The Green Mountain Care Board (GMCB) requested documents and posed questions to OneCare Vermont Accountable Care Organization, LLC ("OneCare"), about its planned transition of its data and analytics functions to the University of Vermont Health Network's Data Management Office ("DMO").[1] OneCare has already delivered documents[2] and is answering the GMCB's questions in a separate document. OneCare also submits additional information to provide a more comprehensive explanation about: (1) the core importance of actionable data analytics for all ACOs; (2) how OneCare's decision to contract with UVMHN and transition data and analytics functions to its DMO helps OneCare meet the State of Vermont's Charge for Improvement; and (3) why the transition of data and analytic functions to the DMO does not raise state or federal anti-trust concerns.

I. Data and Analytics Are a Fundamental Strategic Element for All ACOs and Particularly OneCare Whose Diverse Network Otherwise Lacks a Common Data Structure

OneCare is an organized network of unrelated health care providers working together to improve health outcomes and reduce health care spending for Vermonters.[3]

OneCare's charge as a certified ACO under the All Payer Model is the inclusion of as many providers as possible. This is unlike the majority of ACOs, which are often health system focused and selective about the providers included in their networks. For OneCare's network, there is no common electronic medical record or information system. Instead, OneCare is the source for combining information across the network of providers and presenting it in an organized, meaningful, and actionable way. This allows providers to use information to deliver and evaluate the care they give Vermonters. When this synthesis of information is done at the ACO level through a combination of data analytics software and data management services, it has the advantages that the Vermont Agency of Human Services (AHS) noted in its improvement evaluation for the All Payer Model of:

> efficiencies from shared data and information infrastructure and opportunities for coordination across provider types and settings. A unified network of providers also presents an opportunity to more quickly advance systemwide goals such as improving health equity or reducing deaths due to suicide or drug overdose.[4]

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[1] The DMO is a shared service that maintains a single analytics team, data analytics platform, and data analytics tools and is designed to meet both UVMHN's and OneCare's data analytics needs while maximizing efficiencies and economies of scale and reducing waste and duplication in technology, personnel, and other costs required to perform these functions. The Service Order, and all associated policies, firewalls, and other safeguards described more fully in Section III hereto, keeps UVMHN's data (which the DMO shares with UVMHN's Population Health Services Organization) and OneCare's data separate and makes possible this shared service. UVMHN's DMO will also provide population health and value based care services, including data analytics, to UVMHN and its affiliates for their attributed patient populations.

[2] Those documents demonstrate the full HIPAA compliant structure for the arrangement. As the questions did not address privacy, OneCare is not providing supplemental information on this topic.

[3] *See* https://www.onecarevt.org/about

[4] *See* https://gmcboard.vermont.gov/sites/gmcb/files/documents/APM%20Implementation%20Improvement%20Plan%20Final%2011.19.20.pdf, at p. 19.

In the absence of data to inform decision making across the network, the coordination expected from the All Payer Model cannot be delivered. The All Payer Model is testing the results on population health and costs of implementing a system where the majority of payers and health care providers participate in aligned, risk-based models that involve services for a majority of Vermonters.[5] High quality, combined and analyzed data is a critical tool to succeed in the model for coordinating efforts.

OneCare's data analytics needs include: software and tools to protect, store, and organize claims data; and for staffing resources to analyze data and provide reporting that can help providers assess current care delivery patterns, measure quality, and identify opportunities to maintain or improve care. Collectively these resources (tools, software, staff), when organized through an ACO arrangement, cost less than they would if each provider organization sought to install them independently.

Providing actionable data and reporting supports provider led advancements in care delivery transformation and payment reform – goals that both providers and the State agree upon under the APM agreement. As CMS recognized when making claims data more accessible to ACOs, health care providers are able to obtain a fuller picture of patients' care delivery, outside of the information in their electronic health records. For example, under ACO arrangements providers are accountable for total cost of care, which includes services provided outside their organization. It is therefore important for providers to understand how care is delivered and managed. Thus, if a patient visits three different emergency departments five times in a three-month window, the provider could be alerted to this utilization pattern. The alert allows the care provider to determine clinical appropriateness and outreach to the individual in an attempt to reengage them with primary care and/or other community supports (such as housing, food, care coordination). It also allows providers to more effectively manage their patient populations, identify high risk individuals, monitor appropriate utilization of services (reducing waste and improving preventive care), close care gaps, and track their financial accountability. The goal of providing data and tools is to help practicing providers better understand their attributed populations in hopes that they can meet the aims of an ACO: 1) improve experience, 2) demonstrate high value, and 3) reduce total cost of care.

II. OneCare's Data and Analytics Arrangements Meet Vermont's Health Care Reform Goals and State Directives.

The State itself directed OneCare to elevate its data and analytics. On November 19, 2020, the Vermont Agency of Human Resources ("AHS") issued an Implementation Improvement Plan that provided several recommendations relating to OneCare.[6] Among these recommendations, the Board indicated that "OneCare Vermont should elevate data as a value-added product for its participants. . . . The ACO should focus on improving the data available to providers."[7] At that time, OneCare was aware of desires from network participants to improve data such as reporting not being action oriented, data being too complicated and too much data. OneCare was tasked by AHS to make these improvements in the 2020-2022 period.

[5] *See* All Payer Model Agreement,p. 1

[6] *See* https://gmcboard.vermont.gov/sites/gmcb/files/documents/APM%20Implementation%20Improvement%20Plan%20Final%2011.19.20.pdf.

[7] *Id*. at 15.

As a response to this recommendation, and the desires expressed by the network to elevate data, OneCare undertook a process to identify vendors that could fulfill these data and analytic recommendations.

This process began with OneCare undergoing a strategic planning process using an independent consultant. The planning included interviews with key stakeholders to identify and present common themes, including feedback about the data analytics program. Among the stakeholders were Don George, CEO of BCBSVT; Kevin Mullin and staff from the Green Mountain Care Board; Secretary Mike Smith, Ena Backus and Commissioner Corey Gustafson from the Vermont Agency of Human Services; health care association leaders; and OneCare's Board Managers (many of whom represent a particular constituency of health care providers such as home health agencies). [8]

Ultimately, these efforts culminated in a Strategic Plan that was approved by the OneCare Board of Managers at their May 2021 meeting.[9] A core capability for OneCare and key element in the strategic plan is elevating data and analytics capabilities to support OneCare's network of health care providers. More specifically, the Strategic Plan charged management with exploring collaborative opportunities with Members for data tools and analytics and making recommendations to the Board about those opportunities as well as other options for the services.[10, 11]

This exploration included participation in UVMHN's RFP for an external data and analytics vendor in the winter of 2021. OneCare's management participated in developing the RFP to ensure the organization's needs were represented and then evaluated its specific needs amongst the two responding bidders. It became apparent that the arrangement with the UVMHN DMO for staffing and its vendor Arcadia was the preferred choice for its data and analytics quality, pricing and security. OneCare's Board ultimately decided to transition its data analytics functions to UVMHN, utilizing its DMO, which provides similar services to UVMHN through UVMHN's PHSO. OneCare entered into the Data & Analytics Service Order with the University of Vermont Health Network for that purpose.[12, 13]

This arrangement with the DMO is reflected in various contractual documents that are referenced in detail later in this document, but the basic framework is as follows: The DMO provides dedicated staff to work on OneCare matters. Certain staff members are data architects - they receive data from payers and ensure that it is complete and follows the data structure needed to deliver the data to the firewalled OneCare data warehouse from which it is transferred to the software vendor. These data architects also work with the software vendor on technical issues and integrate new data elements or structures to the warehouse. At times they might also support the work of the analysts. These dedicated analysts design the structure,

[8] A full list is available in the strategic plan. https://www.onecarevt.org/wp-content/uploads/2021/06/2021-05-01-Strategic-Planning-Summary-Set-D17.pdf.

[9] . A summary of this plan is available on OneCare's website: https://www.onecarevt.org/wp-content/uploads/2021/06/2021-05-01-Strategic-Planning-Summary-Set-D17.pdf. The strategic plan was also shared with the GMCB through its Chair, Executive Director and AHS.

[10] *Id.*, at 13.

[11] Then, University of Vermont Medical Center.

[12] OneCare's Board approved management's recommendation to use the PHSO for data management and analytics at its April 2022 meeting.

[13] Ex. B-7, REDACTEDONECARE000069-REDACTEDONECARE000089; Ex. A-1, ONECARE000001- ONECARE000010.

content, and layout of standard reports using Arcadia configurations as a base. The analysts also work on "drill down" reports, such as when a provider asks for more information about utilization of emergency department services that may have been reflected as high on a standard report. Analysts also prepare reports for Health Service Area (HSA) consultations; a recent example is health disparities reporting by HSA. They might also respond to internal data inquires, like writing programs to extract quality data for reporting or organizing network roster and performance information to support supplemental payments to the network.

This arrangement with the DMO is advantageous to OneCare, its participating providers, and their patients in several ways:

- Cost savings
  - Arcadia is less expensive pmpm than the current arrangement due to larger group pricing;
  - Administrative overhead savings by utilizing DMO staff assignments and overhead;[14]
  - Arcadia offers a comprehensive service that allows OneCare to cancel several software contracts and achieve savings; and
  - Fewer staff may be needed.

- Better Data
  - The Arcadia product is well suited for ACO functions and does not require a lot of customization;
  - Data is more actionable and less "noisy" for providers – avoids data fatigue; and
  - Data reports will be automated and have linkages (with appropriate security in place) to directly link providers to patient lists that can be "worked" to close care gaps.

- High Quality Data Security
  - Arcadia is NIST compliant; and
  - Arcadia and PHSO are HIPAA and HiTech compliant.

III. The Arrangement is Carefully Structured to Ensure Antitrust Compliance.

Given the nature of the information the DMO receives and the extensive protections both OneCare and UVMHN have put in place to protect competitively sensitive information (CSI), OneCare's transition of data and analytics functions to the DMO does not raise state or federal antitrust concerns. Antitrust concerns with access to CSI can arise if they facilitate collusion (i.e., price-fixing) among competitors or can be used by a firm to give itself an unfair competitive advantage (e.g., using improper access to CSI to

[14] This collaboration to achieve cost savings is similar to OneCare's efforts in other areas such as personnel services generally which are provided under a Service Order. This allows OneCare to avoid duplicative costs of employee infrastructure for human resources, payroll, etc. Instead, OneCare is provided employees paying their salaries and benefits while avoiding the overhead.

learn competitors' plans or strategies and adjusting one's own conduct). None of these concerns exist under the framework here.

A. Most of the Information Exchanged at Issue Does Not Raise Antitrust Concerns.

As an initial matter, much of the information that the DMO will receive through OneCare does not increase the risk of anticompetitive conduct because UVMHN already has independent access or that information is publicly available.[15] For example, UVMHN already has claims information for its providers. Pricing transparency laws in Vermont also require each of Vermont's hospitals to provide pricing information to the public.[16]

Even among the data the DMO will receive that is not already publicly or otherwise available to UVMHN, much of what will be disclosed is not competitively sensitive. Many of the data files that will be provided to the DMO on behalf of OneCare participants (including a membership file, member span file, member count by attributing TIN file, member disenrollment file, aggregated substance abuse file, fixed prospective program aggregated substance abuse file, and a member opt-out file) are largely comprised of health plan or demographic membership information. Such information may be protected health information, and will require protection as such, but is likely not competitively sensitive because it does not reveal reimbursement rates, referral sources, and other information that could affect competitive decision-making.[17]

B. UVMHN Has Put in Place Appropriate Protections for Information that Is Competitively Sensitive.

It is true that the DMO will also receive certain data from OneCare's participants that is competitively sensitive. However, UVMHN has adopted extensive protections to ensure this data is handled appropriately. It is not shared among competing payers, competing providers, or inappropriately within

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[15] *See, e.g.*, *Todd v. Exxon Corp.*, 275 F.3d 191, 213 (2d Cir. 2001) (Sotomayor, J.) ("Another important factor to consider in evaluating an information exchange is whether the data are made publicly available. . . . A court is [] more likely to approve a data exchange where the information is made public."); Competitive Impact Statement at 14-15, *U.S. v. Geisinger Health and Evangelical Community Hospital* (March 3, 2020) Case 4:20-cv-01383-MWB, available at: https://www.justice.gov/atr/case-document/file/1381971/download (explaining the final judgment would prohibit the sharing of non-public information).

[16] *See* https://auditor.vermont.gov/content/hospital-price-transparency-pages.

[17] *See, e.g.*, ANTITRUST GUIDELINES FOR COLLABORATIONS AMONG COMPETITORS, Federal Trade Commission and the U.S. Department of Justice, April 2000 at 15 ("Other things being equal, the sharing of information relating to price, output, costs, or strategic planning is more likely to raise competitive concern than the sharing of information relating to less competitively sensitive variables."); Complaint at 6, *U.S. v. UnitedHealth Group and Change Healthcare* (February 24, 2022), Case 1:22-cv-00481, available at: https://www.justice.gov/opa/press-release/file/1476676/download ("Change has access to claims data and health insurers' proprietary plan and payment rules. Health insurers consider this information to be competitively sensitive. This data is especially valuable because it can be used to understand how an insurer designs its plans for particular employers, and glean insights into the plans' payment and operational rules.").

UVMHN itself. These processes are enumerated in UVMHN's CSI Policy and other applicable policies, procedures, and guidelines protecting CSI.

Under the Data & Analytics Service Order, the DMO will assume data and analytic responsibilities of OneCare.[18] In recognition of its responsibility to protect CSI, UVMHN has adopted a CSI policy titled "Safeguarding Competitive Sensitive Information" (the "UVMHN CSI Policy"). The UVMHN CSI Policy applies to employees who work in UVMHN's PHSO and DMO (as well as all personnel responsible for oversight and compliance with the UVMHN CSI Policy).[19] This policy became effective on January 1, 2023.[20] UVMHN established the policy to safeguard CSI provided to UVMHN as part of the data and analytics services it performs on behalf of OneCare in a manner compliant with federal and state antitrust and trade regulation laws.[21] UVMHN's CSI policy supplements OneCare's existing data use policy, and other applicable policies, procedures and guidelines protecting CSI.[22]

The UVMHN CSI Policy explains that UVMHN's DMO will receive data including membership information, biographic information, and payer claims data from OneCare's participants, including hospitals and providers not affiliated with UVMHN, for Medicare, Medicaid, and commercial payers.[23] Some of this data, especially third-party claims data, will contain elements that are competitively sensitive. For example, OneCare participants will authorize the provision of data sets for medical claims, fixed prospective program medical claims, and pharmacy claims that will specify diagnoses, copayment amounts, coinsurance amounts, and other specific claims details. Pursuant to the UVMHN CSI Policy, select members of the UVMHN DMO workforce will be designated as the sole recipients of third-party claims data to perform the data and analytics services for OneCare.[24] These designated personnel will be required to sign and comply with the terms and conditions of a Non-Disclosure Agreement ("NDA") stating that they shall not use CSI for any purpose other than performing data and analytics services for OneCare and shall not disclose CSI to anyone not authorized to receive it.[25] Any UVMHN employee that inappropriately accesses, uses, or discloses CSI is subject to corrective action up to and including termination of employment.[26]

To prevent improper disclosure of CSI among competing payers, providers, or within UVMHN itself, the UVMHN CSI Policy requires the PHSO and DMO to adopt, implement, and enforce data firewalls.[27] These firewalls include both technical and physical safeguards.[28] The technical safeguards are intended to prevent unauthorized access to CSI and include "[r]ole-based access controls, [c]ontrol and management of user IDs, [m]onitoring systems for unauthorized access, and [o]ther necessary technical controls to

[18] *Id*.
[19] Ex. C-1, ONECARE000092-ONECARE000094.
[20] *Id*. at -092.
[21] *Id*.
[22] Ex. C-4, ONECARE000104-ONECARE000111.
[23] Ex. C-1, at -092.
[24] *Id*. at -093.
[25] *Id*.
[26] *Id*.
[27] *Id*.
[28] *Id*.

accomplish segregation of duties, businesses and roles."[29] The physical safeguards are also intended to prevent unauthorized access to CSI and include physically separating personnel authorized to work with CSI from other members of UVMHN's workforce who should not obtain access to the CSI in the data from OneCare.[30] Additionally, all personnel working with CSI are required by the UVMHN CSI Policy to complete mandatory CSI policy training prior to being granted access to CSI. Refresher trainings will occur annually (as well as any necessary supplemental trainings).[31] The UVMHN CSI Policy further directs UVMHN's Director of Population Health Analytics to coordinate with the Legal, HR, and IT departments to ensure that as employees turn over and change roles the information firewalls required by the policy remain robust.[32] For example, new employees authorized to access CSI must also receive CSI training and execute an NDA prior to gaining actual access to CSI.[33] Finally, UVMHN's Internal Audit Department will conduct periodic audits and tests of the safeguards described in the UVMHN CSI Policy to ensure compliance with the policy and OneCare will have access to those as part of its oversight of the Services Order.[34]

UVMHN's CSI Policy thus takes every precaution to protect CSI consistent with guidance from the federal antitrust agencies.[35] With these protections in place, OneCare and UVMHN can work toward delivering on the procompetitive benefits of Green Mountain Care Board's data and analytics recommendations without risking anticompetitive effects.[36]

IV. Conclusion

OneCare has diligently evaluated and met its contractual and regulatory obligations with respect to its data and analytics function, including the services of the UVMHN DMO. The arrangement is beneficial to OneCare and its network and is compliant with all obligations to protect competitively sensitive information.

[29] *Id*.
[30] *Id*.
[31] *Id*.
[32] *Id*.
[33] *Id*.
[34] *Id*.
[35] *See, e.g.*, ANTITRUST GUIDELINES FOR COLLABORATIONS AMONG COMPETITORS at 21 ("For example, participants might … limit access to competitively sensitive information regarding their respective operations to only certain individuals. … In general, it is less likely that the collaboration will facilitate collusion on competitively sensitive variables if appropriate safeguards governing information sharing are in place.").
[36] *See, Id.* at 15 ("The Agencies recognize that the sharing of information among competitors may be procompetitive and is often reasonably necessary to achieve the procompetitive benefits of certain collaborations.").