

ADVISORY COMMITTEE ON
STATE ALL PAYER CLAIMS DATABASES
Employee Benefits and Security Administration
U.S. Department of Labor

June 17, 2021

Minutes of Teleconference Meeting

Entire Meeting Open to the Public

Participants

Employee Benefits and Security Administration (EBSA) Attendees

Attending from EBSA's Office of Health Plan Standards and Compliance Assistance (OHPSCA) were Elizabeth Schumacher OHPSCA's Deputy Director and the Committee's Designated Federal Officer (DFO); Angela Melina; Justine Sorrentino; and Beth Schumann.

All Committee Members except Niall Brennan were present.

Others Who Spoke at the Meeting

Alex Dworkowitz, Partner, Manatt Health; Carl Hall, Co-Founder, Lodestar Wealth; Katy Johnson, Senior Counsel, Health Policy at ABC Council; Ryan Temme, Principal, Groom Law Group; Michael Chernew, PhD, Leonard D. Schaeffer, Professor of Health Care Policy, Department of Health Care Policy, Harvard Medical School; Director, Healthcare Markets and Regulation Lab, Harvard Medical School; and James Gelfand, Senior Vice President, Health Policy, ERIC.

Meeting

Elizabeth Schumacher, DFO, called the meeting to order at 9:30 a.m. She thanked the Committee members and members of the public for attending, then turned the meeting over to Committee Chair Maureen Mustard.

Maureen Mustard thanked the public and the Committee members for attending. She noted that the Committee had a lot of work to do in a very short amount of time, and was committed to giving timely recommendations, so they had been working hard. During this meeting representatives of each of the four Subcommittees would discuss what their Subcommittees had been doing, and the Committee would hear from several experts who would help inform decisions of the members.

Frederick Isasi spoke next, as the representative from Subcommittee Four, which focuses on the process for voluntarily collecting data from self-funded group health plans. He said that the Subcommittee had been working on key issues that would help the members make their recommendations. These included public policy arguments and explanations of how to streamline data submission to make it as easy and appealing as possible. The Subcommittee continued to examine whether there should be an opt-in or opt-out mechanism for self-funded plans, and how to align any paperwork with existing ERISA paperwork requirements.

After Frederick Isasi spoke, a question and answer session about his presentation followed. The public had no questions or comments.

Next, Alexander Dworkowitz from Manatt, a healthcare consulting firm, spoke. He said that he was not an ERISA expert; his work focuses on data sharing, interoperability, and HIPAA. He thought that self-funded plans that did not opt-out would be considered “voluntarily” submitting data because opt-outs are common in the “healthcare data-sharing world.” He also discussed the concept of “implicit consent,” which is commonly used in healthcare, and is similar to the concept of opting out.

A question and answer period between Committee members and Alexander Dworkowitz followed this presentation. There were no public comments or questions.

Jo Porter next reported for Subcommittee Two, which focuses on data submission. She said the Subcommittee had focused on the expert testimony from the June 11 full Committee meeting about the technology for data submission. The members agreed that the flat file data submission used by most APCDs was currently working well, and recommended that in the short term State APCDs continue to use this method of data submission. The Subcommittee wanted to provide the Secretary of Labor with details to consider about future methods of data submission, including their data transfer, data quality check, iterative processes, resubmission, and aggregation. The Subcommittee members planned to learn more about these issues. They would report on what they learned at the next full Committee meeting, on June 21.

After this presentation the Committee discussed the issues raised by Subcommittee Two. Maureen Mustard suggested having a representative from a carrier speak to the full Committee about the industry’s views regarding data transfer.

Dr. Cheryl Damberg then reported for Subcommittee One, which focused on uniform data layout. The Subcommittee had been discussing recommendations for what layout would work in the short-term and what might be feasible in the long term. The members discussed how to arrive at a set of high level recommendation about data layout, including recommendations to DOL about what is needed to be done about the long-term issues.

Following this presentation, Committee members discussed how the Committee would reach a consensus on recommendations. Maureen Mustard suggested that robust discussion on Subcommittee presentations would help the work progress. The discussion ended with the Committee deciding that starting with the next meeting the Subcommittees would share bullet points with their recommendations.

Dr. Herbert Wong then reported for Subcommittee Three, which was considering recommendations about data security and access. The Subcommittee recommended extending the existence of the Committee beyond June 25th, and other members agreed. The Subcommittee also had been fine-tuning requirements that data requestors must meet to get access to data; infrastructure for APCDs that would facilitate access to the data in a timely way; and establishing a more standardized process in order to disseminate the data. The Subcommittee had addressed some of the broader issues, determined a

process for writing its recommendations, and hoped to share their recommendations with the full committee on Monday.

Following this presentation, the Committee members discussed the Subcommittee's presentation. The public had no questions or comments.

At 11:04 a.m. the Committee took an extended break for lunch.

The meeting resumed at 1:01 p.m., with Maureen Mustard stating that the afternoon would be filled with expert testimony.

The first expert to speak in the afternoon was Carl Hall, an investment fiduciary for 401(k) plans and trusts who does a lot of planning around healthcare spending in retirement. He testified that self-funded plans would be the entities that benefitted most from providing APCDs with data. He also discussed the benefits of adding this data to the information already collected by state APCDs. Carl Hall added that he used data from New Hampshire, which had no individual identifiers. Hall mentioned that his fintech group was building open source software that will be a fraud-detection model.

A short question and answer period between Committee members and Carl Hall followed this presentation. There were no public comments or questions.

Katy Johnson from American Benefits Counsel (ABC) and Ryan Temme, from the Groom Law Group spoke next. The ABC is a nonprofit organization that advocates on behalf of employee benefit plans. It supports the goals of state APCDs. Katy Johnson agreed with Carl Hall on the benefits of adding data from self-funded plans. She noted the ABC's position that the voluntary language in the CAA does not undermine *Gobeille*. She also said that the ABC appreciated that the Committee was trying to make voluntary submission less burdensome.

Ms. Johnson said that the ABC position was that an "opt-out" did not make a state requirement voluntary. She discussed other ways to encourage self-funded plans to report their claims data to APCDs. Ryan Temme added that the CAA did not change ERISA preemption or *Gobeille*, and that "voluntary" reasonably means the choice is up to the employer without coercion.

A short question and answer period between Committee members, Katy Johnson, and Ryan Temme followed, focusing mostly on whether the contract between the third party administrator (TPA) and a self-funded plan could require that plan claims data be submitted to state APCDs. There were no public comments or questions.

The Committee then had a discussion with Michael Chernew, a Harvard professor who said he does a lot of work with state APCDs, and is a fan of national data. He did not think that employers would find APCD data valuable. He said that employers who self-fund health plans often do not hold, own, or submit their own data. Many of these employers will give the data to others, such as researchers or benefit consultants. The Committee members asked him questions related to their Subcommittee work.

Last, James Gelfand from the ERISA Industry Committee (ERIC) gave a presentation. He said that ERIC represents the perspective of member companies as sponsors of employee benefit plans, and that ERIC's raison d'être is protecting national uniformity of ERISA plans, and to enable member companies to provide the best benefits possible. Most members have employees in every state, so even a minor requirement for each can turn into a major issue if this requirement differs a little in each state, so even though they understand APCDs help lower health care costs, they cannot be subject to different regulations in every state. Members' shared goals led to ERIC's endorsement of centralized data capture for health care data, if there were one point of contact, one process, and one timeline used.

In addition, Gelfand stated that ERIC's position is that a requirement with an opt-out is still a mandate. Gelfand said that ERIC would sue if the DOL used the opt-out. He stated that instead of concentrating on opt-outs, the Committee should create a complete framework for self-funded plans to provide all their data. Meanwhile, ERIC would continue advocating for one streamlined method of submitting this data.

A discussion between James Gelfand and members of the Committee following this presentation. A member of the public asked for a TPA to speak at the next meeting, and Subcommittee Two was interested in hearing from another carrier. Maureen Mustard said that she would try to have another carrier speak at the next meeting.

Maureen Mustard asked the committee for any comments, questions, or suggestions. There were none. Elizabeth Schumacher reminded the Committee members that the meeting on June 21 would be from 9:30 a.m. to noon. The meeting adjourned at 3:27p.m.

**Certification of Minutes and Records of
Advisory Committee Meeting of June 11, 2021**

I, Maureen Mustard, chair of the Advisory Committee on State All Payer Claims Data Bases, do hereby certify that, to the best of my knowledge, the minutes prepared for the meeting of the Advisory Council on June 17, 2021 are accurate, and the accompanying documents constitute a complete compilation of the record of the meeting.

Signed



Dated

8/13/2021
