Air Medical Services
Air Transport
Federal Regulatory History

1937 – Civil Aeronautics Board (CAB)
• Set fares, routes, schedules
• Public utility
• Interstate airlines
• Guaranteed reasonable rate of return

1978 – Airline Deregulation Act
• Safety as the highest priority in air commerce
• Maximum reliance on competition
• Gradually eliminated the CAB’s authority to set fares
• Encourage entry into air transportation markets
• Transferred “prices, routes, services” authority to US DOT
• Dissolved CAB
CMS National Ambulance Fee Schedule in 2000

Helicopter EMS in the United States

2000 – 400

2008 - 840


Programs
Helicopters
Trends in HEMS Growth


• Hospital Based: Not-for-Profit Model
• EMS System Integration
• State Regulation
  * Not a priority for states
  * Not challenged when attempted

In the “aughts” (2000 – present)

• Primarily for-profit and consolidation model
• Less integration with EMS systems
• State regulatory authority increasingly challenged under ADA preemption directly, in court, and through US DOT/FAA opinions
Confusion

- What HEMS providers may hold themselves out to serve the public?
- What are the requirements for state licensure?
- For which patients and circumstances is HEMS to be summoned?
- Who is authorized to summon HEMS?
- Which HEMS is to be requested?
- How will EMS and HEMS programs interface at the scene?
- To what hospital will the patient be flown?
State Efforts to Address Confusion Have Been Frustrated

- Challenges in court under Federal ADA preemption
- FAA and DOT opinions as well as court filings in support of ADA challenges
Emerging Picture of Federal Preemption of State Regulatory Authority of HEMS

- Court rulings have begun to clear the picture, but questions remain
- The current status of state regulatory authority of HEMS under the ADA can be divided into three categories:
  * Areas where federal preemption has been asserted
  * Areas where states retain authority
  * Areas that have not been specifically addressed
Areas where federal preemption has been asserted

• Requirement for 24/7 service: DOT letter to HI; court NC

• Requirement for a CON: Multiple courts

• Regulation of rates, response times, bases of operation, bonding requirements, and accounting and reporting systems: DOT letter to AZ

• Matters concerning aviation safety including equipment, operation, and pilot qualifications: DOT letter to HI
Areas where federal preemption has been asserted

• Requirements for certain avionics/navigation equipment: court TN
• Requirements for general liability coverage: DOT to HI
• Safety aspects of medical equipment installation, storage on aircraft and safety training of medical personnel: DOT to HI
Areas where states retain authority

- Medical equipment and supplies (as long as it does not amount to economic regulation): DOT letter to HI
- Delivery of medical services (regulation of medical staff qualifications and sanitary conditions): MN courts and DOT letters
- Regulating EMS providers to prevent helicopter shopping: FAA letter to states
- Requirement to transport to the nearest appropriate hospital: FAA letter to PA (questions may still exist)
- Market approaches – the state could choose to not do business with HEMS services that did not meet certain standards or requirements: DOT letter to HI
- Voluntary approaches
- Medical environment: providing access to patient and control of temperature in aircraft (recently resolved)
Areas that have not been specifically addressed

- “Quality, availability, accessibility and acceptability” DOT letter to HI – this raises many questions
- Requiring air ambulance mutual aid agreements
- Personnel: requiring training for ground communications; requiring pilot to be medical responder
- Documentation: requiring written criteria for patient transport and destinations; patient transfer protocols
- Requiring communications with EMS, hospitals, and between crew and pilot
- Integration with local EMS system
The ADA Impedes State Efforts to Regulate Health Care

- **HEMS** is a component of the health care system
  - Provides sophisticated, physician directed medical care
  - Must integrate seamlessly with providers/services in another system (EMS system)
- **HEMS** patients are not typical airline passengers
  - Cannot choose a service based on quality, service, price
  - Require state protection (as with all EMS users)
- Airline deregulation should not preempt medical safety
Aviation Safety Should not Trump Medical Safety

- HEMS was not a consideration when the ADA was passed in 1978
- The ambiguity of federal versus state regulation of HEMS needs to be resolved
- States need clear authority to regulate HEMS as an essential health service
Efforts to Clarify State Roles Addressing Patient Safety

- House (Altmire) and Senate Bills (Collins)
- FAA Reauthorization
- Stakeholder groups: Air Medical Operators Association (AMOA) and Association for Critical Care Transport (ACCT)
- Efforts were suspended pending GAO report
GAO Report
Released
9/30/10

GAO Air Ambulance Report

- Recognized growth and shift from hospital based to community based
- Identified two stakeholder groups – supporters of current status (growth and competition) and those opposed (concerns about air and medical safety)
- GAO said insufficient data to support either position
- Confusion over federal preemption issues helped by 8 DOT advisories since 1986 and confusion can continue to be resolved by DOT
- If states wish to increase “control”, they can contract directly with air medical providers
Recent Legislative Efforts By ACCT – S 1402

- Air Ambulance Medicare Accreditation and Accountability Act
- Accreditation required for Medicare reimbursement
- Establishes 3 levels of accreditation – advanced, ED, and tertiary ICU with different rates of payment
- Accrediting organizations designated by HHS
- Quality data reporting program
- States must adopt any “use and dispatch” guidelines released by FICEMS
- IOM study of ground critical care
Also - HR 1117 and S 2376

- Air Ambulance Medical Standards Clarification Act
- Rule of construct: defines what states can do and not be in violation of ADA
- Would clarify state authority to license, establish qualifications of medical personnel, medical direction, medical records, health outcomes, patient safety and QI, medical accreditation, medical equipment, sanitation, design and configuration of patient compartment, categorization of health care resources, coordination with EMS systems including communications, protocols for dispatch, utilization, and destination, report response times, prohibit certain unsafe practices such as helicopter shopping
HR 1117

• The clarification bill would not allow use of a CON nor allow state to
  * Dictate aircraft capacity or outside illumination, regulate communications between crew, require minimum range, require transport without insurance, prohibit aircraft that do not come into the state on regular basis
Model State Regulations

- NASEMSO, NAEMSP, AAMS Air Medical Taskforce – published joint position in PEC 2007
- Planned to do model state regulations
- AAMS – currently finalizing draft of an industry consensus set of standards
- AMTF will reconvene and review when AAMS completes their process
Air Ambulance Advocacy: State Regulation of Coordination and Quality of Air Ambulance Service

Summary Position Statement of NASEMSO on the Need for Shared State and Federal Regulation of Air Medical Services (02/12/09)

NASEMSO Position Statement in Support of HR 978, the Helicopter Medical Services Patient Safety, Protection, and Coordination Act (02/15/09)

Text of HR 978, the Helicopter Medical services Patient Safety, Protection, and Coordination Act (02/15/09)

Air ambulance advocacy key contacts (09/08/08) This contact list includes key elected official and their office contacts, including fax, phone numbers and staff e-mails.

Air Medical Services: Future Development as an Integrated Component of the Emergency Air Medical Services System