



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Commerce, Community,
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November 12, 2013

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

Dear Ms. Yunker:

Re: AirCare Program-Alaska

Thank you for your September 13, 2013 response to my August 19, 2013 and August 30, 2013 letters regarding Airlift Northwest (Airlift NW) operations in Alaska and the AirCare Program.

After reviewing the updated information regarding Airlift NW and its membership program, the division concludes that the membership program constitutes insurance and is subject to regulation under Alaska's insurance code (Title 21). The division further concludes that Airlift NW and the membership program it offers is not exempt from regulation as insurance under Title 21 by virtue of AS 21.87.010(b)(5). The discussion that follows identifies the facts and analyses supporting the division's conclusions.

First, assuming for purposes of argument that Airlift NW is subject to AS 21.87, Airlift NW does not meet the exemption in AS 21.87.010(b)(5) because it is not a municipality, nonprofit medical service corporation, or nonprofit association based on the following:

1. With the change to Airlift Northwest's structure from a corporation to an unincorporated component of the University of Washington, Airlift Northwest is clearly not a nonprofit corporation and even if it was again formed as a nonprofit corporation it would not be a nonprofit medical service corporation, unless it met the definition of a service corporation in AS 21.87.330. Service corporation is defined as "a corporation providing all or part of one or more health care services for subscribers in exchange for periodic prepayment in identifiable amount by or as to the subscribers." As will be discussed in more detail below, Airlift NW as currently operated is not a service corporation providing "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 subscriber".

2. Municipality is not specifically defined in AS 21.87 or elsewhere in Title 21. However, for purposes of all laws of this state, unless the context otherwise requires, the definition of “municipality” in Alaska Statute 01.10.060 will control. Under this statute, “municipality is defined to mean “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”. Regardless of how Airlift NW is defined or treated under WA or other law, Airlift NW operates an air ambulance business in Alaska under an active Alaska business license and is not a municipal corporation or political subdivision incorporated under Alaska law. We note also that under Alaska law Alaska’s state university is considered an instrumentality of the state and not a municipal corporation. Accordingly, even if Airlift NW is considered an extension or component of the University of Washington, it is not a municipality as that term is defined under Alaska law.

3. “Nonprofit association” is not defined in the Alaska Statutes. However AS 21.54.060(2) defines an association for group insurance purposes and is applicable to AS 21.87. Therefore this definition is helpful in determining what a nonprofit association means for purposes of AS 21.87.020(b). AS 21.54.060(2) states “under a policy issued to an association, including a labor union, that has a constitution and bylaws and that has been organized and is maintained in good faith for purposes other than that of obtaining insurance, **insuring members, employees, or employees of members of the association for the benefit of persons other than the association or its officers or trustees**”. In addition, the dictionary definition of association is “an organization of people with a common purpose and having a formal structure.” Airlift NW operates a business in Alaska and provides air ambulance services and bills individuals (and/or their insurance) for the costs of those services. Airlift NW is not an association of members having a common purpose. As of June 15, 2010, Airlift NW’s operations and corporate assets were transferred to the University of Washington to become part of its UW Medicine program. The revised transition agreement between the University of Washington and Seattle Children’s Hospital does no more than provides for the dissolution of Airlift NW’s nonprofit corporate status, transfers its assets to University of Washington, and clarifies Children’s role and/or rights in the continued operation of Airlift NW after the transfer of assets. It does not purport to organize or establish an association of members. Also, even if as you assert in your letter that the relationships between the University of Washington, Seattle Children’s Hospital and Airlift NW creates an “association”, that does not mean that Airlift NW is itself an association, rather it would be a member of an association.

Second, the Division has reassessed the applicability of AS 21.87 to Airlift NW and even if Airlift NW was restructured again as a non-profit corporation, it would not be operating as a non-profit medical service corporation and exempt under AS 21.87.010(b)(5). AS 21.87.330 defines a service corporation as “a corporation providing all or part of one or more health care services for subscribers in exchange for periodic prepayments in identifiable amount by or as to the subscribers.” Health care service is defined in AS 21.87.330 as “a service rendered to an individual for diagnosis, relief, or treatment of an injury, ailment, or bodily condition.”

Critical care air ambulance services provided by Airlift NW falls within the scope of that definition and, therefore, Airlift NW would be engaging in the provision of “**all or part of a health care service defined in AS 21.87.330**”.

However, even if Airlift NW was a non-profit corporation providing a health care service, it does not contract with subscribers to provide the service in exchange for periodic prepayment. Rather, Airlift NW sells memberships to individuals under which it effectively agrees to not bill members for that portion of the cost of ambulance service that is not paid by insurance based on the following:

1. As confirmed in your letter Airlift NW transports individuals regardless of ability to pay or whether the individual has an AirCare membership and individuals do not contract with Airlift NW to receive services. Therefore, Airlift NW does not have “subscribers” as intended by the definition of service corporation; and
2. Airlift NW bills insurance companies and/or the individual after it provides a service and consequently even members who receive Airlift NW services do not prepay for the services and Airlift NW does not provide its services “in exchange for periodic prepayments”.

Although AS 21.87 is not expressly referenced in the 2008 letter from the Division’s former director, Linda Hall, it is clear from the context and the director’s condition requiring Airlift NW to remain certified under AS 18.08.082, that the former director’s conclusion was premised on a determination that Airlift NW was a service corporation and, as such, it would fall within the scope of the exemption in AS 21.87.010(b)(5). Because, in fact, Airlift NW is not a service corporation or otherwise subject to AS 21.87, as you concede in your letter, the exemption in AS 21.87.010(b) cannot apply to Airlift NW and the AirCare program.

Third, similar to other membership programs, the AirCare membership program offered by Airlift NW is insurance and, as such, is subject to regulation under all other provisions of AS 21 based on the following:

1. The definition of insurance is defined in AS 21.97.900(25) as “a contract whereby one undertakes to indemnify another or pay or provide a specified or determinable amount or benefit upon determinable contingencies.” In exchange for an annual membership fee, the AirCare membership program provides a benefit (i.e. no balance billing for amounts not covered by insurance or Medicare) that is contingent on the need for emergency air ambulance services in the future. The benefit to an Alaskan with an AirCare membership compared to an Alaskan without a membership is not that the Alaskan with a membership will receive services under the agreement and a person without the membership will not. Rather, under the membership agreement the Alaskan with the membership will not be balance billed by Airlift NW for the cost of services that the member’s insurer does not pay. The provision of this benefit in exchange for the membership fee constitutes the transaction of insurance, specifically health care insurance.
2. Health care insurance is defined in AS 21.12.050(b) as that part of health insurance that provides, delivers, arranges for, pays for, or reimburses any of the costs of medical care and “Medical care” is defined in AS 21.97.900(3) to include “transportation primarily for and essential to medical care...” The AirCare membership program easily fits within the scope of the health care insurance definition.

3. The AirCare program is regulated under Title 21 pursuant to AS 21.03.021. AS 21.03.021(b) states "Except as otherwise provided in this title, a person that provides coverage for the cost of medical care in this state is subject to this title unless the person shows that, while providing coverage for medical care, the person is subject to the jurisdiction of another agency of this state or of the federal government by providing the director with the appropriate certificate, license, or other document issued by the other governmental agency that **permits or qualifies the person to provide coverage for medical care.**" Under AS 21.03.021(c), a person who is unable to show that the person is subject to the jurisdiction of another governmental agency is subject to all appropriate provisions of AS 21. Based on the information you have provided, it is clear that no other agency of this state or the federal government has permitted or qualified Airlift NW to provide coverage for medical care. The certification under Title 18 only permits or qualifies Airlift NW to act as a critical care air ambulance service in this state.

In conclusion Airlift NW is not subject to AS 21.87 or exempt from AS 21.87, but the AirCare membership program offered by Airlift NW is insurance subject to Title 21. If Airlift NW wants to offer the AirCare program, then the program must either be fully insured by a health insurer authorized in Alaska or Airlift NW must obtain a certificate of authority pursuant to AS 21.09 to transact health insurance in Alaska. In determining which avenue to pursue, please be aware of AS 21.09.040(2).

In order to resolve this matter in a timely and efficient manner and as authorized by the Director, the Division asks for Airlift NW's cooperation in agreeing to discontinue the sale of the current AirCare membership program in Alaska as of the date of this letter and not offer memberships until Airlift NW restructures the membership program to comply with Alaska law. Airlift NW must non-renew all memberships at the end of the current coverage period applicable to that membership agreement unless or until Airlift NW's program is restructured and made compliant with Alaska law. Please acknowledge your acceptance of this agreement no later than November 19, 2013. In the absence of an agreement, the division may consider taking formal administrative action to enforce compliance with the Alaska insurance code.

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