

September 27, 2016

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, D

The Honorable Harry Reid
Minority Leader
United States Senate

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Ferguson Act (15 U.S.C. §§ 1010-15). Congress implicitly concurred with state law distribution
policyholder protection above other creditors because it has not reversed the holding of state
to do so.

x Congress Did No

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 authority”) stating: “Nothing in this title shall be construed to preempt any State law that does not prevent the application of the provisions of this title.” Thus, far from preempting ~~state~~ law protections for policyholders, the ACA expressly preserves them, and leaves liquidation within the exclusive purview of the states.

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.

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

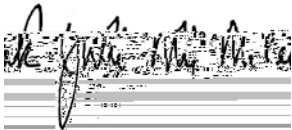
In some GOP liquidations, DOJ argues that despite what Congress, the Supreme Court, and the State Legislatures have all said, state laws prioritizing policy benefit claims are not fully saved from preemption. DOJ's position seems to be that the priority of claims should be decided on an ad hoc basis 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 "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 do

x Conclusion

The ACA's purpose was to ensure "quality, affordable health care for all Americans." Instead of protecting policyholders, the HHS/DOJ abuse of the federal "parity" will have a significant financial impact on policyholders, providers, the states, and state taxpayers. It will also disrupt the orderly liquidation process established by the states, confirmed by Congress, and endorsed by HHS when it promulgated ACA regulations.

The NAIC urges your prompt attention and action to ensure continued protection and priority of policyholder claims. State insurance receivership laws are part of a comprehensive legislative scheme that regulates the business of insurance. The McCarran-Ferguson Act protects these laws in their entirety, subject only to a provision ensuring appropriate priority for federal claims not otherwise subordinated, behind policy benefit claims and ahead of general creditors. Insurance insolvency laws should have full parity with 1(a)-2(r)7(i)-5(t)-5(y)11(

A handwritten signature in black ink, appearing to read "Debra A. ...", is written over a set of horizontal lines. The signature is somewhat stylized and partially obscured by the lines.