

## OVERVIEW OF H.R. 978 AND S. 848

### THE HELICOPTER MEDICAL SERVICES PATIENT SAFETY, PROTECTION AND COORDINATION ACT

#### Background

There is general agreement that the FAA regulates the *aviation* aspects of helicopter medical services (HMS) and the states regulate the *medical* aspects. However, the lack of clarity between these two spheres and limitations on state regulation over HMS threatens patient safety, quality critical care and impedes the proper coordination of services. The Helicopter Medical Services Patient Safety, Protection and Coordination Act, H.R. 978 as introduced by Representatives Jason Altmire and Candice Miller and S. 848 as introduced by Senators Claire McCaskill and Olympia Snowe, ensures that HMS may be properly overseen by states while protecting the one-system safety governance by FAA over aviation safety. The HMS Patient Safety Act is endorsed by the Patient First Air-Ambulance Alliance, representing more than 70 not-for profit and for-profit air medical providers of all sizes with bases in 37 states and operating nationwide, the National Association of State EMS Officials, the Trauma Center Association of America, and a variety of other health and EMS organizations.

While states are empowered to oversee ground ambulances, in the past few years, the appropriate boundary between state and federal oversight of air ambulances has been undermined by a few air medical providers challenging a variety of state regulations across the nation as preempted by the Airline Deregulation Act (ADA). For example, states cannot require that air ambulances be available 24/7 (weather permitting) or transport all critically injured patients from the scene of an accident even if they are uninsured. While the ADA has been beneficial in commercial aviation in reducing costs and improving services, it is not working in HMS. Commercial aviation has regulated markets with a common safety standard. While FAA governs aviation safety of HMS, where states have been unable to properly regulate the economics of HMS, intense competition for individual patients has resulted in delayed transports of critically ill or injured patients, lowered quality of care and aircraft capability, while system costs through overuse of air medical transport and charges to insurers and patients have skyrocketed. Aviation and patient safety are both negatively impacted.

There is necessity and precedent for an ADA exception for state regulation of air ambulances. HMS is completely distinguishable from other sectors of aviation because it is the only area on where critical care services are provided as part of an EMS system. Further, the ADA was never intended to apply to HMS as it was barely in existence when the ADA was enacted in 1978. States must be able to ensure 24/7 availability and complete coordination and coverage of this life-saving service. There is an exception to the comparable motor carrier preemption provision for state safety regulation of motor carriers and of non-consensual towing of cars. An exception for state regulation of patient safety, protection and HMS coordination must also be provided for air carriers to ensure the states can properly protect patients.

The HMS Patient Safety Act would make clear the ability of states to govern helicopter air ambulances within their boundaries (just as they currently do for ground ambulances) without impeding the FAA's exclusive role in regulating aviation safety. The legislation not instruct or require states to issue new regulations, establish new standards or change licensing requirements. Further, it does not prescribe whether or how a state should govern HMS. It simply sets forth a sphere of patient care, patient safety and coordination of HMS in which the states are not preempted by the ADA from oversight. More specifically, the legislation makes clear that states may regulate HMS in the following areas, and subject to the following limitations:

- **Medical Personnel Qualification and Training:** States may require medical personnel aboard HMS aircraft to meet certain qualifications relating to their medical skills (e.g. education, training, certification). Such requirements are intended to ensure that medical responders aboard HMS aircraft possess the required skill and expertise necessary to provide quality medical care to critically ill or injured patients. States may not place such requirements on helicopter pilots.

- **Medical Equipment and Aircraft Attributes:** States may require a HMS provider operating within that state to be properly equipped and configured to facilitate quality critical care delivery. Such requirements may include requiring that a HMS aircraft be equipped with medical equipment and supplies necessary to the care of a critically ill or injured patient in transit, and that a HMS aircraft have the physical attributes necessary to support quality medical care (e.g. sufficient electrical supply for medical equipment, climate control, and patient care space). Such equipment and configuration requirements must be consistent with FAA rules governing such matters.
- **Health Care Planning and Quality Requirements:** States may require HMS providers to comply with state laws related to health care planning and quality of critical care HMS delivery. For example, states may determine the number and location of helicopter air ambulances in a state or region and may require HMS providers to coordinate transport, demonstrate need and capacity for services, affiliate with a health care institution and comply with sanitation and infection control and medical quality requirements such as peer review and quality control.
- **Helicopter Medical Services Access, Delivery and Availability:** States may establish destinations of transport, specifications of service requirements and areas, require hours of availability (such as 24/7, weather and safety permitting), require air medical providers to transport all patients from a scene as medically necessary, impose accreditation requirements, but all such state requirements must be harmonized with federal operating requirements.

#### **How do the House and Senate Bills Differ?**

The Senate version of the HMS Patient Safety, Protection and Coordination Act incorporates a number of helpful suggestions offered by the FAA and the Department of Transportation following the introduction of H.R. 978, which help clarify the interface between state and federal oversight of HMS providers. In addition, the Senate bill adds the following provisions and provides the following clarifications:

- Clarifies that no state health-related regulation shall supersede or be inconsistent with any federal operating requirement regarding aviation safety.
- Enables states to regulate the proffer of gifts of monetary value (other than training or educational programs) to referring entities (hospital, EMS agency, first responder or other personnel) within the state.
- Enables states to regulate the coordination of the interrelationship, interaction and agreements among providers of helicopter medical services, other hospitals, EMS agencies or first responders.
- Imposes a requirement on states to establish regulations or negotiate mutual aid agreements with adjacent states or with providers of HMS in adjacent states when necessary to ensure access to helicopter medical services across state borders.
- Clarifies State authority to establish appropriate medical criteria for determining the appropriate medical institution to receive a patient from the scene of an accident.
- Clarifies that providers licensed in multiple states must comply with the more stringent requirement if there is a conflict between state requirements.
- Prohibits States from delegating the authority over medical equipment, aircraft attributes and communications equipment to a political subdivision of the State.
- Provides other clarifications to state authority related to the provision of care provided by air ambulances including allowing states to require medical helicopters to be able to transport patients a certain distance without refueling within the State.

*For more information on H.R. 978, please contact Nathan Robinson in Representative Altmire's office or Caleb Overdorff in Representative Miller's office. For more information on S. 848, please contact Sonya Wendell in Senator McCaskill's office or Terry McNaughton in Senator Snowe's office.*