

ELIOT SPITZER  
Attorney General

STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL  
Suite 2601  
(212) 416-8267 (voice)  
(212) 416-6015 (telecopy)  
Robert.Hubbard@oag.state.ny.us (e-mail)

DIVISION OF PUBLIC ADVOCACY  
ANTITRUST BUREAU

January 2, 2001

Bartley J. Costello, III  
Hinman Straub PC  
121 State Street  
Albany, N.Y. 12207-1603

Re: Excellus Health Plan Use of Most Favored Nation Clauses

Dear Mr. Costello:

This letter constitutes an agreement between your client, Excellus Health Plan, Inc. and its affiliates ("Excellus") and this office concerning Excellus's use of terms in its contracts with health care providers that reference the rates those providers have with non-governmental third parties ("most favored nation provisions"). This letter resolves or addresses the concerns reflected by this office's investigation into Excellus's use of most favored nation provisions. This office understands and agrees that Excellus's representations shall not be evidence or an admission of any issue of fact or law, nor a determination that a violation of law has occurred.

For purposes of this letter agreement, "most favored nation provisions" shall mean any provision in a contract of a health care provider with Excellus that references the rates those providers have with non-governmental third parties. These provisions include, but are not limited to, provisions that require the provider (1) to notify Excellus of a rate the provider has with a non-governmental third party; and/or (2) to maintain or reduce the rate within the contract or agreement based on the rate the provider has with a non-governmental third party.

Except as provided in this letter, Excellus agrees to discontinue use of its most favored nation clauses with health care providers. Excellus will not use, enforce, or seek to enforce such clauses in its existing or future contracts. Excellus will send letters to providers to notify providers of the agreement set forth in this letter. The letters to providers shall consider any existing most favored nation provision with the providers to be null and void and shall deem the contract with the provider to be amended so as to delete the most favored nation provisions.

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Excellus will provide this office with a draft of the form of the letters before the letters are sent. Excellus will also provide this office with a copy of the final version of the letters, along with a list of the recipients of the letters.

Excellus and this office will continue to explore ways to make prescription drugs more affordable for New York consumers. This office may agree to an exception to this letter in light of those conversations.

Excellus, through Blue Choice HMO, has a contract with the Rochester Independent Physicians' Association ("RIPA") that includes a provision that Excellus considers an annual inflation adjustment and this office considers a most favored nation clause. The parties have not reached agreement on how to resolve this office's concerns with that clause.

Based on the information Excellus has provided to us, this office does not object to most favored nation clauses that Excellus negotiates with providers as part of loan agreements, where Excellus provides substantial funds to the providers without significant security. Excellus will provide to this office a list of loan agreements to which this paragraph applies, and a copy of each agreement entered into after the date of this letter to which this paragraph applies. This office reserves the right to reject any most favored nation provisions that do not, in the judgment of this office, comport with the circumstances defined in this paragraph.

If this accurately reflects Excellus's agreement, please sign the enclosed copy of this letter and return it to me.

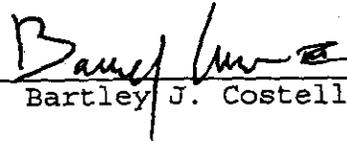
Very truly yours,



Robert Hubbard  
Director of Litigation

Confirmed and agreed:

Excellus Health Plan Inc.

By:   
Bartley J. Costello, III

1/1/01

Letter To Providers Which Signed MFN or Notice clauses

**RECEIVED**  
JAN 09 2001  
ANTITRUST BUREAU

Dear Provider,

As you know from your contract negotiations with us, Excellus Health Plan seeks the lowest fair price for your services so that our premiums charged to employers and subscribers can be both reasonable and competitive.

Your contract with Excellus Health Plan contains a provision prohibiting the use of marginal pricing and/or a written assurance that you have provided Excellus with your best price.

The purpose of this letter is to notify you that, because of the complexity and potential administrative costs of implementing these provisions, we have determined that we will neither enforce such clauses in our current contracts nor include them in future agreements. In their place we will rely on our standard contract negotiation provisions and processes.

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