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March 9, 2021

Senator Judy Lee
Chair, Senate Human Services Committee
North Dakota State Capitol
600 E Boulevard Ave
Bismarck, ND 58505

Dear Chair Lee,

On behalf of Medica, I want to express our opposition to HB 1465. As the Committee may be aware, Any Willing Provider (AWP) laws began appearing in some states in the 1980s. The laws permit providers who are willing to agree to an insurer's terms and conditions for inclusion in a network to demand inclusion in that network. Medica opposes AWP laws, as they stifle innovation and exacerbate increasing health care costs.

One of the roles we play as an insurer is to negotiate with providers on behalf of our members. It is consistently our goal to ensure that our members have access to affordable, quality medical care. Requiring insurers to contract with any willing provider undermines efforts to provide enrollees with access to doctors and facilities who provide the highest quality and the most cost-efficient care to our enrollees.

At present, 17 states have AWP laws that apply to either hospitals, physicians, or both. Such laws have subsequently led to higher health spending and a corresponding increase in health insurance premiums. The Federal Trade Commission (FTC) has expressed concerns about AWP mandates as regulations can result in higher premiums and may increase the number of uninsured.

*"These laws can make it more difficult for health insurers or PBMs to negotiate discounts from providers; if plans cannot give providers any assurance of favorable treatment or greater volume in exchange for lower prices, then the incentive for providers to bid aggressively for the plan's business – to offer better rates – is undercut. AWP and [Freedom of Choice] FOC laws also can limit competition by restricting the ability of insurance companies to offer consumers different plans, with varying levels of choice. These restrictions on competition may result in insurance companies paying higher fees to providers, which, in turn, generally results in higher premiums, and may increase the number of people without coverage."*¹

¹ Federal Trade Commission Letter to Hon. James L. Seward, Senator, 51st District, New York; August 8, 2011. Accessed at http://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-honorable-james-l.seward-concerning-new-york-assembly-bill-5502-bregulate-use-mail-order-pharmacies-health-plans/110808healthcarecomment.pdf.

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AWP laws give health care providers rights that aren't given to other service providers. "Guaranteed" contracting or employment is nonexistent in other industries. Schools are not required to hire "any willing teacher." Airlines are not required to hire "any willing pilot." AWP mandates create a presumed "right to employment or contract" -- a right that does not exist in any other industry or even elsewhere within the health care sector. We note that the problem the Legislature is attempting to solve with HB 1465 (i.e., vertically-integrated health plans limiting their network offerings only to their affiliated health care providers), would actually continue to disproportionately benefit those same vertically-integrated providers. The providers affiliated with a vertically-integrated plan could demand exorbitant rate increases from the other health plans.

Looking forward, Medica supports the approach of allowing health plans to work directly with providers to build on those strategies that work, with a focus on preserving accessibility, affordability, and ensuring quality. Alternatively, the Legislature could consider requiring health insurers in the fully-insured markets to offer a broad access product wherever the insurer offers a care-system, or ACO, product. This approach was used to much success in Minnesota, and we would be happy to work with the Legislature on an amendment.

We appreciate the opportunity to offer our concerns, and are happy answer any questions related to our concerns.

Respectfully,

Matt Schafer

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