

October 22, 2018

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

VIA E-MAIL

RE: MaineHealth ME Data Request Number 2018062601

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 MaineHealth Data Request Number 2018062601 posted to the Maine Health Data Organization (MHDO) website on September 10, 2018.

Based on a review of MaineHealth'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 MaineHealth to support the initiatives that MaineHealth has outlined. APCD data held by MHDO contains confidential and proprietary information, including fully adjudicated and paid claim amounts of commercial healthcare payers. Data submitted to the APCD 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 information from improper use and disclosure to third parties, under applicable state and federal law.

The information provided in the MaineHealth's data request posted on the MHDO website is short in substance and does not provide adequate details to allow UnitedHealth Group and the public at large to understand how MaineHealth actually plans to use the requested data. For example, MaineHealth indicates that MHDO data may be used to identify opportunities to improve quality and safety of services provided and to make the services provided less costly, but it's unclear how Level II medical and pharmacy claims data and eligibility data (which includes individual identifiers such as date of birth/death/service and geographic information), would actually support these efforts. Without more substantive details, it is unclear whether the data can be used for these efforts, or whether 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, MaineHealth's described uses should not require release of payer

identifiers, competitor provider identifiers or individual/patient identifiers; MaineHealth's analysis should be as effective without such identifiers included in any data release from MHDO.

Furthermore, we are concerned that MaineHealth'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 by MaineHealth. The uses outlined by MaineHealth, while lacking in detail, on their face appear to have the potential to reflect actions that may result in anticompetitive effects. For example, MaineHealth intends to use MHDO data to "identify opportunities to make the services provided less costly" and use the data in the reporting of market share data with affiliates. 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. For these reasons outlined here, MHDO's decision on this request should be delayed until sufficient information is publically available to allow a full assessment of the request and issues identified above.

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, MaineHealth appears to be requesting data that includes not only payer identifiable financial information, but also financial information of its competitor provider systems for calendar years 2018 through 2022. We read this to mean that if this data release is approved by MHDO in its current state, MaineHealth will continue to receive current payer and competitor financial information for the current year and through 2022; a near active feed of current financial information for the next four years. This type of unaged and free flowing feed of competitor financial information is certainly the type of information that the DOJ/FTC identified as having the potential to facilitate anticompetitive behaviors. If MHDO intends to disclose payer's identifiable cost data at the payer level with the payers' identifiers to MaineHealth, we strongly object to such disclosure and we recommend certain modifications to any data release approved by MHDO because MaineHealth'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.

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 any disclosure by MHDO 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 MaineHealth'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. Restricting public disclosure of payer identifiers 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 MaineHealth ME Data Request Number 2018062601. 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", written in a cursive style.

Katarina Horyn
Associate General Counsel