

MaineHealth

December 29, 2014

Karynlee Harrington
Acting Executive Director
Maine Health Data Organization
151 Capitol Street
Augusta, ME 04330

Dear Ms. Harrington:

MaineHealth appreciates the opportunity to submit the following comments on the recently proposed Maine Health Data Organization (MHDO) Data Release Rule which repeals and replaces existing MHDO Rule Chapter 120 concerning *Release of Data to the Public*.

Our concern is a matter of current statutory and regulatory interpretation and clarification of the meaning and intent of the newly proposed draft regulations covering the release of individually identifiable practitioner data elements. We have some questions about the intent and details of the proposed draft regulations, as well as the overall approach and structure of the draft rules.

Our first concern is that the proposed draft regulations continue to create ambiguity regarding the potential disclosure of individually identifiable practitioner data elements. I could find no specific reference under MHDO's enabling legislation covering the release of individually identifiable practitioner data. Also, while existing MHDO rule Chapter 120, Section (2)(Q-1) does define *Prescriber Data*, it references Chapter 280 of the MHDO's rules as a resource. Chapter 280 of MHDO's rules is not listed for reference on the MHDO's website or online through the Administrative Rules page of the Secretary of State's website although the section makes reference Chapter 280 concerning the collection of prescriber names, addresses, Maine license or certificate numbers, Drug Enforcement Authority registration numbers, and National Provider Identification numbers. Interestingly, *Prescriber Data* is not defined within the newly proposed draft regulations. In addition, existing Chapter 120 MHDO rules governing the disclosure to the public of data do not specifically include a direct definition of "individually identifiable practitioner data elements" or include it under the definitions of *Financial Data* and *Quality Data*. The only reference to *identifiable practitioner data elements* falls under Section 12(B) concerning comments in response to the *External Review of Data Recipients/Requests*.

Second, the use of *Practitioner Identifiable Data Elements* is also not addressed in the body of the newly proposed MHDO Data Release Rule, only in APPENDIX C. This creates further confusion in our opinion. For example, there is neither a definition of the term nor any guidance on the permitted release or eventual public use of individually identifiable practitioner data elements. It is also unclear why the terms listed under Section 5, subsection 1, A through E (*MHDO Data Sets available for Public Access*) are each defined under Section 2 but Section (5)(1)(F) concerning Supplemental Data under APPENDIX C is not. In addition, while there are defined limitations and requirements under Section (3)(3)(D) concerning requests for *Payer Assigned Group ID Numbers* under APPENDIX C there are no such limitations and requirements outlined for *Practitioner Identifiable Data Elements*.

We respectfully request the Board to review and respond to the aforementioned comments and concerns and also to the following questions:

- Can MHDO provide information on the purpose of APPENDIX C?
- Why is it being proposed and what is the need?, and
- Please cite the current statutory and/or regulatory reference and guidance for MHDO to release individually identifiable practitioner data elements.

Finally, while Section 11(4) outlines the subject of appeal by a data provider should they disagree with an MHDO decision to release certain data and the potential recourse of taking legal action to prevent release, we request additional language be added to clarify that the data will not be released until final adjudication.

We believe these issues are worthy of attention and further consideration. Thank you for the opportunity to submit these comments. Please do not hesitate to contact me directly at (207) 838-8613 or drmorin@mainehealth.org for clarification or additional questions.

Sincerely,

Dan Morin
Director of Government Affairs
MaineHealth