



**ASSOCIATION OF CRITICAL CARE TRANSPORT POSITION STATEMENT  
ON SENATE FAA REAUTHORIZATION**

***ACCT Supports Patient Protection Oversight for Air Ambulance Services:***

**July 26, 2018**

The Association of Critical Care Transport (ACCT) is a non-profit grassroots patient advocacy organization committed to ensuring that critically ill and injured patients have access to the safest and highest quality critical care transport system possible. ACCT is comprised of 80 air and ground critical care transport providers, business organizations, associations, and individuals striving to provide our communities, hospitals and EMS partners in care, regulators, and policy makers with a path toward a safer and more trustworthy critical care transport system for patients. ***Advocating for patients, not profits, is our mission.***

Patients flown by air ambulance aren't able to make informed choices – they don't choose whether they are flown or which air ambulance agency transports them; they often lack information about the quality of care and safety record of the air ambulance agency transporting them, let alone what they will be charged. These critically ill and injured patients lack basic consumer protections at both the state and federal levels.

There are numerous reports around the nation of patients receiving exorbitant balance bills – tens of thousands of dollars – even after insurance has already reimbursed the air ambulance agency. While reasonable balance billing of patients must be allowed, ACCT is very concerned about the lack of consumer protections for patients who often lack the basic information to make meaningful choices about their transport, care and service charges.

States are prohibited by the Airline Deregulation Act (ADA) from regulating the prices, routes and services of air carriers, including air ambulances. States are free to regulate ground ambulances and all other health care providers, but are limited in their regulation of air ambulances. They may regulate patient care, but cannot provide economic oversight or guide the appropriate distribution of air ambulances operating within their states. The federal government has yet to provide consumer protections for patients on air ambulances. The Secretary of Transportation has statutory authority to address “unfair or deceptive practices” and “ensure safe and adequate service” of air carriers. There are both statutory and regulatory consumer protections for major passenger air services, such as relating to tarmac delays, air travel accessibility, refunds for delayed baggage and family seating, but these don't apply to patients on air ambulances. The Federal Trade Commission does not oversee air carriers, including air ambulances.

***ACCT supports the air ambulance consumer protections included in H.R. 4 and S. 2812, the Air Ambulance Consumer Protection Act as introduced by Senator Claire McCaskill (D-MO) in the FAA Reauthorization legislation.*** S. 2812 will enhance consumer protections for patients who lack meaningful choice about their transport and financial liability for it, and clarify the Airline Deregulation Act such that States may properly oversee the medical services and pricing structure of air ambulances, just as they oversee all other health care services in their respective states. ACCT has also supported S. 471, the Isla Rose Life Flight Act, introduced by Senator Tester (D-MT) which would clarify that the ADA shall not be construed as interfering with the ability of a State to enact laws relating to network participation, reimbursement and balance billing or transparency for air ambulances. ACCT does not share concerns raised by other air ambulance industry representatives that S. 2812 will impede the ability of air ambulance providers to cross state lines. S. 2812 does not change the ADA preemption prohibition on state regulation of routes. The DOT has clearly articulated that the preemption of state regulation of routes does not “preclude States from using medical criteria to determine the proper mode of patient transport or the proper medical facility to which a particular patient should be transported.”<sup>i</sup> Appropriately licensing emergency

health care services and individual providers between states is a relative non-issue in today's EMS environment. Ground and air ambulances routinely serve critically ill and injured patients within and across state lines. The DOT has further recognized judicial precedence that a State may act in its "traditional role in the delivery of medical services - the regulation of staffing requirements, the qualifications of personnel, equipment requirements, and the promulgation of standards for maintenance of sanitary conditions."<sup>ii</sup> Therefore, when providers are on a street, in a residence, or in a hospital in any State, they are and always have been subject to the practice regulations of that particular state. Nothing in S. 2812/H.R. 4 will change this fact.

However, in light of the concerns raised by others, ***we suggest that the current language in S. 2812 would be strengthened by adding a required recommendation from the Advisory Committee to provide guidance materials to advise states on mutual aid compacts and other mechanisms that would ensure appropriate movement of patients across state lines to the closest most medically appropriate facility based on patient condition and medical need.***

In addition, ACCT does not share concerns expressed by others that insurers will reduce payment for necessary health care and transportation services. ACCT supports H.R. 3780, the Air Ambulance Quality and Accountability Act, that will hold air ambulance agencies accountable for quality and standards of care, require cost reporting, and a MedPAC study that evaluates and makes recommendations on future payment changes that recognize higher costs of enhanced clinical care and aviation safety improvements beyond the FAA minimum standards.

ACCT does not support the massive increases in Medicare reimbursement provided in S. 2121 and H.R. 3378 in the absence of cost reporting, robust quality and standard requirements, and a clear justification by MedPAC of whether and how any increases should be applied. We believe that such an increase would exacerbate the overpopulation of air medical helicopters in many areas and lead to higher prices for patients. The prior increase in 2002 fueled growth of helicopters, more than doubling the number nationwide, often in already oversaturated markets. This is a significant factor in the subsequent lowering of flight volume per base, increasing the cost per flight, and driving the exorbitant price increases already affecting patients and insurers.

***In short, air ambulance helicopters densely populate too many areas of the country, yet are non-existent in many others. Too many helicopters in an area make it impossible to attain the volumes necessary to adequately sustain the service at a reasonable cost. Too few helicopters in other areas, particularly in super-rural areas, restricts access to patients in need. ACCT supports a reasonable and sustainable distribution of air medical resources that balances the need for accessibility with sustainability of the safe, high quality services our populations need and deserve. The answer is not another enormous, across the board infusion of cash via Medicare. Rather, the solution is clarifying the ADA to enable appropriate State oversight of medical services and implementing long-overdue consumer protections, as provided in S. 2812. This, along with the minimum standards and the careful consideration of the relationship of pricing and quality called for in H.R. 3780, including its thoughtful approach to evaluating Medicare reimbursement and narrow tailoring of future increases to areas of demonstrated need, will go a long way toward assuring patients in need of air medical transport receive the help they need without a secondary assault from their transport bill.***

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<sup>i</sup> Letter from Ronald Jackson, Assistant General Counsel for Operations, Department of Transportation, to Tom Judge, Chair of the Association of Critical Care Transport, March 9, 2012, p.6.

<sup>ii</sup> Ibid, p. 3, citing *Hiawatha Aviation of Rochester v. Minnesota Dep't of Health*, 389 N.W.2d 507, 509 (Minn. 1986).