



Testimony before the House Insurance Committee

**Presented on behalf of
The Michigan Primary Care Association**

**By
Kim E. Siblisky, Chief Executive Officer
and
Douglas M. Paterson, Director of State Policy**

Good afternoon Chairman Lund and members of the committee. My name is Doug Paterson and with me today is Kim Sibilsky, the CEO of the Michigan Primary Care Association. We are here today representing the 35 Federally Qualified Health Center organizations making up the Michigan Primary Care Association. Collectively, our member organizations operate 220 community health center sites throughout Michigan. Every one of them is located in an officially recognized medically underserved area or serves a designated medically underserved population. We are an important part of the "safety net" that attempts to assure our State's residents, especially those without insurance, those with Medicaid and those in "Medically Underserved Areas" of our state have access to medical, dental and behavioral health services. Collectively we serve over 600,000 Michigan residents.

Kim and I are here today to address the "most favored nation" clause in the Blue Cross/Blue Shield contracts. We have a different story to tell than most, because unlike other insurance carriers or health plans that are addressing concerns over the impact such clauses have on the marketplace, our story is about the harm that these provisions can cause to systems and providers of care and ultimately Michigan residents receiving that care. We have one particular story to convey related to the contract between Blue Cross/Blue Shield and our Alcona Health Center located in Alpena, Alcona, and Iosco counties. As background, Alcona Health Center serves 25,000 Michigan residents providing nearly 100,000 encounters per year to residents in a very medically underserved area of our state. Kim will to tell the story.

- January 2006- AHC was notified that they would be audited and were asked to make available records to be reviewed by the Audit Section of Blue Cross Blue Shield of Michigan.
- February 16, 2006 – Both a Blue Cross auditor and an investigator from the Investigation Section presented at AHC, saying that the investigator "just happened to be in the area". It became clear from the meeting this was not just a routine audit.
- March 2006 – Blue Cross sent a letter demanding that pricing information relative to charges made to other entities be provided including cash paying customers. Alcona responded that such charges are not relevant because they reflect subsidies from the 340 B pricing program and from federal grant subsidies. (The 340B pricing program allows Federally Qualified Health Centers to acquire pharmaceuticals under the federal veteran's administration contract and reduces the acquisition costs to 40-60% of wholesale. This was a special provision made by Congress to help FQHCs' offset costs

attributable to serving a significant population of uninsured residents. It was never intended to subsidize private insurer's costs.

- June 2006 – Christine Baumgardner, Executive Director of Alcona Health Center, received a subpoena from the FBI to appear in Detroit with all records relative to their 340B Program including all prices charged to “340B cash paying customers”.
- August 2006 – Christine Baumgardner and Ray Krause, Pharmacy Business Director for AHC, were asked to meet with Patricia A. Rossiter, a federal FBI agent in Detroit and were instructed to provide extensive information on their pharmacy program.
- May 2007 – AHC's counsel received a letter from the United States Attorney for the Eastern District of Michigan indicating that they had determined that Ray Krause “may be an appropriate person to participate in the Department's Pretrial Diversion Program” with an assertion that Ray Krause “committed Health Care Fraud, in violation of 18 U.S.C. 1347” because of charges made to BCBS in excess of charges made to other entities (cash paying customers).
- October 2007 – Federal Attorney “suggested” that Ray Krause sign the pretrial diversion agreement, write a statement, pay \$1,000 of his own money and do 40 hours of community service. When Ray inquired as to consequences if he didn't follow the suggestion the Federal attorney stated he would prosecute Ray, the CEO, the Board of Directors and anyone else at Alcona HC that he could tie this to.
- November 2007 – Ray Krause submitted a statement admitting no guilt, but agreeing to do 40 hours of community service and wrote a check from his own funds made payable to Blue Cross Blue Shield of Michigan as directed by the Federal Attorney.
- That same month, November 2007 – AHC received the Audit Findings for 2005 and 2006 establishing that BCBSM overpaid AHC by \$374,345.05 based on a 340B based recalculation of Usual and Customary rates.

Since February 2008, the directors and officers of the Alcona Health Center, the Michigan Primary Care Association, the National Association of Community Health Centers, attorneys with Michigan Legal Services and attorneys of Washington, DC based Feldesman, Tucker, Leifer, Feidel and Associates focused on Alcona's audit case. Other community health centers contributed funds toward attorney fees for Alcona recognizing the implications such a case could have upon other centers with similar contracts.

Finally, in July of 2011, over five years after the audit, Blue Cross policy staff and associates in the Office of General Counsel agreed that Blue Cross was not entitled to Federally Qualified Health Centers' 340B drug pricing. They reduced the Alcona Health Center's audit findings and greatly reduced the amount AHC owed BCBSM.

In September 2011, the Blue Cross Office of General Counsel agreed that they would eliminate all reference to FQHCs in their amendment language and that MPCA would be given a copy of the draft amendment language for review and comment by October of 2011.

- To this date I have not received the draft or final language.
- Though it was established that Alcona Health Center did not fraudulently bill Blue Cross, Alcona Health Center stayed on their Fraud List until mid-2012.
- Ray Krause has received no recognition or compensation for his erroneous pre-trial diversion.
- The Alcona Health Center, Michigan's Federally Qualified Health Centers and the National Association of Community Health Centers paid a combined \$180,000 plus in legal fees, not to mention time and travel, that could have been used to provide health care to our uninsured patients.
- And we have no assurance that this travesty will not happen again.

None of this would have happened if "most favored nation" language had not been included in the Contract between BCBS and Alcona.

We would like to commend Commissioner Clinton for his action in July of this year at which time he ruled that most favored nation clauses including requiring providers to disclose other contractual or reimbursement rates may violate the Michigan Insurance Code, the Nonprofit Health Care Corporation Reform Act or the Prudent Purchaser Act. The commissioner ruled that such clauses shall not be included or enforced after February 1, 2013. His ruling requires insurers to obtain permission from the insurance commissioner before they are included in future contracts.

Today, we would like to request from you that an amendment be considered to outright prohibit in law the inclusion of such clauses in insurance contracts and not leave it up to the commissioner. I believe we have demonstrated the serious and significant negative impact such clauses can have upon systems and, most importantly, to the good people like Ray Krause who are trying to provide low-cost health care services to residents of our state. We ask for each of you to support such an amendment.

Thank you!

