

# **Cox, DOJ File Antitrust Lawsuit against Blue Cross Blue Shield of Michigan**

## ***Metro Detroit Hospitals Affected by Strong-Arm Tactics Used to Increase Costs as Americans Struggle to Afford Healthcare***

**LANSING** - Attorney General Mike Cox today announced that his office and the U.S. Department of Justice have filed suit in federal court to stop Blue Cross Blue Shield of Michigan from its use of allegedly anti-competitive "Most-Favored-Nation" (MFN) clauses in reimbursement contracts with approximately half of Michigan's hospitals. The lawsuit alleges that MFN status gives Blue Cross an unlawful advantage over other insurers by requiring hospitals to charge the other insurers more than they charge Blue Cross, driving up prices for consumers and damaging competition in the healthcare market place—all to benefit Blue Cross' market share.

"It is deeply disturbing that Blue Cross, a non-profit created to help Michigan citizens, would strong-arm hospitals at the expense of hard-working families," said Cox. "These greedy deals are hardly what the legislature had in mind when it created Blue Cross. We need more competition to keep prices down, but with the support of our tax dollars, Blue Cross is doing everything it can to kill its competition."

A joint investigation by the U.S. Department of Justice and Cox's office revealed that Blue Cross ramped up its practice of requiring MFN clauses in 2007, threatening to slash payments to 45 small, rural hospitals by up to 16% if the hospitals refused. The investigation also revealed that Blue Cross secured MFN clauses with at least 23 larger hospitals by offering to increase the amount Blue Cross paid hospitals, as long as all other insurers paid more, putting other insurers at a competitive disadvantage while raising prices for everyone. For these larger hospitals, the MFN that Blue Cross secured was an even costlier type of MFN called an "MFN-plus." These clauses require hospitals to give Blue Cross better prices than other insurers, while adding on a specific

percentage increase—in some instances resulting in other insurers paying as much as 39% more than Blue Cross.

In all cases it is alleged that Blue Cross stifles competition to protect its market share, leading to higher costs and keeping new insurers from entering markets. For example, MFN status at Marquette Hospital requires other insurers to pay the hospital at least 23% more than Blue Cross. Other insurers at Beaumont Hospitals are required to pay 27% more. And Blue Cross competitors at Covenant Medical Center are required to pay at least 39% more.

The joint lawsuit filed today challenges Blue Cross' anticompetitive practices under both state and federal antitrust law. The suit seeks an injunction to end all variations of MFN clauses by alleging violations of Section 1 of the federal Sherman Act and Section 2 of the Michigan Antitrust Reform Act, both of which prohibit contracts that unreasonably restrain trade or commerce. In 1999, the U.S. Department of Justice successfully challenged Blue Cross Blue Shield of Ohio's use of MFN clauses under Section 1 of the Sherman Act in the case *U.S. v Medical Mutual of Ohio* (formerly Blue Cross Blue Shield of Ohio).

The three Beaumont Hospitals, in Detroit, Troy, and Grosse Pointe, all have MFN-Plus contracts with Blue Cross. The MFN-plus provisions require Beaumont hospitals to charge Blue Cross's significant competitors at least 25% more than they charge Blue Cross.

Additionally, all of the hospitals in the St. John Providence Health System have MFN-plus contracts with Blue Cross. These hospitals are located in Detroit, Southfield, Novi, Harrison Township, Warren, Madison Heights, and East China Township. Each of these hospitals charges Blue Cross competitors significantly more than they charge Blue Cross.

Hospitals have cooperated with the investigation. The 23 hospitals across Michigan with MFN-plus provisions include:

- Alpena Regional Medical Center (Alpena)
- Genesys Regional Medical Center (Flint)
- St. Mary's of Michigan Medical Center (Saginaw)
- St. Joseph Health System (Tawas City)
- Borgess Medical Center (Kalamazoo)
- St. John Providence Health System (Detroit) (6 hospitals)
  - St. John Hospital (Detroit)
  - Southfield Providence Hospital (Southfield)
  - Providence Park Hospital – Novi (Novi)
  - St. John Hospital – North Shore Campus (Harrison Township)

St. John Macomb – Oakland Hospital (Warren and Madison Heights)

St. John River District Hospital – East China (East China Township)

- Botsford Hospital (Farmington Hills)
- Covenant Medical Center (Saginaw)
- Dickinson County Memorial Hospital (Iron Mountain)
- Gratiot Community Hospital (Alma)
- Marquette General Hospital (Marquette)
- Metro Health Hospital (Grand Rapids)
- Mid-Michigan Medical Center in Midland (Midland)
- Munson Medical Center in Traverse City
- Sparrow Hospital (Lansing)
- William Beaumont Hospital – Royal Oak
- William Beaumont Hospital – Troy
- William Beaumont Hospital – Grosse Pointe

In addition, 45 of Michigan's "Peer Group 5" rural hospitals each have MFN provisions as part of their Participating Hospital Agreements with Blue Cross. Peer Group 5 hospitals have less than 100 beds and provide access to care in areas where no other care is available. Many of these hospitals are classified by Medicare as Critical Access Hospitals. Peer Group 5 Hospitals with MFN provisions include:

- Allegan General Hospital (Allegan)
- Aspirus Keweenaw Hospital (Laurium)
- Aspirus Ontonagon Hospital (Ontonagon)
- Baraga County Memorial Hospital (L'Anse)
- Bell Memorial Hospital (Ishpeming)
- Borgess/Pipp Health Center (Plainwell)
- Borgess-Lee Memorial Hospital (Dowagiac)
- Bronson LakeView Hospital (Paw Paw)
- Bronson Vicksburg Hospital (Vicksburg)
- Caro Community Hospital (Caro)
- Charlevoix Area Hospital (Charlevoix)
- Clinton Memorial Hospital (St. Johns)
- Community Hospital – Watervliet (Watervliet)
- Deckerville Community Hospital (Deckerville)
- Eaton Rapids Medical Center (Eaton Rapids)
- Grand View Hospital (Ironwood)
- Harbor Beach Community Hospital Inc (Harbor Beach)
- Hayes Green Beach Memorial Hospital (Charlotte)
- Helen Newberry Joy Hospital (Newberry)
- Herrick Medical Center (Tecumseh)
- Hills & Dales General Hospital (Cass City)
- Huron Medical Center (Bad Axe)
- Kalkaska Memorial Health Center (Kalkaska)
- Mackinac Straits Hospital and Health Center (St. Ignace)
- Marlette Regional Hospital (Marlette)
- McKenzie Memorial Hospital (Sandusky)
- Mercy Health Partners Lakeshore Campus (Shelby)

- MidMichigan Medical Center-Clare (Clare)
- MidMichigan Medical Center-Gladwin (Gladwin)
- Munising Memorial Hospital (Munising)
- Northstar Health System (Iron River)
- Otsego Memorial Hospital (Gaylord)
- Paul Oliver Memorial Hospital (Frankfort)
- Portage Health Hospital (Hancock)
- Scheurer Hospital (Pigeon)
- Schoolcraft Memorial Hospital (Manistique)
- Sheridan Community Hospital (Sheridan)
- South Haven Community Hospital (South Haven)
- Sparrow Ionia Hospital (Ionia)
- Spectrum Health Kelsey Hospital (Lakeview)
- Spectrum Health Reed City Campus (Reed City)
- St. Mary's of Michigan Standish Hospital (Standish)
- Three Rivers Health (Three Rivers)
- VA Medical Center - Iron Mountain (Iron Mountain)
- West Shore Medical Center (Manistee)

The case, *United States of America, State of Michigan v Blue Cross Blue Shield of Michigan*, was filed today in the United States District Court for the Eastern District of Michigan. The court will determine a pre-trial schedule for the case against Blue Cross Blue Shield of Michigan once the insurer files its response to the lawsuit.