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1/3

Allen, McBride & Lagos LLP
1251 Bay Street
Margot Bay, Franklin 33501

February 22, 2005

Dear Mr. Caldwell:

I have received your letter announcing your representation of Preferred Medical Providers. I anticipate your timely response to the complaint filed by Ms. Raven Reynolds on behalf of her deceased father, John Reynolds.

Be forewarned, neither the Federal Arbitration Act does not preempt MCA 63.1 - the Federal Arbitration, 9 U.S.C. § 1 et. seq. Provider-Patient Contract provisions in contracts involving interstate commerce are invalid if grounds exist.

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in law or equity for revocation.

Judy Smith v. Medicare of Franklin the court has ruled Health Insurance must provide certain disclosures in the documents issued to plan enrollees and and the State has exercised its power through 63.1 to regulate the insurance

additionally, §1395 mm of the Medicare Act does not preempt MICA 63.1

No binding authority exists upon which such claim may be held to invalidate

Must

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You have already acknowledged Underwriter arbitration disclosure does not comply with the requirements of 6311 of the Franklin Mutual Insurance Contract Act. In accordance therewith, Mrs. Reynolds is not bound by such provisions and will not submit to arbitration.

Sincerely,

For Signature
Arthur McBride, Esq.

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Allen, McBride & Lagos LLP

Attorneys at Law

1251 Bay Street

Margot Bay, Franklin 333501

(555) 424-0900

February 22, 2005

William Caldwell

473 Bayliss Court, Suite 8500

Margot Bay, Franklin 33501

Dear Mr. Caldwell:

We have received your letter dated February 21, 2005 in the *Reynolds v. Preferred Medical Providers* matter. My client does not intend to submit to arbitration on this issue. We reject your last letter and look forward to seeing your clients in court. As you have correctly stated Preferred's arbitration agreement does not comply with MICA. You are under the mistaken impression that the Federal Arbitration Act preempts MICA 63.1. We disagree.

In a case on point on this issue is Franklin Court of Appeal (2001) *Smith v. ModernCare of Franklin* (Smith). In this case Smith filed action against ModernCare seeking damages for injuries as result of ModernCare failure to timely authorize or extend needed treatment. The case is similar since the MICA language is being challenged. ModernCare the same as here

wanting to enforce binding arbitration. The Court stated that while *Casaro v. Super Sub* (1996) the court had stated that federal binding arbitration was upheld the Casaro has missed a step and not dealt with the effect of the McCarren-Ferguson Act. Here "Congress clearly intended to reserve to the states the regulation of the business of insurance." Quote "No Act of Congress shall be construed to invalidate, impair or supersedes any law enacted by any State for the purpose of regulating the business of insurance . . . unless such Act specifically relates to the business of insurance. . ." The court "then goes on and states the only issue to whether MICA 63.1 constitutes a regulation of insurance within the meaning of the McCarran-Ferguson." When a policyholder pays a fee to get medical services "it follows that the HMO's are in the business of insurance." The final issue was "whether the state law at issue is a insurance regulation, a law must not just have an impact on the insurance industry but must be directed toward the industry." (Smith) page 11. The Court stated "MICA 63.1 regulates the language and terms of the policies that HMO's and other health insurers may offer in Franklin. Health insurers who that want to use mandatory arbitration **must** provide certain disclosures in the documents issued to the plan enrollees and place disclosures in a certain way." Finally on page 11 the court states "McCarran-Ferguson prevents the Federal Arbitration Act is a federal statute of general application that does not specifically relate to the business or insurance, from being used to preempt the state law." And finally, "ModernCare arbitration clause may not be enforced because of its failure to satisfy the specific requirements imposed by MICA 63.1.

We would suggest that you take a hard look at this case since from our point of view your client is a medical provider the same and ModernCare and as you have admitted you do not meet the MICA requirements.

We will now look at your second premise as to why this should be in arbitration rather than court. Medicare Act section 1395 doesn't preempt MICA, under 42 U.S.C. section 1395 it

just boils down that companies such as yours must send to the Secretary of Health and Human Services their forms and brochures at least 45 days in advance of distributing them. But in US District court of appeals *Casaro v. Super Sub Associates*(1996) (Sub) the court states that in determining "whether a federal statute preempts state law under the Supremacy Clause of US Constitution it is necessary to examine the intent of Congress in enacting the statute." When page 12 of the Congressional Record is looked at you will find that while it prohibits HMO from distributing misleading and deceptive information and sending these out before first submitting them to the Secretary a closer look needs to be taken. The House and Senate had differing views but the review and approval power that would be granted to the Secretary.

"According, the Committee resolves that the Secretary shall not be the sole regulatory voice in the matter, recognizing that states may differ on the measure of protection they wish to provide for their elderly residents, who are vulnerable to misleading and deceptive practices." "The Committee also recognizes the likelihood of more rigorous and comprehensive state standards for HMO providers and values them."

As you can see Congress intend that each state had the right to protect its own citizens. States are much better at protecting their own citizens in these issues. You can go ahead and file in court to compel arbitration. We are more than happy to explain this to the judge and when we win we will be asking for our court costs

Sincerely

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1251 Bay Street
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1/6

February 22, 2004

William Caldwell
Belle, Burne & Caldwell LLP
45 Bayliss Court, Suite 3500
Margot Bay, Franklin 33501

Re: Reynolds v. Preferred Medical Provider

Dear Mr. Caldwell,

We received, from your office, your letter compelling our client, Kourtney Reynolds, to submit to arbitration pursuant to the Elder Advantage plan. We are also quite confused pursuant to The Franklin Medical Insurance Contract Act (MICA), §63.1, regulates disclosures concerning arbitration requirements in a health care plans, that said by giving is proper. Your client's arbitration clause does not comply w/ MICA §63.1 and

Is therefore void.

Your arguments submitted in your letter that 42 U.S.C. § 1395mm and the Federal Arbitration Act preempt MICA § 63.1 have been noted and looked into by Allen, McBride & Logan & ~~but~~ we are in serious disagreement. ~~but~~

~~The letter letter said~~ Under Smith a case similar mine, the court ruled that the FAA does not preempt MICA § 63.1 because of the supplementation of the McCarran-Ferguson Act, 15 U.S.C. § 1012. The Smith court went on to say that because MICA § 63.1 primary purpose is to regulate the business of insurance via the McCarran-Ferguson Act, the FAA cannot

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preempt MICA § 63.1.

In Smith the court did the following analysis. They first compared ~~the plaintiff's~~ the arbitration clause from the plaintiffs case B from the plaintiff case in Cason. The Arbitration clause in Cason was not protected by MICA § 63.1 & the FAA declared the clause valid, because the clause focused only on arbitration and was not protected by the McCarran-Ferguson Act. The Smith court ruled that because MICA § 63.1 is a state related to the business of insurance & therefore, pursuant to the McCarran-Ferguson, ~~RE~~ no federal law can preempt MICA § 63.1 unless the federal law is specifically related to

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to the business of insurance. Since the FAA is not a federal law that specifically relates to the business of insurance it cannot preempt MICA § 63.1.

To bolster its argument that MICA § 63.1 is an insurance regulation and the McCarran-Ferguson Act applies, the Smith court said MICA § 63.1 by its terms protects the insured & therefore defined as an insurance regulation as applied regulating the language & terms of the policies that HMOs & other health insurers may offer in Franklin.

Similarly § 1395 mm of the Medicare Act does not preempt MICA § 63.1. In order for a Federal law to preempt State law ~~a state~~

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There must be Field or Conflict preemption. There is no conflict between MICA § 63.1 & § 1395 mm. The Congressional Record states ~~is~~ amendments to the medicare act, that by its terms it will allow states to implement these new regulations. "Congress ~~has~~ previously has stated its intent to maximize federal returns in the traditionally state-regulated area of medical services for elderly". There would also contradict an argument for ~~obtain~~ Field preemption. In no way would it seem that Congress intends to occupy the field of insurance. Therefore because your analysis that MICA § 63.1 should preempted by § 1395 mm is clearly wrong.

It also should further be noted that MICA §63.1 ~~preempts the FAA~~ cannot be preempted by either FAA or §1395mm because Congressional intent on the whole.

On behalf of Mrs. Reynolds, we demand that you submit to the fact that the arbitration clause is not binding and a trial by jury is proper.

Very truly yours,

Arthur McBride

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Allen, McBride, & Lagos LLP
Attorneys at Law
1251 Bay Street
Margot Bay, Franklin 33501
(555) 434-0900

February 28, 2005

William Caldwell
Belle, Bruce, & Caldwell LLP
473 Bayliss Court, Suite 8500
Margot Bay, Franklin 33501

Re: Reynolds v. Preferred Medical

Dear Mr. Caldwell:

I have received your demand letter you sent on behalf of your client Preferred. On behalf of my client, Rowena Reynolds and her deceased father, John Reynolds, we are informing you that we do not agree with the demand and for the reasons addressed feel confident the court will deny your motion. We will seek an award for costs & expenses of this motion.

The court will deny any such motion because neither the Federal

2/5

Arbitration Act nor § 1395 mm of the Medicare Acts preempts MICA § 63.1.

(1) Why the Federal Arbitration Act does not preempt MICA § 63.1;

The case of Smith v. ModernCare of Franklin is directly on point. It discusses Casaro v. Super Sub Assoc. (1996) where a similar Olympian statute was not preempted by the Federal Arbitration Act. However, the Smith case found differently. Casaro did not have the effect of the federal McCarran-Ferguson Act, 15 U.S.C. § 1012 et seq.

This Act was intended to reserve the regulation of the business of insurance to the states. It provides under (b): No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any state for the purpose of regulating the business of insurance ... unless such Act specifically relates to the business of insurance ...

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Here MICA §63.1 is a regulation by the state regulating the business of insurance so the federal law cannot preempt it unless the federal law also specifically relates to insurance. (Smith)

As discussed in Smith the Federal Arbitration Act is one of general applicability, so the only way it could have a preemptive effect on MICA §63.1 is if MICA §63.1 is not a state law regulating the business of insurance. Smith further goes on to conclude that HMO's are in the business of insurance and that MICA §63.1 does regulate the business of insurance within the meaning of McCarran-Ferguson.

Here is the same section MICA §63.10 and the Federal Arbitration act. The Franklin Court of Appeals has already held in 2001 that "McCarran-Ferguson prevents the Federal Arbitration Act, a federal statute of general application that does not specifically relate

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to the business of insurance from being used to preempt" MICA § 63.10

(2) Why § 1395mm of the Medicare Act does not preempt MICA § 63.1

42 U.S.C. § 1395mm provides that the Secretary of Health & Human services be submitted marketing materials, application forms, ~~enrollment~~ contracts. The Secretary shall review the material & disprove any such material that the Secretary determines is inaccurate, misleading, or otherwise make a material misrepresentation.

To determine whether a federal statute preempts state law under the Supremacy Clause of the United States Constitution, it is necessary to examine the intent of Congress in enacting the statute. (Casaro v. Super Sub Assoc)

The statutory history of 42 U.S.C § 1395 shows that the intent was to let states expand rights.

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Specifically the legislative history states that "Congress previously has stated its intent to minimize federal intrusion in the traditionally state-regulated area of medical services for the elderly." Congress recognized that "states differed on the measure of protection they wished to provide for elderly residents, who are vulnerable to misleading and deceptive practices.

Finally, the history is clear. "The federal regulation of marketing & informational material in § 1395 mm(c)(3)(C) satisfies federal & permissible state req. allows states to append whatever additional protections they deem appropriate."

That is exactly what Franklin has done. These don't conflict & Congress intended States to give additional protections.

So for the reasons stated neither Fed. Arbitration Act or § 1395 preempts. MICA § 63.1 We do not agree to arbitration.

Sincerely, Arthur McBride

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1251 Bay Street
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February 22, 2005

William L. Caldwell
Bell, Bruce & Caldwell LLP
473 Bayliss Court, Suite 8500
Margot Bay, Franklin 33501

Re: Reynolds v. Preferred Med. Provic

Dear Mr. Caldwell,

We are in receipt of your letter dated February 21, 2005, in which you argue that MICA §63.1 is preempted by both the Federal Arbitration Act and the Medicare Act.

After reviewing and considering your letter and the applicable law, we write to inform you that we reject your arbitration demand because 1) the Federal Arbitration

Act does not preempt MICA and 2) the Medicare Act does not preempt MICA.

I. First, the Federal Arbitration Act (FAA) does not preempt MICA because of the language of the McLaraqh-Ferguson Act and the Franklin Court of Appeals interpretation of it in Smith v. Modern Care of Franklin.

While at first blush the FAA appears to apply, preventing my client from pursuing non-arbitration remedies, the McLarran-Ferguson Act clearly states that "The business of insurance, and every person engaged therein, shall be subject to the laws of the several states which relate to the regulation ... of such business." ~~Clearly~~ ~~[illegible]~~

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It further states that "no act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance ... unless such Act specifically relates to the business of insurance." Clearly, this plain language of the act indicates that the FAAA was not intended to supersede state insurance regulation, such as MICA, since the FAAA doesn't relate to the business of insurance.

Any doubt ~~so~~ may be dismissed by the Franklin Court of Appeals decision in Smith v. ModernCare of Franklin. The court held that MICA regulates the business of insurance within the meaning

prevents the FAA from preempting state law.

In this case, the FAA may not be used to preempt MICA under Smith. Therefore, according to Smith your client is in violation of MICA.

II. Second, ~~The~~ § 1395mm of the Medicare Act does not preempt MICA. Field preemption arises where either by specific words of a statute or necessary implication it can be determined that ~~Congress~~ Congress intended to exclusively occupy a field. Casaro v. Super Sub Assoc. Where a federal regulation purports to affect a field historically within the police powers of the state, the party asserting preemption has a particularly heavy burden to establish that

preemption was the manifest purpose of Congress. Id.

In this case, your client presumes that including brochures with the contract to my client's deceased father, in compliance with the Medicare Act satisfied your client's obligation under Franklin state law. However, there is no indication from the language of the act that ~~it~~ Congress intend to exclusively control this field. To the contrary, the act states "The Secretary... may prescribe... conditions ... may inform individuals..." the act uses language indicating no intent to act exclusively of state authority. Additionally, the Congressional [illegible] to the intent of Congress ~~was~~ in

enacting this legislation was not to preclude concurrent regulation of HMO Medicare benefits marketing and information and that States may append additional protections as appropriate. Since your client has a heavy burden to show that Congress intended preemption here, and it is quite clear that Congress did not, your client's claim of Medicare preemption fails.

As both of your client's claims of preemption are invalid we inform you that we will not adhere to your arbitration demand. We look forward to prompt resolution of this matter if possible.

Very truly yours,

Arthur McBride