

Case against Blue Cross shows difficulty of cutting health costs

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By Patricia Beck, Detroit Free Press

TheraMatrix CEO and owner Robert Whitton, left, and President Bob Read are battling Michigan's biggest insurer.

"The picture that they're trying to paint is the big whatever giant with a chainsaw in his hand coming down on the little guy. I just don't buy into that too easily."

—Jeffrey Rumley, Blue Cross' general counsel



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By Kimberly P. Mitchell, Detroit Free Press

Ford retiree Mike Harris gets treatment from physical therapist Joe Fisher at a TheraMatrix clinic in Sterling Heights, Mich.

By [Alison Young](#), USA TODAY
PONTIAC, Mich. — As health care costs soared nationally, a small [Michigan](#) firm gave [Ford Motor Co.](#) a proposal to cut its physical therapy costs. The automaker signed up for an in-state pilot program, which was so successful Ford expanded it last year to cover about 390,000 employees, retirees and their families nationwide.

Yet the cost-saving program created by Pontiac-based TheraMatrix has come under attack from [Blue Cross Blue Shield of Michigan](#).

Court records allege Blue Cross used its position as the state's dominant insurer to try to crush TheraMatrix as it worked to also sign up [Chrysler](#) and [General Motors](#). A USA TODAY review of hundreds of pages of e-mails and internal documents that are part of a lawsuit TheraMatrix filed against Blue Cross indicates that TheraMatrix's efforts to carve out a niche market in managing outpatient physical therapy costs was seen as a threat by officials at Blue Cross and by some Michigan hospitals.

MORE: [Feds accuse Mich. Blue Cross of anticompetitive contracts](#)

"They tried to destroy us," says Robert Whitton, a physical therapist who founded TheraMatrix in 1981. TheraMatrix has cut Ford's physical therapy costs by about half, Whitton says, saving millions of dollars annually. Under Blue Cross, Ford's costs averaged \$745,000 a month just in Michigan, he says. "We shouldn't have been in this position for creating a program that helped save health care costs."

Blue Cross denies trying to hurt TheraMatrix's business.

"The picture that they're trying to paint is the big whatever giant with a chainsaw in his hand coming down on the little guy," Jeffrey Rumley, Blue Cross' general counsel, told USA TODAY. "I just don't buy into that too easily."

The dispute provides a window into some of the factors that make overhauling the nation's health care system so difficult. The aggressive tactics employed against TheraMatrix raise questions about whether relationships between hospitals and insurers are inflating medical prices and stifling competition

needed to control costs.

Court records depict Blue Cross — a non-profit created under Michigan law to provide affordable health care — as working with a major hospital to stop expansion of TheraMatrix's program. They also reveal that Blue Cross barred TheraMatrix from the insurer's medical provider network, which covers most Michigan patients.

A Detroit-area jury awarded TheraMatrix \$4.5 million in July, finding that Blue Cross breached an agreement with TheraMatrix to process claims for its Ford program, then wrongfully interfered with TheraMatrix's efforts to launch a Chrysler program. Blue Cross has appealed.

Last month, the [U.S. Justice Department](#) sued Michigan's Blue Cross, accusing the insurer of a different kind of anticompetitive behavior: paying hospitals higher prices for medical care in exchange for a promise they would charge competing insurers as much as 40% more than they charge Blue Cross. Blue Cross says the suit is without merit.

Amid growing consumer fury over double-digit insurance rate hikes, the power wielded by huge insurance companies is under increasing scrutiny:

- The [Massachusetts](#) Attorney General's Office has been investigating whether relationships between insurers and hospital networks in that state have driven up health costs for consumers.
- Pennsylvania's insurance department is investigating whether Blue Cross plans in that state are engaged in anticompetitive practices. Blue Cross is a national brand, but its companies are independently operated.
- In 24 states, two or fewer health insurers control 70% or more of the market, a study this year by the [American Medical Association](#) found.

Effective antitrust regulation is critical to lowering health care costs, [Christine Varney](#), the assistant attorney general who heads the Justice Department's antitrust division, told lawyers at a health care conference in May. "The goals of health care reform cannot be achieved," she said, "if dominant insurers use exclusionary practices to blockade entry or expansion by alternative insurers."

A battle over business

TheraMatrix's battles with Blue Cross go back to 2005. That's when Ford Motor Co. decided to try to save money by carving out physical therapy benefits from an employee health plan administered by Blue Cross. That February, Ford hired TheraMatrix to manage that aspect for its Michigan employees.

At the time, physical therapy spending for all Michigan Blue Cross customers was increasing by almost 17% a year, an internal Blue Cross report shows.

Like many major employers, Ford has a "self-funded" health plan. That means Ford pays Blue Cross an administrative fee to handle paper work and maintain a provider network, but Ford — not the insurer — is responsible for the medical bills. In 2003-04, Ford paid Blue Cross a \$54 million administrative fee, plus other costs, a Blue Cross memo says.

TheraMatrix saved Ford money by creating a network of physical therapists willing to accept \$68 per visit — significantly less than what Ford had been paying under Blue Cross. TheraMatrix also reviews treatment plans so patients don't get too many or too few visits.

But the project was nearly derailed when Blue Cross said it couldn't process claims for TheraMatrix, records show. About the same time, TheraMatrix alleges, Blue Cross decided to create its own discount physical therapy network.

Ford kept TheraMatrix; the program began in August 2005.

Michigan hospitals, which provide outpatient physical therapy, weren't happy about the lost business, records indicate. They could have joined the TheraMatrix provider network, but most wouldn't agree to the lower rate, says Whitton, TheraMatrix's CEO.

The state hospital association gave its members an option if they wanted to take action. In an Aug. 1, 2005, letter about TheraMatrix, the group highlighted a provision in Blue Cross' hospital contracts: If an employer such as Ford carves away categories of care, hospitals can revoke Blue Cross discounts for any other services used by patients on the employer's plan. Association spokesman Kevin Downey says the group never suggested its members "should" revoke discounts.

None ended Ford's discounts.

By early 2006, Chrysler, which also used Blue Cross to administer its health plan, was looking to hire TheraMatrix. This set off a series of urgent e-mails among top Blue Cross executives, court records show.

David Kee, head of Blue Cross' Chrysler account, warned: "We need to do something fast and dramatic." His strategy included showing that Chrysler could lose its hospital discounts if it went with TheraMatrix. "I think a carefully worded document, perhaps from the hospitals themselves could be valuable," [he wrote](#).

About a week later, e-mails show, such a letter was being offered by Beaumont Hospitals Vice President Mark Johnson — who had been a Blue Cross vice president before joining the suburban Detroit hospital system in 2004.

Blue Cross Vice President Kim Sorget [said in reply](#) that Kee could "use the letter as leverage with his customer to not proceed with the carve out."

In August, after the TheraMatrix trial, Blue Cross re-hired Johnson as a vice president. Blue Cross said Johnson, Kee and Sorget were unavailable for comment.

Beaumont spokesman Mike Killian says the hospital system had a financial duty as a non-profit to stop honoring the discounts if necessary. When Ford went with TheraMatrix, it cost Beaumont \$400,000 a year, Johnson testified at trial. Beaumont facilities would have lost \$2 million a year if Chrysler and GM had followed suit, he said.

In spring 2006, Chrysler and the auto union [UAW](#) agreed TheraMatrix would start managing physical therapy for the automaker around July 1.

Two weeks later, Blue Cross kicked TheraMatrix out of the insurer's provider network, which meant a huge loss of patients and doctor referrals.

"It was devastating," says TheraMatrix President Bob Read. Blue Cross controls more than 60% of Michigan's insurance market, covering nine times as many people as its closest competitor.

Blue Cross took the action because TheraMatrix's relationship with the insurer is "competitive and damaging not only to BCBSM's financial interests, but also to its business relationships," Sorget wrote TheraMatrix.

The move outraged Ford officials.

"This is clearly a retaliatory action against Theramatrix," Ford's employee benefits director Lee Mezza wrote to Sorget. Mezza said TheraMatrix had cut Ford's costs by 40%, and he accused Blue Cross of caring more about hospital revenue than saving customers money, according to a redacted letter in court records and a full version Mezza e-mailed TheraMatrix.

Ford spokeswoman Kimberly Harry said the company has no comment. Mezza, who has retired, is on Blue Cross' board of directors and didn't respond to an interview request.

Blue Cross refused for more than a year to let TheraMatrix back into its provider network, and the Chrysler program became critical to TheraMatrix's survival, Whitton says.

Within the UAW, Blue Cross board member Chuck Gayney — a top UAW benefits official — continued to raise the specter of hospitals revoking discounts for Chrysler's union employees, union memos show. UAW spokesman Michele Martin had no comment.

Beaumont Hospitals gave Blue Cross the letter about potentially canceling discounts for Chrysler and Ford on June 26, 2006.

The next month, Chrysler decided not to go forward with the program. Chrysler spokesman Michael Palese said the company had no comment.

Blue Cross, in court records, contends TheraMatrix hasn't proven the insurer's actions influenced Chrysler's decision.

Blue Cross let TheraMatrix back into its provider network in August 2007, but a year later [was again threatening to kick it out](#). The offense: TheraMatrix was discussing a potential program with General Motors, a letter sent to TheraMatrix shows.

Whitton says that's when TheraMatrix sued Blue Cross.

'You get the care that you need'

Neither Chrysler nor General Motors went ahead with a TheraMatrix program. In 2009, Ford expanded its Michigan contract with TheraMatrix to employees and retirees nationwide. The program has a 98% satisfaction rate, TheraMatrix says.

Ford retiree [Mike Harris](#), 57, praises TheraMatrix. "You get the care that you need," says Harris, who undergoes treatments for neck and back problems at a Detroit-area TheraMatrix clinic.

Butch Stokes, a UAW-Ford benefits representative at Local 737 in Nashville, says he initially was skeptical of the TheraMatrix carve out. "It's worked great," he says, because members have a good choice of providers and fewer hassles than with Blue Cross.

David Balto, policy director of the Federal Trade Commission's competition bureau from 1995-2001, says Blue Cross' conduct "clearly crosses the line." The case shows the dangers of the lack of insurance competition nationally: "Ultimately it's the consumer who is harmed," he says.

Blue Cross general counsel, Jeffrey Rumley, says he's not aware of anything in the TheraMatrix case "that would have a nexus to antitrust activity."

The Michigan Attorney General's Office asked TheraMatrix in September to produce documents about Blue Cross' "competitive conduct."

The U.S. Justice Department also is reviewing records, a June e-mail to TheraMatrix shows.

Both agencies said they can neither confirm nor deny any possible investigation.

TheraMatrix's Whitton says his company is struggling to rebuild: "We are still in jeopardy."