



September 27, 2016

The Honorable Paul Ryan  
Speaker

The Honorable Nancy Pelosi

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requirements or insurer rehabilitation or liquidation. To the contrary, the ACA includes an express anti-preemption clause, 42 U.S.C. §18041(d) (titled “No interference with State regulatory authori

typically may only collect after policyholder and other creditor claims are paid. Nevertheless, DOJ now seeks to renege on that agreement and collect on these investor claims ahead of policyholder claims.

- **The Federal Government Cannot Pick and Choose Which Policy Claims Deserve Priority**

In some CO-OP liquidations, DOJ argues that despite what Congress, the Supreme Court, and the State Legislatures have all said, state laws prioritizing policy benefit claims are not fully saved from preemption. DOJ's position seems to be that the priority of claims should be decided on a case-by-case basis rather than on the basis of a comprehensive legislative framework, so that benefit claims involving direct payment to healthcare providers receive less protection than benefit claims involving patient reimbursement. The result, if DOJ had its way, would be that out-of-network health benefit claims have privileged status, while federal "super-priority" would trump the payment of in-network benefit claims. The notion that only out-of-network claims qualify as "real" policy claims is exactly the opposite of the incentive system codified by the ACA.

The rationale appears to be that if providers commit to hold patients harmless from balance billing, then the policy benefit priority does nothing to protect patients and therefore should be preempted. This reasoning is deeply flawed for two reasons. First, the question is not whether the law protects policyholders, but whether it regulates the business of insurance. Insurance liquidation laws give priority to policy benefit claims, both first-party and third-party, because insurers' essential purpose is the payment of insurance benefits. Second, and even more important, providers' promise to their patients that their sole recourse will be against the insolvent insurer's estate rests on the state's promise to the provider that there *will* be recourse against the insolvent insurer's estate. T071 Tw 0 -2(

