



Legal Policy Section
Antitrust Division
U.S. Department of Justice
450 5th Street NW, Suite 11700
Washington, DC 20001

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To Whom It May Concern:

On behalf of the National Alliance of State Health CO-OPs, I appreciate the opportunity to offer comments on the Department of Justice and the Federal Trade Commission's ongoing efforts to refine the federal antitrust approach to most favored nation arrangements. I was able to attend the MFN workshop held on September 10th in Washington, and was encouraged by the thoughtful discussion fostered by the DOJ and FTC. As you may know, NASHCO represents innovative non-profit health care insurance providers that were established around the country under the Patient Protection & Affordable Care Act. With 20 CO-OPs already receiving federal loans and several more likely to sign loan agreements before the end of the year, CO-OPs will be a strong presence in the health care market place when the state-based exchanges go live in 2014.

As was discussed in the workshop, most favored national clauses create unique challenges in the health care industry, and their use in health care contracts has come under increased scrutiny and in my view, appropriately so. Preferred provider agreements, originally designed to create competition and control health costs, are transformed by MFNs into an anti-competitive tool by which dominant payers and providers set rates. Rather than focusing on payers getting lower rates from providers, these agreements allow providers to set rates as high as they want so long as the rates given to the dominant insurer are better than those granted to competitors. Under such a system, it is exceedingly difficult for competitors such as CO-OPs to enter the market, thwarting the goals of health care reform and making cost-control a near impossibility.

In an industry that affects every American, anticompetitive behavior in health care is especially worrisome and likely to create ripple effects that impact our country in a number of ways. By creating barriers to entry to competitors such as CO-OPs that are designed to bend the cost curve, MFNs upend assumptions made in federal health care reform regarding projected cost savings. Therefore, MFNs create obstacles to reforming our payment and delivery systems, reducing the federal budget deficit, and ensuring the solvency of Medicare and Medicaid. Because MFNs

could have significant impacts on an array of issues, we encourage the DOJ and FTC to engage in interagency collaboration in order to fully comprehend the scope of harm that MFNs have the potential to cause consumers in this highly complex market. Based on observations at the workshop as well as anecdotal evidence, it does not appear that agencies in charge of health care reform, including HHS and CMS, are fully aware of the ramifications that MFNs could have on the implementation of the Affordable Care Act and health care policy in general.

From a policy perspective, we believe that MFN rates should be available to all insurers in order to maintain competition and lower health care costs. At a minimum, “MFN Plus” arrangements, which are clearly anti-competitive and harmful to the consumer, should be banned in health care contracts.

Thank you for your attention to this important issue and for allowing stakeholder input in this process. MFNs pose serious challenges for consumers and policymakers seeking lower costs in health care and a robust, competitive market. Our nation’s health care cooperatives look forward to continued engagement with the DOJ and FTC on this issue. I, along with NASHCO’s membership, look forward to working with each agency as you continue to address this very important issue.

Sincerely,

John Morrison
President
National Alliance of State Health Cooperatives