

Testimony of Paul Knag in Support of Senate Bill 429

I am a partner of the firm of Murtha Cullina LLP. I am Chair of its Health Care Group. Prior to joining Murtha, I served as Chair of the Health Care Group at Cummings and Lockwood. I represent numerous hospitals and other health care providers. However, I am not here today representing any client, but rather am here to express my personal views.

I am in support of view taken in this bill that insurers should be prevented from unduly leveraging their market share by requiring providers to agree to a so called "most favored nation" ("MFN") clause. Under an MFN clause, hospitals are required to charge other payors an amount equal to or more than they charge the payor which has the MFN clause. For many years, providers in this state have sought to end this practice of payors demanding MFN clauses. There are many circumstances which might warrant a hospital charging less in a particular circumstance. For example, a competing plan might cost less to administer.

By eliminating these MFN clauses, hospitals will be free to negotiate freely with all payors, and will be able to charge lower fees than may be permitted by the anti-consumer, anti-competitive MFN clauses.

Furthermore, it should be noted that to enforce this clause, the payor with the clause in the contract may attempt to require the hospital or other provider to disclose the such payor the rates it is charging other payors.

This itself is highly uncompetitive.

It is my understanding that twelve other states have already passed similar legislation. It makes sense to obtain this result through legislation, rather than to leave it to court

battles with the attendant high costs.

Therefore, I believe this legislation is in the public interest and should be enacted as law.