



December 31, 2014

Patrick Hultman
Minnesota Department of Human Services
Health Care Administration
PO Box 64984
Saint Paul, MN 55164-0984

Dear Mr. Hultman,

On behalf of Citizens' Council for Health Freedom (CCH Freedom), I am responding to the Minnesota Department of Human Services' Request for Information (RFI) on the treatment of data when private parties contract with a government entity for health related services. This RFI was requested to comply with a law enacted last session, a law that also requires transparency from health plans contracting with Minnesota state health programs.

First of all, DHS announced the RFI on December 15, 2014 in the Federal Register, asking for comments over a very congested holiday time, and far too late to meet the December 21, 2014 statutory deadline for getting the report to the Minnesota State Legislature. I certainly hope this was not an attempt to limit transparency of the request, to limit the number of responses DHS receives from the general taxpaying public (and impacted patients and doctors), or to limit the ability of concerned state legislators to be fully informed before session begins on January 6, 2015. Yet that is the most likely outcome.

As your RFI declares, I expect to see this letter included in the report given to the key chairs and ranking committee members of the Minnesota State Legislature.

OVERARCHING STATEMENT OF SUPPORT FOR TRANSPARENCY:

CCH Freedom supports rigorous data transparency requirements for managed care health plans that receive taxpayer dollars, as required by the MN Government Data Practices Act, specifically Subdivision 11 of Chapter 13.05, and which are specifically required by the state legislature beginning on June 30, 2015. It is essential that state government has access to data validating proper use or revealing improper use of millions of dollars in taxpayer funds. There must be no repeal of the June 30, 2015 deadline requirement for data transparency by health plans.

Our responses to the 4 questions in the RFI are as follows:

Question 1 RE: transparency's impact on competition, negotiated prices and health care expenditures: The dollars received by health plans as pre-payment for health care services

are taxpayer dollars. In 2013, an independent auditor hired by your agency reported excessive profits, lack of critical review of health plans' administrative expenses and noted the lack of connection between the health plans' self-reported costs and reported patient encounter (clinical) data. Thus, no one outside of the health plans has any idea how many of the taxpayer dollars are actually being used for patient care, or how restrictive the reimbursements to physicians are in "negotiated" contracts. In our report on MinnesotaCare more than a decade ago, we learned that increased statutory reimbursement rates to health plans from the legislature were not actually required to transition into higher reimbursements for doctors and hospitals ("Distribution, Utilization, and Impact of the MinnesotaCare Provider Tax," CCHC (now CCHF), January 2000).

Question 2 RE: transparency's impact on government programs, purchasers of health insurance and patients (health care recipients/consumers): The pricing of most consumer products is highly transparent, creating a competitive market and lower prices. As proof, watch customers at any store using their phones to check out online product prices or prices at other stores for the product they wish to buy. Consider the cost of cash-only Lasix eye surgery. Watch people choose one gas station over the other. Any attempt to claim that adding transparency will cause prices to rise is a scare tactic. Health plans have profited from years of non-transparent contracts, doubling their "target operating margin" according to the independent auditor. It is time for taxpayers to see what they are actually paying for so they can make a determination as to whether the health plan's use is a misuse of taxpayer funds or a good use of the taxpayer's hard-earned dollars.

There may indeed be better, more transparent, more efficient, more patient-friendly, and less costly ways to run state government health care programs. Oklahoma, for instance, discovered they could save significantly by ending their contracts with health plans. In a 2009 report on the state SoonerCare program, the following was revealed:

"With sufficient resources and leadership commitment, state Medicaid agencies can manage care at lower costs than MCOs and with similar outcomes."

In addition, patient access to medical and dental care under state government programs has been damaged by poor reimbursements and excessive paperwork. More and more physicians are choosing not to care for patients in state programs run by managed care health plans at the same time that an independent auditor reports health plans are greatly exceeding expected profit margins. Access to patient care and the use of more of each taxpayer dollar for actual hands-on patient care will be improved by transparency of health plans expenditures, including administrative expenditures.

Question 3 RE: the transparent effect of complying with data requests on existing administrative resources for both public and private entities: Health plans demand extraordinary administrative reporting from hospitals and clinics before they ever

reimburse physicians and others for care, and when they refuse to reimburse or they refuse to authorize treatment, they require complex documentation or appeals processes.

Meanwhile the state's independent auditor says, "There did not seem to be any critical or diligent review of the administrative components going into the base rates" that the health plans are paid using state taxpayer funds. Thus, it appears the plans may be claiming excessive administrative expenses for profit purposes, something transparency should be able to correct. And like other government contractors, health plans under government contracts should expect and be required to answer data requests, including requests for direct evidence of proper use of taxpayer dollars. Furthermore, the plans have consistently overshot their targets for operating margin (profit), an amount the independent auditor found concerning.

Question 4 RE: transparency's impact on potential liability to government or private entities for releasing data subsequently found to be a trade secret: Government has many contractors, all under the same MN Government Data Practices Act, Chapter 13. As a contractor, receiving millions of taxpayer dollars, the health plans represent that they have proficiency in business operations, including proper accounting for use of dollars received and spent, as well as the ability to follow the law. Furthermore, they are expected to follow contractual obligations, of which transparency should be a priority in state government contracts. If they are unable to follow the law or unwilling to be transparent with the use of taxpayer dollars, health plans should not be in the business of government contracting. Health plans are not the first or only state government contractors. **Claims of "trade secret" should not be allowed to become shields against transparency requirements.** If so, Minnesota's health plans need to find another venue for their business – outside of the government. Millions of taxpayer dollars are at stake, and transparency is the only way the Minnesota taxpayer can find out where their dollars are going and the only way they can be protected from misuse of millions of taxpayer dollars by health plans.

A REMINDER: Minnesota health plans have been under investigation by the U.S. Congress and the federal government for potential misuse of taxpayer dollars. Complying with the transparency requirement under the MN Government Data Practices Act, as well as requiring such transparency in every state contract with a health plan, should be viewed as a priority. There must be no repeal of the June 30, 2015 transparency requirement.

Sincerely,

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