

Docket No. SA-530

Exhibit No. 5-N

NATIONAL TRANSPORTATION SAFETY BOARD

Washington, D.C.

NC Draft Legislation Explanation

(4 pages)

Explanation of Legislation

Background

The Airline Deregulation Act of 1978 preempts State laws that affect the "prices, routes or services" of air carriers. In addition, courts have generally supported FAA's view that its aviation safety regulatory scheme – including such matters as airworthiness, maintenance, crew requirements, flight rules and equipment – is comprehensive in nature and preempts State regulation directly related to aviation safety.

While the federal government's lead role in aviation safety is well recognized, it is the States that have the well-established, constitutionally recognized authority to promote the public welfare through measures intended to protect and promote the public health. States exercise authority over public health through laws that address an immense range of matters related to issues such as ensuring the proper training and certification of medical personnel, the quality of medical services offered by medical care providers and the organization of health care services to meet the needs of the public.

Federal authority over aviation and State authority over public health intersect in the area of air ambulance services. For a number of reasons – including a recent spate of opinion letters issued during the Bush Administration by the Department of Transportation's Office of General Counsel -- the demarcation of state and federal authority in this area has become blurred. Legislation is needed to clarify the authority of the States to exercise their historic public health-related functions with respect to air ambulance services -- just as they regulate ground ambulance services and many other health care services -- while ensuring that any such State action does not contradict FAA's authority over aviation safety. The proposed legislation provides this clarity.

Explanation of Provisions

The proposed legislation confirms the authority of the States to regulate intrastate helicopter medical transportation services with respect to matters pertaining to the oversight of public health planning and protection, emergency medical services, and the practice of medicine within their borders. The legislation also ensures that the States cannot exercise this authority in a manner that interferes with federal regulation and oversight of aviation safety. A State can only exercise its regulatory authority with respect to intrastate services or, in the case of two or more states that coordinate their regulation (for example in an adjoining region), within those states.

Specifically, the legislation makes clear that a State can regulate helicopter medical transportation services with respect to the following matters and subject to certain limitations to ensure that there is no adverse impact on FAA's oversight of aviation safety:

1. A state can require medical personnel aboard air ambulances providing intrastate services to meet certain qualifications relating to their medical skills (e.g. training and certification, continuing education). Such requirements are commonly applied to personnel involved in the provision of ambulance services, ordinarily on a tiered basis

based on level of responsibility and the level of complexity of the services being provided (e.g. Basic Life Support, Advanced Life Support Level I, etc.). The legislation does not allow a state to impose such medical training requirements upon an FAA-licensed pilot of the helicopter.

2. A state can require a helicopter air ambulance providing intrastate services to be properly equipped and configured to facilitate quality medical care. This might include requiring that an air ambulance be equipped with medical equipment and supplies necessary to the care of a patient in transit (for example medical oxygen or an defibrillator); that an air ambulance have the physical attributes necessary to support patient care (for example, entry doors that facilitate loading and unloading of patients or sufficient internal space to allow medical personnel to treat a patient in transit); and that an air ambulance have communications equipment that allows the ambulance to communicate with ground emergency responders or a receiving trauma center and that allow the medical team to communicate with the flight crew). Analogous requirements are commonly applied to ground ambulances.

The legislation makes clear that such equipment and configuration requirements must be entirely consistent with FAA rules governing such matters. For example, any required equipment must be installed, secured and operated entirely in compliance with FAA requirements supported by any required data to demonstrate that the aircraft can be safely operated when configured with such equipment. Similarly, the legislation in no way allows a State to involve itself in determinations as to the airworthiness of an aircraft, which is solely a matter for FAA determination. However, the legislation does make clear that a State has the authority to stipulate medical equipment and configuration requirements that it expects on an aircraft that will be operated as an air ambulance just as it has the authority to impose such requirements upon a ground ambulance. An aircraft that cannot meet such State requirements cannot be used as an air ambulance for intrastate services.

3. A state can require entities that provide intrastate helicopter medical transportation services to comply with a variety of State laws related to health care planning and quality of care. This could include requirements that such services coordinate their activities with emergency medical services and receiving trauma centers; that they comply with any requirements to affiliate with health care institutions; that they agree to provide emergency transport services to uninsured patients who are unable to pay for such services; that they comply with sanitation and infection control protocols; medical records requirements; or participate in patient safety and medical quality control efforts; and that they comply with state processes that require health care service providers to demonstrate their capacity to provide services, and the need for new or expanded services.

4. A state can require entities that provide intrastate helicopter medical transportation services to comply with certain additional requirements, including that they deliver patients to the nearest available trauma center (which is already a requirement for participation in the Medicare program); that they provide services within a specified

geographic area or on a 24/7 basis, weather permitting; or that they participate in a medical accreditation process. It is conceivable that such state requirements could have implications with respect to certain FAA requirements and, therefore, the legislation further stipulates that any such state requirements must be harmonized with federal operating requirements. For example, a 24/7 service requirement would need to be harmonized with FAA rules respecting crew duty limitations and rest requirements (for example, by ensuring that the service provider had adequate personnel to meet the requirement). Similarly, an accreditation program that touched upon matters of FAA oversight would need to be harmonized with those requirements.

This legislation is sharply limited in its scope. In order to avoid ambiguities, it only clarifies State authority with respect to the matters discussed above. Because the list of matters that it addresses is not (and could not possibly be) exhaustive, it is certainly the case that the legislation is silent on some issues. The legislation therefore includes language to make clear that it has no effect whatsoever on those matters that it is silent on – i.e. it neither restricts nor expands whatever existing authority a State might have over matters it does not address.

In order to put to rest any claims that the legislation could be interpreted as changing a provision of the Airline Deregulation Act of 1978 that limits the authority of States with respect to the prices of air carriers, the legislation contains an express statement clarifying that it does change any limitations that may exist on State authority with respect to rates, taxes or user fees of air carriers. Neither the Airline Deregulation Act of 1978 nor the amendment has any effect on health insurance.

The legislation includes a definition of helicopter medical transport services. It should be noted that this legislation has no applicability to fixed wing air ambulance services.

The legislation includes a definition of federal requirements that references the federal aviation statutes and related regulations.