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National Conference of Insurance Legislators (NCOIL)

Guiding Principles on State Regulation of Air Ambulance Balance Billing Practices

To be discussed by the NCOIL Health Long Term Care and Health Retirement Issues Committee on July 14, 2017

- 1.) Air ambulance services are being used more frequently to transport patients to faraway hospitals.
- 2.) The problem of air ambulances not being affiliated with hospitals and not in an insurer's network has become increasingly apparent.
- 3.) This has led to situations in which, after airlifting individuals in both emergency and non-emergency situations, the individuals are left with crippling and often life-altering "balance bills" that can be tens of thousands of dollars.
- 4.) The Federal Airline Deregulation Act (ADA) contains an express preemption clause which provides that "a State, political subdivision of a State, or political authority of at least 2 States may not enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier that may provide air transportation under this subpart." 49 U.S.C. § 41713(b)(1).
- 5.) It is undisputed that air ambulances are "air carriers" as defined under the ADA.
- 6.) The McCarran-Ferguson Act, 15 U.S.C. § 1012(b), explicitly reserves the regulation of the business of insurance to the states and provides that any Federal law that infringes upon that regulation is preempted by state insurance laws, unless the Federal law specifically relates to the business of insurance.
- 7.) It is undisputed that the ADA does not specifically relate to the business of insurance.
- 8.) Various states have attempted to pass laws to protect consumers from high air ambulance bills, but several courts have ruled such laws were not enacted for the purpose of regulating the "business of insurance" and are therefore preempted by the ADA.
- 9.) Accordingly, until there is a Federal solution to these problems that would allow the states flexibility to protect consumers from excessive air ambulance "balance bills"

without the threat of Federal preemption, States should consider passing proactive yet narrow legislation under the states' McCarran-Ferguson authority to regulate "the business of insurance."

10.) Proactive legislation or regulation may include "laws aimed at protecting or regulating the relationship between the insurer and the insured, whether directly or indirectly."¹ Such laws or regulations are considered to regulate the business of insurance.²

11.) The current situation is not working and left untouched, consumers will continue to be harmed by outrageous air ambulance "balance bills." Legislation specifically addressing the balance-billing issue to protect the policyholder could escape preemption.³

¹ Valley Med Flight, Inc. v. Dwelle, 171 F.Supp.3d 930 (2016)

² Id.

³ Id.

