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August 25, 2015

Ms. Katarina M. Horyn
Associate General Counsel
UnitedHealthcare Insurance Company
185 Asylum St City Place
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Hartford, CT 06103
Email: katarina_m_horyn@uhc.com

Dear Ms. Horyn,

I am writing to you in response to your letter to me dated June 23, 2015 regarding the Anthem BCBS ME MHDO data request number 91586.

I have reviewed your request that the MHDO redact several claims data elements as listed in your letter, before releasing the MHDO restricted claims data under request number 91586.

In your June 23, 2015 letter you contend that the re-release of each payer's identifiable fee schedule based amounts:

- Could adversely impact health care competition in Maine if they are provided to Anthem BCBS ME.
- It is not necessary for Anthem BCBS ME to accomplish the purpose of their data request.

My decision comes after careful consideration of the concerns raised in your June 23, 2015 letter, the requirements in Title 22, Chapter 1683, specifically section 8712, MHDO's data release rule (90-590 CMR Chapter 120), **and** previous data releases of MHDO restricted claims data to health plans (including Anthem, Harvard Pilgrim HealthCare and Maine Community Health Options) and hospitals back to 2008 to current. In addition I asked Anthem to respond to your assertions and they provided the following information:

"We do not believe releasing payer identifiable information will adversely impact the health care competition in Maine. On the contrary, we believe that by adopting best practices which will most certainly benefit our members, we will actually be facilitating better care and reducing premiums. Our intent is to improve member health through better member compliance and better care management while making care more affordable to members".

Title 22 MRS §8712(2) requires MHDO to publish information related to payments to healthcare facilities and practitioners regarding predominantly elective services that may be provided to a large number of patients who are uninsured or underinsured. The published data must also display prices



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paid by individual commercial health insurance companies, and 3rd party administrators. The data elements objected to are the data that support these reports.

Please note data elements related to charges that are submitted to the MHDO are not released.¹

Under MHDO's Data Release rule, there are provisions for protecting data from release when a data submitter establishes that the data is confidential. Pursuant to 90-590 CMR Chapter 120 Release of Data to the Public, Confidential Data is defined in section 2(C)(3) as "Confidential Clinical Data" or "Confidential Financial Data" are data provided to the MHDO that:

- (a) have not been revealed to the general public; and
- (b) will directly result in the data provider being placed in a competitive economic disadvantage.

I have considered your claim under Chapter 120, Section 7; specifically where the burden of proof rests with the data provider contending that information should not be released and deemed confidential data. It is my opinion that your written support has failed to prove that the data elements referenced meet the MHDO definition of confidential or privileged.² As such I will be releasing the claims data as requested in data request number 91586. Pursuant to Section 7(G) I can release this data no less than 5 business days after you are notified of this decision.

You may consider this Final Agency Action. A party aggrieved by final agency action may file a petition for judicial review of final agency pursuant to 5 MRS Chapter 375 and M.R.Civ.P. 80(C). MHDO is informing you of this decision by E-mail as well as regular mail.

Assuming the data requesters meet all requirements of release, I intend to release the data requested in response to the outstanding application, including the elements that you wanted redacted, on September 2, 2015, unless UnitedHealthcare takes legal action to prohibit the release.

Sincerely,
Karynlee Harrington



Cc: Deanna White, Esq, Office of the Attorney General
Lisa Harvey-McPherson, Chair MHDO Board of Director
Commissioner Anne Head, Vice Chair MHDO Board of Director

¹ Under Chapter 120, Section 9. A (3) Data elements related to health care facility or practitioner charges (total charges, line item charges, charge amount) are **not** released in order to prevent a data recipient from computing a charge/paid ratio for each type of service rendered for any individual health care claims processor, health care facility, or health care practitioner. Additionally, Section 9. A (3) prohibits data recipients from using MHDO data to publically display data elements related to payments for specific health care services by individual health care claims processors and health care facilities or practitioners.

² You have argued that the data should be aggregated or averaged in a way that meets the "requirements" of the 1996 DOJ/FTC statements of Antitrust Enforcement Policy in Health Care; Statement 6-Provider Participation In Exchanges of Price and Cost Information. However, these are not requirements, but rather parameters of a "Safety Zone" that the DOJ/FTC will recognize as acceptable conduct between providers absent extraordinary circumstances.