U.S. Department
of Transportation
**Federal Aviation
Administration**

JUL 27 2012

Margaret A. Keavney
Monmouth Ocean Hospital Service Corporation
4806 Megill Road
Wall Township
Neptune, NJ 07753

Dear Ms. Keavney:

This letter responds to your March 28, 2012 letter regarding air medical services provided under 49 USC §40125, the public aircraft statute. You indicate that your company, the Monmouth Ocean Hospital Service Corporation (MONOC), provides the medical component for certain air medical transport operations, contracting with helicopter operators that operate the flights.

You are requesting a clarification of an interpretation sent from my office to the Miami-Dade Fire Rescue Department in July 2011 in which we indicated that air medical transport operations may qualify as public aircraft operations despite the fact that they carry non-crewmember patients. Your first question is how public aircraft status can be asserted when a patient is transported.

The section of the law at issue in your question is 49 USC §40125(b), which states:

(b) Aircraft Owned by Governments.— *An aircraft described in subparagraph (A), (B), (C), or (D) of section 40102(a)(41) does not qualify as a public aircraft under such section when the aircraft is used for commercial purposes or to carry an individual other than a crewmember or a qualified non-crewmember.*

This analysis presumes that a government entity, in your case the New Jersey Emergency Medical Services Helicopter Response Program, qualifies to operate a public aircraft operation, such as 49 USC § 40102(a)(41)(C). Your question concerns the language at the end of §40125 (b) that the operation becomes commercial when it carries "an individual other than a crewmember or qualified non-crewmember." The statutory provision that defines a qualified non-crewmember in this instance is §40125 (a)(3)(B):

(3) Qualified non-crewmember.— *The term "qualified non-crewmember" means an individual, other than a member of the crew, aboard an aircraft— ...*
(B) *whose presence is required to perform, or is associated with the performance of, a governmental function.*

The FAA interprets the public aircraft statute to include helicopter emergency medical operations as a type of search and rescue, a governmental function listed in §40125(a)(2). In

turn, the patient being transported becomes a qualified non-crewmember since the rescue is the governmental function, and the patient being transported is the reason for the operation.

The significant limitation in this operation is that the government entity is not allowed to charge the rescued individual for any portion of the operation as a civil operator would. As we indicated in the Miami-Dade interpretation, collecting any sort of fee would be considered compensation under §40125(a)(1), and the flight would have a commercial purpose. The service would no longer be viewed as being provided by a government entity as a public aircraft operation, but by a commercial vendor that would be subject to the civil regulations of 14 CFR Part 135 to conduct helicopter emergency medical operations.

Your second question concerns whether MONOC could contract with the State of New Jersey to provide the health care component of the operation, charge the patients only for the medical services provided by MONOC, and have the flight remain a public aircraft operation. The answer is no. The FAA does not distinguish any aspect of the service as separable for compensation purposes under the law. The public aircraft statute allows government entities to perform certain operations that are funded by the government entity, but there can be no outside reimbursement of any type.

If the state of New Jersey wants to contract with MONOC to provide medical services on its helicopter rescue flights it may do so, but the state would have to compensate MONOC using its own funds, with neither the state nor MONOC seeking reimbursement from the patient or an insurance carrier. A government entity may contract with another entity to provide a service in its place, but the persons receiving the service may not be charged if the operation is to be conducted as a public aircraft operation. *See also* Interpretation to Rachel Waldinger from Rebecca B. MacPherson (May 4, 2012) regarding medical service charges; interpretation to James Gardner (February 24, 2012) finding that "The cost of operation is borne by the government entity, whether performed by the government entity or by a contractor" when conducted as a public aircraft operation.

We trust that this information responds to your inquiry. If you need further assistance, please contact my staff at 202-267-3073. This response was prepared by Karen Petronis, Senior Attorney of my staff, and was coordinated with the General Aviation and Commercial Division of the Flight Standards Service.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations