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Comments on Department of Labor Notice of Proposed Rulemaking Docket # EBSA-2016-0010; RIN 1210-AB63

On July 21, 2016, the Department of Labor (DOL) and coordinating agencies published a Notice of Proposed Rulemaking^[1] and a Notice of Proposed Revision of Annual Information Return/Reports^[2] proposing changes to the Form 5500 annual report for employee benefit plans. The Maryland Health Care Commission (MHCC), the state agency responsible for assembling Maryland's All Payer Claims Database (APCD), is responding to DOL's request for public comments on "those conforming amendments and the proposed annual reporting requirements for plans that provide group health benefits, including the new Schedule J, in light of the Supreme Court's recent decision in *Gobeille v. Liberty Mutual Insurance Co.*, 136 S. Ct. 936 (2016)."^[3]

The National Academy for State Health Policy (NASHP) and the All-Payer Claims Database Council (a collaboration between the National Association of Health Data Organizations (NAHDO) and the Institute for Health Policy at the University of New Hampshire), have submitted detailed comments reflecting a proposed approach to support DOL's needs for data and information articulated in the Proposed Rule by leveraging state infrastructure and investment in the collection of claims data in state APCDs. We are writing today to express our support for the approach described in the NASHP/APCD Council comments. We believe that collaboration with DOL in the partnership expressed in those comments would be beneficial to DOL and the states; and address the needs identified by DOL for oversight of the quality and cost of health care provided by ERISA plans, which are among the stated objectives of DOL's creation of Schedule J.

In addition to comments submitted by NASHP/APCD Council, the *Gobeille v. Liberty Mutual* Supreme Court decision resulting in the loss of self-funded ERISA health plans insurer data has been devastating for Maryland's APCD. Approximately 34% of the privately insured APCD data is lost due to the ruling. This loss of data directly affects many APCD data use cases in Maryland including but not limited to the following: (1) Support the measurement of Total Cost of Care as required under Maryland's new global payment model demonstration established with the Center for Medicare and Medicaid Innovation (CMMI); (2) State Legislature studies; (3) Total Cost of Care benchmark studies; (4) and Episodes of Care studies to name a few. Without prompt action, the *Gobeille* ruling will severely diminish ongoing efforts to use the APCD claims and enrollment data to support these and many other public policy efforts and to increase the transparency of healthcare costs in Maryland.

MHCC requests that DOL review the approach brought forward in the NASHP/APCD Council comments and consider the impact on state partnership in the development of the final rules for the Form 5500 and Schedule J.

Regards,

Ben Steffen
Executive Director
Maryland Health Care Commission

^[1] 81 Fed. Reg. 47496 (July 21, 2016).

^[2] 81 Fed. Reg. 47534 (July 21, 2016).

^[3] 81 Fed. Reg. 47534, 47559 (July 21, 2016).