdraw from independent dispute resolution process if either party is dissatisfied with the insurance commissioner's selection of a particular independent reviewer. The current language of the proposed legislation could be read to require the parties to the mutually agreed upon independent dispute resolution procedure to accept the selection of the independent reviewer, when the very independent dispute resolution activity is voluntary in the first place.

Finally, since there is no evidence to support that there is emergency basis for requiring an "effective upon passage and approval" effective date, NAMIC believes that the effective date should be January 1, 2018, so that stakeholders have appropriate time to educate their staff about the new law and effectively implement internal business practice necessary to comply with the proposed legislation.

For the aforementioned reasons, NAMIC respectfully requests that the Senate Business, Labor, and Economic Affairs Committee **VOTE NO on SB 44 or in the alternative amend the proposed legislation to clarify that the bill applies only to "health insurers and health plans"**.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you would like to discuss NAMIC's written testimony.

Respectfully,

A handwritten signature in black ink, appearing to read "Christian John Rataj". The signature is fluid and cursive, with the first name "Christian" being the most prominent.

Christian John Rataj, Esq.
NAMIC – Senior Director of State Affairs
Western Region