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D. Michael Frink
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October 17, 2005

Via Electronic Mail and Regular Mail

Alessandro A. Iuppa, Superintendent
Attn: Vanessa J. Leon, Docket No. INS-05-700
Bureau of Insurance
Maine Dept. of Professional & Financial Regulation
34 State House Station
Augusta, ME 04333-0034

RE: **In Re: Review of Aggregate Measurable Cost Savings Determined by Dirigo Health for the First Assessment Year**
Docket No. INS-05-700

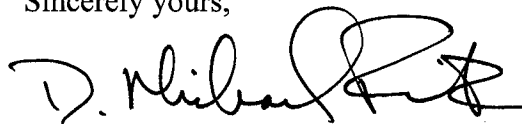
Dear Superintendent Iuppa:

Enclosed please find two (2) copies of the following documents:

1. Filing Cover Sheet
2. Responses of Maine Association of Health Plans to Information Requests of Dirigo Health Agency

Thank you.

Sincerely yours,



D. Michael Frink

DMF/lc
Enclosure

Cc: John Kelly (w/enc)
Thomas C. Sturtevant, Jr., Esq. (w/enc)
William H. Laubenstein, III, Esq. (w/enc)
Christopher T. Roach, Esq. (w/enc)

Alessandro A. Iuppa, Superintendent
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Rufus E. Brown, Esq. (w/enc)
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STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE

IN RE: REVIEW OF AGGREGATE)
MEASURABLE COST SAVINGS)
DETERMINED BY DIRIGO HEALTH)
FOR THE FIRST ASSESSMENT YEAR))
Docket No. INS-05-700)

FILING COVER SHEET

TO: Alessandro A. Iuppa, Superintendent
ATTN: Vanessa J. Leon

Submitted by: D. Michael Frink

Date Filed: October 17, 2005

Party: Maine Association of Health Plans

Document: Responses of Maine Association of Health Plans to Information
Requests of Dirigo Health Agency

Document Type: Discovery

Confidential: No

Dated: October 17, 2005

Respectfully submitted,



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STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE

IN RE: REVIEW OF AGGREGATE)
MEASURABLE COST SAVINGS)
DETERMINED BY DIRIGO HEALTH)
FOR THE FIRST ASSESSMENT YEAR))
Docket No. INS-05-700)

**RESPONSES OF MAINE ASSOCIATION
OF HEALTH PLANS TO INFORMATION
REQUESTS OF DIRIGO HEALTH
AGENCY**

The Maine Association of Health Plans (“MEAHP”) responds to the Information Requests propounded by Dirigo Health Agency, as follows:

1. Please identify by name, address and business or professional affiliation every person or entity involved in the Plans’ development of questions set forth in its Informational Request to the Board dated October 7, 2005.

RESPONSE:

Katherine D. Pelletreau, Executive Director, Maine Association of Health Plans, 250 Greeley Road, Cumberland, Maine 04021; Robert K. Downs, Director, Maine Operations and Development, Harvard Pilgrim Health Care, 48 Free Street, Portland, ME 04101; William J. Graham, Manager, Public Policy, Harvard Pilgrim Health Care, 93 Worcester Street, Wellesley, Massachusetts 02481; John F. Sheils, Vice President, Lewin Group, 3130 Fairview Park Drive, Suite 800, Falls Church, Virginia 22042; David Mannis, External Affairs, CIGNA HealthCare, Inc., 140 45th Street, 38th Floor, New York, New York 10017; Jeff Beck, Head of State Governmental Relations, Aetna, Inc., 980 Jolly Road, Blue Bell, Pennsylvania 19422.

2. Please identify, if not done so in response to Request No. 1, by name, address and business or professional affiliation every consultant or expert retained by the Plans with regard to the present proceeding.

RESPONSE:

The MEAHP and the Maine State Chamber of Commerce jointly retained The Lewin Group, 3130 Fairview Park Drive, Suite 800, Falls Church, Virginia 22042 as a consulting firm to provide an independent assessment of the estimates and methodology used by the Dirigo

Health Agency to calculate aggregate measurable cost savings, and to serve as an expert and provide testimony in connection with this adjudicatory hearing. John F. Sheils is the director of this project for the Lewin Group..

3. For each person or entity identified in response to Request No. 2, please provide a copy of the contract or other agreement pursuant to which services were retained.

RESPONSE:

A copy of the contract for services to be provided by The Lewin Group is attached to this response.

4. For each person or entity identified in response to Request No. 2, please state the rate of compensation and how much has been paid to date to each person.

RESPONSE:

The Lewin Group charged a flat fee of \$94,149, including all labor, materials and travel costs, for this engagement, which was contemplated to be completed over a period of approximately eight to twelve weeks. One half was paid prior to beginning work and the balance will be paid upon completion. The Maine State Chamber of Commerce and the MEAHP agreed to split the costs equally between the two organizations with one half being paid prior to beginning work and the balance due upon completion. Accordingly, the MEAHP has paid \$25,000 to date.

5. Please provide a copy of all reports prepared for this proceeding or related to the determination of aggregate measurable cost savings by each person identified in response to Request No. 2, whether or not such reports are to be introduced into evidence in this proceeding.

RESPONSE:

OBJECTION:

The Dirigo Board has requested voluminous reports, workpapers and other materials prepared by The Lewin Group. The Maine State Chamber of Commerce is the intervenor working directly with The Lewin Group in preparing pre-filed testimony and any other reports prepared by The Lewin Group should be obtained through the Maine State Chamber Of Commerce. Requiring the MAHP to do so would be duplicative and unduly burdensome.

Without waiving this objection, the MEAHP is in possession of the following documents produced by The Lewin Group, copies of which are attached to his response:

- a. Undated suggested questions developed by Lewin for SOP Working Group members to pose to Mercer;

- b. Powerpoint draft and final presentations to DHA Board;
- c. Letter dated October 3, 2005 to Kristine M. Ossenfort, Senior Governmental Affairs Specialist for the Maine State Chamber of Commerce outlining suggested discovery questions;
- d. Letter dated October 4, 2005, also addressed to Kristine M. Ossenfort, offering a critique of the Mercer Report;
- e. Letter dated October 5, 2005, also addressed to Kristine M. Ossenfort.

6. If the Plans intend to present an alternative methodology to the methodology adopted by the Board, please describe the alternative methodology in detail.

RESPONSE:

The Plans do not intend to present an alternative methodology to that adopted by the Board, but will offer testimony and legal argument demonstrating numerous fundamental flaws in the Board's methodology to show that this methodology and nearly all of the alleged savings contained in the Board's filing are not reasonable and should be rejected by the Superintendent.

The so-called payor caucus alternative proposal, contained at pages 2 to 4 of the August 29, 2005 Report, contained at tab # 4 of the Board's September 19, 2005 filing with the Superintendent, was offered to the Board as a possible basis for compromise when even Mercer Governmental Human Resource Consulting, the actuarial firm hired by the Dirigo Health Agency to assist in the development of a proposed methodology, indicated that it was difficult or impossible to develop a methodology that could attribute savings to the Health reform initiatives. Given the Board's rejection of the alternative methodology proposed by the payor caucus, and the scope of the hearing now before the Superintendent, the Plans will not be presenting the above-referenced payor caucus alternative methodology, other than as a means of highlighting flaws in the methodology proposed by the Dirigo Board

7. If your response to Request No. 6 was "yes", please provide all data, calculations, information, work papers, documents and other materials of whatever kind and nature related to the methodology and your determination of aggregate measurable cost savings.

RESPONSE:

Not applicable given the response to request number 6 above.

8. With regard to your response to Request No. 7, please identify the sources of all data used.

RESPONSE:

Not applicable.

9. If not already provided in response to Request No. 6 or question No. 5, please provide a copy of all reports prepared or related to the alternative methodology, whether or not such reports are to be introduced into evidence in this proceeding.

RESPONSE:

OBJECTION:

The information requested is irrelevant to this proceeding as the Plans will not be presenting an alternative methodology for calculating aggregate measurable cost savings.

10. If the Plans contend that there have been increased costs in the health care system as a result of the operation of Dirigo Health, please:

- a. Identify each cost;
- b. State the amount of each cost identified;
- c. State how each cost identified is the result of the operation of Dirigo Health;
- d. Provide all data, calculations, information, work papers, documents and other materials of whatever kind and nature used in developing each cost identified.

RESPONSE:

OBJECTION:

The Board has the burden of proving that its methodology and calculation of measurable cost savings is reasonable and supported by the evidence in the record. The Plans do not have the burden of proving that there have been increased costs in the health care system as a result of the operation of Dirigo Health. The requested information is therefore irrelevant to this proceeding.

Without waiving this objection, the Plans and the Chamber may present testimony from The Lewin Group that shows that utilization of health services would, on average, increase for newly insured people, such as those that have enrolled in DirigoChoice.

The Plans have not independently studied or identified the extent of any such increased costs, but will present testimony and legal argument that any methodology that fails to account for such increased costs is fundamentally flawed.

- a. See above.
- b. See above.
- c. See above.
- d. See above.

11. If the Plans contend that there are savings in the health care system not the result of the operation of Dirigo Health, please:

- a. Identify each savings;
- b. State the amount of each saving identified;
- c. State how each savings identified was achieved; and
- d. Provide all data, calculations, information, work papers, documents and other materials of whatever kind and nature used in developing each savings identified.

RESPONSE:

OBJECTION:

The Board has the burden of proving that its methodology and calculation of measurable cost savings is reasonable and supported by the evidence in the record. The Plans do not have the burden of proving that there have been savings in the health care system not the result of Dirigo Health. The requested information is therefore irrelevant to this proceeding.

Without waiving this objection, the Plans expect that The Lewin Group will offer testimony that hospital cost growth nationwide slowed after 2002, giving the appearance of “savings” in Maine for Dirigo under the Board’s methodology. Similarly, The Lewin Group will offer testimony that the Board’s methodology should not but did show Dirigo-related savings in New Hampshire in 2003.

The plans have not independently studied or identified the extent of such savings not the result of Dirigo health, but will present testimony and legal argument that any methodology that fails to account for such non-Dirigo-related savings is fundamentally flawed.

- a. See above.
- b. See above.
- c. See above.

d. See above.

12. If the Plans contend that netting the amounts of cost avoided by hospitals that met Dirigo voluntary targets against the amounts of cost above target for hospitals that did not meet the voluntary targets, please describe how this addresses the objection that the Dirigo methodology will not capture the valid effort to respond to Dirigo targets by those hospitals that reduced their cost.

RESPONSE:

OBJECTION:

This request calls for a legal conclusion in the form of an interpretation of the requirements of the Dirigo law and therefore no response is required.

Without waiving this objection, the Plans note that health insurance premium rating, which also considers utilization and administrative costs, is developed on the basis of aggregate, system-wide trends in medical costs paid by plans, and not on the basis of the costs avoided by a particular hospital or group of hospitals without consideration of all those hospitals that did not experience costs that met the Dirigo targets. Counting only alleged savings of hospitals without also counting those that did not show savings would significantly overstate “savings” and would fundamentally depart from the way in which premium rates are developed.

13. Please describe how the private sector contracting process for health care services with hospitals works. Include in your answer:

- a. How far in advance of the first year of the operation of Dirigo health rates for services were negotiated;
- b. The basis upon which the rates were negotiated;
- c. Whether the rates negotiated for the first year of the operation of Dirigo health can be changed based on information about hospital costs and profits that is not known until the third year of the operation of Dirigo health; and
- d. How frequently private insurers negotiate charge reductions with hospitals rather than discounts off those charges.

RESPONSE:

a. **OBJECTION:**

The request in this sub-part is vague and ambiguous because the phrase “first year of the operation of Dirigo Health” is not defined. Apparently the Board contends that Dirigo Health may have been in operation since July 1, 2003 when the

legislation calling for voluntary restraints on hospital consolidated operating margins and costs per case mix adjusted discharge became effective. The Plans do not agree that these voluntary restraint initiatives relate to the “operation of Dirigo Health.” On the other hand, enrollees in DirigoChoice did not start to receive coverage until January 1, 2005.

Without waiving this objection, the contracting practices from plan to plan may vary, but in general hospital reimbursement contracts are negotiated in advance for a defined period of time, subject to renewal and periodic re-negotiation of reimbursement rates. Contracted rates in place as of July 1, 2003 were negotiated before that date by as little as a day or as much as a year or more, depending on the plan and the hospital in question.

- b. The majority of reimbursement rates were negotiated as a percentage discount off charges of each hospital.
- c. The rates negotiated for hospital services rendered in the year following July 1, 2003 could not be changed for that year based on information about hospital costs and profits that is not known until the third year of operation of Dirigo Health, because, in general, provider reimbursement rates are negotiated on a prospective basis. It is generally not possible to change the rates paid to hospitals per the contract on a retroactive basis. However, once the data on any such alleged changes in hospital costs or profits becomes known to the Plans, through disclosure by hospitals as required by the Dirigo law, Plans could work to negotiate changes in reimbursement rates to be paid on a going forward basis based on that new data. Until such information becomes available to the Plans, however, it would be difficult if not impossible for Plans to compel hospitals to pass through any alleged cost reductions.
- d. The Plans in Maine predominantly negotiate discounts off charges and do not negotiate reductions of charges with hospitals except in two ways – the negotiation of a cap on charge increases each year and the negotiation of a specific inflator which is applied to fixed rates in contracts normally on an annual basis. The impact of either of these could reduce what is paid relative to the charge structure of a hospital but do not specifically constitute a negotiation of hospital charges.

14. Please explain how the methodology presented by the payor group to the Board, a methodology that uses hospital charges per adjusted discharge (“CPAD”), reflects the actual rates of payment that are negotiated.

RESPONSE:

OBJECTION:

This request seeks information that is not relevant to the issues in this proceeding, because the Plans do not intend to offer an alternative methodology, including the methodology presented by the payor caucus to the Dirigo Board.

Without waiving this objection, assuming certain hospitals experienced a true reduction in costs, including the cost of bad debt and charity, they could, but would not be obligated to, reduce their charges. If they did, the Plans would pay these hospitals less for services than would otherwise be the case based on the discount off charges provision in reimbursement contracts. This result would occur only if the hospitals did in fact pass through to the Plans any reduced costs in the form of reduced charges.

15. If the Plans contend that changes in volume account for increases or decreases in Cost per Case Mixed Adjusted Discharge (“CMAD”) please provide all data, calculations, information, work papers, documents and other materials of whatever kind and nature relate to this contention.

RESPONSE:

OBJECTION:

This request has also been made of the Maine State Chamber of Commerce, which is the intervenor working directly with the Lewin Group and Baker Newman on this issue. This request is therefore duplicative and unduly burdensome.

Without waiving this objection, the Plans do contend that changes in patient volume do account significantly for increases or decreases in cost per Case Mix Adjusted Discharge, because a substantial portion of each hospital’s costs is fixed.

16. If the Plans contend that hospitals raise charges whenever the government announces cost containment initiatives, please provide all data, calculations, information, work papers, documents and other materials of whatever kind and nature related to this contention.

RESPONSE:

The Plans do not contend that hospitals raise charges whenever the government announces cost containment initiatives. However, hospitals can do so and the Plans contend that any methodology that does not take account of this possibility and would allow such increases in charges to occur without making an adjustment in the calculation of “savings” is fundamentally flawed.

17. If the Plans contend that hospitals pass uncompensated care on to the private payors on the basis of cost of uncompensated care, and not on the basis of gross charges foregone, please provide all data, calculations, information, work papers, documents and other materials of

whatever kind and nature relate to this contention.

RESPONSE:

OBJECTION:

This point will be covered by The Lewin Group or Baker Newman, and the Chamber is working directly with those firms to develop pre-filed testimony. This request is unduly burdensome of the Plans, which do not have in their possession any of the documents requested.

Without waiving this objection the Plans do contend that hospitals pass uncompensated care on to the private payors on the basis of cost of uncompensated care and not on the basis of gross charges foregone, and that any methodology that does not take this point into account is fundamentally flawed.

18. Please provide for each Maine hospital the average percentage discount by payer and year for the period 2000 through 2005.

RESPONSE:

OBJECTION:

The information requested is confidential and proprietary. The information also is protected by the terms of reimbursement agreements with each hospital, under which the plan in question is to safeguard the confidentiality of this information. As such, all Maine hospitals have contractual rights to protect the confidentiality of this information, and they are not parties to this proceeding. If the information were released to all of the Plans and other parties in this case, there would likely be a substantial anti-competitive effect in violation of state and federal antitrust laws. Moreover, the information requested is not relevant to the issues in this proceeding. It is notable in this regard that the Board apparently did not attempt to obtain this information as part of its deliberative process leading up to the issuance of the September 19, 2005 report.

It also would be difficult if not impossible to conduct the hearing on this information without clearing the hearing of all but the Bureau, a representative of the Dirigo board, and the applicable health plan each time the Superintendent or the Dirigo Board wishes to use the information requested, as in cross-examination.

Subject to and without waiving the objections provided above, in an effort to provide meaningful information that actually can be produced under normal procedures for confidentiality and without the cumbersome prospects of clearing the room each time the information is referenced, the Plans would consider producing hospital discount information in the aggregate reflecting the discount trend for the period 2002 through 2005.

19. With regard to your response to Request No. 18, please provide all data, calculations, information, work papers, documents and other materials of whatever kind and nature related to your response.

RESPONSE:

OBJECTION:

Please refer to the response to request number 18 above.

20. For each Maine health insurance carrier, please provide the average percentage discount by hospital and associated contract terms for the period 2000 through 2005.

RESPONSE:

OBJECTION:

Please refer to the response to request number 18 above.

21. With regard to your response to Request No. 22, please provide all data, calculations, information, work papers, documents and other materials of whatever kind and nature related to your response.

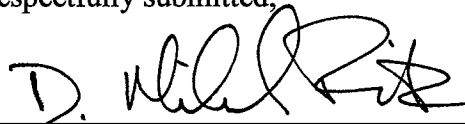
RESPONSE:

OBJECTION:

Please refer to the response to request number 18 above.

Dated: October 17, 2005

Respectfully submitted,



D. Michael Frink (Bar No. 2637)
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CERTIFICATE OF SERVICE

I hereby certify that on this date the foregoing document was served on the following parties via first class mail and electronic mail:

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I further certify that the foregoing documents were served on counsel of record in this case via electronic mail only, as follows:

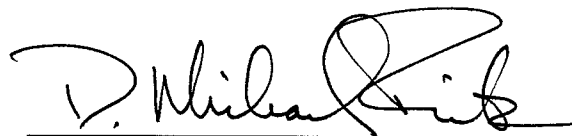
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Dated: October 17, 2005

A handwritten signature in black ink, appearing to read "D. Michael Frink". The signature is written in a cursive style with a large, stylized initial "D".

D. Michael Frink, Bar No. 2637