

111TH CONGRESS
1ST SESSION

H. R. 978

To recognize and clarify the authority of the States to regulate intrastate helicopter medical services pursuant to their authority over public health planning and protection, patient safety and protection, emergency medical services, the quality and coordination of medical care, and the practice of medicine within their jurisdictions.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 11, 2009

Mr. ALTMIRE (for himself, Mrs. MILLER of Michigan, Mr. CLEAVER, Mr. HOLDEN, Mr. MASSA, Mr. PLATTS, Ms. PINGREE of Maine, Mr. SHULER, Mr. PETERSON, Mr. SPACE, Mr. EHLERS, Mr. MCINTYRE, Mr. CAPUANO, and Mr. MICHAUD) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To recognize and clarify the authority of the States to regulate intrastate helicopter medical services pursuant to their authority over public health planning and protection, patient safety and protection, emergency medical services, the quality and coordination of medical care, and the practice of medicine within their jurisdictions.

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

1 **SECTION 1. SHORT TITLE.**

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

5 **SEC. 2. FINDINGS.**

6 Congress finds the following:

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

10 (2) Each State is responsible for the regulation
11 of public health planning and protection, patient
12 safety and protection, emergency medical services,
13 the quality and coordination of medical care, and the
14 practice of medicine within its jurisdiction.

15 (3) Helicopter medical services are an essential
16 component of the health care delivery and emergency
17 medical services system in each State and integral to
18 each State’s management of public health planning
19 and protection, patient safety and protection, emer-
20 gency medical services, the quality and coordination
21 of medical care, and the practice of medicine within
22 its jurisdiction.

23 (4) Existing or future regulation of helicopter
24 medical services by the several States is in the public
25 interest.

1 (5) Court rulings and statutory interpretations
2 issued by the Department of Transportation have
3 imposed limitations on the authority of States to
4 regulate helicopter medical services in a manner
5 similar to the regulation of other health care services
6 by the States.

7 (6) These rulings and interpretations have con-
8 cluded that certain State actions related to public
9 health planning and protection, patient safety and
10 protection, emergency medical services, the quality
11 and coordination of medical care, and the practice of
12 medicine and related aspects of helicopter medical
13 services are preempted by Federal law, either pursu-
14 ant to the preemption provisions of the Airline De-
15 regulation Act of 1978 or through the application of
16 the “field occupation” preemption doctrine.

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

24 (8) At the same time, it is also important to en-
25 sure that the Federal Aviation Administration’s ple-

1 nary and exclusive jurisdiction over matters of avia-
 2 tion safety is not infringed by any State and that
 3 State health-related regulation of helicopter medical
 4 services is harmonized with Federal regulation of
 5 aviation safety.

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

14 **SEC. 3. CLARIFICATION OF STATE AUTHORITY OVER**
 15 **INTRASTATE HELICOPTER MEDICAL SERV-**
 16 **ICES.**

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

20 **“§ 40130. Clarification of State authority over intra-**
 21 **state helicopter medical services**

22 “(a) CLARIFICATION OF STATE AUTHORITY.—Noth-
 23 ing in this subtitle shall prohibit a State from regulating
 24 helicopter medical services provided between locations
 25 within such State (or helicopter medical services provided

1 between locations in more than one State if undertaken
2 pursuant to an agreement between or among such States)
3 in the manner described in subsection (b), (c), or (d).

4 “(b) STATE AUTHORITY OVER MEDICAL SERV-
5 ICES.—A State may regulate helicopter medical services
6 with respect to the following:

7 “(1) The medical qualifications and medical
8 training of helicopter medical personnel, except that
9 a State shall not impose new or additional require-
10 ments on a pilot.

11 “(2) The obligation of providers of helicopter
12 medical services to comply with the health planning,
13 patient safety, and medical service requirements of
14 a State, including—

15 “(A) coordination between emergency med-
16 ical services providers, receiving institutions,
17 and other medical transport service providers
18 regarding the transport of a patient;

19 “(B) demonstration of adequate capacity
20 to provide helicopter medical services;

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

23 “(D) limitations on the number of heli-
24 copters providing helicopter medical services
25 within the State or region of the State;

1 “(E) affiliation with health care institu-
2 tions;

3 “(F) sanitation and infection control proto-
4 cols;

5 “(G) medical records requirements;

6 “(H) quality requirements, including par-
7 ticipation in patient safety and medical quality
8 control efforts, such as peer review processes,
9 utilization review, and error reporting systems;
10 and

11 “(I) the provision of emergency helicopter
12 medical services to all persons for whom such
13 services are medically necessary and appro-
14 priate.

15 “(c) STATE AUTHORITY OVER MEDICAL SERVICES
16 SUBJECT TO HARMONIZATION REQUIREMENT.—To the
17 extent that any State regulations are harmonized with any
18 relevant Federal operating requirements, a State may reg-
19 ulate helicopter medical services with respect to the fol-
20 lowing:

21 “(1) The designation of destinations for emer-
22 gency patient transport.

23 “(2) The specification of service requirements
24 with respect to geographic areas within a State or
25 during specified hours and days.

1 “(3) The coordination of flight requests for
2 emergency helicopter medical services.

3 “(4) Compliance with accreditation require-
4 ments.

5 “(d) STATE AUTHORITY OVER MEDICAL SERVICES
6 SUBJECT TO CONSISTENCY REQUIREMENT.—To the ex-
7 tent that any State regulations are consistent with any
8 relevant Federal operating requirements (such as air-
9 worthiness and the proper storage and installation of med-
10 ical equipment) applicable to a helicopter that is otherwise
11 capable of meeting such State regulations, a State may
12 regulate helicopter medical services with respect to the fol-
13 lowing:

14 “(1) The necessary medical equipment to be
15 carried on board or affixed to the helicopter.

16 “(2) The physical attributes of the helicopter—

17 “(A) necessary for the provision of quality
18 medical care, including—

19 “(i) climate control;

20 “(ii) a configuration that allows ade-
21 quate access to the patient, medical equip-
22 ment, and medical supplies by the heli-
23 copter medical personnel;

1 “(iii) use of materials in the helicopter
2 that are appropriate for proper patient
3 care; and

4 “(iv) sufficient electrical supply to
5 support medical equipment without com-
6 promising helicopter power; and

7 “(B) necessary for the protection of heli-
8 copter and ground medical personnel.

9 “(3) Communication capabilities enabling—

10 “(A) the helicopter personnel to commu-
11 nicate with emergency medical services and
12 public safety personnel and personnel at receiv-
13 ing institutions; and

14 “(B) the flightcrew to communicate with
15 the helicopter medical personnel.

16 “(e) DEFINITIONS.—In this section, the following
17 definitions apply:

18 “(1) HELICOPTER MEDICAL SERVICES.—The
19 term ‘helicopter medical services’ means the heli-
20 copter transport of a patient, in both emergency and
21 nonemergency situations, as well as the medical
22 services provided to such patient in the course of
23 transport by such helicopter.

24 “(2) FEDERAL OPERATING REQUIREMENTS.—
25 The term ‘Federal operating requirements’ means

1 requirements under part A of subtitle VII of title
2 49, United States Code, and Federal aviation regu-
3 lations set forth in title 14, Code of Federal Regula-
4 tions.”.

5 (b) CONFORMING AMENDMENT.—The analysis for
6 such chapter is amended by adding at the end the fol-
7 lowing:

“Sec. 40130. Clarification of State authority over intrastate helicopter medical
services.”.

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