Evan A. Peters
Vice President, Network Management
Cigna HealthCare of MidAmerica
7400 W. 110th, Suite 400
Overland Park, KS 66210
913.498.4984

Testimony in favor of SB 382

Ms. Chairman, Members, thank you for the opportunity to testify today in support of SB 382, related to a prohibition on “most favored nation” or MFN clauses.

MFN clauses traditionally require a provider to give a favored payor the lowest rate that the provider has with any other comparable payor. The prevalence of such contract provisions has increased and the concept of MFN has evolved in some markets to require that the favored payor to be advantaged versus other payors in the market by a specific percentage (e.g. the rates charged to payors without MFNs must be 20% higher than the payor with an MFN)

The availability of MFN clauses is somewhat limited because they are usually attainable only by the largest payors; according to the testimony during FTC anti-trust hearings, “only payors with requisite market power in the form of patients can demand and receive MFN status from their service suppliers.”

There are several arguments against the use of MFN clauses: New competitors are discouraged from entering the market place, providers limit their payor mix, consumers are negatively affected by the suppression of competition and the resulting higher rates, and the loss of provider autonomy.

MFN clauses produce marketplaces in which new competitors are simply unable to survive due to artificially high floor prices. According documents submitted to the FTC, MFN clauses create an environment where “it is almost impossible for a competitor to attract customers on the basis of quality and almost as hard to compete on the basis of product differentiation.”

Additionally, doctors and other medical professionals may be placed in the position of having to limit their payor mix if they cannot afford to provide discounts to small carriers, for fear they will in turn have to deal with the repercussions of having to further discount their services to their larger providers. Providers stuck in a market with an overwhelmingly dominant payor are forced to agree to "take it or leave it" pricing policies.

Another argument against the usage of MFN clauses is that health care consumers are harmed by the suppression of competition and the higher rates, which result from the informal imposition of a price floor. According to testimony before the FTC, "…the maintenance of a non-competitive marketplace may have the effect of artificially increasing co-payments and deductibles to patients."

As a result of the detrimental impact these clauses create in the marketplace, states are taking affirmative steps to ban all MFN clauses. Over a dozen states have adopted laws prohibiting or restricting the use of MFN clauses, and 12 states are considering bills in 2012, some of which were carry over bills from 2011.

In addition, multiple Attorneys General and Insurance Commissioners are investigating the issue. Last year, a large payor in Connecticut agreed to a request by the Attorney General to remove MFN clauses from certain contracts, which the AG stated will, "… [have] a significant positive impact on access to affordable health care in our state." And Georgia adopted a regulation this month to prohibit the use of these contractual clauses.

The negative fiscal impact and resulting cost-shifting that occurs as a result of these contract provisions costs Kansas employers millions of dollars each year, further straining the employer-based system.

I appreciate your time and your consideration of this issue and its corresponding impact to State of Kansas businesses and residents. I am happy to answer any questions that you may have.