

Approved:

03-30-2012

(Date)

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE

The meeting was called to order by Chairperson Ruth Teichman at 9:30 AM on Thursday, March 8, 2012 in 152-S of the Capitol.

All members were present except:

Senator Taddiken
Senator Merrick

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department
Heather O'Hara, Kansas Legislative Research Department
Ken Wilke, Revisor of Statutes Office
Marilyn Arnone, Committee Assistant

Conferees appearing before the Committee:

Larrie Ann Brown, Aetna, Inc.
Keith Barnes, Aetna, Inc.
Melissa Ness on behalf of Jack Wagner, Shawnee Mission Medical Center
Scott Day, Kansas Association Health Underwriters
Evan A. Peters, Vice President, Network Management, Cigna Healthcare of
MidAmerica
Brad Smoot, Blue Cross/Blue Shield of Kansas

Others in attendance:

See attached list.

The Chair opened the meeting with the hearing on **SB 382–Patient protection act; prohibited provisions in certain agreements.** Melissa Calderwood gave an overview of the bill. This bill was a Federal and State Affairs bill and was referred to this Committee for consideration. It will amend the Patient Protection act to prohibit health insurers from including certain contract provisions in any agreement with any provider. These prohibitive contract provisions are

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commonly referred to as most favored nation clauses. Any fiscal effect from this bill is not reflected in the Governor's budget report.

Larrie Ann Brown spoke on behalf of Aetna, Inc., a growing and nationally recognized company that supports **SB 382**. The legislation would prohibit health insurance companies from utilizing what's commonly referred to as a "most favored nation" clause in contracts with providers. A "most favored nation" clause can require the dominant payor have the option to renegotiate should the provider give a lower price to another payor. The clause may require the dominant payor automatically be given the same price negotiated by a competing health insurer or the clause may even require that the dominant payor be given a price 5%, 10%, or even 15% lower than any other payor. Aetna is concerned about the anti-competitive environment created by the use of "most favored nation" clauses in contracts with providers by dominant insurance companies. Ms. Brown introduced Shannon Meroney, Senior Manager, Aetna Government Affairs and Mr. Keith Barnes, Market President, Kansas, Missouri and Oklahoma, Aetna, Inc. Mr. Barnes will testify. ([Attachment 1](#))

Keith Barnes continued support of **SB 382** for Aetna, Inc. Mr. Barnes said a most favored nation (MFN) clause is a contractual provision requiring a provider of health care services to accept from a particular insurer the lowest price the provider accepts from other insurers. Aetna believes that MFN clauses should be prohibited when used by insurers possessing significant market share. Aetna believes that if healthcare reform is to be successful in this country, we must do everything possible to get at the actual cost drivers within the system. The use of MFN clauses is one of those cost drivers that can be eliminated by the Legislature. Aetna has chosen not to use MFNs, but to allow the market to work. ([Attachment 2](#))

Melissa Ness spoke on behalf of Jack Wagner, President and CEO of Shawnee Mission Medical Center in support of **SB 382**. He believes this to be an essential bill especially in light of the changing health care market and the move toward greater competition and potential health exchanges. Specifically, the bill would prevent the exclusion of competitors in a market dominated by a major insurer. MFN clauses can create barriers to entry into the market, and generally suppress competition in health insurance markets. It is simply not in the best interest of an orderly market to allow companies to include contract provisions that would give the

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insurer an option to prohibit a provider from contracting with another health insurer to accept a lower rate of reimbursement. MFNs are not in the best interest of a healthy market.

([Attachment 3](#))

Scott Day is a proponent of **SB 382** because it has the potential to open up greater competition in the private insurance markets in Kansas and to lower the cost of health care services in Kansas. The Health Underwriters support the enactment of **SB 382** because more carriers with larger provider networks provide consumers and employers with more lower cost options; competition from other carriers helps to lower the costs of provider services; our largest insurance carriers do not need the protections of MFN clauses to compete in the Kansas market; and with better insurance company networks, Kansans will have far better protections against out of network provider charges and medical bankruptcies. ([Attachment 4](#))

Evan Peters testified in support of **SB 382**. There are several arguments against the use of MFN clauses. New competitors are discouraged from entering the market place, providers limit their payor mix, consumers are negatively affected by the suppression of competition and the resulting higher rates, and the loss of provider autonomy. MFN clauses produce marketplaces in which new competitors are simply unable to survive due to artificially high floor prices. The negative fiscal impact and resulting cost-shifting that occurs as a result of these contract provisions costs Kansas employers millions of dollars each year, further straining the employer-based system.

([Attachment 5](#))

Kerri Spielman presented written testimony in support of **SB 382** for the Kansas Association of Insurance Agents. The KAIA asked for favorable support of this bill to encourage free market competition that could ultimately drive down health insurance costs. ([Attachment 6](#))

Written testimony was submitted by Coventry Health Care in support of **SB 382**. This bill would no longer allow an insurance carrier to stifle open competition through the use of provisions known as ‘most favored nation’ clauses in their contracts with medical providers. These clauses may appear intended to help reduce health care costs; in fact, they can stifle competition and raise health care costs. ([Attachment 7](#))

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The Chair called on Brad Smoot who is an opponent of the bill.

Brad Smoot testified on behalf of Blue Cross/Blue Shield of Kansas as an opponent to **SB 382**. This bill would void longstanding contract provisions commonly known as “most favored nation” clauses. These negotiated provisions enable our customers to get the best possible rates from contracting providers and help reduce out of pocket expenses and monthly premiums for Kansas employers and families. Derogatory comments offered by the supporters of this bill such as these provisions violate the law, these provisions create a pricing “floor,” other carriers can’t use these provisions or that MFN provisions enable us to get lower prices than anyone else. These comments are all untrue. **SB 382**, by removing our ability to utilize MFN provisions in our contracts with providers, will reduce our ability to accomplish our objectives on behalf of our customers and your constituents. (Attachment 8)

The Chair closed the hearing saying this was a difficult problem and not the first time it had been looked at in Committee.

The Chair called for final action on **HB 2618–Portable electronics insurance act**. This bill would allow changes in vendor locations to be provided to the Insurance Commissioner on request of the Commissioner with 10 days notice. It would also allow for refunds or returns to be made to consumers from vendors by crediting the billing mechanism used to pay the premium. House vote was 124-0.

*Senator Masterson moved that **HB 2618** be passed out of the Committee favorably for passage. Senator Schmidt seconded, and the motion passed.*

The Chair opened **HB 2507–Repealing KSA 40-3508; concerning reinsurance limits for mortgage guaranty insurance companies** for final action. This bill introduced by the Mortgage Insurance Companies of America repeals a statute in the Insurance Code that relates to a limit, per loan, on the coverage net of reinsurance or payment of indebtedness. The 25% limit on coverage has been in effect for many years and is now out-of-date. There is no objection from the Insurance Department for elimination of this statute. There is no fiscal effect on the agency or local governments.

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Senator Masterson moved that **HB 2507** be passed out of Committee favorably for passage. Senator Longbine seconded and the motion passed.

Chairman Teichman introduced Pages Gabriel Zorn and Alex Lind from Great Bend Middle School in her district.

The Chair adjourned the meeting at 10:20 AM. The next meeting will be on March 9, 2012.

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