

111TH CONGRESS
1ST SESSION

S. 848

To recognize and clarify the authority of the States to regulate intrastate helicopter medical services, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 22, 2009

Mrs. MCCASKILL (for herself and Ms. SNOWE) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To recognize and clarify the authority of the States to regulate intrastate helicopter medical services, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Helicopter Medical
5 Services Patient Safety, Protection, and Coordination
6 Act”.

7 **SEC. 2. FINDINGS.**

8 Congress finds the following:

1 (1) The Federal Aviation Administration is re-
2 sponsible for regulating civil aviation in the United
3 States.

4 (2) Each State is responsible for the regulation
5 of public health planning and protection, patient
6 safety and protection, emergency medical services,
7 the quality and coordination of medical care, and the
8 practice of medicine within its jurisdiction.

9 (3) Helicopter medical services are an essential
10 component of the health care delivery and emergency
11 medical services system in each State and are inte-
12 gral to each State's management of public health
13 planning and protection, patient safety and protec-
14 tion, emergency medical services, the quality and co-
15 ordination of medical care, and the practice of medi-
16 cine within the State's jurisdiction.

17 (4) Existing or future regulation of helicopter
18 medical services by the several States is in the public
19 interest.

20 (5) Helicopter medical services represent a
21 unique and discrete area of air transportation be-
22 cause those services present issues involving the ade-
23 quacy and availability of medical services to patients.

24 (6) Court rulings and statutory interpretations
25 issued by the Secretary of Transportation have im-

1 posed limitations on, impeded, or prevented, the abil-
2 ity of States to effectively regulate helicopter medical
3 services in a manner similar to the regulation of
4 other health care services by the States.

5 (7) Those rulings and interpretations have con-
6 cluded that certain State actions related to public
7 health planning and protection, patient safety and
8 protection, emergency medical services, the quality
9 and coordination of medical care, and the practice of
10 medicine, and related aspects of helicopter medical
11 services, are preempted by Federal law, either pur-
12 suant to the preemption provisions of the Airline De-
13 regulation Act of 1978 (Public Law 95–504; 92
14 Stat. 1705) or through the application of the “field
15 occupation” preemption doctrine.

16 (8) The Airline Deregulation Act of 1978 did
17 not contemplate helicopter medical services, and the
18 use of the Act to strike down intrastate health-re-
19 lated regulations overseeing the provision of heli-
20 copter medical services that would otherwise be per-
21 missible with respect to any other segment of the
22 health care industry is not in the public interest.

23 (9) At the same time, it is also important to en-
24 sure that the Federal Aviation Administration’s ple-
25 nary and exclusive jurisdiction over matters of avia-

1 tion safety is not infringed by any State. Accord-
 2 ingly, any State health-related regulation of heli-
 3 copter medical services must be harmonized and
 4 shall not be inconsistent with Federal regulation of
 5 aviation safety because the safe operation of the heli-
 6 copter medical services flight is of paramount im-
 7 portance.

8 (10) Accordingly, there is a need for clarifica-
 9 tion of existing Federal law so that States may regu-
 10 late helicopter medical services with respect to public
 11 health planning and protection, patient safety and
 12 protection, emergency medical services, the quality
 13 and coordination of medical care, and the practice of
 14 medicine without infringing on the Federal govern-
 15 ment’s plenary power to regulate aviation safety.

16 **SEC. 3. CLARIFICATION OF STATE AUTHORITY OVER HELI-**
 17 **COPTER MEDICAL SERVICES.**

18 (a) IN GENERAL.—Chapter 401 of title 49, United
 19 States Code, is amended by adding at the end the fol-
 20 lowing:

21 **“§ 40130. Clarification of State authority over heli-**
 22 **copter medical services**

23 “(a) CLARIFICATION OF STATE AUTHORITY.—Noth-
 24 ing in this subtitle shall prohibit a State from—

1 “(1) requiring medical licenses for the provision
2 of helicopter medical services between locations with-
3 in the State; or

4 “(2) prescribing regulations relating to the pro-
5 vision of such services if such regulations are pre-
6 scribed pursuant to subsection (c), (d), or (e).

7 “(b) APPLICABILITY OF FEDERAL AVIATION SAFETY
8 AUTHORITY.—No State health-related regulation estab-
9 lished pursuant to this section shall supersede or be incon-
10 sistent with any Federal operating requirement with re-
11 spect to aviation safety.

12 “(c) STATE AUTHORITY OVER MEDICAL SERV-
13 ICES.—A State may prescribe regulations relating to the
14 provision of helicopter medical services with respect to the
15 following:

16 “(1) The medical qualifications and medical
17 training of helicopter medical personnel, except that
18 a State may not impose any requirement with re-
19 spect to a pilot.

20 “(2) The obligation of providers of helicopter
21 medical services to comply with the health planning,
22 patient safety, and medical service requirements of
23 the State, including—

24 “(A) coordination of the interrelationship,
25 interaction, and agreements among providers of

1 helicopter medical services, providers of other
2 emergency medical services, providers of other
3 medical transport services, referring entities,
4 and medical institutions that receive patients
5 transported by providers of helicopter medical
6 services with respect to the transport of pa-
7 tients;

8 “(B) demonstration of adequate capacity
9 to provide helicopter medical services;

10 “(C) demonstration of the need for new or
11 expanded helicopter medical services;

12 “(D) determinations with respect to the
13 number and base location of helicopters used in
14 the provision of helicopter medical services
15 within the State or region of the State or the
16 regulation of competition for specific markets
17 within the State;

18 “(E) affiliation with health care institu-
19 tions;

20 “(F) sanitation and infection control proto-
21 cols;

22 “(G) medical records requirements;

23 “(H) quality of medical care requirements,
24 including participation in patient safety and
25 medical quality control efforts, such as peer re-

1 view processes, utilization review, and error re-
2 porting systems; and

3 “(I) the proffer of gifts of monetary value
4 (other than training or educational programs)
5 to referring entities (or personnel employed by
6 such entities) within the State.

7 “(d) STATE AUTHORITY OVER MEDICAL SERVICES
8 SUBJECT TO HARMONIZATION REQUIREMENT.—A State
9 may prescribe regulations relating to the provision of heli-
10 copter medical services with respect to the following, if
11 such regulations are harmonized with, and do not infringe
12 upon, any applicable Federal operating requirements:

13 “(1) The establishment of appropriate medical
14 criteria for determining the appropriate medical in-
15 stitution to receive a patient being transported from
16 the scene at which the patient’s injury or accident,
17 or other event resulting in the need for medical serv-
18 ices for the patient, occurred.

19 “(2) The specification of service requirements
20 with respect to geographic areas within the State or
21 during specified hours and days.

22 “(3) The coordination of flight requests for
23 emergency helicopter medical services.

24 “(4) The compliance with accreditation require-
25 ments regarding medical services, except where such

1 requirements infringe upon relevant Federal oper-
2 ating requirements.

3 “(5) The provision of emergency helicopter
4 medical services to all persons for whom such serv-
5 ices are medically necessary and appropriate.

6 “(e) STATE AUTHORITY OVER MEDICAL SERVICES
7 SUBJECT TO CONSISTENCY REQUIREMENT.—

8 “(1) IN GENERAL.—Subject to paragraph (2), a
9 State may prescribe regulations relating to the pro-
10 vision of helicopter medical services with respect to
11 the following, if such regulations are consistent with,
12 and do not infringe upon, any applicable Federal op-
13 erating requirements:

14 “(A) The necessary medical equipment and
15 supplies to be carried on board or affixed to the
16 helicopter.

17 “(B) The physical attributes of the heli-
18 copter—

19 “(i) necessary for the provision of
20 quality medical care, including—

21 “(I) permanently installed cli-
22 mate control systems capable of meet-
23 ing specified temperature settings;

24 “(II) a configuration that allows
25 adequate access to the patient, med-

1 ical equipment, and medical supplies
2 by the helicopter medical personnel;

3 “(III) use of materials in the heli-
4 copter that are appropriate for proper
5 patient care;

6 “(IV) sufficient electrical supply
7 to support medical equipment without
8 compromising helicopter power; and

9 “(V) the ability of the helicopter
10 to transport a patient a certain dis-
11 tance without refueling within the
12 State; and

13 “(ii) necessary—

14 “(I) for the protection of heli-
15 copter personnel, ground medical per-
16 sonnel, and emergency response per-
17 sonnel; and

18 “(II) to ensure that the heli-
19 copter has no structural or functional
20 defects that may adversely affect such
21 personnel, such as by requiring
22 tailroter illumination for loading pa-
23 tients at night or external search
24 lights.

1 “(C) Communication capabilities ena-
2 bling—

3 “(i) the helicopter medical personnel
4 to communicate with emergency medical
5 services and public safety personnel and
6 personnel at medical institutions that re-
7 ceive patients transported by providers of
8 helicopter medical services; and

9 “(ii) the flightcrew to communicate
10 with the helicopter medical personnel, to
11 the extent that the communications do not
12 interfere with the safe operation of the
13 flight.

14 “(2) LIMITATIONS.—

15 “(A) PROVIDERS LICENSED IN MULTIPLE
16 STATES.—If a provider of helicopter medical
17 services is licensed to provide such services in
18 more than one State and the regulations estab-
19 lished pursuant to this subsection by the States
20 in which the provider is licensed are incon-
21 sistent, the provider shall comply with the most
22 stringent of such regulations.

23 “(B) NONDELEGATION REQUIREMENT.—A
24 State may not delegate authority provided

1 under this subsection to a political subdivision
2 of the State.

3 “(f) INTERSTATE AGREEMENTS.—In regulating the
4 provision of helicopter medical services pursuant to this
5 section, a State shall, if necessary, establish regulations
6 or negotiate mutual aid agreements with adjacent States
7 or providers of helicopter medical services in adjacent
8 States to ensure access to helicopter medical services
9 across State borders.

10 “(g) DEFINITIONS.—In this section:

11 “(1) HELICOPTER MEDICAL SERVICES.—The
12 term ‘helicopter medical services’ means the heli-
13 copter transport of a patient, in both emergency and
14 nonemergency situations, as well as the medical
15 services provided to such patient in the course of
16 transport by such helicopter.

17 “(2) FEDERAL OPERATING REQUIREMENTS.—
18 The term ‘Federal operating requirements’ means
19 requirements under part A of subtitle VII of title
20 49, United States Code, and Federal aviation regu-
21 lations set forth in title 14, Code of Federal Regula-
22 tions.

23 “(3) REFERRING ENTITIES.—The term ‘refer-
24 ring entity’ means any entity that dispatches or pro-
25 vides a referral for a provider of helicopter medical

1 services, such as a medical institution, an agency
2 providing emergency medical services, or a first re-
3 sponder.”.

4 (b) CONFORMING AMENDMENT.—The table of sec-
5 tions at the beginning of chapter 401 of title 49, United
6 States Code, is amended by adding at the end the fol-
7 lowing:

“40130. Clarification of State authority over intrastate helicopter medical serv-
ices.”.

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