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**TESTIMONY OF  
PETER FREYTAG  
CHIEF FINANCIAL OFFICER  
BRISTOL HOSPITAL  
BEFORE THE  
PUBLIC HEALTH COMMITTEE  
Friday, March 12, 2010**

**S.B. No. 429, An Act Concerning Most-Favored-Nation Clauses In Health Care Contracts**

My name is Peter Freytag and I am the Chief Financial Officer for Bristol Hospital. On behalf of Bristol Hospital I appreciate the opportunity to testify in support of S.B. No. 429, *An Act Concerning Most-Favored-Nation Clauses In Health Care Contracts*. As a CFO and as former president of the Colorado Hospital Association I have become very familiar with managed care policies and contracting practices.

Most Favored Nation (MFN) clauses have negatively impacted many health care providers in Connecticut, including Bristol Hospital; accordingly, I am very appreciative of the legislature's willingness to explore this matter. As you are already aware, Most Favored Nation clauses require hospitals and other medical providers to give the health insurance agency enforcing the MFN clause the lowest reimbursement rate that the hospital or medical provider receives from any other third party payer. These clauses are anticompetitive by nature but have been tolerated since the health insurance industry is exempt from all federal trade laws.

MFN clauses are often advocated by the largest insurance companies with the most beneficiaries, insisting that significant market strength entitles a company to the lowest prices. However, this philosophy only advances the company's competitive advantage over the benefit to consumer. For example, a large insurance company with a dominant market presence can impose MFNs to discourage medical providers from giving other insurance companies discounted rates. When facing a dominant insurance company imposing an MFN clause, healthcare providers feel compelled to take the insurance company's pricing policy for fear that they will lose a substantial percentage of their patients. However, this action sets off a domino effect as providers with commitments to MFN clauses are discouraged from securing contracts with other insurers at discounted prices. This creates barriers to entry for other health insurance companies, establishes an artificially high market price for health insurance products, limits the type of health insurance accepted by medical providers, and results in fewer healthcare options for patients.

Recently, through the work of Attorney General Blumenthal, we have seen an example of the negative consequences of MFN clauses as demonstrated by the Charter Oak Health Plan's struggle to secure agreements with Connecticut hospitals. Many Connecticut hospitals have commitments to MFN clauses issued by a predominant insurance company

which deterred these hospitals from participating in the Charter Oak Health Plan. The Attorney General's investigation largely contributed to the MFN clauses being waived from the hospitals' contracts which expanded the opportunity for Charter Oak's 13,000 beneficiaries to obtain access to health care. This example easily illustrates how rival insurance companies or new entrants to the industry can be barred from entry by a large incumbent plan that exercises MFN policy.

The Charter Oak example further demonstrates how MFN clauses can negate the economic forces that regularly govern the competitive marketplace. Typically, if a competitor wants to be competitive it can price below the dominant player. However, MFN clauses prevent rival companies from lowering their prices, allowing the established health insurer to preserve artificially high prices. These harmful effects of the MFN clause are especially detrimental in an industry where it is difficult to draw customers based on product quality alone.

Currently, at least 12 other states, three of which are in New England, have passed legislation banning or restricting the use of MFN clauses. In addition, the Massachusetts Attorney General recently published a report entitled *Investigation of Health Care Cost Trends and Cost Drivers*. The investigation provides an analysis of what factors are driving health care costs in Massachusetts and describes how MFN provisions (referred to as Parity Agreements in the report) may "lock in payment levels and prevent innovation and competition based on pricing."

Enclosed for your consideration is the Massachusetts Attorney General's report referenced above (a summary of the investigation is outlined on page 2 and the section referencing MFN clauses can be found on page 17), as well as Attorney General Blumenthal's press release regarding the effect MFN clauses had on the Charter Oak Health Plan.

In closing, Bristol Hospital kindly asks that this bill be referred to the Program Review and Investigations Committee for further consideration.