Testimony of the
Connecticut Society of Eye Physicians
Connecticut ENT Society
Connecticut Dermatology and Dermatologic Surgery Society
Connecticut Urology Society
CT Orthopaedic Society
Connecticut Oncology Association
Connecticut Chapter of the American College of Surgeons
on
HB 6471, AN ACT PROHIBITING MOST FAVORED NATION CLAUSES IN HEALTH CARE PROVIDER CONTRACTS
Before the Insurance and Real Estate Committee
March 3, 2011

Good Morning Senator Crisco, Representative Megna and other distinguished members of the Insurance and Real Estate Committee For the record, my name is Debbie Osborn, I am the executive Director of the Connecticut Society of Eye Physicians, CT ENT, CT Dermatology and CT Urology Society and I am here representing over 1500 medical doctors in the specialties of dermatology, eye, orthopaedic, otolaryngology, general surgery, oncology and urology to support HB 6471, An Act Prohibiting Most Favored Nation Clauses In Health Care Provider Contracts.

Healthcare Providers in Connecticut are witnessing a recurrence of a behavior. The inclusion of Most Favored Nations (MFN) clauses, that were previously prohibited by legal settlements between the insurers and organized medicine, are resurfacing now that those settlements have expired. In light of this, I am here to ask this committee to follow the example of Rhode Island, New Hampshire, Vermont and New York, among others, to statutorily prohibit "Most Favored Nations" (MFN) clauses from inclusion in Physician/ Managed Care Organization Contracts.

A Most Favored Nations clause allows an insurer to demand the lowest price for any procedure that a provider has agreed to in any other contract, regardless of what company issued it, or what other terms may be contained in that contract which might make it possible for the provider to accept that price. This clause inclusion severely limits the doctor's ability to selectively contract with third party payors based on specific circumstances important to the doctor, such as whether or not the payer makes payments in a timely fashion, whether they represent a significant market share, or if the rest of the payment schedule can balance the losses on a given procedure. It effectively negates any negotiating power or skill a practice might have, and gives the insurer complete control to fix prices. This puts the doctor at a huge disadvantage, especially if the MFN clause is in a contract that represents a large portion of the practices patients and revenue. Connecticut is already experiencing a drain of providers. This loss of market forces, keeping artificially low prices on goods and services, will make an already adverse practice environment worse.

MFN clauses are also anti-competitive, in that they produce marketplaces in which new competitors are simply unable to survive because they cannot compete on price. There are several examples that illustrate the potential negative competitive consequences of MFN clauses. New competitors may be discouraged from entering the payor/provider marketplace, or providers may limit their payor mix. Consumers may be negatively affected by suppression of competition and resulting higher rates, as well as the loss of provider and patient autonomy. MFN clauses also have the unintended consequences of restricting access to physicians in lower paying programs, such as Medicare, Medicaid (Husky), SAGA, and Charter Oak or other such programs.

In closing, we have attached some of the actual MCO/physician contract language for your review and appreciate the time and consideration this committee has given us today.

One example of a MFN clause from an actual contract offered this year:

AGREEMENT

This Agreement confirms the understanding between _____and Aetna Health Inc. ("Aetna") regarding rates payable under the Physician Group Agreement which will be effective _____ (referred to hereinafter as "Agreement").

1. Physician Group warrants and covenants that the rates payable under the Physician Group Agreement for Covered Services are and will remain at least as favorable as those granted or to be granted by Group to any other health maintenance organization, insurer, network or third party administrator ("Other Carrier").

2. Should Physician Group grant any Other Carrier more favorable rates and terms than those provided in the Physician Group Agreement, then Physician Group will notify Aetna in writing within (30) days and Aetna will thereupon receive the more favorable prices and terms effective as of the date that Physician Group granted such more favorable prices and terms to such Other Carrier. If requested by Aetna in writing, Physician Group will execute an Amendment to the Physician Group Agreement to contain the more favorable prices and terms effective as of the date that Physician Group granted such more favorable prices and terms to such Other Carrier.

3. Aetna will have the right, upon ninety (90) days prior written notice, to secure (at its own expense) a confidential audit for the sole purpose of determining if the rates and terms payable under the Physician Group Agreement are at least as favorable as those granted by Physician Group to any Other Carrier. The auditor will have the skills and qualifications reasonably required to perform its duties hereunder. In the event that either Physician Group or the auditor confirms that the rates and terms under the Physician Group Agreement are not at least as favorable as those granted by Physician Group to any Other Carrier, then the reimbursement rates and terms that Aetna pays Physician Group under the Physician Group Agreement will be adjusted to match the more favorable rates and terms effective as of the date that Physician Group had granted such more favorable rates and terms to such Other Carrier.

4. Under either (2) or (3) above, to the extent that Aetna has paid Physician Group monies in excess of that which would have been paid had the more favorable rates and terms been in place as of the date the services were rendered, Aetna will calculate the amount of the overpayment made by Aetna, will notify Physician Group of the overpayment, and Physician Group will reimburse Aetna for such overpayment within thirty (30) days following receipt of Aetna's notice of the overpayment.

AGREED AND ACCEPTED:	AGREE AND ACCEPTED
PHYSICIAN GROUP	AETNA
By:_____	By:_____
Title:	Title:
Date:	Date: