Air Ambulance Services Play a Critical Role in State Trauma Systems

Victims of serious injuries have the strongest chance of survival if they are transported to a designated trauma center within the first "Golden Hour" following their injury. Depending on circumstances, emergency medical responders may arrange to transport trauma victims via either ground or air ambulance. Helicopter air ambulances, are critical to the survival of many trauma victims, especially in rural areas -- it is estimated that medical helicopters provide access for 81.4 million persons who otherwise would not be able to reach a trauma center within the Golden Hour. Air ambulances are best used only when medically necessary, when flying conditions are safe and when air transport is faster than alternative ground ambulance service.

States and localities work to ensure that the care and transport of trauma patients – whether by ground or air -- is carefully coordinated among Emergency Medical Service (EMS) authorities, trauma centers and ambulance providers. Complex agreements and communication arrangements are established to ensure seamless coverage so that responders can backstop one another and trauma centers can prepare for arriving patients. While en route, it is important that patients receive critical health services and that contact be maintained with the receiving trauma center.

Many States Regulate Air Ambulance Services to Ensure Quality and Availability

Most States have laws on the books that promote health care quality and availability by regulating key aspects of health care services including air or ground ambulance services. State regulatory schemes for air ambulance services are developed in accordance with their specific trauma and emergency medical service systems and specific geographic attributes. Among other requirements, a state might require that air ambulance providers obtain a license; that they be staffed with medical personnel having certain qualifications; that they have radio communication between the flight crew and the medical crew, between the flight crew and the ground or between the medical crew and the ground; that the aircraft sufficiently support air medical services, have a power supply sufficient to support the use of common emergency medical equipment, be clean and sanitary and have an infection control protocol, and be equipped with certain equipment. In addition, States may require that an air ambulance service provide services on a 24/7 basis, weather permitting; that the provider agree to handle all transport needs arising in a certain geographic area of the state (and enter into mutual aid agreements with nearby providers to ensure this coverage); and that the air ambulance service coordinate or affiliate with local EMS and receiving Trauma Centers, so that consistent, quality medical care can be provided to the patient and ensure continuity of care from pick-up to arriving at the trauma center. Some states have applied their Certificate of Need (CON) program to air ambulance services. Most states have some form of CON program aimed at promoting the coordinated planning of new health services by reviewing the financial health and capacity and the need for additional services before licensing these activities. Included in these CON programs are assurances that the needs of the historically medically underserved patients (including indigent, elderly and minority patients) are satisfied.

Federal Preemption is Being Used to Challenge State Oversight of Air Ambulance Services

Unlike ground ambulances, air ambulance services are subject to the jurisdiction of the Federal Aviation Administration (FAA). This means that they must comply with FAA's comprehensive regulatory scheme governing aviation safety (which addresses a wide range of matters involving airworthiness, crew training, and flight operations). However, it also means that air ambulance services are subject to other provisions of the Federal Aviation Act that have been interpreted to constrain the authority of States and localities to oversee air ambulance activities unrelated to aviation safety. In particular, the Airline Deregulation Act of 1978 stipulates that States may not regulate "air carriers" with respect to "prices, routes and services" (49 USC 41713(b)). Although helicopter emergency medical services were in their infancy when this statute was written, and the applicability of the definition of "air carriers" to air ambulances is questionable, this language has been relied upon (by the FAA, some courts and some private air ambulance companies) to argue that States cannot apply to air ambulance services the same types of medical and public health related regulations that they apply to ground ambulance and other health care services. For instance, in North Carolina, after an air ambulance company was denied a certificate of need, it filed a federal lawsuit seeking to invalidate North Carolina's regulations governing air ambulance services related to both CON and EMS, including a requirement that air ambulance companies provide 24/7 services, and including transport protocols relating to coordination between air ambulances and receiving trauma centers. Also, in 2007 a Hawaii Air Ambulance company requested a DOT opinion on whether Hawaii's ambulance regulations were preempted by federal law. The DOT responded that Hawaii was preempted from regulating air ambulances in most areas, including mandatory coverage on a 24/7 basis.
The Uncertain Legal Playing Field is Impacting Quality and Availability of Trauma Services

While challenges to state oversight of air ambulance services are growing, the FAA is, by its own admission, not in the business of regulating the patient care or service coordination aspects of air ambulance operations. While the FAA issued an Advisory Circular in 1991 recommending a variety of "best practices" (related to issues such as communication, equipment and training) for air ambulance helicopters, the document does not have the force of law.

At the same time that the States’ legal authority, to oversee air ambulance services has been called into question and the FAA has limited its involvement, the past decade has also seen a substantial influx of new profit-driven air ambulance services into the marketplace. This muddled state of affairs has produced a number of negative outcomes including an increase in deadly air ambulance accidents, inconsistent access to timely and quality air ambulance services, and excessive use of air ambulance services in non-life threatening situations.

Industry experts consulted by the GAO have identified a number of dangerous practices related to increased numbers of air ambulance operations, including "helicopter shopping" (when an EMS dispatcher contacts several operators until one agrees to accept the flight without informing the operator that a prior operator declined the flight, often for safety reasons) and "call jumping" (when an air ambulance operator responds to a scene to which that operator was not dispatched, often at night or in poor weather conditions).

In addition, profit motives appear to be contributing to the inappropriate and expensive use of air ambulances. A 2002 study in the *Journal of Trauma* concluded that Helicopter Emergency Medical Services were being used "excessively" for patients who weren't severely injured, and often didn't get patients to the hospital faster than ground ambulances. In 2005, the *New York Times* reported extensively on the practices of one company, Air Evac Lifeteam, in sending out helicopters and charging insurers in situations that did not appear to be emergencies. The *Times* report disclosed the company's practice of sending "blitz teams" to small towns where commission-based sales representatives sold $60 household "memberships" whereby a subscriber could call the company directly, instead of going through 911, and be transported by helicopter to a nearby hospital. The company would then bill health insurance providers for the cost of the flight -- $5,000 to $10,000, or about ten times the cost of ground ambulance service. Air Evac Lifeteam is presently the subject of an FBI investigation into its activities.

**Congress Should Clarify Federal Governance of Aviation Safety Does Not Preempt State Regulation of Coordination and Quality of Air Ambulance Services**

In its comprehensive 2006 report on the state of emergency medical services in the United States, the Institute of Medicine recommended that States "assume regulatory oversight of the medical aspects of air medical services, including communications, dispatch and transportation protocols." As described by IOM:

"The regulatory authority of the FAA should extend to helicopters, fixed wing aircraft, pilots and company sponsors; however, the state should regulate the medical aspects of the operations, including personnel on board (nurses, paramedics, physicians), medical equipment and transport protocols regarding hospitals and trauma centers. In addition, states should establish dispatch protocols for air medical response and should incorporate air medical providers into the broader emergency and trauma care system through improved communications. These measures are essential to more coordinated and efficient use of air capacity."

There is no question that the FAA should have exclusive jurisdiction over matters of aviation safety -- including such matters as aircraft equipment, operation and pilot qualification. However, the broad federal preemption language contained in the Airline Deregulation Act of 1978 should be modified to clarify Congress’ original intent regarding the unique and limited role of states in regulating air ambulance services to promote availability, access, coordination and patient safety consistent with their historic jurisdiction over other health care services.