

90-590 Maine Health Data Organization

Chapter 120: Release of Data to the Public (*Major Substantive Rule*)

Note: This rule requires legislative approval prior to final adoption.

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Section I. Basis Statement

The Maine Health Data Organization (MHDO) is charged with collecting health care data. This Chapter governs the release of data that the MHDO is authorized to collect to the public. The purpose of this rule is to specify the permissible uses of the data; the releasable data elements available in MHDO's Level I, II, and III Data sets; the process for which data requests will be reviewed and if approved the data release; public notice of data requests; the MHDO Data Use Agreement (MHDO DUA), MHDO internal use of the data, and the security and protection of the MHDO Data.

These proposed changes updates definitions and several data elements allowable for release to authorized data recipients based on how our data user's needs have changed; and due to new and existing laws that allow for the collection of certain data elements as well as the release of these data, including PL 2021, Chapter 423 and PL 2017, Chapter 218.

It is anticipated that these updates will align the data collection rules and requirements with the release of these data; as well as respond to the needs of our data users as it relates to their use of the MHDO data, including the study of healthcare disparities and inequities.

The MHDO Board met on May 6, 2021 and authorized the MHDO to initiate rulemaking. A public hearing was held on November 4, 2021 and one public comment was received during the comment deadline of November 15, 2021.

Section II. Names of Individuals that Submitted Comments

1. Scott Sebastian, Associate General Counsel, UnitedHealthcare Insurance Company

Section III. Summary of Comments Received by Submitter with Proposed Agency Response & Action.

Below is a copy of the comments received; MHDO's staff responses; and staffs recommended board action:

1. Scott Sebastian, Associate General Counsel, UnitedHealthcare Insurance Company

Non-Claims-Based Payments

With the addition of non-claims-based payments to the MHDO data collection regulation, we understand that the MHDO desires to understand the payment methodologies used in the state more fully. However, MHDO's inclusion of this new information as part of data sets that it will release to external parties is particularly concerning given the MHDO's repeated willingness to release competitive financial information to competitor payers and providers in the state.

This type of information is considered proprietary financial information and is not normally disclosed by payers without adequate protections and restrictions on use. Forced release of proprietary financial information potentially conflicts with long-established limits on the forced disclosure of trade secrets and may harm competition in Maine.

To account for these risks, the MHDO should enhance its protections on data releases to adequately protect proprietary financial information to ensure that this type of information is not released by the MHDO in a manner inconsistent with legal precedent. Removing this information from MHDO's data release schedule would be an important first step to ensure MHDO has acceptable protections in place for proprietary financial information.

As MHDO continues to consider the collection of non-claims-based payments, we would also welcome additional discussion on the way potential opportunities to standardize this reporting. We have experience in other states where claims databases have started collecting this type of information and believe our experiences could help further MHDO's goals to better understand the payment methodologies.

MHDO Staff Response:

Proprietary Data as defined in 90-590 CMR Chapter 120, *Release of Data to the Public*, is data that is submitted to the MHDO by a Data Provider which has not been made available to the public; and is information that if made available to the public will directly result in the data provider being placed in a competitive economic disadvantage.

In Maine, price transparency is a stated purpose of the MHDO. The MHDO claims data that UnitedHealthcare contends is proprietary is publicly reported on the MHDO's price and quality transparency website, CompareMaine, as well as in other mandated reports as required by MHDO's governing statute 22 MRS §8712; and has been released to authorized MHDO data users for over thirteen years; and as such is neither proprietary data nor trade secrets. Additionally, to date, there is no evidence that the release of MHDO claims data has resulted in an anticompetitive market. In fact, quite the opposite, as stated by several of UnitedHealthcare's competitors, "transparency is what fosters a competitive market."

In response to the comment specific to adequate protections and restrictions on use, there are provisions in 90-590 CMR Chapter 120, that address these issues. In both Chapter 120 and in the MHDO Data Use Agreement (DUA), which all authorized data requestors and recipients are required to sign and comply with, there is a provision that prohibits authorized MHDO data requestors and recipients from misusing MHDO data in any way that would violate law, including anti-competitive behaviors like collusion; and that the MHDO will report any such violation in the use of its data to the appropriate authorities.

MHDO's default data release structure anonymizes all payer codes that appear in the claims and eligibility data that is submitted to MHDO. Meaning, MHDO replaces each distinct payer code with an integer value that identifies the payer as either Commercial, Medicaid, or Medicare.

The release of non-claims based payment data as described in Appendix A.5, includes a limited set of data elements (listed below), that if approved would only be released in an aggregated manner identified by payer category: Commercial, Medicaid, or Medicare. It is not possible in this structure to associate any specific commercial payor with a specific financial arrangement and or a specific dollar amount for non-claims-based payments.

Insurance Type/Product Code (Commercial or Medicaid) • Total Number of Members • Total Member Months • Total Dollars Non-Claims-Based Payments • Total Dollars Non-Claims-Based Payments (Primary Care Only/Portion)

In response to the last comment made, MHDO Staff plans to participate in a discussion that the National Association of Health Data Organizations and the APCD Council is convening to create a national standard for the collection of non-claims-based payments based on best practice and experience from the states and payers perspective. We hope UnitedHealthcare participates in the national discussion and look forward to their perspective as we work to balance our legislative mandate to create and maintain a comprehensive data set with understanding the limitations of reporting non-claims-based data.

Recommended Board Action: No further action required at this time.

