

## **THE HMS PATIENT SAFETY ACT (H.R. 978)**

### **FREQUENTLY ASKED QUESTIONS**

#### **What will the HMS Patient Safety, Protection and Coordination Act (H.R. 978) do?**

The HMS Patient Safety Act will ensure that patient safety, quality patient care and coordination of helicopter medical services are properly overseen by state emergency medical services (EMS) and public health authorities. It would allow states, to the extent they choose, to oversee air ambulances just as they currently oversee ground ambulances, hospitals and other healthcare entities. The Act does not direct how or whether states should govern air ambulance services. Rather, it simply sets forth a sphere in which the state is not preempted by the Airline Deregulation Act (ADA) from fulfilling its role in public health oversight.

#### **Why is legislation needed?**

Critically ill or injured patients requiring air medical transport are among the most vulnerable patients treated in the medical system. Ensuring patient safety is paramount as critical care is often provided in remote settings or during transport from scene to hospital or between hospitals. Regulatory oversight to protect patient interests in all ambulances is an essential function and responsibility of state EMS and health authorities. While states have clear authority to oversee ground medical transport, state oversight over helicopter medical transport is less defined. As a result, numerous state laws governing HMS have been undermined by challenges citing the federal ADA preemption provision. Although there is general agreement that the federal government regulates the *aviation* aspects of HMS and the states regulate the *medical* aspects, there is a lack of clarity between these two spheres and this threatens patient safety and the quality of patient care and impedes the proper coordination of services.

Air ambulances are not and should not simply be air taxis. Patients who are so critically ill or injured as to require helicopter medical services must be transported in a safe manner and receive high quality critical care during flight. It is imperative that Congress clarify the ability of states to govern helicopter air ambulances within their boundaries (just as they currently do for ground ambulances) while continuing to recognize the important federal role in aviation oversight.

#### **Who is impacted by the HMS Patient Safety Act?**

All helicopter air ambulances operating or seeking to operate in a given state may be required by that state to comply with state patient safety, quality medical care and public health planning requirements if they want to provide air ambulance services in that state. State EMS offices are returned the ability to oversee helicopter air ambulances in the same manner they oversee ground ambulances in their emergency medical systems. Most importantly, patients and the public will be provided the opportunity for a better and safer air medical emergency care system that meets quality standards of medical care appropriate to the specific needs of patients in those states.

#### **Does the HMS Patient Safety Act amend or eliminate the ADA preemption provision?**

The Act does not amend or eliminate the ADA preemption provision. It simply clarifies under what circumstances and to what extent states may oversee the medical aspects of air ambulance services without infringing on FAA oversight or running afoul of the ADA preemption provision.

**Does the HMS Patient Safety Act require states to act or establish certificate of need regulations?**

The Act does not require states to enact any new laws or regulations. Further, the legislation recognizes that there is no “one size fits all” air medical system. States that choose to regulate various aspects of air ambulance services are not told how they should do so, nor should they be as the needs of patients, the geography and availability of trauma and EMS care varies widely between states. States are provided clarity as to the sphere in which they may regulate and their oversight will be appropriately governed by the unique attributes of each state.

**Can states already regulate the quality of care provided in medical helicopters?**

A small group of air carriers have used the ADA selectively to dismantle State emergency medical services and health care planning regulations in states throughout the country. The law has been broadly interpreted by the Courts and the Department of Transportation to severely restrict the ability of states to oversee the “quality, accessibility, availability and acceptability” of helicopter medical services. This is the heart of state authority to assure and protect the public’s interest in the safety and integrity of the helicopter medical providers. Without the ability to assure the quality of air medical providers, states are not able to protect vulnerable patients.

**Will the HMS Patient Safety Act limit access to care, particularly in rural areas?**

The states’ ability to regulate HMS means both the ability to limit and the ability to increase the number of helicopters in various regions throughout the state according to population, geography, location of trauma centers, patient needs, and the availability or lack thereof of other air ambulance providers. The number of medical helicopters in the country has more than doubled in the last six years, yet most of the recent growth is in areas that already have other medical helicopters. The ADA has not been used to improve access to underserved communities. Rather, the ADA has primarily been used to overturn long standing state EMS and public health regulations to enable unfettered entry into geographic areas where air medical programs already exist and to eliminate the need to comply with quality air medical transport standards. Unnecessary duplication of unneeded services does not improve access but it does impose new costs to the public due to the economic incentive to maintain sufficient flight volume whether air medical transport is needed by patients or not. There is extensive evidence that the rapid increase of medical helicopters in the same market areas has led to increased use of HMS for patients with minor injuries.

**Will passage of this legislation stifle competition?**

Critically ill or injured patient are unique passengers in transportation and they do not have a choice of carriage or carrier. When a helicopter is used as an air ambulance to transport them when minutes can mean the difference between life and death, the public must be able to trust that patient interests, not competitive business interests, are paramount. The HMS Patient Safety Act will enable states to appropriately regulate competition to ensure a level playing field where all helicopter medical service providers must meet quality standards and participate in a coordinated air medical transport system that promotes the best interests of patients. Further, the HMS Patient Safety Act will allow states to establish bases of operations and service areas among air medical providers to ensure coordinated medical transport and discourage dangerous practices to increase flight volume such as stacking of flights (accepting a transport without an available helicopter thus delaying the patient's transport), helicopter shopping among various providers, and call jumping where multiple helicopters arrive at the same scene.

### **Do more helicopters mean fewer motor vehicle deaths?**

Multi-year data from the Fatal Accident Reporting System (FARS) overseen by the National Highway Traffic and Safety Administration clearly shows that the number of helicopters in any given area is not related to trauma fatalities. In fact, some of the states with strong certificate of need laws, such as Massachusetts and Connecticut, and very few helicopters have the lowest number of traffic fatalities in the country, while other states with many helicopters have very high rates of fatalities from motor vehicle crashes. Medical helicopters are a useful, essential, and important resource in the emergency care system. Access to high quality medical teams in helicopters can help save lives but only if the helicopters are integrated into the entire EMS and trauma system. It is the comprehensive system, not just the helicopters that save lives. Improving the oversight ability of state EMS and health authorities is essential in assuring the integration and appropriate use of medical helicopters within state EMS and trauma systems.

### **Will the HMS Patient Safety Act impede FAA oversight over the safety of medical helicopters?**

There is nothing in the Act that interferes with the FAA's ability to oversee the aviation system and airworthiness of medical helicopters. The legislation recognizes the FAA's clear mandates to oversee and regulate the safety of air carriers. State EMS and health authorities have clear mandates to oversee and regulate the provision of medical care including helicopter air ambulances. The legislation clarifies the boundaries of both and will improve the consistency and partnership of federal and state regulatory oversight.

### **Will the HMS Patient Safety Act interfere with safety in air traffic control and the nation's airspace?**

Oversight of the nation's air space is solely within the authority of the FAA. The legislation neither conflicts with nor compromises the safety of the nation's airspace. In fact, one of the safety enhancements identified by the FAA is wider use of the instrument flight system that assures the safety of commercial air lines. Virtually all of the rapid growth of medical helicopters in the past several years has been in aircraft operating in less restrictive visual flight rules with most medical helicopter accidents occurring in non-instrument capable aircraft operating at night and during periods of low visibility. The HMS Patient Safety Act does not impact the FAA's ability to regulate aviation safety or mandate the wider use of instrument flight.

### **Does the HMS Patient Safety Act direct a pilot where they can fly?**

While an aircraft is in operation, the sole authority to operate the aircraft is the Pilot in Command working within the operations control of the FAA Certificate Holder. There is nothing in this legislation that impacts a pilot's sole authority in operating an aircraft. Medical helicopters exist to serve critically ill and injured patients. Patient selection, allocation of helicopters to specific patient requests, and hospital destination criteria are medical, not aviation decisions. A pilot retains sole authority of the aircraft but must operate safely within the medical system.

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