



Economic Affairs Interim Committee

64th Montana Legislature

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Air Ambulance-Related Laws

FEDERAL AVIATION ACT, 49 U.S.C. 40101, et seq., and **AIRLINE DEREGULATION ACT**, 49 U.S.C. 41713

The Federal Aviation Act reserves to the federal government the regulation of air commerce in the United States. States are further preempted specifically from affecting air ambulance operators' prices, routes, or services under the Airline Deregulation Act.

References may be made to: Part 135 Commuter and on-demand operations

Air Carrier or Air Ambulance? - The U.S. Department of Transportation [Guidelines for the Use and Availability of Helicopter Emergency Medical Transport](#) says: "A company that provides air ambulance services and holds an FAA air carrier certificate constitutes an air carrier for purposes of the ADA."

Court rulings* preempting state laws:

- State requirements for 24-hour-a-day air ambulance availability
- State requirement for specialty care in a "defined service area"
- State requirement for certificate of need or certificate of public convenience and necessity.

DOT advisory opinions against:

- State regulation of air carrier advertising
- State requirement that subscription services available to all, whether or not a subscriber
- State regulation that tries to regulate only intrastate behavior.

Emergency Medical Treatment and Labor Act (EMTALA) 42 U.S.C. 1395dd

EMTALA says that a hospital with an emergency department must provide for an appropriate medical screening examination (within the hospital's capability) to determine if an emergency medical condition exists. If the person has an emergency medical condition, then the person may not be transferred until stabilized unless the person requests the transfer after being informed of the risks, or a physician or other qualified medical person has certified that the benefit of a transfer outweighs the risks. A transfer must be "effected through qualified personnel and transportation equipment, as required including the use of necessary and medically appropriate life support measures during the transfer...."

Penalties may not be assessed against a physician authorizing a transfer under 42 U.S.C. 1395dd(d)(C), which adds that a hospital or the on-call physician who failed or refused to appear may be penalized.

For purposes of the air ambulance discussion: *The question of stabilization is important in distinguishing between air transport and medical transport. If a state is able to address medical components of air ambulances, those medical components are more critical in medical transport of a potentially unstable patient rather than air transport of a stable patient.*

Affordable Care Act, 42 U.S.C. 300g-19a

The Affordable Care Act says that if a group health plan or health insurance issuer covers emergency services then prior authorization is not needed and there is no distinction between whether the health care provider furnishing the emergency services is a participating provider or not for those services. The provision of emergency services by a nonparticipating health care provider is supposed to have the same cost-sharing requirement (copayments) as if the services were provided in-network.

For purposes of the air ambulance discussion: *Health plans subject to the Affordable Care Act (nongrandfathered plans) apparently may have to bill as if the air ambulance is in-network. The State of Montana health plan, for example, says in-network emergency and urgent care services require a 25% copay for in-network and a 25% copay with balance billing for out-of-network.*

McCarran-Ferguson Act, 15 U.S.C. 6701 et seq.

This 1945 law recognizes that states, rather than the federal government, regulate insurance. Montana's law specifically states that private air ambulance services that solicit membership subscriptions or charge membership fees are not insurance or a health service corporation or health maintenance organization. While the State of [Texas Department of Insurance](#) indicates that McCarran-Ferguson might trump the Airline Deregulation Act in terms of pricing as related to insurance, Montana law probably would indicate that any membership-accepting air ambulance service in this state is not subject to McCarran-Ferguson.

North Dakota's House Bill No. 1255

This legislation started out to provide air ambulance service classifications, but the final version also required the State Department of Health to create and maintain a primary call list and a secondary call list of air ambulance service providers in North Dakota. The lists are to be provided to all emergency medical services personnel and each hospital as well as each 9-1-1 coordinator and public safety answering operation. Further, the Department of Health was to establish air ambulance service response zones for rotary wing aircraft, based on response times and patient health and safety. The bill provided some protocols for using the primary and secondary call lists and for gathering and distributing fee information and informing the patient about the fees being charged.

- To be on the primary call list the air ambulance service was to certify its participation in-network of "the health insurance carriers in the state which collectively hold at least seventy-five percent of the health insurance coverage in the state as determined by annual market share reports."

Valley Med Flight, Inc. is suing the North Dakota State Health Officer and the head of the state's workers' compensation agency over HB 1255, citing the Airline Deregulation Act, EMTALA, and, as the legislation allegedly puts an undue burden on interstate commerce, under the U.S. Constitution Commerce Clause.

Montana's Regulation of Air Ambulances, 50-6-320, MCA.

Subsection (1) omitted as to a requirement for licensure but subsections (2) and (3) are germane: "(2) A private air ambulance service that solicits membership subscriptions, accepts membership applications, charges membership fees, and provides air ambulance services to subscription members and designated members of their households is not an insurer as defined in 33-1-201, a health carrier as defined in 33-36-103, a health service corporation as defined in 33-30-101, or a health maintenance organization as defined in 33-31-102 if the private air ambulance service:

- (a) is licensed in accordance with 50-6-306;
- (b) has been in operation in Montana for at least 2 years; and
- (c) has submitted evidence of its compliance with this section to the department.

(3) Any private air ambulance service membership program must have arrangements with other air ambulance service providers in Montana to the extent reasonably possible to ensure maximum geographic coverage within the state for the subscribers to the program."

Under Montana's law private air ambulances avoid all regulation as an insurer, including the need to obtain a certificate of authority or other operating permission but they are treated like a provider, currently subject to the requirement to be licensed as an emergency medical service under 50-6-306, MCA. As with other providers who benefit from health insurance payments, an air ambulance can be an in-network or out-of-network provider. An out-of-network provider may balance bill a patient.

FYI - Federal Aviation Administration rules (FAA 2012) require certain reports from air ambulances. These include: the number of flight requests for a helicopter providing air ambulance services that were accepted or declined and the number of incidents when a helicopter was not directly dispatched and arrived to transport patients but not used.