

EMERGENCY AIR MEDICAL
TRANSPORTATION:
RURAL ACCESS TO
HEALTHCARE &
MEDICARE
REIMBURSEMENT ISSUES



June 19, 2019

mwe.com

McDermott
Will & Emery

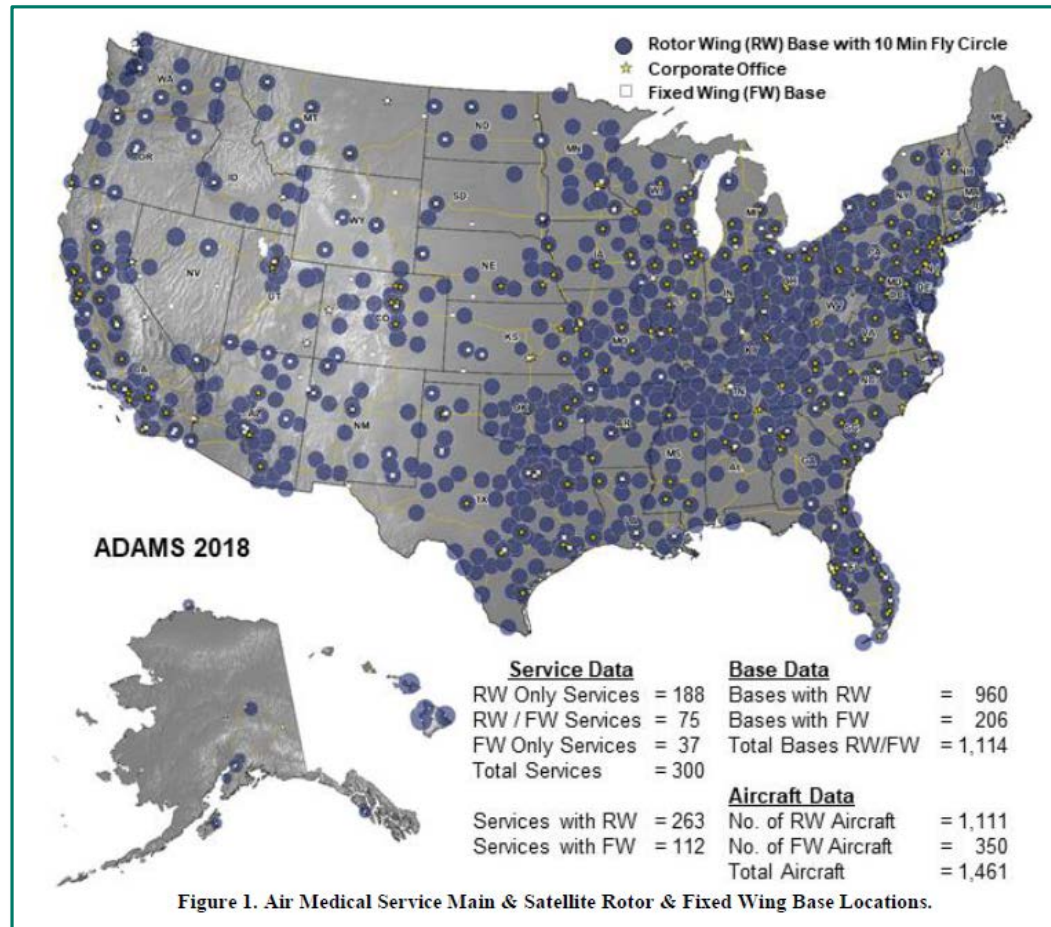
INTRODUCTIONS

- **General Rick Sherlock (ret.)**, President and CEO, Association of Air Medical Services
- **Christopher Eastlee**, Vice President of Government Relations, Association of Air Medical Services
- **Thomas Cook**, General Counsel, Global Medical Response
- **Tim Pickering**, Vice President of Government Affairs, Air Medical Group Holdings, a Global Medical Response company
- **Jason Caron**, Partner, McDermott, Will & Emery
- **Congressman Lamar Smith (ret.)**, Akin Gump Strauss Hauer & Feld
- **Daniel Graver**, Counsel, Akin Gump Strauss Hauer & Feld

OVERVIEW

- Emergency Air Ambulance is the only link to a Level I or Level II trauma center for 85 million Americans in rural areas
- Costs to provide emergency air ambulance services have increased significantly
- Medicare volume has increased significantly
- Medicare payments have remained stagnant
- This unsustainable mismatch between costs and reimbursement has reached a crisis point in the air ambulance industry
- CMS should use the CY2020 Medicare Physician Fee Schedule Rule to:
 - Solicit stakeholder feedback on rebasing air ambulance Medicare payments
 - Begin gathering cost data to inform its air ambulance reimbursement policy
- CMS should rebase Medicare payments to more closely reflect the actual costs of providing emergency air ambulance services

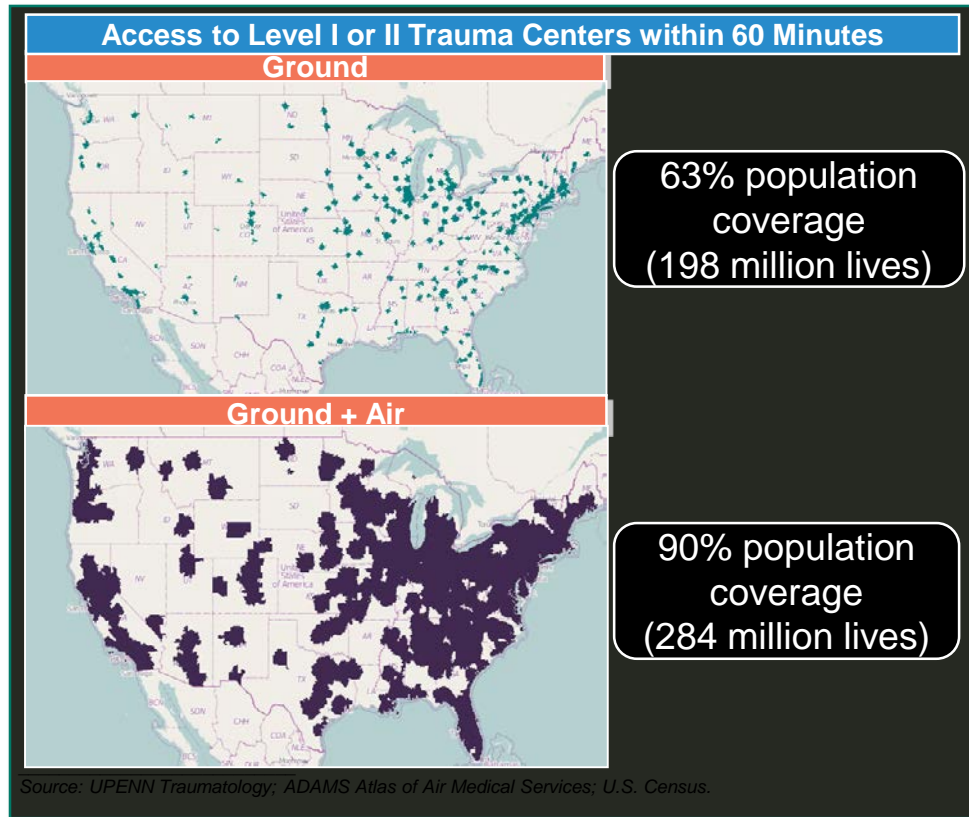
BACKGROUND



- There are more than 300 air medical service companies nationwide.
- These companies staff and operate 960 rotary wing bases and 206 fixed wing bases. They operate over 1,100 rotary wing aircraft and 350 fixed wing aircraft—the equivalent of one aircraft per 2,500 square miles of coverage in the U.S.
 - Source: Atlas and Database of Air Medical Services, September 2018
- When requested by a physician or first responder, air medical providers respond immediately—without ever knowing how, when, or if the service will be paid, yet incurring all the costs associated with the flight.

THE ROLE OF AIR MEDICAL SERVICES

- 30% of the U.S. population relies on air medical transport for access to Level I or II trauma centers within the “Golden Hour”

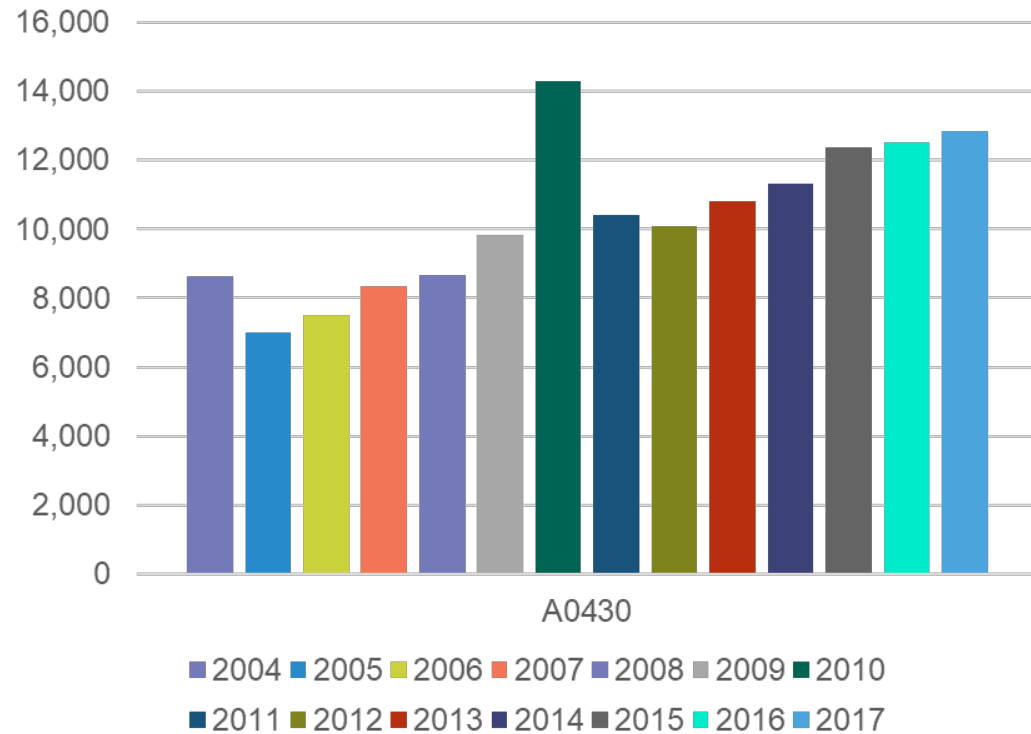


- ~85 million Americans (1-in-4 Americans) can access a Level I or II trauma center within 60 minutes only if they are flown by helicopter
- Additionally, there are another 30+ million Americans, many of whom are in rural areas, who cannot access a Level I or II trauma center within 60 minutes, even by air.
- Air medical transport is often a matter of life and death, responding to critical emergencies and providing rapid transport to tertiary and trauma care centers

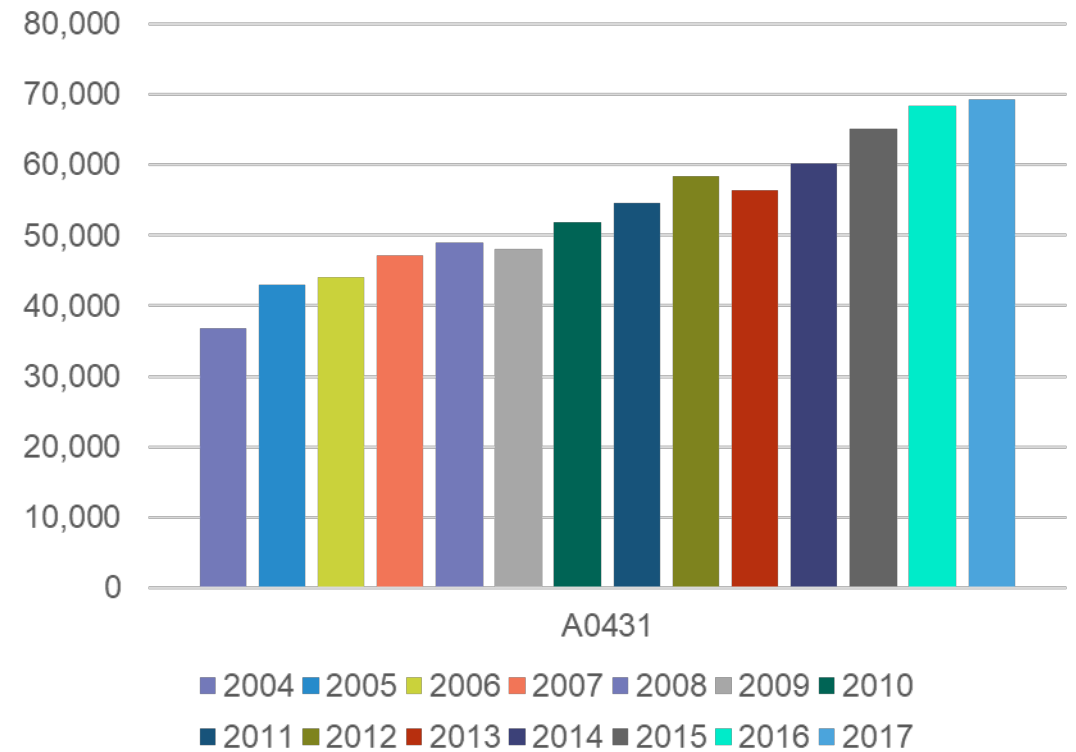
MEDICARE CLAIMS VOLUME GROWS

Demand for Emergency Medical Transportation is not controlled by suppliers

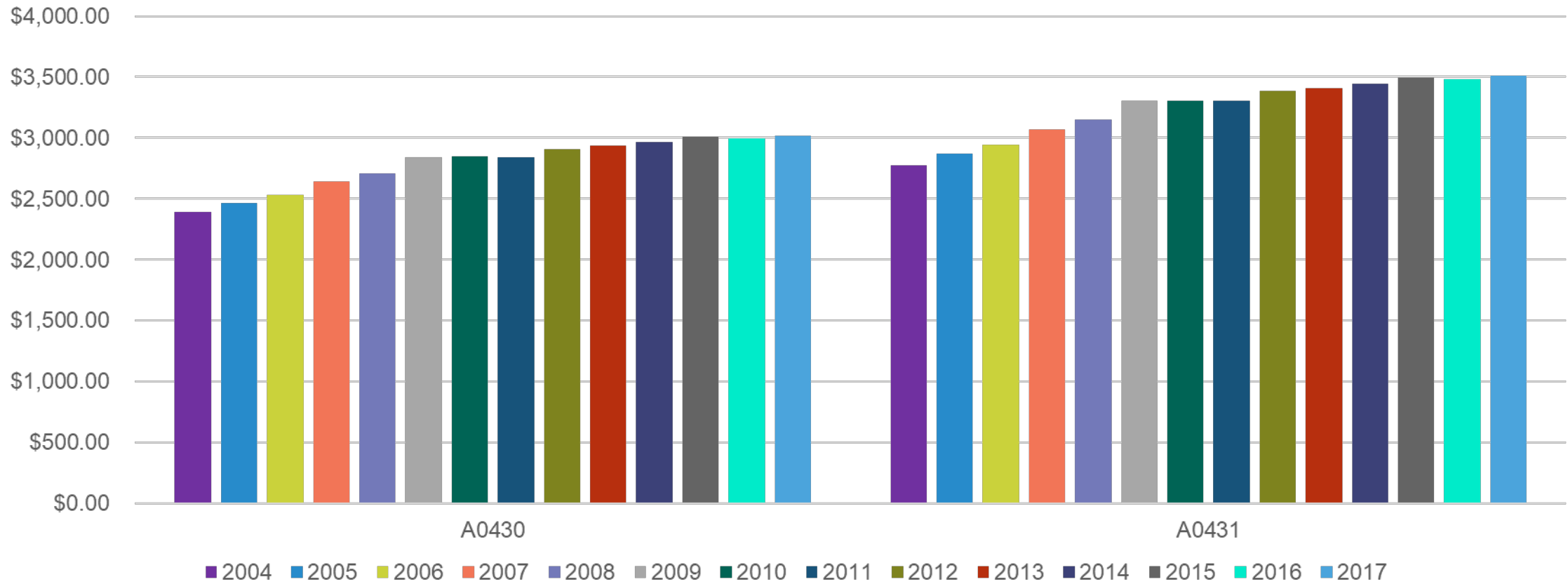
Fixed Wing Medicare Flight Volume



Rotary Wing Medicare Flight Volume



MEDICARE BASE RATE REMAINS STAGNANT



MEDICARE FEE SCHEDULE RATES PAY ~40% LESS THAN COSTS (2016)

- Xcenda surveyed air medical suppliers to collect cost information and found:
 - Median fully loaded cost per transport for independent programs: \$10,199
 - Medicare payment to be about \$6,000
 - Median fully loaded cost per transport for hospital based programs: \$13,017
 - Medicare payment to be about \$7,600
- Source: Air Medical Services Cost Study Report; Xcenda; March 24, 2017

Based on reported revenue,
Medicare covers 59%
of reported transport costs



One-third
of participants report
a negative margin



RURAL ACCESS TO EMERGENCY HEALTHCARE

- **More than 100 Rural Hospitals Have Closed Since 2010.** These rural hospital closures place rural Americans in greater need for effective and rapid transportation during a medical emergency. Source: <https://www.shepscenter.unc.edu/programs-projects/rural-health/rural-hospital-closures/>
- **1 in 5 Rural Hospitals are at High Risk of Imminent Closure.** According to a recent analysis conducted by Navigant, 21 percent of rural hospitals nationwide are currently at high risk of imminent closure. Source: <https://www.navigant.com/insights/healthcare/2019/rural-hospital-sustainability>
- **The New Rural Healthcare Delivery Model.** Secretary Azar has identified the need for a new rural healthcare delivery model in the wake of so many rural hospital closures. Source: Sec. Alex Azar, *Remarks to the National Rural Health Association*, Feb. 5, 2019.
- **Emergency Air Ambulance Plays a Vital Role in Rural Healthcare Delivery.** FQHCs and telemedicine can help relieve some of the primary care challenges in rural areas, but they cannot replace access to a trauma center.

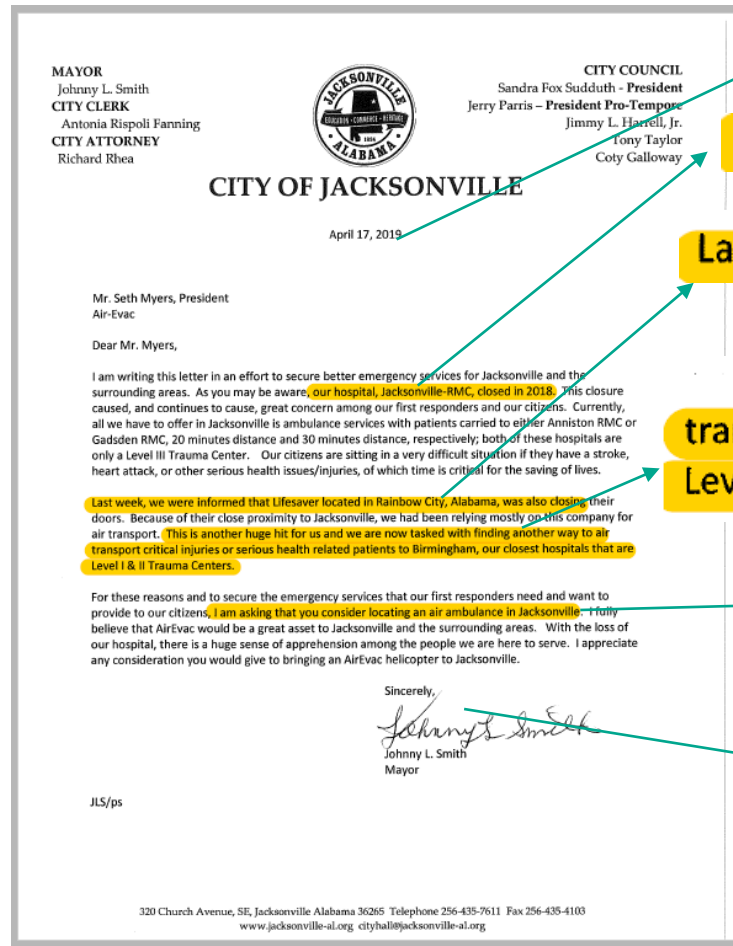
MEDICARE REIMBURSEMENT POLICY ISSUES

- **Air Medical Rural Expansion.** In recent years, the majority of Air Ambulance expansion has been into rural areas, increasing access and coverage, including where rural hospitals closed.
- **Readiness.** The cost of readiness is the largest contributor to program operating costs, and those costs are higher in rural areas.
- **Government Payor Volumes.** In addition to higher costs, rural areas have a higher concentration of Medicare beneficiaries, and Medicare volume is expanding across the U.S.
- **Medicare Below-Cost Reimbursement.** Air Medical Services are reimbursed significantly below cost by government payors like Medicare.
- **Mandatory Assignment.** Ambulance suppliers are required by law to accept assignment from Medicare, and cannot bill for costs that exceed reimbursement. [See 42 C.F.R. § 414.610(b)]
- **Medicare Under-Payments are Closing Air Bases.** An outdated Medicare payment methodology for air ambulance transportation is closing air bases in those same areas where rural hospitals are closing, exacerbating the life-threatening lack of access to emergency care.

MEDICARE REIMBURSEMENT RATES HAVE REACHED A CRISIS POINT FOR AIR MEDICAL SERVICES

- **Bankruptcy.** The third-largest air ambulance provider, PHI Inc., filed for Chapter 11 bankruptcy on March 7, 2019 citing an inability to service nearly \$500 million debt obligation with payments from on-going operations.
 - *PHI cited the impact of inadequate payments from insurers, including Medicare, as a main driver of the bankruptcy.*
- **Closed Bases.** In the last five months, at least 31 air medical bases (3% of the total bases in the U.S.) have closed, nearly all in rural areas (including 29 bases closed by air medical providers other than PHI), many citing mounting financial pressures from Medicare/Medicaid underpayments.

THIS IS EXACERBATING THE ACCESS TO HEALTHCARE CRISIS IN RURAL AMERICA



April 17, 2019

our hospital, Jacksonville-RMC, closed in 2018.

Last week, we were informed that Lifesaver located in Rainbow City, Alabama, was also closing

This is another huge hit for us and we are now tasked with finding another way to air transport critical injuries or serious health related patients to Birmingham, our closest hospitals that are Level I & II Trauma Centers.

I am asking that you consider locating an air ambulance in Jacksonville.

Johnny L. Smith
Mayor

CMS HAS THE AUTHORITY TO RESOLVE THIS ISSUE

Page 2665

TITLE 42—THE PUBLIC HEALTH AND WELFARE

§ 1395m

§ 1395m. Special payment rules for particular items and services

(l) Establishment of fee schedule for ambulance services

(1) In general

The Secretary shall establish a fee schedule for payment for ambulance services whether

(2) Considerations

In establishing such fee schedule, the Secretary shall—

(A) establish mechanisms to control increases in expenditures for ambulance services under this part;

(B) establish definitions for ambulance services which link payments to the type of services provided;

(C) consider appropriate regional and operational differences;

(D) consider adjustments to payment rates to account for inflation and other relevant factors; and

(E) phase in the application of the payment rates under the fee schedule in an effi-

- The Secretary has the authority (and statutory obligation) to take into account both inflation and “*other relevant factors*” when adjusting the ambulance fee schedule.
- However, Medicare’s rate setting process has failed to keep pace with inflationary growth, and has not been adjusted to address other relevant factors in almost 20 years (*e.g., equipment costs, safety costs, staff costs, maintenance and fuel costs, and other overhead costs*)

PROCESS EXACERBATES COST ISSUES

- While most costs associated with operating an air medical base are “fixed costs” (e.g., readiness costs of labor, equipment ownership, and leases), both fixed and variable costs have increased significantly in recent years.
- Costs of operating air medical service programs have continued to increase every year
 - According to the Department of Transportation, in 2018 the average cost per gallon for aviation fuel in the US was \$2.14/gallon – in 1999 the average was \$0.71 (a 300% increase, averaging about +15% each year)
 - According to the Bureau of Labor Statistics, the mean salary of AMS pilots increased nearly +112% over the same period
 - CPI-Medical increased about +3.8% each year from 2009 – 2019
 - **The Ambulance Fee Schedule has increased less than an average of 2% each year**
- The air medical service industry is highly competitive—it can be difficult to recruit and retain pilots when competing with commercial airlines
- Air medical service providers operate at the nexus of two highly regulated industries—aviation and healthcare—contributing to high regulatory costs

ENGAGEMENT WITH HHS AND CMS

- **Our team has had productive conversations with CMS and HHS around both access to healthcare in rural areas, and the need to rebase Medicare rates to reflect actual costs.**
 - HHS Chief of Staff
 - Medicare Part B Leadership
 - HHS/CMS Office of General Counsel
 - [TBD: Medicare Part B Principal Deputy Administrator Demetrious Kouzoukas]

REQUEST OF OMB AND CMS

- **In the CY2020 Medicare Physician Fee Schedule Rule, CMS (with support from OMB), should request stakeholder input on rebasing air ambulance reimbursement.**
 - CMS should issue a proposed rule requesting stakeholder input on rebasing air ambulance reimbursement for CY2020.
 - CMS should begin collecting emergency air ambulance cost data, so it can make informed policy decisions about the alignment of costs and reimbursement.
 - CMS should exercise its authority under the Social Security Act to use its existing rate setting methodology to consider factors beyond inflation when making adjustments to the ambulance fee schedule.
- **Ultimately, CMS should adjust its payment methodology and re-base air medical payments so that payments are more closely reflective of the current costs of providing critical air medical services to Medicare beneficiaries.**

THANK YOU

This material is for general information purposes only and should not be construed as legal advice or any other advice on any specific facts or circumstances. No one should act or refrain from acting based upon any information herein without seeking professional legal advice. McDermott Will & Emery* (McDermott) makes no warranties, representations, or claims of any kind concerning the content herein. McDermott and the contributing presenters or authors expressly disclaim all liability to any person in respect of the consequences of anything done or not done in reliance upon the use of contents included herein. *For a complete list of McDermott entities visit mwe.com/legalnotices.

©2019 McDermott Will & Emery. All rights reserved. Any use of these materials including reproduction, modification, distribution or republication, without the prior written consent of McDermott is strictly prohibited. This may be considered attorney advertising. Prior results do not guarantee a similar outcome.

