



Testimony in Support of Senate Bill 382

Madam Chair and members of the Committee on Financial Institutions and Insurance, thank you for allowing Coventry Health Care of Kansas the opportunity to provide testimony on Senate Bill 382. Coventry Health Care supports the changes made by this Bill to current Kansas law and believes that the Bill will ultimately provide benefits and savings to Kansan consumers.

SB 382 would no longer allow an insurance carrier to stifle open competition through the use of phrases or provisions, known as Most Favored Nation ("MFN") clauses, in their contracts with medical providers. A most favored nation's clause in a health insurance provider contract is a contractual requirement imposed on a health care provider, such as a hospital or physician, typically by a dominant insurer that the provider will not charge a lower price to any other insurer, will charge prices at least a specified percentage higher to all other insurers, or will lower its prices to the insurer if the provider agrees to lower prices to another insurer.

While such clauses may appear intended to help reduce health care costs, in fact they can stifle competition and raise health care costs. Use of MFN clauses by a dominant health insurer reduces competition and raises barriers against smaller competitors. This results in an artificial "price floor," higher health insurance costs that may otherwise be possible for employers and consumers, and potentially less choice in the marketplace.

Instead of bargaining for the best prices available, a large insurer can require an MFN commitment from health care providers – obligating them to adjust their rates downward for the dominant insurer to match the lowest prices given to any other insurer. The result is that hospitals and physicians are discouraged from reducing their prices for any competing insurer, because doing so will result in a sharp reduction in their rates for the much larger population covered by the dominant insurer.

Smaller or competing plans that are attempting to enter or expand in a local health insurance marketplace may offer a benefit plan with a narrower provider network as one choice for consumers. With fewer hospitals and physicians, the plan may negotiate to pay lower rates to its contracted providers in exchange for a more selective managed care network. This can permit the smaller or competing plan to offer lower premiums to consumers and local employers, willing to accept this smaller network of providers. When a dominant health insurer that contracts with virtually all providers in the market imposes an MFN requirement on hospitals and physicians, it blocks this competition altogether. This can be particularly harmful to small employers seeking a lower cost health plan choice.

Where the MFN clause requires a positive pricing differential – or "cushion" – between the rates for the insurer and the rates charged to other payors, the anticompetitive and anti-consumer impact is even more damaging. The powerful insurer locks in a requirement that

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smaller competitors must pay higher rates than it does, so that they will inevitably be unable to charge competitive premiums. This relieves the dominant insurer of competitive pressure and permits it to charge higher premiums.

MFN provisions may also obstruct innovative health insurance delivery models that adjust provider reimbursement based in part on satisfaction of quality or performance measures. Hospitals and physicians can be deterred from agreeing to reimbursement arrangements that improve quality and promote cost effectiveness if a dominant insurer will calculate payments pursuant to an MFN clause. The result is to freeze out more creative approaches to incentivizing quality improvement and cost-effective care by providers.

Lastly, fifteen (15) states have already adopted legislation prohibiting or restricting use of MFN clauses in health insurance provider contracts. These include Alaska, California, Idaho, Indiana, Kentucky, Maryland, Minnesota, New Hampshire, New Jersey, New York, Ohio, Rhode Island, Vermont, Washington and West Virginia.

Again, thank you for providing Coventry Health Care the opportunity to address this issue and provide our written support for this Bill.

Sincerely,



Steven Robino
Director, Policy and Compliance
Coventry Health Care of Kansas, Inc.