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Written Testimony of ConnectiCare, Inc.

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Submitted to
The Insurance and Real Estate Committee
Connecticut General Assembly

March 3, 2011

Testimony in Support of
HB 6471 An Act Prohibiting Most Favored Nation Clauses in Health Care Provider Contracts

Senator Crisco, Representative Megna and members of the Insurance and Real Estate Committee, my name is Janice Perkins and I am Director of Government Relations for ConnectiCare Inc. ConnectiCare is a health plan based in Farmington, Connecticut and part of the Emblem Health family with over 200,000 commercial and Medicare members. For many years, ConnectiCare has been ranked in service and quality as one of the best health plans in America. We are a local health plan with 500 employees who reside primarily in the Hartford area. Thank you for the opportunity to testify in support of HB 6471 An Act Prohibiting Most Favored Nation Clauses in Health Care Provider Contracts.

A most favored nation clause (MFN) is a provision in a provider agreement in which the parties agree that the provider will charge the payer no more than the lowest prices the provider charges any other payer. Payers with large market share often negotiate most favored nation clauses in their contracts. The bill before you would prohibit managed care organizations and preferred provider networks from including such clauses in their provider agreements.

Most Favored Nation Clauses benefit large payers that have predominant market share (see attached chart). Connecticare objects to MFN clauses in provider contracts because MFNs create an uneven playing field in the market and an unfair advantage for large health plans. MFNs are anti-competitive and actually do harm to a smaller, high quality health plan like ConnectiCare in Connecticut. The following is a true story that illustrates our concern.

Several years ago, in a nearby state, the following scenario played out. Two major hospitals in a city merged and as a result attained substantial market power. The new hospital organization got together with the biggest health plan in the area and made a deal: The health plan agreed to give the hospital a large pay increase, and the hospital agreed to require all other health plans with which it had contracts to pay at least as much as those new higher rates. Several months later, a smaller health plan negotiated a contract renewal with the hospital. The hospital demanded the higher rates from the smaller health plan. The smaller health plan would not agree to the increased fees. The hospital launched a public campaign to tell its patients that it would no longer accept the smaller health plan coverage. The smaller health plan's employer and individual customers threatened the smaller health plan with policy cancellations. Result: The smaller health plan relented and agreed to increase its rates. The risk of policy terminations threatened the very viability of the smaller health plan.

This is an example of the damage that can be done by a Most Favored Nation or MFN clause in a provider-payer contract. A payer with sufficient market clout to obtain an MFN clause in a provider contract benefits by ensuring that its competitor health plans will have to pay at least as much for medical services as the big health plan will pay. However, the overall health plan market is the big loser: Other payers find that they are unable to bargain for better provider rates because providers are not willing to violate the MFN provisions in their agreement with the big health plan. There is only one result: higher costs for health plans and higher premiums for the employers and individuals they serve. MFN clauses in provider contracts act as "floor pricing" in the health care industry: No matter what the true costs of providing coverage really are, pricing will never fall below the artificial floor set by the one contract with the MFN clause. This is clearly not in the best interests of health plan customers, particularly as we seek to make insurance more affordable.

MFN clauses provide a substantial disincentive for providers to even consider accepting lower rates from other payers because to do so will decrease the provider's compensation in a disproportionate matter. If a provider agrees to perform a service for $100 under a contract with an MFN clause, and then agrees to perform the same service for $90 under a contract with another payer (without an MFN clause),the provider must then notify the payer with the MFN clause of the new $90 fee arrangement, and also must accept a $10 pay cut for that service from the payer with the MFN clause. Such a situation poses a barrier for providers that might want to consider new and innovative payment arrangements, since they may be unable to afford to accept an across-the-board pay cut to enter into a lower-priced contract. The obvious effect on the overall health care market is to stifle competition and innovation in payment practices, to hinder cost containment efforts and to harm consumers.

It is in all of our interests to control costs. Let's do it in a way that that supports fair competition among all the payers. Anything less removes our ability to compete on a level playing field and to succeed in our efforts to lower the costs of health insurance premiums for the people of Connecticut. For this reason we urge your support of HB 6471.

(continued)

TOTAL HMO and Indemnity	Insured	ASO	Total	Market Share of State Total Insured
Aetna	223,566	352,114	575,680	18.5%
Anthem (WellPoint)	536,728	814,246	1,350,974	43.4%
CIGNA	75,277	59,540	134,817	4.3%
ConnectiCare	176,502	42,653	219,155	7.0%
Health Net	113,646	92,911	206,557	6.6%
Oxford (United)	91,818	1,866	93,684	3.0%
United Healthcare (Incl. Golden Rule)	130,622	139,862	270,484	8.7%
SUBTOTAL	1,348,159	1,503,192	2,851,351	
Other (Indv) Indemnity less Golden Rule	4,385	0	4,385	0.1%
Other: Community Health Network (Medicaid)	257,039	0	257,039	8.3%
Total Insured	1,609,583	1,503,192	3,112,775	

CT Uninsured	380,400
CT Total Population (approximate)	3,500,000

<u>*Sources:*</u>
- *CT Insurance Department (CID), Released Oct. 2010 (YE 2009 Data)*
- *ConnectiCare January 2011 membership 224,714 (29,603 ASO); Market Share of CT Insured 7.2%*
- *Community Health Network membership from CT Dept. of Social Services, Dec. 2010*
- *Current Uninsured and Total Population data from U.S. Census, Kaiser*

Quality is Our Bottom Line

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Insurance Committee Public Hearing

March 3, 2011

Connecticut Association of Health Plans

Testimony in Support of

HB 6471 An Act Prohibiting Most Favored Nation Clauses in Health Care Provider Contracts

The Connecticut Association of Health Plans is pleased to support HB 6471. Assuring that Connecticut's health insurance marketplace remains competitive is critical to the health of the overall delivery system. Most Favored Nation Clauses create an unlevel playing field among the carriers and should be prohibited allowing health plans to compete on the basis true cost and quality. Currently, Connecticut has the benefit of five major health insurers in the state which gives our employers and consumers real choice among products. Practices that have the potential to destabilize the market should be discontinued.

Thank you for your consideration.

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