



To: Melissa Miles, Green Mountain Care Board
From: Linda Cohen, Counsel, OneCare Vermont
Date: July 31, 2019
Subject: Public Records Exemptions, OneCare Vermont Comprehensive Payment Reform Interim Report

Dear Ms. Miles:

Enclosed in addition to this report, please find a redacted version that reflects OneCare's claims for exemption from public disclosure of the matters reported to the Board.

(1) Financial Information

The report contains financial information about OneCare, that is, the payment amounts to participating partial CPR providers. Similar information, audit reports, cash flow analysis, account reconciliations, reports on productivity, were withheld from production in *Mount Mansfield Television, Inc. v. Babock*, 1990 WL 105232678 (Vt. Super., No. S. 1418-89, April 5, 1990) (also finding the information was trade secret).

(2) Trade Secrets

This report contains proprietary pricing and program design elements that have been developed over several years by OneCare's analysts and finance staff and that has been kept confidential within OneCare. The figures are derived from data that includes claims data from payers (Medicare, Medicaid, Blue Cross and self-funded plan) that OneCare receives pursuant to contracts with the payers. Additionally, the program design is the intellectual property of OneCare exclusively built and maintained for the furtherance of its business and maintained confidential within its organization and network of providers all of whom are bound by confidentiality obligations.

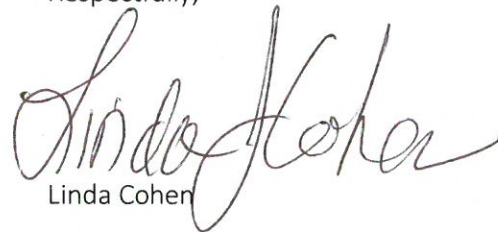
The CPR program reported on has been defined and produced by OneCare's staff, by combining data sources that are available, making inquiries and modifying results. The program and report include many decisions about how to organize a primary care capitation program in ways that will meaningfully allow OneCare and its network to move forward in the core business function of population health management. No other organization pays in this manner or according to this design which was developed through OneCare's analytics team's professional intellectual expertise. Given the structure and competitive advantages that have been achieved by OneCare with these efforts, it is a concern that the work and processes would be reverse engineered to the competitive detriment of OneCare.

Were this information that OneCare generally protects to become public, it would be to OneCare's commercial disadvantage. Either other ACOs or payers would gain access to the capitation amounts and process of developing those amount and measuring their impact which could be used to OneCare's disadvantage either in negotiating program agreements with the payers; or by other ACOs (or payers) to take known processes and use them to compete.

The information falls within the sphere of what has been protected by courts. *See, e.g. Food Marketing Inst. V. Argus Leader Media*, 139 S.Ct. 2356 (2019) (protecting SNAP redemption data from grocery retailers, voluntary production to the government notwithstanding); *People for the Ethical Treatment of Animals v. U.S. Dep't of Health and Human Serv.*, 901 F.3d 343 (DC Cir. 2018) (protecting shipment information); *Planned Parenthood of the Great Northwest v. Azar*, 352 F. Supp.3d 1057 (W.D. WA 2018) (protecting grant application that contained proprietary information regarding pricing); *Long v. City of Burlington*, 199 A.2d 542 (D. Vt. 2018) (protecting market feasibility study); *Springfield Ry. Co. v. Agency of Transp.*, 816 A.2d 448 (Vt. 2002) (protecting balance sheets, cash flow statements, revenue histories, supervision information, plans for proposed service . . .); *Mount Mansfield Television, Inc. v. Babcock, supra* (protecting actuarial reports from Blue Cross, cash flow analysis, productivity reports, reconciliations of accounts).

Thank you for your consideration of these requests. Should the Board disagree in any manner, we ask that OneCare be given the opportunity to retract this information.

Respectfully,

A handwritten signature in cursive script, reading "Linda Cohen". The signature is written in dark ink and is positioned above the printed name "Linda Cohen".

Linda Cohen