

November 12, 2018

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

**VIA E-MAIL**

RE: Harvard Pilgrim ME Data Request Number 2018082201

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 Harvard Pilgrim Data Request Number 2018082201 posted to the Maine Health Data Organization (MHDO) website on October 1, 2018.

We have concerns 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 uses outlined by Harvard Pilgrim, to support corporate planning by analyzing hospital and professional utilization and reimbursement patterns for diagnoses and procedure codes by geographic region, on their face appear to have the potential to reflect actions that may result in anticompetitive effects. It is unclear what protections will be in place to ensure that anticompetitive issues do not arise from access to competitor-payer data.

Analogous to the submission of competitive claim data to the APCD and any subsequent disclosure of APCD data that contains competitive financial information, the Department of Justice (DOJ)/Federal Trade Commission (FTC) Statements of Antitrust Enforcement Policy in Health Care – Statement 6, outlines certain situations in which appropriate safeguards and protections should be in place in order to ensure that the exchange or release of confidential and propriety information does not facilitate collusion or anticompetitive behaviors, thereby reducing competition and increasing prices and availability of health care services. The DOJ/FTC statement suggests that upon reviewing each potential disclosure, the entity making the disclosure should consider and weigh any potential anticompetitive effect on the market against the procompetitive justification for the disclosure. Of significant importance in this particular request, Harvard Pilgrim is requesting data that includes competitor payer financial information, which is oft held as confidential and proprietary to each payer. This feed of competitor financial information is certainly the type of information that the DOJ/FTC identified as having the potential to facilitate anticompetitive behaviors.

In making recommendations to state inquiries regarding broad public release of payer confidential and proprietary information, including reimbursement information, the FTC and DOJ have recommended that states take caution and carefully weigh the benefits and costs of disclosing such information since the release and disclosure of pricing, financial, and other confidential information that payers send to states would result in a containment risk of significant anticompetitive harm from information-sharing among competitors.<sup>1</sup>

Even if payer cost data is de-identified and payer-masked, we strongly object to the disclosure of the requested data because Harvard Pilgrim's receipt and proposed use of MHDO data appears to be in conflict with existing Federal guidance and the disclosure of certain competitive information may facilitate collusion and anticompetitive behaviors in Maine since Harvard Pilgrim would be granted access to competitor confidential and proprietary financial information with a release of MHDO data that they would otherwise not be entitled access to.

Because the data submitted to the all-payer claims database contains information that UnitedHealth Group considers to be confidential and proprietary in nature and is the type that we would not normally disclose to outside third parties, but has done so in compliance with the State's mandate and in trusting that the State will continue to protect such confidential and proprietary information from improper disclosure to third parties, we strongly request that MHDO not disclose the requested data.

Thank you again for the opportunity to comment on the Harvard Pilgrim Data Request Number 2018082201. Please let me know if you have any questions or concerns regarding these comments.

Sincerely,



Katarina Horyn  
Associate General Counsel

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<sup>1</sup> See FTC Staff Comment to the Hon. Joe Hoppe and Hon. Melissa Hortman concerning Amendments to the Minnesota Government Data Practices Act Regarding Health Care Contract Data (June 29, 2015). In issuing comments, the FTC indicates that a broad release of payer reimbursement information "may promote a level of transparency that creates a significant risk of anticompetitive harm" and that the "disclosure of competitively sensitive information may enable [third parties] to determine whether their pricing is above or below their competitors' prices, to monitor the service offerings and output of current or potential competitors, and to increase their leverage in future contract negotiations." Furthermore, the FTC notes that "[t]here is a substantial risk that greater price transparency in contracted health care markets may impede, rather than enhance, the ability of [health plans] to selectively contract with health care providers and to negotiate lower reimbursement rates."