

U.S. to Blues: Quid pro no -- Hospitals pressured to deal, suit says

By Jay Greene



Blue Cross Blue Shield of Michigan's failed purchase of a Lansing-based health maintenance organization earlier this year led to the antitrust lawsuit filed last week by state Attorney General Mike Cox and the **U.S. Department of Justice**.

The lawsuit, filed Oct. 18 in **U.S. District Court** in Detroit, alleges the state's largest health insurer pressured 23 of the state's 131 hospitals to sign illegal "most favored nation" contracts that required them to charge higher prices to competing health insurers. It asks for the clauses to be removed.

Joy Yearout, the attorney general's deputy director of communications, said the attorney general's office became aware of the clauses during its investigation of the proposed Blue Cross acquisition of **Physicians Health Plan of Mid-Michigan**. The Blue Cross and PHP deal, proposed in September 2009, fell apart in March after the federal government threatened to challenge it.

"Following that discovery earlier this year, our office issued subpoenas to other Michigan hospitals to examine their contracts with Blue Cross," Yearout said.

In its investigation, the Justice Department and Cox's office found that in 2007 Blue Cross threatened to cut payments by up to 16 percent to 45 small and rural hospitals if they did not agree to the most-favored-nation contracts.

Blue Cross also allegedly required 23 larger hospitals to charge more than 20 percent more than Blue Cross rates. One hospital, **Covenant Medical Center** in Saginaw, was required to charge 39 percent more to other insurers.

In an interview with *Crain's*, Andy Hetzel, Blue Cross' vice president of corporate communications, said Blue Cross has used most-favored-nation clauses in its contracts since 2007 only to negotiate the lowest price it can to keep premiums low.

Hetzel denied that Blue Cross contracts require hospitals to charge competing insurers higher prices.

Greg Moore, health care practice leader with **Clark Hill PLC** in Birmingham, said he suspects one of Blue Cross' competitors could have provided prosecutors with information on the Blues' contracting practices during the investigation.

"It is curious to me why they are doing this now. My suspicion is there is a backstory here. Maybe a competitor is looking to get" an edge over Blue Cross, Moore said.

According to the lawsuit, Blue Cross wrote during negotiations in 2008 with a Grand Rapids hospital that "we need to make sure they (the hospital) get a

PRICE DIFFERENCES

Here are the 23 hospitals that have signed "most favored nation" contracts with Blue Cross Blue Shield of Michigan that allegedly required them to charge higher prices to competing health insurers. Blue Cross denies that its contracts require hospitals to charge competing insurers higher prices.

Southeast Michigan hospitals: Higher price requirement

St. John Hospital, Detroit: 10%

Southfield Providence Hospital, Southfield: 10%

Providence Park Hospital, Novi: 10%

St. John Hospital — North Shore Campus, Harrison Township: 10%

St. John Macomb — Oakland Hospital, Warren and Madison Heights: 10%

St. John River District Hospital, East China Township: 10%

William Beaumont Hospital, Royal Oak: 25%

William Beaumont Hospital, Troy: 25%

William Beaumont Hospital, Grosse Pointe: 25%

Botsford Hospital, Farmington Hills: NA

Other hospitals in Michigan

Covenant Medical Center, Saginaw: 39%

St. Mary's of Michigan Medical Center, Saginaw: 39%

Marquette General Hospital, Marquette: 23%

Metro Health Hospital, Grand Rapids: 5% HMO, 10% PPO

Mid-Michigan Medical Center, Midland: 14%

Sparrow Hospital, Lansing: 12.5%

Alpena Regional Medical Center, Alpena: NA

Genesys Regional Medical Center, Flint: NA

St. Joseph Health System, Tawas City: NA

Borgess Medical Center, Kalamazoo: NA

price increase from Priority if we are going to increase their rates."

Hetzel acknowledged that in 2007 Blue Cross began each contract with a preamble that discussed most-favored-nation contract status. But he said the only requirement was that hospitals give Blue Cross best prices.

"Our contracts only relate to Blue Cross reimbursement rates," Hetzel said. "It doesn't relate to rates with other contracts with other insurers."

However, Rick Murdock, executive director of the **Michigan Association of Health Plans**, said Blue Cross has "side agreements" with most hospitals in the state in addition to a standard participating hospital agreement with the **Michigan Health and Hospitals Association** that also applies to all hospitals.

"Every (insurer) should negotiate the best deal they can, and more power to them if they get deep discounts," Murdock said. "But when you take advantage of your economic power and stifle competition, (then) that is going over the line."

In one example cited in the lawsuit, **Priority Health**, which has an office in Farmington Hills, wanted to offer insurance in the Upper Peninsula and compete with Blue Cross.

However, because **Marquette General Hospital** had signed a most-favored-nation contract with Blue Cross, Priority Health concluded it could not compete in the U.P.

"Other commercial insurers, including **Assurant** and **Health Alliance Plan**, likely also would have entered into agreements with Marquette General if they had been able to contract (with the hospital) at prices Blue Cross pays to Marquette General," said the lawsuit.

Another example describes a contract between **Sparrow Hospital** in Lansing and Blue Cross that allows existing contracts between Sparrow and other insurers to continue only until Jan. 1.

"After that date, Blue Cross' (most-favored-nation contract) will likely require Sparrow to raise prices to **McLaren Health Plan**," said the lawsuit. "The resulting higher costs will reduce McLaren's effectiveness as a competitor to Blue Cross."

The Blue Cross contract with Sparrow "also prevents ... Priority Health and **HealthPlus of Michigan** from entering the market in a manner that would create effective price competition to Blue Cross," the lawsuit said.

Murdock said many health plans in Michigan feel they are unfairly paying double-digit higher rates to hospitals than the Blues does.

"It is too early to tell how the complaint will be resolved," Murdock said. "If you eliminate the barriers that this appears to bring, clearly you will have more carriers interested in doing business in the state."

William Berensen, **Aetna's** Michigan market president, said competition in the health insurance market is crucial in providing value to consumers.

Earlier this year, Aetna decided it would pull out of Michigan's small-business group market next February because sales are lagging. That market represents a small percentage of Aetna's 300,000 customers in Michigan, he said.

Berensen said Aetna's decision remains unchanged with the news of the Blue Cross lawsuit.

"Any time payer, hospital or physician pricing is significantly out of line, it can create an uncompetitive market and consequently a burden to employers and consumers," Berenson said. "It should be the goal of everyone to ensure competitiveness."

Officials for **Humana**, Priority Health, **Health Alliance Plan of Michigan**, and **St. John Providence Health System** declined to comment. A spokesman for **William Beaumont Hospitals** said executives are cooperating with the investigation.

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Dickinson County Memorial Hospital, Iron Mountain: NA

Gratiot Community Hospital, Alma: NA

Munson Medical Center, Traverse City: NA

Source: United States of America, State of Michigan v. Blue Cross Blue Shield of Michigan, United States District Court for the Eastern District of Michigan