



U.S. Department
of Transportation

General Counsel

1200 New Jersey Ave., S.E.
Washington, DC 20590

Office of the Secretary
of Transportation

APR 21 2015

The Honorable Rob Woodall
United States Congress
1725 Longworth House Office Building
Washington, DC 20515-1007
ATTN: Mr. Paul Oh
(Also sent by e-mail to Mr. Oh)

Dear Congressman Woodall:

Thank you for your letter requesting the U.S. Department of Transportation's (DOT) assistance with addressing concerns raised by your constituent, Medway Air Ambulance (Medway). In its e-mail to you, Medway stated that it was contacted by an insurer to transport a patient from Colorado to Michigan. Medway further explained that, shortly before the transportation was to take place, the State of Colorado informed Medway that it could not enter the State because Medway did not have a Colorado air ambulance license. As a condition of Colorado licensure, air ambulance operators must be accredited by the Commission on Accreditation of Medical Transportation Systems (CAMTS).¹ Medway, then, posed the following questions in its e-mail to you:

- “1. Can a State block or prevent a FAA [Federal Aviation Administration] Part 135 licensed Air Charter Operator from landing, discharging and/or accepting passengers (patients), and taking off again for a destination outside of that state's boundaries?
2. Can a State prevent this type of Aviation Interstate Commerce which is Authorized and Licensed by the FAA, and defined under the Interstate Commerce Act?
3. If the FAA permits these actions, by these respective states, then does it also sanction the sub-contracting of their accreditation/licensure function to a private-for-profit organization such as CAMTS?

¹ COLO. REV. STAT. ANN. § 25-3.5-307(1)(a) (“Successful completion of an accreditation process as established and updated by the commission on accreditation of medical transport systems (CAMTS) . . . is required for full licensure . . . by the [Colorado] department [of public health and environment] for all fixed-wing and rotor-wing air ambulance services.”); see also 6 COLO. CODE REGS. 1015-3:5.4 (requiring CAMTS accreditation as a condition of State licensure).

4. If the FAA permits these actions, by individual states, then what is the validity of our FAA Part 135 Certificate?

5. Is the FAA, by default, telling us as Part 135 Operators, that we are also required to abide by any and all the Aviation laws, which may be enacted by the 50 individual states, regardless of the fact that we have no base of operation or legal presence in that respective state?"

DOT typically does not take a position on specific disputes that may be subject to local administrative proceedings. We are not privy to all the facts surrounding the circumstance described in Medway's letter and, therefore, we do not offer an opinion on Medway's particular matter. Instead, we offer general guidance based on our review of Medway's letter to you and our subsequent conversation with representatives from the Health Facilities and Emergency Medical Services Division of the State of Colorado's Department of Health and Environment.

The questions posed by Medway raise issues related to two types of Federal preemption of State law: express preemption and field preemption. Generally, Federal agencies construe statutes to preempt State law only where there is express preemption or "clear evidence" that Congress intended preemption, or State action "conflicts with" Federal action.² Further, when Federal agencies foresee the possibility of preemption, the agencies are directed to consult, to the extent practicable, with appropriate State and local officials.³ As stated above, we have consulted with officials from the State of Colorado.

The Airline Deregulation Act (ADA)⁴ expressly preempts certain State and local regulations affecting air carriers, as follows:

A State, political subdivision of a State, or political authority of at least 2 States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier that may provide air transportation

As a threshold matter, an air ambulance operator, such as Medway, that holds DOT economic authority to operate as a registered air taxi under 14 CFR Part 298 and an FAA air carrier operating certificate under 14 CFR Part 135, is an "air carrier" for purposes of the ADA preemption provision.⁵

With respect to field preemption, 49 U.S.C. section 40103(a)(b) directs the FAA to "develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace." This provision, as implemented by comprehensive FAA regulations, establishes a pervasive and

² See Executive Order 13132. 64 Fed. Reg. 43255 (Aug. 10, 1999).

³ *Id.*

⁴ 49 U.S.C. § 41713(b).

⁵ See *Hughes Air Corp. v. Pub. Util. Comm'n*, 644 F.2d 1334 (9th Cir. 1981); *Hiawatha Aviation of Rochester, Inc. v. Minn. Dep't of Health*, 389 N.W.2d 507 (Minn. 1986).

exclusive Federal regime over the management and use of the navigable airspace, and aviation safety, noise, and aircraft operations. Thus, DOT and courts have concluded that matters concerning aviation safety (including aircraft equipment, operation, and pilot qualifications) are under the FAA's exclusive jurisdiction and, therefore, State and local laws in this area are preempted.⁶

It appears to us that Federal law preempts Colorado law's use of the CAMTS standards to regulate air ambulance operations to the extent that it regulates the rates, routes, and services of air carriers and regulates matters that are subject to the FAA's exclusive jurisdiction.

CAMTS is a private entity composed of non-profit organizations aimed at improving the quality and safety of ground and air medical transport services.⁷ To that end, CAMTS developed accreditation criteria that medical transport service providers may voluntarily comply with to demonstrate achievement of a standard of safety and patient care.⁸ The CAMTS standards, as voluntary compliance and accrediting metrics, do not, themselves, present Federal preemption issues; however, State regulation that *requires* accreditation by an outside body could implicate Federal preemption.⁹ While we will not engage in an exhaustive review of the CAMTS standards, we note that, in the context of our review of other State and local laws, and in judicial decisions on Federal preemption of State aviation laws, many of these standards have been deemed preempted to the extent they have been required or enforced by State law or regulation.

With respect to the ADA's express preemption, several CAMTS standards relate to an air carrier's rates, routes, and services.¹⁰ For instance, the CAMTS standards include provisions related to marketing of aircraft capabilities.¹¹ The U.S. Supreme Court has held that State or local laws regulating air carrier advertising or marketing are preempted¹² by the ADA.¹³ CAMTS provisions on evidence of financial responsibility¹⁴ are likely preempted as well.¹⁵

⁶ City of Burbank v. Lockheed Air Terminal Inc., 411 U.S. 624 (1973); Abdullah v. Am. Airlines, Inc., 181 F.3d 363, 371 (3rd Cir. 1999); see also Letter from Rosalind A. Knapp, Acting General Counsel, U.S. Dep't of Transp., to Gregory S. Walden, Counsel, Pacific Wings, L.L.C (Apr. 23, 2007); Letter from James R. Dann, Deputy Assistant General Counsel, U.S. Dep't of Transp., to Donald Jansky, Assistant General Counsel, Texas Dep't of State Health Serv. (May 23, 2007) (hereinafter "DOT Letter to Texas").

⁷ <http://www.camts.org/Who-Is-CAMTS-.html> (last visited Apr. 16, 2015).

⁸ CAMTS, 9th Edition Accreditation Standards of the Commission on Accreditation of Medical Transportation System (Oct. 2012) available at http://www.camts.org/Approved_Stds_9th_Edition_for_website_2-13.pdf (last visited Apr. 16 2015) (hereinafter "Accreditation Standards").

⁹ DOT Letter to Texas ("It is axiomatic that a State may not regulate indirectly what it cannot regulate directly.").

¹⁰ 49 U.S.C. § 41713(b).

¹¹ CAMTS, Accreditation Standards, § 01.03.00.

¹² Am. Airlines, Inc. v. Wolens, 513 U.S. 219, 228 (1995) ("In light of the full text of the preemption clause, and of the ADA's purpose to leave largely to the airlines themselves, and not at all to States, the selection and design of marketing mechanisms appropriate to the furnishing of air transportation services, we conclude that [the ADA] preempts plaintiff's claims under the [Illinois] Consumer Fraud Act."); Morales v. Trans World Airlines, 504 U.S. 374, 387-90 (1992) (finding that consumer protection guidelines applicable to air carrier fare advertising are "related to rates" and, therefore, preempted by the ADA); see also DOT Letter to Texas.

¹³ The CAMTS standards may further consumer protection goals, but in that respect they are similar to the State consumer protection laws at issue in Wolens, 513 U.S. 219, and Morales, 504 U.S. 374. We recognize that a State mandate to comply with CAMTS standards also may be designed to further public health objectives; however, as the Supreme Court held in Rowe v. New Hampshire Motor Transportation Association, 552 U.S. 364 (2008), the ADA

The CAMTS standards also include many provisions related to aviation safety, including aircraft equipment, operation, and pilot qualifications. As previously discussed, all aspects of aviation safety are subject to the FAA's exclusive jurisdiction and, therefore, State and local laws in these areas are preempted. This is true even to the extent that State requirements align with the FAA's requirements,¹⁶ as the CAMTS standards on night vision goggles¹⁷ and "helicopter shopping" policies appear to do.¹⁸ Furthermore, several of the CAMTS standards deviate from FAA regulations (they are either more¹⁹ or less stringent²⁰ than FAA requirements), and these also would be preempted given their incorporation into State law.

This letter provides only an overview of Federal preemption as it relates to State incorporation of the CAMTS standards into law. It does not attempt to provide an exhaustive preemption analysis of each provision of the CAMTS standards. Instead, we have highlighted a few of the standards as examples of the Federal preemption issues presented. There may be additional provisions in the CAMTS standards that also raise express or field preemption issues. In sum, it appears that a State's wholesale requirement of CAMTS accreditation as a prerequisite for transporting patients from the State is preempted under principles of express and field preemption. State adoption of accreditation standards governing patient care, however, would not be preempted.²¹ We have stated previously that "State regulations serving 'primarily a patient care objective' are properly within the State's regulatory authority."²² Thus, to the extent the CAMTS accreditation standards

preemption provision that prohibits State requirements related to air carrier rates, routes, or services does not include an exemption for requirements designed to further public health objectives.

¹⁴ CAMTS, Accreditation Standards, § 01.02.01.

¹⁵ See *United Parcel Serv. v. Flores-Galarza*, 318 F.3d 323, 336 (1st Cir. 2003) (striking down a bonding requirement for shippers doing business in Puerto Rico and finding that the expenses incurred by UPS to satisfy the bonding requirement "necessarily ha[d] a negative effect on UPS's prices"); Letter from D.J. Gribbin, General Counsel, U.S. Dep't of Transp., to Greg Abbott, Attorney General, State of Texas (Nov. 3, 2008) (noting that State law requiring evidence of financial responsibility through bonding or self-insurance was preempted because it "imposes a significant financial expense on air carriers," citing *United Parcel Serv.*, 318 F.3d 323); DOT Letter to Texas.

¹⁶ *Ariz. v. U.S.*, 132 S.Ct. 2492, 2502 (2012) ("Where Congress occupies an entire field . . . even complementary state regulation is impermissible. Field preemption reflects a congressional decision to foreclose any state regulation in the area, even if it is parallel to federal standards."); *Morales*, 504 U.S. at 386-87; see also DOT Letter to Texas ("A State may not establish a duplicative regulatory regime to 'ensure' that Federal aviation requirements are being met.").

¹⁷ CAMTS, Accreditation Standards, § 04.03.06; 14 CFR 61.31(k) & 61.57(f).

¹⁸ CAMTS, Accreditation Standards, § 05.03.06; 14 CFR 135.617. Note, 14 CFR 135.617 was promulgated as part of the Helicopter Air Ambulance Final Rulemaking (HAA Rule), 79 Fed. Reg. 9932 (Feb. 21, 2014). This provision will not be in effect until April 21, 2015. 79 Fed. Reg. 22009 (Apr. 22, 2014).

¹⁹ For example, FAA regulations require rotorcraft pilots operating under Part 135 to hold a commercial certificate, but do not require an instrument rating. 14 CFR 135.243(b). CAMTS accreditation requires that these pilots hold a commercial pilot certificate with an instrument rating. CAMTS, Accreditation Standards, § 05.07.01. Note, the HAA Rule promulgated a new 14 CFR 135.603 that will require air ambulance pilots-in-command to hold a helicopter instrument rating by 2017. Nonetheless, this does not affect the preemption analysis.

²⁰ For example, the CAMTS standards permit communication specialists to work scheduled shifts of 12 hours or more, whereas FAA regulations limit communications specialists to ten hour shifts. Compare CAMTS, Accreditation Standards, § 03.03.00 with 14 CFR 135.619(g)(2)(i).

²¹ See DOT Letter to Texas ("If, however, the matter is not preempted—as would be the case in various areas dealing exclusively with medical care—then the result is permissible and can be attained either directly with specific state regulation, or indirectly, through accreditation requirements.").

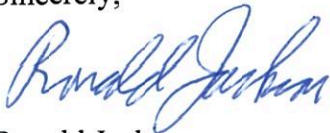
²² Letter from D.J. Gribbin, General Counsel, U.S. Dep't of Transp., to Greg Abbott, Attorney General, State of Texas (Nov. 3, 2008) (agreeing with holding in both *Hiawatha Aviation of Rochester v. Minnesota Department of*

factors include patient care provisions, a State may require compliance with those patient care provisions by air ambulance operators providing such care.

We are taking the liberty of copying the Health and Emergency Medical Services Division of the State of Colorado Department of Public Health and Environment on this letter. We have discussed this matter with the State and will offer to provide them with additional guidance on these issues if they wish.²³ The National Highway Traffic Safety Administration and National Association of State EMS Officials are developing Model Air Medical Rules as a resource for States. Because of the breadth of preemption issues presented by the incorporation of standards like CAMTS into State law, we have also prepared a summary of preemption law as it relates to State and local regulation of air carriers, including a discussion of previous DOT opinion letters in this area. We have attached it for your reference and will publish it on the DOT Office of General Counsel's website.

I hope that this letter proves informative to you, your constituent, and State officials. Please be advised, however, that this letter provides only guidance and does not constitute a final order of the Department, either on the matters your constituent raised or the merits of any particular proceeding. If you have any questions concerning this letter, please do not hesitate to contact me at (202) 366-9151. Thank you.

Sincerely,



Ronald Jackson
Assistant General Counsel for Operations

cc: D. Randy Kuykendall, MLS

Health, 389 N.W.2d 507 (Minn. 1986), and Med-Trans Corp. v. Benton, 581 F. Supp. 2d 72 (E.D.N.C. 2008)). As stated by the Supreme Court of Minnesota, 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." Hiawatha, 389 N.W.2d at 509. Similarly, the court in Med-Trans held that States may impose requirements that air ambulance operators develop plans to inspect, repair, and clean medical equipment on board the aircraft, transport patients to appropriate facilities, and ensure synchronized voice radio communications with local emergency medical services. Med-Trans, 581 F. Supp. 2d at 739-741.

²³ Medway's e-mail suggests that other States, such as the State of Oregon, may also incorporate CAMTS requirements into State laws, similar to Colorado. While we did not find this kind of regulatory regime in place in Oregon, our review indicated that there are other States that rely on CAMTS accreditation as a prerequisite to operation within the State. It is generally DOT's policy to consult with the State when we foresee the possibility of a conflict between State law and Federally-protected interests within its area of regulatory responsibility.