



# Department of Justice

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MONDAY, MARCH 25, 2013  
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**JUSTICE DEPARTMENT FILES MOTION TO DISMISS ANTITRUST LAWSUIT  
AGAINST BLUE CROSS BLUE SHIELD OF MICHIGAN AFTER MICHIGAN PASSES  
LAW TO PROHIBIT HEALTH INSURERS FROM USING  
MOST FAVORED NATION CLAUSES IN PROVIDER CONTRACTS**

***Michigan Consumers Likely to Benefit from Increased Health Insurance Competition***

WASHINGTON – The Department of Justice today filed a motion to dismiss its antitrust lawsuit against Blue Cross Blue Shield of Michigan (BCBSM) after the state of Michigan passed a law that prohibits health insurers from using most favored nation clauses (MFN) in contracts with health care providers. In its lawsuit, the department challenged BCBSM's use of MFNs, alleging that its agreements with hospitals raised hospital prices charged to other insurers, prevented insurers from entering local markets and discouraged discounts. The department said the combination of the new law and a previous order by the Michigan Insurance Commissioner that prohibits MFN clauses in health insurer's provider contracts provides the relief the department sought in its lawsuit against BCBSM, rendering further proceedings unnecessary.

The department and the state of Michigan's Attorney General today filed a stipulated motion requesting that the U.S. District Court for the Eastern District of Michigan in Detroit dismiss the lawsuit without prejudice. BCBSM joined in the motion. The department's Antitrust Division, along with the state of Michigan, originally filed its lawsuit on Oct. 18, 2010.

"The Department of Justice's antitrust lawsuit alleged that Blue Cross Blue Shield of Michigan's MFN clauses likely raised health care costs, harmed consumers and prevented other health plans from entering local markets," said Bill Baer, Assistant Attorney General in charge of the Department of Justice's Antitrust Division. "The law just enacted by Michigan addresses the department's concerns by eliminating MFNs and ensuring that Michigan consumers will benefit from enhanced health insurance competition."

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.

On March 18, 2013, the state of Michigan enacted legislation that, among other reforms, prohibits health insurers, including BCBSM, from including or using MFNs in provider

contracts. The MFN ban takes effect on Jan. 1, 2014. Since Feb. 1, 2013, the Michigan Insurance Commissioner's order has prohibited all MFN clauses in any health insurer's provider contracts.

The department and the state of Michigan alleged in their complaint that the MFN clauses in BCBSM's contracts with Michigan hospitals decreased competition among health plans. Some of BCBSM's MFN clauses required hospitals to charge BCBSM's competitors at least as much as the hospitals charged BCBSM. Other BCBSM MFN clauses required hospitals to charge competitors more than the hospitals charged BCBSM, often by a specified percentage. Moreover, BCBSM often agreed to raise the prices that it paid hospitals, in part to obtain MFN clauses.

At trial, the department and the Michigan Attorney General intended to demonstrate that BCBSM's MFN clauses reduced competition between BCBSM and its rival insurers and discouraged other health plans from entering or expanding in markets throughout Michigan, which increased prices self-funded employers and their employees paid to hospitals, and likely increased prices other Michigan residents and their employers paid to health plans and hospitals.

The Antitrust Division continues to investigate the use of MFN clauses in health plan contracting in other areas. The department has observed that MFN clauses used by health plans that have market power in the sale of health insurance can reduce competition by, for example, encouraging hospitals to contract with smaller health plans at higher rates or through less efficient reimbursement models. The department remains committed to challenging any anticompetitive use of MFN clauses by health plans. The division has seen increased awareness of the potential anticompetitive effects of MFN clauses. For example, insurers in areas such as North Carolina have recently stopped using MFN clauses in their contracts with hospitals and other providers.

Blue Cross Blue Shield of Michigan is a Michigan nonprofit healthcare corporation headquartered in Southfield, Mich. It is the largest provider of commercial health insurance in Michigan.

The case remains open until the court acts on the stipulated motion for dismissal without prejudice.

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