

**AIR AMBULANCE REGULATION OVERVIEW GENERAL SUMMARY**

<b>Federal Aviation Express or Field Preemption</b>	<b>Dismantled State Regulations</b>	<b>Lack of Clarity between Federal/State Domains</b>	<b>Apparently Permissible State Regulation</b>	<b>S. 848/H.R. 978</b>
<p>Express preemption of State regulation related to price, route or service, broadly interpreted to invalidate numerous State economic regulations, including those covering:</p> <ul style="list-style-type: none"> <li>• Rates</li> <li>• Advertising</li> <li>• Scheduling</li> <li>• Insurance</li> <li>• Routing</li> <li>• Accounting and reporting systems</li> <li>• Air ambulance subscription programs</li> </ul> <p>Field preemption of airworthiness and minimum standards related to flight safety:</p> <ul style="list-style-type: none"> <li>• Aircraft certification</li> <li>• Aircraft equipment (e.g., avionics and VHF aircraft frequency transceivers)</li> <li>• Installation/storage of medical equipment aboard the aircraft</li> <li>• Qualifications for pilot and for certain medical personnel acting as flight crew</li> <li>• Weather minimums</li> <li>• Flight operations</li> <li>• Flight safety inspections</li> </ul>	<p>Federal law found to preempt public health regulations that, for example:</p> <ul style="list-style-type: none"> <li>• Specified operating (e.g., 24/7 availability) and minimum response times</li> <li>• Required trauma center affiliation, EMS system affiliation or having in place EMS peer quality review</li> <li>• Designated base of operations, service areas, destinations of patient transport</li> <li>• Required demonstrable need for new or expanded air ambulance services</li> <li>• Limited number of air ambulances within a State/region</li> <li>• Required least-cost alternative analysis/non-duplication</li> </ul> <p>Federal law found to preempt state standards relating to aircraft attributes, equipment and training that cannot reasonably be detached from aviation safety, such as:</p> <ul style="list-style-type: none"> <li>• Safety-related training for medical personnel</li> <li>• Pilot medical training</li> <li>• Prohibition on structural or functional defects affecting safe operation of aircraft</li> <li>• Accreditation by outside body that sets aviation safety standards</li> <li>• Inspection requirements related to aviation safety</li> <li>• Duplicative regulation, even if identical, and independent enforcement</li> </ul>	<p>The patchwork of DOT and court opinions does not provide a clear picture of what regulations concerning air ambulances are permissible. Although DOT has indicated that state regulations serving primarily a patient care objective are properly within the states' regulatory authority, DOT has also indicated that a State medical program, ostensibly dealing with only medical equipment/supplies aboard the aircraft, could be so pervasive or so constructed as to amount to indirect regulation of prices, routes, or services which is preempted. Thus, lack of clarity exists as to what point State regulation of public health constitutes impermissible economic regulation. Further, under field preemption, the extent to which states may regulate and the interface between state and FAA rules are both less defined, particularly where the state regulation impacts the aircraft:</p> <ul style="list-style-type: none"> <li>• Aircraft attributes required for patient safety (e.g., climate control, lighting, configuration to allow access to patient and medical equipment).</li> <li>• Equipment required for patient safety (i.e. States may set requirements but may intersect with FAA regulation over affixing of equipment)</li> <li>• FAA maintains no bright line standards and FAA advises states to consult them regarding federal authority on a case-by-case basis leaving open varying interpretations</li> </ul>	<p>DOT, in line with several court cases, has indicated that state regulations serving primarily a patient care objective are properly within the states' regulatory authority including the adequacy of medical equipment, qualifications of medical personnel and the need to maintain sanitary conditions. DOT has opined more specifically that oxygen masks, litters, blankets, sheets and trauma supplies are permissible so long as FAA requirements are met regarding how those items are safely installed and carried aboard aircraft and as long as they do not constitute preempted economic regulation.</p>	<p>Recognizes State authority to regulate intrastate helicopter medical services including by:</p> <ul style="list-style-type: none"> <li>• Requiring medical licenses</li> <li>• Setting qualifications and training of medical staff</li> <li>• Requiring compliance with health rules such as coordinating patient transport; demonstrating need for new services; determining the number and base location of helicopters; affiliating with health care institution; sanitation and infection control; peer review and quality control; and the proffer of gifts to referring entities (S.848).</li> <li>• Establishing medical criteria for where to transport patients from scene; requirements as to service-areas, hours of availability (such as 24/7), accreditation regarding medical services; flight request coordination; and serving all as medically necessary and appropriate but must all be harmonized with and may not infringe FAA operating requirements</li> <li>• Determining necessary medical equipment and aircraft attributes for quality patient care and communications equipment; but regulations must be consistent with and cannot infringe upon Federal operating requirements</li> </ul> <p>State health regulations shall not supersede or be inconsistent with any FAA operating rules regarding aviation safety (S.848)</p>