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Office of The Attorney General  
**State of Connecticut**

December 21, 2009

*VIA Regular and Electronic Mail*

David R. Fusco  
President  
Anthem Blue Cross and Blue Shield  
370 Basset Road  
North Haven, Connecticut 06473-4201

Dear Mr. Fusco:

As you are aware, my office has been conducting an antitrust investigation to determine whether Anthem Blue Cross and Blue Shield's ("Anthem") use of Most Favored Nation ("MFN") clauses in many of its participating provider contracts with Connecticut hospitals violates Connecticut's antitrust laws. An MFN clause entitles a purchaser such as Anthem to receive from a hospital the price or rate equal to the lowest provided to a competitor. One specific area of inquiry is whether these MFN clauses have the exclusionary effect of preventing or impeding the Charter Oak Health Plan ("Charter Oak") from offering health insurance to Connecticut's uninsured.

I call on you to immediately exempt Charter Oak from Anthem's MFN. Such a waiver would permit all hospitals in Anthem's provider network to participate in Charter Oak without having to extend Anthem the same terms applied to Charter Oak. This step will have little effect on Anthem's profits, but a significant positive impact on access to local affordable health care in our state.

In the late summer of 2008, the State of Connecticut offered Charter Oak, a state subsidized HMO-type plan that was created to provide health insurance to uninsured adult Connecticut residents ages 19 through 64 years of age. Charter Oak is administered by the Connecticut Department of Social Services. As part of its plan to provide coverage to the uninsured, the state contracted with three private health insurers - - Aetna Better Health, AmeriChoice by United Healthcare, and Community Health Network of Connecticut - - to coordinate benefits and establish provider networks for health professionals and hospitals. Under Charter Oak, hospitals that agreed to participate were required to accept discounted rates for services and treatment provided to Charter Oak members that were much steeper than the rates hospitals generally accepted for their commercial business. Currently, only seventeen of the thirty-two hospitals in Connecticut have executed agreements to participate in Charter Oak, with no hospitals in Windham and Middlesex counties participating.

Although my investigation is ongoing, I am writing to you today because of my strong concern that Anthem's MFN clause remains a significant factor in many hospitals' decisions not to participate in Charter Oak. In particular, I am concerned that many of these hospitals delayed or refused to participate in Charter Oak at its inception out of concern that Anthem may insist that the MFN applies to Charter Oak and may elect to enforce its rights under the MFN for any hospital that participates in Charter Oak. Rates of reimbursement to hospitals under Charter Oak are considerably lower than the rates hospitals charge Anthem for their commercial plan members. If a hospital participates in Charter Oak, and if Charter Oak falls within the purview of the MFN clause, the hospital potentially would be exposed to considerable financial penalty as it would have to offer Anthem the same rates or discounts it accepts with Charter Oak. Since Anthem is invariably a hospital's largest commercial payer, the loss of revenue would be a significant financial detriment, so the MFN effectively straightjackets their participation. The breadth and quality of a health plan's hospital network is one of the most critical factors in its ultimate success as a viable option, making this issue of paramount importance.

Severe economic distress is compounding the number of Connecticut citizens who are uninsured or in danger of losing their health insurance. Charter Oak is a unique program specifically conceived to address this fundamental problem. Unless and until Congress passes federal health care reform, programs like Charter Oak will make the difference between individuals having access to affordable health insurance or not.

I know that you have expressed on many occasions that Anthem supports health insurance benefits for uninsured adults. Accordingly, I urge that you publicly state that Anthem's MFN clause in its hospital provider contracts does not apply to Charter Oak. I ask you to provide this statement in the form of an unconditional written waiver to each and every hospital in Connecticut with whom Anthem has an MFN. Removing this cloud should encourage and enable additional hospitals to participate in the Charter Oak network – removing the financial straightjacket – and enable this important program every opportunity to accomplish its most critical objective.

My office looks forward to working with you on this vital matter.

I look forward to your timely response.

Very truly yours,



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