



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Commerce, Community,
and Economic Development

DIVISION OF INSURANCE
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August 19, 2013

Dina L. Yunker
Assistant Attorney General
Attorney General of Washington
University of Washington Division
Box 359475
Seattle, WA 98195-9475

Dear Ms. Yunker:

Re: AirCare Program – Alaska

Thank you for your August 7, 2013 response to my July 16, 2013 letter regarding the AirCare Membership Program and the Airlift Northwest exemption under AS 21.87.010.

As you know the exemption in AS 21.87.010 applies to "ambulance or emergency medical services provided by a municipality, nonprofit medical service corporation, or nonprofit association if the person providing the services is certified under AS 18.08.082." Given that Airlift Northwest's structure was changed in 2010 from a corporation to a component of the University of Washington, which you state is a governmental tax exempt entity, Airlift Northwest is not a nonprofit medical service corporation. However, in your letter you state that Airlift Northwest would qualify under the categories of municipality and nonprofit association. Please provide a legal analysis that supports that conclusion.

In addition would you please provide the number of current Airlift Northwest Alaska members?

Please provide the requested information no later than September 3, 2013 by e-mail, if possible. If you have questions I may be contacted by e-mail at Katie.campbell@alaska.gov or by phone at 907-465-4607.

Sincerely,

Katie Campbell
Katie Campbell, FSA, MAAA
Life/Health Actuary
Alaska Division of Insurance

cc: Shelly Deering, Alaska Regional Manager, Airlift Northwest



Bob Ferguson

ATTORNEY GENERAL OF WASHINGTON

University of Washington Division • Box 359475

Seattle WA 98195-9475 USA • Phone (206) 543-4150 • Fax (206) 543-0779

September 13, 2013

VIA e-mail to: Katie.campbell@alaska.gov

Ms. Katie Campbell, FSA, MAAA
Life /Health Actuary
Alaska Division of Insurance
P.O. Box 10805
Juneau, AK 99811-0805

Re: AirCare Program - Alaska

Dear Ms. Campbell:

Thank you for your letter of August 19, 2013, and for making yourself available to speak with us on August 29. I wish to make clear that the following discussion represents strictly my personal opinion and should not be construed as an official opinion of Washington's Attorney General.

Factual Context. In addition to the factual context provided in my August 7, 2013 letter, it is noteworthy that, while Airlift Northwest's legal status has evolved from an association of entities to a distinct corporation, then back to an unincorporated enterprise, Seattle Children's Hospital continues its involvement with Airlift Northwest. As previously explained, the University of Washington is a public, non-profit institution, recognized as such by the IRS. Seattle Children's Hospital is also a non-profit institution. This link will take you to the Washington Secretary of State registration database showing Seattle Children's Hospital as a current nonprofit entity: http://www.sos.wa.gov/corps/search_detail.aspx?ubi=178019356

Under the Revised Transition Agreement Regarding Airlift Northwest, effective June 15, 2010 between the University of Washington and Seattle Children's Hospital, the parties agreed and asserted that, to the extent Airlift Northwest intends to use nurses still employed by Children's, they will enter into a leased employee agreement. See Section 7 of the attached Revised Transition Agreement Regarding Airlift Northwest. Registered Nurses employed by Seattle Children's Hospital continue to provide these contemplated services, working alongside their Airlift Northwest associates to provide high quality air ambulance transport.

You will also see language in the Transition Agreement indicating that Children's will continue to contribute its perspective and expertise to Airlift's operations (see, *Id.* at Recital B), that Children's will be a permanent member of the Airlift Advisory Committee (see, *Id.* at Section 3), that Children's will provide an Associate Medical Director to Airlift Northwest, (see, *Id.* at Section 4), that Children's will provide training and participate in the Airlift Quality Improvement program (see, *Id.* at Section 5), and that Airlift and Children's will cooperate to enable Children's-based physicians and respiratory therapists to function as part of the Airlift transport team in appropriate cases (see, *Id.* at Section 6). Children's association with the University in operating Airlift Northwest is consistent with the notion of Airlift being considered a "non-profit association," as is the fact that Airlift is but one of eight healthcare enterprises associated with UW Medicine.

As mentioned during our call, the Master License Service of the State of Washington has classified Airlift Northwest as a municipality. Attached for your consideration is a copy of the Master Business License issued by the State of Washington. Note the "Municipality" designation in the upper left corner.

Nonprofit Association. The only reference to "nonprofit association" that I could locate relevant to the provision of services related to the sick and injured appeared in chapter 18.20 Alaska Statutes. While that chapter speaks to hospitals and medical facilities, I note that the definitions of "nonprofit hospital" and "nonprofit medical facility" mean ones that are "owned and operated by a nonprofit corporation or association, *no part of the net earnings of which inures, or may lawfully inure, to the benefit of a private shareholder or individual*" AS 18.20.210(8). [Emphasis added].

Alaska law regarding provision of services to the sick and injured contemplates that "nonprofit associations" are enterprises that do not distribute profits to shareholders or individuals. As noted previously, the University of Washington, which holds the Airlift Northwest assets and associates with Seattle Children's Hospital to operate Airlift, is a governmental, tax-exempt entity. As such, it has no private shareholders and the net earnings do not inure to any individual. And, as noted above, Seattle Children's Hospital is also a registered nonprofit entity. Airlift Northwest is unquestionably an association of nonprofit entities.

Municipality. While it is easy to think of a "municipality" as a city or town – something smaller than a state – "municipality" also has a broader meaning. In its more broad sense, a "municipal corporation" is simply an instrumentality of the state. Citing to various legal treatises and long-standing case law, the Washington Supreme Court in *Roza Irrigation District v. State of Washington*, 80 Wn.2d 633, 497 P.2d 199 (1972), undertook an exhaustive analysis of the meaning of the term "municipal corporation":

A municipal corporation, in its strict and proper sense, is a body politic established by law partly as an agency of the state to assist in the civil government of the country but chiefly to regulate and administer the local and internal affairs

of the city, town or district which is incorporated. Sometimes the term municipal corporation is used in a broader sense and includes public quasi corporations, the principal purpose of whose creation is an instrumentality of the state, but not for the regulation of local and special affairs of a compact community.

In a rather comprehensive treatise, 3A C. Antieau, *Local Government Law (Independent Local Government Entities)* (1970), the author analyzes the nature of such entities as the one with which we are concerned here and points out that the following, while in strict logic not true municipal corporations, have nevertheless been called such in certain contexts: School districts (§ 30C.01); fire protection districts (§ 30D.00); airport authorities (§ 30E.00); housing authorities (§ 30F.00); sewerage and sanitary districts (§ 30G.00); port districts ... (§ 30I.00); utility districts ... (§ 30J.00); drainage and irrigation districts (§ 30K.00); library districts ... (30L.00); park and recreation districts (§ 30O.00); building authorities (§ 30P.11); road and highway district (§ 30P.15).

According to this writer, even a hospital authority has been called a "governmental subdivision of the state." (§ 30H.00).

Roza Irrigation District v. State of Washington, supra, 80 Wn.2d 633 at 635-636, 497 P.2d 166 at 168, quoting *Columbia Irr. Dist. v. Benton Cnty.*, 149 Wash. 234, 235, 270 P. 813, 814 (1928).

In your most recent correspondence of August 30, 2013, you have indicated that AS 01.10.060(a) defines "municipality" as "a political subdivision incorporated under the laws of the state that is a home rule or general law city, a home rule or general law borough, or a unified municipality." In addressing municipal government, Title 29 Alaska Statutes confers the general power of regulating "the operation and use of a municipal right-of-way, facility, or service." AS 29.35.010(10). With respect to "services," I note that Title 29 also contains a provision that defines "emergency services" to mean "services provided by law enforcement agencies, fire departments, *ambulance services*, and other organizations that are intended to respond to emergency situations of imminent danger to life or property." AS 29.35.130(d)(1). [Emphasis added].

While Title 29 Alaska Statutes classifies municipalities as home rule and general law municipalities, both AK 29.04.010 and AS 29.04.020 recognize the concept that these types of municipalities possess legislative power. This is a concept that is common to descriptions found in legal treatises and adopted under Washington law. As an instrumentality of the state, the University of Washington was established by law with the authority to regulate and administer internal affairs. As such, the University functions as a municipality.

Chapter 21.87 Alaska Statutes is Inapplicable. Chapter 21.87 Alaska Statutes, to which you refer, pertains to Hospital and Medical Service Corporations, while other Alaska law pertains to emergency medical services. Specifically, chapter 18.08 of Alaska Statutes addresses Emergency Medical Services and defines "emergency medical service" as the "provision of emergency

medical care and transportation of the sick and injured". AS 18.08.020)(8). "'Ambulance' means any publicly or privately owned means of conveyance intended to be used and maintained or operated for the transportation of persons who are sick, injured, wounded, or otherwise helpless." AS 18.08.200(2).

Airlift Northwest transports persons who are sick, injured, wounded, or otherwise helpless and, in the process, provides emergency medical care. As such, Airlift Northwest is an air ambulance service providing the type of emergency medical care and transportation of the sick and injured specifically addressed by the Alaska legislature in Chapter 18.08. Airlift is not a hospital or medical service corporation. Therefore, the definition of "health care service" found in AS 21.87.330 is not applicable to Airlift Northwest.

Airlift Northwest is to be distinguished from privately-owned air ambulance services. It is operated by a governmental entity in service of the public's health and safety. No part of Airlift Northwest's earnings inure to the benefit of any private shareholder or individual. Even if, for the sake of argument, Airlift Northwest could be considered as providing a "health care service" in the manner described for hospital and medical service corporations under AS 21.87.330, it would be exempt from chapter 21.87 Alaska Statutes under AS 21.87.010(b)(5) as an ambulance or emergency medical services provider operated by a nonprofit entity appropriately classified as a municipality, in association with another nonprofit entity.

Alaska's 2008 letter. Please refer to Ms. Hall's letter of August 26, 2008 to Airlift Northwest. The address for Ms. Hall is at the State of Alaska's Department of Commerce, Community and Economic Development, which is in turn, indicated as being associated with the Division of Insurance. Ms. Hall's signature indicates that she was the Director at the time she wrote the letter. And the letter, which is short and unambiguous, states that "We have reviewed the materials you provided and conclude that under Alaska's current insurance laws *you may offer the subscription membership program as described*, with two caveats. First, Airlift Northwest must remain certified under Alaska Statute 18.08.082. Second we do not approve of the 'lifetime memberships'." [Emphasis added]. I have previously explained that Airlift continues to adhere to the caveats Ms. Hall prescribed. This leaves us with a determination that has already been made, by a Director in the Division of Insurance, that Airlift may offer its subscription membership program. We are puzzled as to what has changed between then and now and why you are second-guessing your colleague's determination.

Finally, please be advised that Airlift Northwest transports individuals regardless of their ability to pay and regardless of whether they have an AirCare membership. Curtailing the AirCare membership program will profoundly impact the 3,520 citizens of Southeast Alaska who will no longer be able to secure certainty respecting their out-of-pocket expenses for air ambulance services.

Katie Campbell
September 13, 2013
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Please let me know if you require further information.

Sincerely,



DINA L. YUNKER
Assistant Attorney General

Encl.

cc: C. Martin, Executive Director, Airlift Northwest
C. McFeely, Director of Finance, Airlift Northwest
S. Deering, Alaska Regional Manager, Airlift Northwest

REVISED TRANSITION AGREEMENT REGARDING AIRLIFT NORTHWEST

As set forth below, the University of Washington (hereinafter referred to as the "University") and Seattle Children's Hospital, a Washington nonprofit corporation (hereinafter referred to as "Children's") hereby agree to revise and replace the Airlift Northwest Transition Agreement, which took effect January 1, 2003 (the "Transition Agreement") previously entered into between them.

RECITALS

- A. Based on the premises described in the Transition Agreement, the parties previously agreed to cooperate in the formation of a nonprofit corporation to operate Airlift Northwest ("Airlift") as a regional air ambulance system.
- B. With the passage of time, the assumptions and expectations that formed the basis for the Transition Agreement have substantially changed. After substantial review and discussion, the parties have decided to seek dissolution of the nonprofit corporation and transfer Airlift operations and its corporate assets to the University as part of its UW Medicine organization, while continuing to assure that Children's can contribute its perspective and expertise to Airlift's operations.

NOW, THEREFORE, the parties agree as follows:

- 1. **Previous Agreement Terminated.** The Transition Agreement is hereby terminated and replaced by this agreement, effective June 15, 2010.
- 2. **Airlift Assets.** All assets of the nonprofit corporation known as Airlift Northwest shall be distributed to the University for the continued operation of Airlift. Children's hereby waives any and all rights it may have to such assets, *provided* that in the event the University, within ten years of the effective date of this agreement, terminates the agreement or transfers all or substantially all Airlift operations to a third party (other than a not-for-profit entity controlled by the University), Children's will receive a cash payment in equal to the amount to which it would have been entitled under the Transition Agreement on dissolution of Airlift, with interest from the date of the dissolution at the average rate paid by the University for borrowing during that period.
- 3. **Advisory Committee.** The University will establish and maintain an Airlift Advisory Committee to guide the planning and operational oversight of Airlift. Children's will be a permanent member of the Airlift Advisory Committee with full rights to provide guidance on any and all pediatric issues, including medical planning, preparation, care delivery, training, medical control, and case review. The Committee will meet periodically and no less often than twice annually.

The University understands that Children's requires state-of-the-art pediatric and neonatal transport services to support its tertiary and quaternary level healthcare for children of the region, that Children's has a strong interest and stake in the continued operation of Airlift as source for these services, and that Children's expects that these services will not come with any cap based on payor status. The University intends to provide services that meet

these requirements and expectations. One function of the Advisory Committee will be to periodically assess the level of services provided and recommend any needed changes and enhancements. If at any time Airlift fails to follow the Advisory Committee's recommendations for such services, Children's may obtain those services elsewhere.

Specifically, Children's strongly desires Airlift to develop the capacity for higher-acuity pediatric transports in the near term. Airlift agrees to work with Children's, under the guidance of the Advisory Committee, to develop and offer transport services for pediatric and neonatal patients requiring high-frequency ventilation and iNO (inhaled nitrous oxide), and to develop and offer mobile pediatric and neonatal ECMO. These services are necessary to enable Children's to provide adequate care to the children of the region.

4. **Pediatric Medical Direction.** Children's will provide a physician to provide pediatric program advice and guidance as Associate Medical Director for Pediatric Transport, reporting to the Medical Director for Airlift. This physician will work with Airlift to assure optimal pediatric transport services, as described in this agreement. Airlift will reimburse Children's for a .2 FTE share of this physician's salary and benefits. A Children's-based physician will also continue to serve as the lead support physician for all Airlift pediatric inter-facility flights except those involving trauma patients unless the Airlift medical director designates a physician at the receiving hospital who will serve this function.
5. **Training and Quality Improvement.** The University will seek Children's recommendations for pediatric training for Airlift nurses and allow Children's an active role in the oversight of such training. The Children's-based Pediatric Transport Medical Director will work with Airlift leadership to identify the necessary pediatric competencies for Airlift nurses. At Airlift's request, Children's will provide training, at reasonable cost, to fulfill annual competency requirements and otherwise to assure Airlift's nurses have appropriate, mutually acceptable pediatric skills. Identified annual competency requirements will be based in part on the results of the Airlift Quality Improvement (QI) program.

Children's will participate in the Airlift QI program, which will review all pediatric and neonatal transports, including communications, coordination of care, landings at Children's, Graves Field, Harborview and other sites, and all Airlift pediatric ground transports. Appropriate clinical personnel from Children's, designated by the Children's-based Airlift Pediatric Transport Medical Director, will participate in such reviews.

6. **Operational Relationships.** Separate from the formal QI program, Airlift will review its operations and pediatric transports with Seattle Children's designated medical and nursing leadership to identify issues, opportunities and constraints that could affect patient access, provider and patient safety, delivery of care, available pediatric equipment and medications, training, supervision, and practice of Airlift clinical and operational personnel. Children's will cooperate with Airlift to enable Children's-based clinicians, including physicians and respiratory therapists, to function as part of the Airlift transport team in appropriate cases, such as with high-frequency ventilation or ECMO care. Airlift will also keep Children's informed through timely direct communication about operational, safety and personnel issues that could affect pediatric transport capabilities or hospital operations.

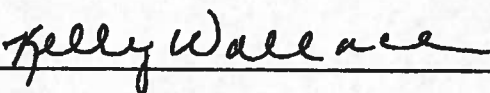
7. **Existing Airlift Nurses.** Although Children's currently employs many of the pediatric nurses used by Airlift, new Airlift nurses will be hired as University employees and voluntary transitions will be supported as part of a long term plan to have all Airlift nurses employed by the University. Children's and University human resources personnel will cooperate to facilitate and effect this transition. As long as any Airlift nurses remain Children's employees and Airlift desires to continue to use them for Airlift flights Children's will enter into a leased employee agreement with Airlift under which Children's will provide the services of these nurses to Airlift under Airlift's supervision and control, consistent with Children's WSNA collective bargaining agreement.

8. **Other Provisions**

- a. **Termination.** Either party may, upon six months written notice to the other, terminate this agreement. In the event of such a termination by Children's, Children's may thereafter support development of an alternate air transport service.
- b. **Entire Agreement.** This agreement (including the exhibits) constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements and representations, whether oral or written, with respect to the subject matter hereof.
- c. **No Assignment.** This agreement, and the rights and obligations hereunder, shall not be assigned by either Party to any Person, under any circumstance, without the prior written consent of the other Party, which consent shall be at such other Party's sole discretion.
- d. **Heirs, Successors, and Assigns.** Each of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.
- e. **Counterparts.** This agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

SEATTLE CHILDREN'S HOSPITAL, a
Washington nonprofit corporation

UNIVERSITY OF WASHINGTON, an
institution of higher education of the State of
Washington



By: Kelly Wallace
Its: Senior VP and Chief Financial Officer



By: Johnese Spisso
Its: Clinical Operations Officer, UW Medicine



UNIVERSITY OF WASHINGTON
AIRLIFT NORTHWEST
6987 PERIMETER RD S STE 110
SEATTLE WA 98108-3847

001882

MASTER LICENSE SERVICE PO Box 9034 • Olympia, WA 98507-9034 • (800) 684-1400	
REGISTRATIONS AND LICENSES	
STATE OF WASHINGTON	
Municipality	Unified Business ID #: 178 019 988
	Business ID #: 1
	Location: 63
UNIVERSITY OF WASHINGTON AIRLIFT NORTHWEST 6987 PERIMETER RD S STE 110 SEATTLE WA 98108 3847	
TAX REGISTRATION	
REGISTERED TRADE NAMES: AIRLIFT NORTHWEST	
<p>The licensee named above has been issued the business registrations or licenses listed. By accepting this document the licensee certifies the information provided on the application for these licenses was complete, true and accurate to the best of his or her knowledge, and that business will be conducted in compliance with all applicable Washington state, county, and city regulations.</p>	
<p><i>Elizabeth A. Luce</i> Director, Department of Licensing</p>	

STATE OF WASHINGTON

178 019 988 1 63

UNIVERSITY OF WASHINGTON

AIRLIFT NORTHWEST

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TAX REGISTRATION

Elizabeth A. Luce
Director, Department of Licensing



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

**Department of Commerce, Community,
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August 30, 2013

Dina L. Yunker
Assistant Attorney General
Attorney General of Washington
University of Washington Division
Box 359475
Seattle, WA 98195-9475

Dear Ms. Yunker:

Re: AirCare Program – Alaska

As a follow-up to the conference call on August 29, 2013 regarding the AirCare Membership Program and the Airlift Northwest exemption under AS 21.87.010, I would like to clarify the exemption and based on our conversation to ask for additional information the Division will need to determine whether Airlift Northwest meets the exemption.

Even though the focus of our questions to date and specifically on the call was on whether Airlift Northwest is a municipality or nonprofit association, keep in mind that in order for Airlift Northwest to be exempt from AS 21.87 it must in the absence of the exemption actually be subject to AS 21.87 as set forth in AS 21.87.010(a). AS 21.87.010(a) states that the requirements of AS 21.87 apply to "every individual, person, firm, corporation, association, or organization of any kind hereafter engaging or purporting to engage in the provision of all or part of a health care service as defined in AS 21.87.330, for its subscribers in exchange for periodic prepayments in identifiable amounts by or as to the subscribers."

Therefore, in addition to a legal analysis supporting your position that Airlift Northwest is a municipality and nonprofit association under Alaska law, the division will also need evidence that under the AirCare program, Airlift Northwest is providing services "in exchange for periodic prepayments in identifiable amounts" by the members of the AirCare program. Basically, this means that under the AirCare program Airlift Northwest (1) agrees to provide services to members (as opposed to providing some other benefit to members for services provided); and (2) membership fees are determined such that the fees pay in advance for the expected costs associated with providing the services to members.

Whether Airlift is operating as a municipality or nonprofit association will be determined based on Alaska law. The definition of municipality in AS 01.10.060(a) is "a political subdivision incorporated under the laws of the state that is a home rule or general law city, a home rule or general law borough, or a unified municipality". With respect to nonprofit association, that term is not specifically defined in Alaska statute and in determining whether

an entity is a nonprofit association the division would be guided by insurance laws that apply to associations including AS 21.54.060(2) and by the definition/s of association applicable to insurance such as the definition of "association group" in the Dictionary of Insurance Terms which is a "bona fide organization that purchases insurance on a group basis on behalf of members...."

Also, does Airlift Northwest transport an individual regardless of the individual's ability to pay or whether the individual has an AirCare membership?

Thank you in advance for your response.

If you have questions I may be contacted by e-mail at Katie.campbell@alaska.gov or by phone at 907-465-4607.

Sincerely,

Katherine S Campbell

Katie Campbell, FSA, MAAA
Life/Health Actuary
Alaska Division of Insurance

cc: Shelly Deering, Alaska Regional Manager, Airlift Northwest
Signe Anderson, Assistant Attorney General, Alaska Department of Law