

December 21, 2018

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

VIA E-MAIL

RE: MaineGeneral Health ME Data Request Number 2018083001

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 MaineGeneral Health Data Request Number 2018083001 posted to the Maine Health Data Organization (MHDO) website on November 20, 2018.

Based on a review of MaineGeneral Health's Data Request, it is not clear how the MHDO data, which includes competitive financial information of UnitedHealth Group and other payers, will be used by MaineGeneral Health to support the initiatives that MaineGeneral Health has outlined. The data held by MHDO contains confidential, proprietary and trade secret information, including fully adjudicated and paid claim amounts of UnitedHealth Group. This information is the type that we would not normally disclose to outside third parties, but we have done so in compliance with the State's mandate and in trusting that the State will continue to protect such information from improper use and disclosure to third parties, under applicable state and federal law.

Analogous to the submission of competitive claim data to the all payer claims database (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.

The information provided in the MaineGeneral Health's data request posted online is short in substance and does not provide adequate details to allow UnitedHealth Group and the public at large to understand how MaineGeneral Health actually plans to use the requested data, and contains references that appear to run afoul of how confidential, proprietary and trade secret

information should be protected by the MHDO, and is unclear how Level II medical and pharmacy claims data and eligibility data is necessary to support the proposed uses. For example, MaineGeneral Health indicates, in part, that MHDO data will be used to identify cost-saving opportunities, and will be used to assist MaineGeneral Health with commercial payer contracts. These examples appear, on their face, to be in conflict with FTC/DOJ Statement 6 identified above, and are not uses for which UnitedHealth Group would consent without more substantive details and assurances that the data would be protected and used appropriately.

Of significant importance, MaineGeneral Health is requesting data that includes not only payer identifiable financial information, but also financial information of its competitor provider systems for calendar years 2015 through 2018. Furthermore, it is unclear how this data may or may not be used by MaineGeneral Health's affiliate MaineHealth, who made a similar request for APCD data under Data Request Number 2018062601. This is of specific concern since the request ties using the data to assist "member organizations" with "commercial payer contracts." This type of request 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 payer confidential, proprietary and trade secret information.¹

The uses outlined by MaineGeneral Health, while lacking in detail, on their face appear to have the potential to reflect actions that may result in anticompetitive effects and may be in conflict with FTC/DOJ Statement 6. It is unclear how this analysis will actually be accomplished, or what protections will be in place to ensure that anticompetitive issues do not arise from access to fully identifiable payer and competitor-provider data. It is also unclear how competitor information will be protected by MHDO with a release under this request. For these reasons, MHDO's decision on this request should be delayed until sufficient information is publicly available to allow a full assessment of the request and issues identified above. As such, we strongly object to this data release without more information around the protections MHDO will implement to address these risks.

Furthermore, based on the publicly available details of this data request, it is unclear how the request meets the regulatory Minimum Necessary requirement to make reasonable efforts to request and use only the minimum amount of data needed to accomplish the intended purpose of the data request. Although we expect that MHDO will scrutinize this request to ensure compliance with the Minimum Necessary requirement, at a minimum, MaineGeneral Health's described uses should not require release of payer identifiers, competitor provider identifiers or individual/patient identifiers; MaineGeneral Health's analysis should be as effective without such identifiers included in any data release from MHDO. It is unclear how Level II medical and pharmacy claims data and eligibility data (which includes, in part, individual identifiers such as

¹ See Staff Letter to Hon. Joe Hoppe and Hon. Melissa Hortman (June 29, 2015) Re: Amendments to the Minnesota Government Data Practices Act Regarding Health Care Contract Data (Disclosure of competitive financial information, including "fees, discounts, and other pricing terms that typically are negotiated in confidence between health care providers and health plans... would undermine the effectiveness of selective contracting, a key mechanism used by health plans to drive down health care costs and improve overall value in the delivery of health care services." Furthermore, "health care providers may find increased access to each other's prices and other competitively sensitive information to be quite useful... [which] may enable providers 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 negotiations. This risk increases in markets with fewer providers... [and] empirical studies of other industries have shown transparency of prices and other competitively sensitive information to be associated with higher prices.").

date of birth/death/service and geographic information), would actually support the efforts outlined in this data request.

Because the data submitted to the APCD contains information that UnitedHealth Group considers to be confidential, proprietary and trade secret, 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 information from improper use and disclosure to third parties, we strongly object to this request. Furthermore, any disclosure by MHDO should be done without disclosure of payer identifiers, competitor provider identifiers or individual/patient identifiers given that there is no indication in the data request that such information is integral to MaineGeneral Health's data analysis. Specifically, we request that MHDO de-identify the Submitter/Carrier ID fields (MC001 and MC002), individual/patient identifier fields (including fields that contain member protected health information—PHI), and any provider identifier fields that would identify a competitor provider or provider organization and confirm that MHDO's APCD claims data release practice continues to exclude any information derived from the fields HD003/TR003 or the Payer NAIC. We also expect that confidential, proprietary and trade secret information would be excluded from any release based on the concerns raised above. Restricting public disclosure of payer and provider information may further protect against activities that may facilitate collusion or anticompetitive behaviors as has been discussed by the DOJ/FTC.

Thank you again for the opportunity to comment on the MaineGeneral Health ME Data Request Number 2018083001. Please let me know if you have any questions or concerns regarding these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Katarina Horyn". The signature is fluid and cursive, with a long horizontal stroke at the end.

Katarina Horyn
Associate General Counsel