

**House Bill 125-Joint Legislative Study Commission on Most Favored Nation Clauses in
Healthcare Contracts**

These sections are from HB 125. They describe the charge and scope of the commission.

SECTION 5. (A) As used in this section and Section 6 of this act:

(1) "Most favored nation clause" means a provision in a health care contract that does any of the following:

(a) Prohibits, or grants a contracting entity an option to prohibit, the participating provider from contracting with another contracting entity to provide health care services at a lower price than the payment specified in the contract;

(b) Requires, or grants a contracting entity an option to require, the participating provider to accept a lower payment in the event the participating provider agrees to provide health care services to any other contracting entity at a lower price;

(c) Requires, or grants a contracting entity an option to require, termination or renegotiation of the existing health care contract in the event the participating provider agrees to provide health care services to any other contracting entity at a lower price;

(d) Requires the participating provider to disclose the participating provider's contractual reimbursement rates with other contracting entities.

(2) "Contracting entity," "health care contract," "health care services," "participating provider," and "provider" have the same meanings as in section 3963.01 of the Revised Code, as enacted by this act.

(B) No health care contract that includes a most favored nation clause shall be entered into, and no health care contract at the instance of a contracting entity shall be amended or renewed to include a most favored nation clause, for a period of two years after the effective date of this act, subject to extension as provided in Section 6 of this act. This section does not apply to and does not prohibit the continued use of a most favored nation clause in a health care contract that is between a contracting entity and a hospital and that is in existence on the effective date of this act even if the health care contract is materially amended with respect to any provision of the health care contract other than the most favored nation clause during the two-year period specified in this section or during any extended period of time as provided in Section 6 of this act.

SECTION 6. (A) There is hereby created the Joint Legislative Study Commission on Most Favored Nation Clauses in Health Care Contracts consisting of seventeen members as follows:

(1) The Superintendent of Insurance;

(2) Two members of the House of Representatives, one representing the majority party and one representing the minority party;

(3) Two members of the Senate, one representing the majority party and one representing the minority party;

(4) Three providers who are individuals;

(5) Two representatives of hospitals;

(6) Two representatives of contracting entities regulated by the Department of Insurance under Title XVII of the Revised Code;

(7) Two representatives of contracting entities regulated by the Department of Insurance under Title XXXIX of the Revised Code;

(8) One representative of an employer that pays for the health insurance coverage of its employees;

(9) A licensed attorney with an expertise in antitrust law who represents providers;

(10) A licensed attorney with an expertise in antitrust law who represents contracting entities that have used most favored nation clauses in their health care contracts and that are regulated by the Department of Insurance under either Title XVII or Title XXXIX of the Revised Code.

(B) The members of the Commission shall be appointed as follows:

(1) The Speaker of the House of Representatives shall appoint the two members of the House specified in division (A)(2) of this section.

(2) The President of the Senate shall appoint the two members of the Senate specified in division (A)(3) of this section.

(3) The Speaker of the House of Representatives and the President of the Senate jointly shall appoint the remaining members specified in divisions (A)(4) to (10) of this section.

(C) Initial appointments to the Commission shall be made within thirty days after the effective date of this act. The appointments shall be for the term of the Commission as provided in division (F)(2) of this section. Vacancies shall be filled in the same manner provided for original appointments.

(D)(1) The Superintendent of Insurance shall be the Chairperson of the Commission. Meetings of the Commission shall be at the call of the Chairperson. All of the members of the Commission shall be voting members. Meetings of the Commission shall be held pursuant to section 121.22 of the Revised Code.

(2) The Department of Insurance shall provide office space or other facilities, any administrative or other technical, professional, or clerical employees, and any necessary supplies for the work of the Commission.

(3) The Chairperson of the Commission shall keep the records of the Commission. Upon submission of the Commission's final report to the General Assembly under division (F) of this section, the Chairperson shall deliver all of the Commission's records to the General Assembly.

(E)(1) The Commission shall study the following areas pertaining to health care contracts:

(a) The procompetitive and anticompetitive aspects of most favored nation clauses;

(b) The impact of most favored nation clauses on health care costs and on the availability of and accessibility to quality health care;

(c) The costs associated with the enforcement of most favored nation clauses;

(d) Other state laws and rules pertaining to most favored nation clauses in their health care contracts;

(e) Matters determined by the Department of Insurance as relevant to the study of most favored nation clauses;

(f) Any other matters that the Commission considers appropriate to determine the effectiveness of most favored nation clauses.

(2) The Commission may take testimony from experts or interested parties on the areas of its study as described in division (E)(1) of this section.

(F)(1) Not less than ninety days prior to the expiration of the two-year period specified in Section 5 of this act, the Commission shall report its preliminary findings to the General Assembly and a recommendation of whether to extend that two-year period for one additional year. If the General Assembly does not grant the extension, the Commission shall submit its final report to the General Assembly not later than three months after the expiration of the two-year period specified in Section 5 of this act. If the General Assembly grants the extension, the extension shall be for not more than one year after the expiration of the two-year period specified in Section 5 of this act, and the Commission shall submit its final report to the General Assembly not later than six months prior to the expiration of the one-year extension.

(2) The final report of the Commission shall include its findings and recommendations on whether state law should prohibit or restrict most favored nation clauses in health care contracts. The Commission shall cease to exist upon the submission of its final report to the General Assembly.