



MHDO Maine Health
Data Organization
Information | Insight | Improvement

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December 27, 2018

Ms. Katarina M. Horyn
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Dear Ms. Horyn,

I am writing to you in response to your letter to me dated November 12, 2018 regarding Harvard Pilgrim Health Care's (HPHC) MHDO data Request Number 2018082201.

MHDO Data are obtained to fulfill MHDO's legislative mandate to create and maintain a useful, objective, reliable and comprehensive health information database that is used to improve the health of Maine citizens **and** to issue reports promoting public transparency of health care quality, outcomes, and costs. The MHDO is required by its governing statute to make the data it collects publically available and accessible to the broadest extent consistent with the laws protecting individual privacy, and confidential information.

The primary use of the MHDO Data as defined in 90-590 CMR Chapter 120 Release of Data to the Public, is to produce meaningful analysis in pursuit of improved health and health care quality for Maine people. Acceptable uses of MHDO Data include, but are not limited to, study of health care costs, utilization, and outcomes; benchmarking; quality analysis; longitudinal research; other research; and administrative or planning purposes.

The MHDO has been releasing health care data to authorized users for over ten years. MHDO's authorized users include the largest and smallest health insurance companies in the state of Maine as well as the state's largest health care systems as well as smaller hospitals. 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 your competitors, transparency is what fosters a competitive market.

Below is a statement from Harvard Pilgrim Health Care in response to your concerns regarding their MHDO data request and use:

Should UnitedHealthcare, Harvard Pilgrim, or anyone else wish to see a certain extent of carrier-specific payment information, they may do so by visiting the MHDO CompareMaine website. We make this note to suggest that UHC's concern is not just misplaced with respect to Harvard Pilgrim's data request, but it is made substantially obsolete by years of advances in consumer transparency work by federal and state governments across the country. We would further point



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out that, contrary to UHC's suggestion, the broad availability of this information fosters competition by providing enough illumination for industry stakeholders to assess product opportunities. Competition is hindered in 'dark' markets that operate with a scarcity of information. UHC's reference to a decades-old document from the DOJ and the FTC that ambivalently discusses competition among provider groups (i.e. hospitals, clinics, etc.) is entirely non sequitur to APCDs and the modern insurance market.

Note, there is a provision in 90-590 CMR Chapter 120 Release of Data to the Public and in the MHDO Data Use Agreement, which all authorized data requestors and recipients are required to sign and comply with, that prohibits authorized MHDO data 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.

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.

Based on the information provided above, I disagree with your assertion that that "Harvard Pilgrim's receipt and intended use of MHDO data has the potential to harm the healthcare marketplace in Maine and have adverse effects on the residents of Maine with the receipt and use of **payers' confidential and proprietary information.**" The MHDO claims data that you suggest is proprietary is publically reported on the MHDO's CompareMaine website as required by MHDO's governing statute 22 MRS §8712; has been released to authorized MHDO data users for over ten years and as such is not proprietary data.

It is important to reiterate that the MHDO's standard data release structure anonymizes all payer codes that appear in the claims and eligibility data. Each distinct payer code has been replaced with an integer value such that all instances of a particular code receive the same replacement value. The integers used to replace the payer codes are randomly assigned so that the authorized MHDO data user cannot use the order of the integer values to impute the underlying payer codes. The authorized MHDO data user is given a table that, for each integer value, **identifies the payer as either Commercial, Medicaid, or Medicare. No payer name information is provided in the data or in the table referenced above.**

Note, HPHC made the following statement in their MHDO data request form specific to the exclusion of payer specific identifiers:

Harvard Pilgrim requests MHDO to exclude identifiable data elements related to the submitter and payer fields. Please remove the Submitter/Payer ID from the data extract. These exclusions ensure that there is no way to correlate any of the data requested to a specific insurance company, which we have no interest in doing anyway.

As stated above, there is no evidence that the release of claims data that includes payment data has resulted in an anticompetitive market. In fact quite the opposite, as stated by several of your competitors, transparency helps fosters a competitive market. In fact, Harvard Pilgrim Health Care went on to say in response to your comments that the "fully-insured markets in Maine are highly competitive and price-sensitive. We cannot imagine how it would be in any carrier's interest to increase prices, as UHC suggests is a general risk associated with APCD data use. Maine insurance markets are efficient and

reactive, and low pricing is by far the most common driver behind favorable changes in market share between carriers.”

After careful consideration of your concerns; HPHC’s comments in response to your concerns; a review of the health care transparency laws in the state of Maine, including the requirement that MHDO create and maintain a publically accessible website that includes the cost of healthcare procedures by payer and by facility; and the requirements in 90-590 CMR Chapter 120 Release of Data to the Public, I will be releasing the claims data as requested in data request number 2018082201.

Pursuant to 90-590 CMR Chapter 120 Release of Data to the Public, either the data applicant or the data provider who comment on a data request application may appeal the decision to the MHDO Data Release Subcommittee. Any such appeal must be filed in writing within ten business days after this electronic notification to the attention of the MHDO Executive Director. Any such appeal must be received at MHDO either through e-mail at Karynlee.harrington@maine.gov or other mail or delivery before the close of business (5pm) on the tenth business day.

Assuming the data applicant meets all the requirements of data release, I intend to release the data requested in response to data request 2018082201, after January 11, 2019, unless any of the notified participants file an appeal to the MHDO Data Release Subcommittee. If any participant files such an appeal, all parties will be notified electronically by MHDO.

Sincerely,
Karynlee Harrington
Karynlee Harrington