

December 11, 2015

Karynlee Harrington
Executive Director
Maine Health Data Organization
151 Capitol Street
102 State House Station
Augusta, Maine 04333-0102

VIA E-MAIL

RE: Proposed Changes to 90-590 Maine Health Data Organization; Chapter 120

Dear Ms. Harrington,

On behalf of UnitedHealthcare and its affiliated companies, hereinafter referred to as UnitedHealth Group, we appreciate the opportunity to comment on the proposed changes to MHDO Rule, 90-590 Chapter 120 - Release of Data to the Public.

Confidential and Proprietary Information

The information submitted to the APCD contains certain financial information that Data Providers consider to be confidential and proprietary in nature, often containing information that may amount to trade secrets. If this financial information is inappropriately released or disclosed by the MHDO, it may cause harm to the marketplace by reducing competition, which may result in increased prices, or reduced quality and availability of health care services. It is important that MHDO recognize that financial data and information that they hold is confidential and proprietary, amounting to trade secrets, and take the steps necessary to ensure that such information is protected when re-released to the public by MHDO. The Federal Government recognizes the critical importance of protecting financial data/information when supplied by a group of payers and regulates this activity in the Department of Justice and Federal Trade Commission's Statement of Antitrust Enforcement Policy in Health Care – Statement 6. Statement 6 outlines appropriate safeguards and protections that should be in place in order to ensure that the exchange or release of confidential and propriety information does not facilitate collusion or anti-competitive behaviors, thereby reducing competition and increasing prices and availability of health care services. Due to the confidential and proprietary nature of the financial information submitted by Data Providers, we request that in the review of the APCD's data release rule you include language that protects payers' confidential and proprietary financial information.

We request that the following sections be revised.

Section 2. ##. Paid Data. "Paid Data" is the carrier's paid amount, prepaid amount and dispensing fee as well as the member's co-pay amount, coinsurance amount, deductible amount, and patient pay amount.

Section 3.1. Confidentiality of Data in the proposed version of 90-590 Chapter 120 - Release of Data to the Public be revised to include a reference to the Department of Justice and Federal Trade Commission Statement referenced above and clearly state that payers' propriety and confidential financial information re-released to the public will be fully protected by MHDO – even treated as a State trade secret.

Section 3.1.D. Data elements related to health care facility or practitioner charges (total charges, line item charges, charge amount) and data elements related to carriers' Paid Data for services rendered shall only be released by MHDO in the average or aggregate in a manner which will prevent a charge/paid ratio to be computed for each type of service rendered for any individual health care claims processor, health care facility, or health care practitioner. All other data related to *payment* of claims contained in the appendices is publically available contingent upon MHDO approval of the data request.

Section 3.3.H. Data elements related to payment may be arrayed or displayed publically in a way that shows only average or aggregate payments for specific health care services by individual health care claims processors, individuals and health care facilities or practitioners only by MHDO. Data recipients may not publically array or display MHDO Data in this way.

Limiting Data Uses

We propose that the use of data released by the MHDO be allowed as specified in Section 1.1. of MHDO 90-590 Chapter 120 and purposes for the public well-being and exclude the release of data for commercial purposes that would facilitate collusion or anti-competitive behaviors based on data sources revealed in the data release request. In order to facilitate the purpose of collecting data by the MHDO as identified in 90-590 Chapter 120, Release of Data to the Public, we believe that the information release should be primarily for those uses specified in Section 1.1 of MHDO 90-590 Chapter 120 and purposes of the public well-being and should not be released by the APCD for commercial purposes that would facilitate collusion or anti-competitive behaviors. As detailed above, the data held by the MHDO is often considered by Data Providers to be confidential and propriety in nature, and often a trade secret. The release of the data for commercial purposes to a competitor of a Data Provider has the potential of causing significant harm not only to the Data Provider but also to the health care marketplace.

Because a risk of harm detailed above exists when a data release is for a commercial purpose, rather than for research or academic purposes or purposes for the public well-being, we request that the MHDO restrict the release of data as described in Section 1.1 of MHDO 90-590 Chapter 120 and purposes for the public well-being and exclude the release of data for commercial purposes that would facilitate collusion or anti-competitive behaviors. We further request that the MHDO consider an alternative approach for release of data for commercial purposes that would restrict the release of claims and prescription data fields directly related to pricing, payment, and copayment/coinsurance.

Potential solutions to address the concerns above include:

Redefine *Commercial redistribution* in Section 2.8. to read 'Commercial redistribution' is when a for-profit or not-for-profit business or organization purchases MHDO data or information for

inclusion in a larger composite database for resale in any form that does not facilitate collusion or otherwise reduce competition as outlined by the Department of Justice and Federal Trade Commission.

Redefine *Non-Commercial Redistribution* in Section 2.31 to read 'Non-commercial redistribution' is when an entity purchases MHDO data for inclusion in a larger composite database that is publically released, that does not facilitate collusion or otherwise reduce competition as outlined by the Department of Justice and Federal Trade Commission and is available at no cost.

Thank you, again, for allowing UnitedHealth Group the opportunity to comment on the proposed changes to MHDO Rule, 90-590 Chapter 120 - Release of Data to the Public. Please let me know if you have any questions or concerns regarding these comments.

Sincerely,

A handwritten signature in cursive script that reads "Katarina Horyn". The signature is written in black ink and is positioned above the typed name and title.

Katarina Horyn
Associate General Counsel