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Koehler Fitzgerald

Koehler Fitzgerald LLC provides highly specialized legal services for self-insured health plans, their members and sponsors, TPAs, and reference-based pricing plans.

The firm's services encompass defense of out-of-network claims, claim repricing and scrubbing, and the national defense of patients confronted with balance billing claims. Additionally, the firm can represent plans nationally in the recovery of claim overpayments.

Koehler Fitzgerald's services cover all stages of collection activity, from advocacy to provider billing to jury trial and appeal.

Koehler Fitzgerald's multilingual services are supported by the use of proprietary and customized software to track and support all of its tasks and provide customized weekly reports of the status of claims and activity.

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Air Ambulance Update

In *Bailey v. Rocky Mountain Holdings LLC*, __ F.3d __, 2018 WL 2107176 (11th Cir. May 8, 2018), the Eleventh Circuit Court of Appeals ruled that Florida's Personal Injury Protection statute (Fla. Stat. § 627.736) was preempted in pertinent part by the Airline Deregulation Act (ADA). In the underlying case, an automobile accident victim was transported by air ambulance to a hospital. The patient's insurer paid the air ambulance service pursuant to Florida's statute at 80 percent of the statutory fee for air ambulance services up to the policy's limits. The air ambulance operator balance billed the plaintiff, as the insured.

The Eleventh Circuit's ruling is a significant victory for the air ambulance industry as the industry battles state law efforts to eliminate or regulate balance billing disputes. It follows upon several other rulings also holding that the ADA preempts these efforts. See, e.g., *EagleMed LLC v. Cox*, 868 F.3d 893 (10th Cir. 2017); *Stout v. Med-Trans Corp.*, No. 1:17-cv-115-MW/GRJ (N.D. Fla. May 2, 2018); *Schneberger v. Air Evac EMS, Inc.*, No. CIV-16-843-R, 2017 WL 1026012 (W.D. Okla. Mar. 15, 2017); *Valley Med Flight, Inc. v. Dwelle*, 171 F. Supp. 3d 930 (D.N.D. 2016).

However, the FAA reauthorization Act of 2018, if enacted,





CBO Report

In May 2018, the Congressional Budget Office (CBO) updated its report providing estimates for 2018-2028 of the number of noninstitutionalized people under 65 with health insurance and the federal costs associated with each kind of subsidy. "In an average month in 2018, about 244 million of those people will have health insurance, and about 29 million will not. By 2028, about 243 million are projected to have health insurance and 35 million to lack it.

"Net federal subsidies for insured people in 2018 will total \$685 billion. That amount is projected to reach \$1.2 trillion in 2028. Medicaid and the Children's Health Insurance Program account for about 40 percent of that total, as do subsidies in the form of tax benefits for work-related insurance. Medicare accounts for about 10 percent, as do subsidies for coverage obtained through the marketplaces established by the Affordable Care Act or through the Basic Health Program.

"The market for nongroup health insurance (that is, insurance bought individually rather than through an employer) is expected to be stable in most areas of the country over the decade. Premiums for benchmark plans, which are the basis for determining subsidies in that market, are projected to increase by about 15 percent from 2018 to 2019 and by about 7 percent per year between 2019 and 2028."

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could alter the playing field. H.R. 4, which has passed the House and been read twice before the Senate, provides, "[n]ot later than 90 days after the date of enactment of this Act, the Secretary of Transportation shall establish an advisory committee to make recommendations for a rulemaking—(1) to require air ambulance operators to clearly disclose charges for air transportation services separately from charges for non-air transportation services within any invoice or bill; and (2) to provide other consumer protections for customers of air ambulance operators." The committee is to be comprised of representatives from state insurance regulators, health insurers, consumer groups, the air ambulance industry, and relevant Federal agencies, including the Secretary of Transportation. The advisory committee is to make recommendations with respect to various matters, including: (1) cost-allocation methodologies needed to ensure that charges for air transportation services are separated from charges for non-air transportation services; (2) cost- or price-allocation methodologies to prevent commingling of charges for air transportation services and charges for non-air transportation services; and (3) formats for bills and invoices. Significantly, H.R. 4 provides that non-air transportation services of air ambulance operators and prices thereof are neither services nor prices of an air carrier for preemption under the ADA.

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