

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairperson Jeff Longbine at 9:30 am on Wednesday, February 18, 2015, 546-S of the Capitol.

All members were present

Committee staff present:

Ellen Martinez, Kansas Legislative Committee Assistant
Melissa Calderwood-Renick, Legislative Research Department
Whitney Howard, Legislative Research Department
Eileen Ma, Office of Revisor of Statutes

Conferees appearing before the Committee:

Kerri Speillman, Executive Director, KS Association of Insurance Directors
Tom Byron, President, SS&G Associates
Dallas Scrip, Wichita Assn of Health Underwriters
Scott Day, KS Assn of of Health Underwriters
Brad Clotheir, Ks Market President, Steven Robino, State Deirector, Aetna, Inc.
Dr. Brad Dopps, Chiropractor, Wichita
Doug Mays, Aetna, Inc.
Brad Smoot, Blue Cross and Blue Shield of Kansas

Others in attendance:

[See Attached List](#)

Hearing on: SB75 — Amending the patient protection act to prohibit the use of certain provisions in agreements.

Senator Longbine opened the hearing on **SB 75**. Eileen Ma, staff revisor, gave a brief overview of the bill.

Proponents:

Brad Clotheir and Steven Robino of Aetna, testified in favor of **SB 75**. Aetna believes that the bill will ultimately encourage increased competition within the health insurance market, thereby providing improved benefits and saving to Kansas consumers. A most favored nation (MFN) clause is a contractual provision requiring a provider of health care services to accept from a particular insurer the lowest price the provider accepts from any other insurer, and may require that the provider disclose to such insurer whenever they give another insurer a lower price in the future.

MFN provisions are believed to be even more detrimental since passage of the Affordable Care Act by the Federal government. Today, companies such as Aetna, are moving towards a payment model where insurers and health care providers are partnering together, with the goal of increasing preventive services, rewarding improved quality of care and better outcomes, and ultimately bringing a greater quality of life for our members and patients.

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Twenty three states have already adopted legislation and/or regulation prohibiting or restriction the use of MRN clauses in health insurance contracts with providers. ([Attachment 1](#))

Stephanie Mullholland, speaking for Kerri Spielman, Executive Director, Kansas Association of Insurance Agents, testified in support of **SB 75**. Amending the law would level the playing field in Kansas, giving more health insurance companies a greater level of certainty about entering the Kansas market and thereby increasing competition in our state.

Kansas was the very first state to enact an antitrust law when it enacted the Restraint of Trade Act in 1889. Since that time, Kansas has been a leader in free market principles. As such, the state has recognized unique situations where anti-competitive measures prevent a free market and cause harm to consumers. The fact that the dominant provider has indicated its intent to remove MFN clauses from its contracts makes this the right time to take action in Kansas. Passage of **SB 75** grants Kansas the opportunity to create market certainty for health insurance companies without affecting the business practices of any existing health insurers in the state. ([Attachment 2](#))

Tom Bryon, President of SS&G and Associates, testified in support of **SB 75**. This bill would remove one of the key barriers that exist in our state's health market, the use of Most Favored Nations (MFN) clauses as a means to control the marketplace. MFNs tend to stifle competition in markets where there is a dominant health insurer. The clause essentially ensures that the dominant insurer remains dominant by discouraging other health insurance companies from entering the market. MFN clauses allow a dominant insurer to control insurance prices for everyone else.

Other states have taken action to prevent dominance. More than 20 other states have determined that restricting MFN clauses in the context of health insurance is good public policy, especially in states like Kansas where a single health insurer dominates the market. ([Attachment 3](#))

Dallas Scrip, President-Elect, Wichita Association of Health Underwriters, testified in support of **SB 75**. This bill has the potential to allow more competition in the private insurance market in Kansas as well as lowering the cost of healthcare services. **SB 75** seeks to restrict the use of the MFN clause in provider contracts. The clause punishes providers that accept contracted offers from competing carriers by lowering their current contract reimbursement rates down to the contracted rate of the new carrier contract.

Another effect of the MFN clause is that it keeps health care costs artificially high. As a result, consumers have been left with very few quality options. ([Attachment 4](#))

Scott Day, Past President, Kansas Association of Health Underwriters, testified as a proponent on **SB 75**. This bill has the potential to open up greater competition in the private insurance markets in Kansas and to lower the cost of health care services in Kansas. **SB 75** seeks to restrict the use of "Most Favored Nation" clauses in provider contracts.

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More carriers with larger provider networks provide consumers and employers with more lower cost options. Competition from other carriers helps to lower the costs of provider services. Our largest insurance carriers do not need the protections of MFN clauses to compete in the Kansas market. With better insurance company networks, Kansas's will have far better protections against out of network provider charges and medical bankruptcies. ([Attachment 5](#))

Dr. Brad Dopps, a Chiropractor from Wichita, testified in support of **SB 75**. Most Favored Nations Clauses tend to fix a common price for services. While this is not behind closed door price fixing, it essentially creates the same outcome with dictatorial policy design rather than collusion.

Chiropractors and physical therapists want to be competitive by accepting contracted reimbursements that are negotiated at a lesser amount than large insurance companies. To allow large insurance companies to hijack the hard work and developmental cost of establishing a competitive network simply by adding language like the Most Favored Nations clause gives them an unfair advantage. Dominate insurance companies hold the providers hostage with the MFN clause prevents my company from negotiating and other providers accepting reimbursement levels that could save millions for our already struggling health care system. ([Attachment 6](#))

Doug Mays, on behalf of Aetna, Inc., testified in support of **SB 75**. Much of this testimony was previously covered by earlier conferees. Most Favored Nations clauses 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 rates payable pursuant to and MFN clause by a provider with another insurer solely on the basis of the compensation guaranteed to the providers under other more innovative arrangements. The amount that is at risk based on performance is instead treated as a "discount" that the dominant health insurer can demand under the MFN clause. The result is to freeze out more creative approaches to incentivizing quality improvement and cost-effective care by providers. ([Attachment 7](#))

Written testimony only: Daniel Meylan, National Sales Director, Allied National ([Attachment 8](#))

Neutral:

Brad Smoot, Legislative Counsel for Blue Cross and Blue Shield of Kansas, testified as neutral on SB 75. Over the last decade or more BCBSKS has not sought to enforce the MFN provision with any provider. Other payers use different techniques to control their costs, like using narrow networks and 'driving' customers/patients to those providers that gave them the best prices. Many experts believe the MFN clauses are legitimate, lawful and effective cost containment tools for business.

Beginning in the summer of last year, BCBSKS announced removal of the MFN clauses from all provider contracts, effective January 1, 2015. With the advent of the Affordable Care Act and its similar

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"pay for quality" requirements, the time was right to retire this provision, so it is gone. While we are neutral on SB 75, BCBSKS felt it important to make certain that this Committee had a chance to hear both sides of the MFN story. ([Attachment 9](#))

There being no further business, Senator Longbine adjourned the meeting.