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International Association of
Industrial Accident Boards and Commissions
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February 4, 2020

RE: Authority to regulate air ambulance rates in workers' compensation

Dear Members of the Air Ambulance and Patient Billing Committee,

On behalf of the International Association of Industrial Accident Boards and Commissions (IAIABC), we are writing to recommend legislation that would allow states to regulate air ambulance services under their workers' compensation systems. As a result of the Federal Aviation Act (FAA) and Airline Deregulation Act (ADA), state workers' compensation programs are without clear authority to set payment, utilization, or other guidelines for air ambulance services under state workers' compensation systems.

Air ambulance services provide a valuable, and often critical, role in the transport and treatment of injured workers. The states do not want to impede a healthy competitive environment or to mandate a "one-size-fits-all" rate for air ambulance services. The states simply would like the opportunity to review and set guidelines to encourage transparency, competition, and safety in the care of injured workers.

Unfortunately, it appears the states are unable to do so without congressional intervention. Under current laws, there is no transparent, free market to encourage price competition. There is no federal oversight or regulation. There is no state oversight or regulation. On behalf of the IAIABC's members, we urge you to recommend legislation clarifying that state workers' compensation systems are free to regulate air ambulances under their system.

The IAIABC is a not-for-profit association representing government agencies charged with the administration of workers' compensation systems in 49 US states and 13 jurisdictions around the world. Its mission is to find solutions to reduce harm and aid recovery from occupational injuries and illnesses.

Thank you for your attention to this matter. If you or your staff have questions, or if we can otherwise serve as a resource as you deliberate these or any other issues relating to the state workers' compensation systems, please do not hesitate to contact us.

Sincerely,

Evelyn McGill
President, IAIABC
Executive Director, Virginia
Enclosure: Air Ambulance Background Sheet



Air Ambulance Background Sheet

Congress enacted the Federal Aviation Act¹ (FAA) in 1958 to establish a uniform, nationwide system of regulation for air carriers² in response to safety concerns. By 1978, Congress' interest in air carrier policy had grown from safety to the competitive market environment. In response, Congress enacted the Airline Deregulation Act³ (ADA), which among other changes, amended the FAA by adding a provision that expressly forbids a state or local subdivisions from enacting or enforcing any statute or regulation "related to a price, route or service of an air carrier."⁴

Courts have interpreted "related to" broadly to preempt any state or local law having any direct or indirect impact on a price, route, or service of an air carrier (and according to some views, by extension to air ambulances). The result of this broad interpretation is that state workers' compensation programs are left without clear authority to set payment guidelines for what are often excessive and volatile air ambulance charges.

While we appreciate the intent of the ADA, we believe air ambulance services reimbursed under state workers' compensation systems warrant a different approach from other air carrier services.

- The McCarran-Ferguson Act⁵ precludes preemption of a state law enacted "for the purpose of regulating the business of insurance" by any federal law not specifically related to the business of insurance. In essence, state Workers' Compensation Acts are for the purpose of regulating the insurance both of employers and injured workers. From a policy perspective, air ambulances generally are deployed in emergency settings and without a real opportunity for the patient or payer to choose a provider.
- Enabling state regulation of air ambulance rates would not be a policy departure and in fact would be consistent with existing Federal health care program policy. Medicare already regulates air ambulance rates.⁶ If a federal health care system can regulate air ambulance rates, then so it would seem should state workers' compensation programs.
- Ground ambulance service rates are already subject to state regulation. With regard to pricing and rates, there is no policy distinction as to why emergency transportation can be regulated in one instance and not the other.
- While in theory workers' compensation carriers and providers might negotiate contract rates with air ambulance providers, in practice there are limitations on the efficacy of this approach (e.g., transparency of pricing, negotiation leverage, availability, proximity - especially in emergency scenarios, misalignment between who is ordering the service and who is using or paying for it). In other words, a given patient and a given employer/self-insurer or insurer often have no control over which service is called and/or which service shows up, thereby leaving insurers and vulnerable patients stuck with potentially exorbitant bills under balance billing.

¹ 49 U.S.C. § 40101 et seq.

² Air ambulances have been interpreted as "air carriers" for purposes of the FAA.

³ 49 U.S.C. § 41713.

⁴ Id. at § 41713 (b).

⁵ 15 U.S.C. §§1011-1015

⁶ The 1997 Balanced Budget Act mandated a new Medicare ambulance fee schedule that includes a fixed fee for each flight and a fee per mile of transport. 42 U.S.C. §1395m.