



François de Brantes
Executive Director

13 Sugar Street
Newtown, CT 06470
O: 203 270-2906
C: 203-731-4465
francois.debrantes@hci3.org

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Phyllis C. Borzi, Assistant Secretary of Labor
Employee Benefits Security Administration (EBSA)
200 Constitution Ave, NW, Ste S-2524
Washington, DC 20210

RE: RIN 1210-AB63: Annual Reporting and Disclosure

Dear Assistant Secretary Borzi:

The Health Care Incentives Improvement Institute (HCI³) supports the Administration's goal of collecting and making public high-value data on health plan enrollment and claims. We appreciate the attempt, through the proposed Annual Reporting and Disclosure rule, to improve consumers' and policymakers' understanding of health care price, quality, and utilization. The rule requests comments on proposed reporting requirements in light of the *Gobeille* decision, and our position is that information collected through the proposed Schedule J may help gauge the extent of the gaps in health care price information that the decision triggered, but will not help fill those gaps.

The rule states that data to be collected through Form 5500's new Schedule J is intended to lead to greater transparency for consumers and assist in their decision-making processes. As co-publishers of annual report cards on state quality and price transparency, HCI³ understands well that All-Payer Claims Databases (APCDs) established under state laws are the best resource for collecting and publicizing the actual amounts public programs, individual insurers and large employers have paid for health care services. APCD data is essential to providing health care consumers the price transparency they deserve in making informed purchasing decisions. These resources suffer when, as under *Gobeille*, states may not require self-insured employers, and their third party administrators, to submit their health care claims data.

The proposed Schedule J calls for group health plans regulated by section 715 of ERISA, and that have 100 or more participants, to report, among other data, both the number of benefit claims submitted during the plan year and the total dollar amount of claims paid during the plan year. This will allow consumer advocates, researchers, and policymakers to calculate the extent of claims data not available in APCDs. That may be useful for estimating the real-world validity of conclusions drawn from APCD data, but far more beneficial to the health care market would be to have detailed, claim-by-claim data on prices paid for health care services available in APCDs.

We support the department's proposed Schedule J data collection, but we also recommend that Labor establish a requirement that ERISA plans report their claims data to APCDs. We know from our experience in the field that important analyses, producing insights valuable to consumers and health care leaders, are possible only when many data sources are

represented among the claims in these databases. APCD data can be used to measure, for example, costs of care, potentially avoidable complication rates, and costs of such complications. Consumers and other decision makers need to know when those rates vary across payer type—Medicare, Medicaid, individual commercial insurance, large-employer plans, or others. The ability to produce and respond to such findings is badly undermined when self-funded plans subject to ERISA—holders of claims data for 63 percent of all covered workers¹—are not compelled to submit claims information to APCDs.

The proposed rule calls for the affected plans to report not just number and dollar amount of claims, but also the number of denied during the plan year, denials appealed, appealed claims upheld as denials, claims payable after appeal, and more. We believe that directing the plans to submit all claims data to APCDs will not impose an unreasonable *additional* administrative burden, as plans would already have to collect full data in order to prepare the summary figures that the rule proposes. We would also suggest that the Department consider reducing some of the proposed reporting requirements for employers that voluntarily submit—either directly or through their third party administrators—their claims data to state-run APCDs.

Thank you for addressing the issues of health care data, pricing, and transparency in this proposed rule, and for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'François de Brantes', with a stylized, cursive flourish at the end.

François de Brantes
Executive Director

¹ Claxton G, Rae M, et al. Employer Health Benefits 2015 Annual Survey. The Kaiser Family Foundation and Health Research & Educational Trust. 2015; 174.