



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

GENERAL COUNSEL

1200 New Jersey Avenue, SE
Washington, DC 20590

November 12, 2010

FILE COPY

Lucille F. Bond, Esq.
Assistant General Counsel
State of Tennessee Department of Health
220 Athens Way, Suite 210
Nashville, TN 37243

Dear Ms. Bond:

Re: Proposed Air Ambulance Climate Control Regulation

This responds to your request for an opinion from my office on whether federal law would preempt a proposed rule of the Tennessee State Emergency Medical Board (the Medical Board) mandating that all air ambulances operating in the State provide cabin climate control, via permanently installed heating and air conditioning units in the aircraft.

An air ambulance is an air carrier for purposes of the federal preemption provisions in the Transportation Code.¹ Those provisions prohibit a state from enacting or enforcing any requirement “related to the price, route, or service of an air carrier.” 49 U.S.C. § 41713(b)(1) (part of the Airline Deregulation Act). The term “related to” is given a very broad interpretation by the courts, and extends to all state laws “having a connection with or reference to” airline prices, routes, or services. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383-85 (1992); *see also Rowe v. New Hampshire Motor Transportation Association*, 552 U.S. 364, 370-71 (2008). However, federal law does not preempt those state laws affecting air carrier prices, routes, or services in only a “tenuous, remote, or peripheral...manner.” *Morales*, 504 U.S. at 390. Moreover, state regulations serving “primarily a patient care objective are properly within the states’ regulatory authority.” *Med-Trans Corp. v. Benton*, 581 F.Supp. 2d 721, 738 (E.D.N.C. 2008); *see also Hiawatha Aviation of Rochester v. Minnesota Department of Health*, 389 N.W. 2d 507, 509 (Minn. 1986).

Your letter explains that the Medical Board “carefully drafted its rules to regulate issues related to patient medical care,” but deferred implementation pending receipt of this opinion. In our subsequent conversations with you and other interested parties (including medical professionals

¹ An “air carrier,” as defined in 49 U.S.C. section 40102(a)(2), includes both “direct” and “indirect” air carriers. Therefore, an air ambulance service provider that is an air carrier may be a “direct” air carrier, which has operational control over the aircraft flown, or an “indirect” air carrier, which does not itself operate aircraft but, since 1983, has been licensed by exemption to sell air ambulance air transportation services to the public on condition that it contracts with a properly licensed direct air carrier to operate the flight. *See* Order 83-1-36 (January 12, 1983), issued by the Civil Aeronautics Board (predecessor to Office of the Secretary of Transportation in airline economic regulation).

from Tennessee), the State confirmed that the purpose of the proposed climate control regulation was to improve patient care.² It was explained that patients with certain conditions are particularly sensitive to ambient temperatures, and for that reason, emergency medical care takes place in a carefully controlled environment (whether provided in a hospital, in a freestanding medical facility or in a ground ambulance). Section 41713 would not preempt a state or local climate control requirement, like Tennessee's proposed requirement, if it serves "primarily a patient care objective." *Med-Trans Corp.*, 581 F. Supp. 2d at 738. However, the installation of an aircraft cabin climate control system must conform to the Federal Aviation Administration's (FAA) safety standards. We recommend that you contact the local FAA safety inspectors for their review.

Thank you for bringing this issue to our attention. We would be happy to address any additional questions that you might have.

We have received essentially the same question from a senior official with the State of Alabama, and are copying him on our response.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert S. Rivkin". The signature is fluid and cursive, with a prominent initial "R" and a long, sweeping tail.

Robert S. Rivkin
General Counsel

cc: Dennis Blair
State EMS Director
Alabama Department of Public health
RSA Tower, Suite 750.
201 Monroe Street
Montgomery, Alabama 36104

² During those conversations, the State also discussed the nature of Tennessee's climate conditions and indicated that it was unaware of any other reliable method for effectively regulating the cabin temperature as an alternative to permanently installed heating and air conditioning units.