

**STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION**

Before the Commissioner of the Office of Financial and Insurance Regulation

In the matter of:

Most Favored Nation Clauses
_____ /

Order No. 12-035-M

**Issued and entered
this 18th day of July 2012
by R. Kevin Clinton
Commissioner**

Order Requiring Submission of Most Favored Nation Clauses

It has come to the Commissioner's attention that certain insurers have included provisions, commonly known as "most favored nation" clauses, in their provider agreements. For purposes of this Order, "insurer" means an insurer, health maintenance organization, or nonprofit health care corporation. In general, most favored nation clauses prohibit a provider from charging an insurer a rate that is higher than the lowest reimbursement rate the provider accepts from any other insurer.

Specifically, a most favored nation clause is one that:

- (1) Prohibits, or grants a contracting insurer an option to prohibit, a provider from contracting with another party to provide health care services at a lower rate than the payment or reimbursement rate specified in the contract with the contracting insurer;
- (2) Requires, or grants a contracting insurer an option to require, a provider to accept a lower payment or reimbursement rate if the provider agrees to provide health care services to any other party at a lower rate than the payment or reimbursement rate specified in the contract with the contracting insurer;
- (3) Requires, or grants a contracting insurer an option to require, termination or renegotiation of an existing provider contract if a provider agrees to provide health care services to any other party at a lower rate than the payment or reimbursement rate specified in the contract with the contracting insurer; or
- (4) Requires a provider to disclose, to the insurer or its designee, the provider's contractual payment or reimbursement rates with other parties.

Insurers operating under Michigan certificates of authority should be aware that the use of most favored nation clauses may violate the Michigan Insurance Code, MCL 500.100 *et seq.*; the Nonprofit Health Care Corporation Reform Act, PA 350 of 1980, MCL 550.1101 *et seq.*; and/or the Prudent Purchaser Act, PA 233 of 1984, MCL 550.51 *et seq.*

THEREFORE, IT IS ORDERED that, as of February 1, 2013, the use of most favored nation clauses in insurer provider contracts, including currently effective provider contracts, is strictly prohibited, unless the most favored nation clause has been filed with and previously approved by the Commissioner.

FURTHER, IT IS ORDERED that, as of February 1, 2013, any attempt by an insurer to enforce a most favored nation clause in any provider contract, without the Commissioner's prior approval, is prohibited and will result in appropriate administrative action.

This Order does not constitute a determination regarding the permissibility of the use of any particular most favored nation clause, nor is it issued with the intent to preempt general antitrust enforcement in this area.

A handwritten signature in dark ink, appearing to read "R. Kevin Clinton", is written over a horizontal line.

R. Kevin Clinton
Commissioner