



Department of Justice

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JUSTICE DEPARTMENT FILES ANTITRUST LAWSUIT AGAINST BLUE CROSS BLUE SHIELD OF MICHIGAN

Department Alleges Agreements with Hospitals Stifle Competition, Resulting in Higher Health Insurance Prices for Michigan Consumers

WASHINGTON — The Department of Justice filed a civil antitrust lawsuit today against Blue Cross Blue Shield of Michigan (BCBSM) alleging that provisions of its agreements with hospitals raise hospital prices, prevent other insurers from entering the marketplace and discourage discounts. The department said that these agreements likely resulted in Michigan consumers paying higher prices for their healthcare services and health insurance.

The state of Michigan joined the department in its lawsuit, which was filed in U.S. District Court in the Eastern District of Michigan.

The challenged provisions are known as most favored nation (MFN) clauses. In the healthcare context, MFN provisions generally refer to contractual clauses between health insurance plans (buyers) and healthcare providers (sellers) that essentially guarantee that no other plan can obtain a better rate than the plan wielding the MFN. Some of the MFNs in this case guarantee the plan an even better rate than given to any other plan or purchaser.

The department alleges in its complaint that BCBSM's MFN clauses in its contracts with hospitals have caused hospitals to increase their prices to BCBSM's competitors and insulated BCBSM from competition. According to the complaint, BCBSM has used MFNs or similar clauses in its contracts with at least 70 of Michigan's 131 general acute care hospitals, including many major hospitals in the state.

"The department's lawsuit alleges that the intent and effect of Blue Cross Blue Shield of Michigan's MFNs is to raise hospital costs for competing health plans and reduce competition for the sale of health insurance. As a result, consumers in Michigan are paying more for their healthcare services and health insurance," said Christine Varney, Assistant Attorney General in charge of the Department of Justice's Antitrust Division. "American consumers deserve affordable healthcare at competitive prices, and the Antitrust Division will vigorously pursue anticompetitive actions that stand in the way of achieving that goal."

The department said that the MFNs require a hospital either to charge BCBSM no more than it charges BCBSM's competitors, or to charge the competitors a specified percentage more than it charges BCBSM, in some cases between 30 and 40 percent. The complaint alleges that BCBSM's use of MFN provisions has reduced competition in the sale of health insurance in Michigan by raising hospital costs to BCBSM's competitors, which discourages other health insurers from entering into or expanding within markets throughout Michigan. The complaint further alleges that BCBSM agreed to raise the prices that it pays certain hospitals to obtain the MFNs, thus buying protection from competition by increasing its own costs.

BCBSM is a Michigan nonprofit healthcare corporation headquartered in Southfield, Mich. It is the largest provider of commercial health insurance in Michigan, with revenues of more than \$10 billion in 2009. BCBSM insures more than nine times as many Michigan residents as its next largest commercial health insurance competitor, covering more than 60 percent of Michigan's three million commercially insured residents.

The court will determine a pretrial schedule for the case once BCBSM files its response to the government's lawsuit.

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