

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

June 21, 2021

Minutes of Teleconference Meeting

**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 Frederick Isasi were present.**

**Others Who Spoke at the Meeting:**

Jon Breyfogle, Principal and Co-Chair of Health Services Practice, Groom Law Group; and Janice Bourgault, CPC, CPB, Senior Director of Product and Process Development OnPoint.

**Meeting**

Elizabeth Schumacher, the Designated Federal Officer (DFO) called the meeting to order at 9:33 a.m., and welcomed everyone. She stated that the meeting would last from 9:30 – 12:00 p.m. Ms. Schumacher said that there would be presentations from each of the four subcommittees and two from speakers who had asked to address the Committee. She then turned the meeting over to Maureen Mustard, Chair.

Maureen Mustard thanked everyone for attending the meeting, where they would hear preliminary recommendations from the Committee's four subcommittees, which would continue to meet and draft a report. She explained that the Committee members were divided into subcommittees to consider different topics in a very short time.

Dr. Cheryl Damberg presented for Subcommittee One, which she said had struggled a bit, but was starting to formulate its core recommendations about a uniform standard data layout. She expected a more complete written draft after the subcommittee members met in the afternoon, however, and the recommendations would be more fully addressed in the June 24 meeting. Dr. Damberg said that at this point she would describe the group's basic recommendations and potential recommendations, which were based on testimony from experts and carriers.

Dr. Damberg said that carriers said their greatest challenge in dealing with state APCDs is that they must submit different information, using different layouts, at different times to APCDs in different states. NADHO and APCD representatives told the Subcommittee that 90% of the data requested by each states' APCDs was the same, even if the request was worded differently and the format used was different. These organizations had put these common data elements together and created a uniform data set and layout, which if used, would provide existing APCDs with 90% of the data they needed. Consequently, the Subcommittee members believed that the CDL was a great starting point for a standard data layout, and probably would save time and money for the entities that submit data, and the

Subcommittee's first recommendation probably would be for DOL to recommend that states that are creating APCDs should adopt the APCD CDL.

Recognizing that the APCD has some limitations, and that healthcare delivery, payment systems, and the marketplace constantly are changing, the standard data layout would need to evolve to capture these changes. Consequently, the Subcommittee also would recommend that DOL keep capturing the changes and update or change the standard data layout. The group was considering whether to recommend that DOL use an ongoing stewarding body to maintain and update the uniform layout, and discussed whether the group should be a data stewarding organization or a multi-stakeholder committee, hosted by DOL or HHS.

The full Committee then discussed Subcommittee One's recommendations.

Jon Breyfogle of the Groom Law Group, then testified for the association of independent community-based Blue Cross Blue Shield (BCBS) plans. BCBS submitted comments on June 17. Mr. Breyfogle said that the letter covered a wider range of issues than he would discuss. His presentation focused on the issue of whether self-funded plans must report to states or "opt-out." Mr. Breyfogle's view was that an opt-out was inconsistent with the section of the Consolidated Appropriations Act (CAA) that charges the Committee with helping the Secretary of Labor create a standardized reporting format for ERISA-covered group health plans. The form was intended for the voluntary use by a self-funded plan. Mr. Breyfogle thought that ERISA preemption and the U.S. Supreme Court case, *Gobeille*, prevented an opt-out standard. Because the CAA does not refer to either, he believes a court would not change its view that ERISA preempts state laws requiring self-funded plans to report data to a state APCD. Mr. Breyfogle also stated that a multi-state, self-funded plan would find mastering each state's "opt-out law" to be very burdensome, which also is inconsistent with the same section of the CAA, he said. There were no questions for Mr. Breyfogle from the Committee or from the public.

Ms. Mustard introduced the next speaker, Janice Bourgault, from OnPoint, an APCD vendor, which also had submitted written comments. Ms. Bourgault is a member of NADHO, whom Jo Porter invited to speak to the Committee to help members of Subcommittee Two (which is focused on the process for submitting data) understand how data from flat files generally is processed.

Ms. Bourgault said that data generally go from a submitter to the state through a data processor, such as OnPoint. The vendor considers the data quality during every step of the process. Ms. Bourgault discussed the stages of processing data for APCDs. She stopped for questions from the Committee several times through her presentation.

Jo Porter then presented on behalf of Subcommittee Two, discussing considerations for the Subcommittee's short-term and long-term recommendations. The Subcommittee recognized that for states currently operating APCDs or that were starting to create an APCD it would be hard to recommend anything other than CDL in the short-term. The Committee and Subcommittee had heard about other technologies for processing data that are available now and may be available in the future. The members of the Subcommittee thought that their recommendations must emphasize the importance of robust security checks.

The group reached three major conclusions: first, that the systems in place for existing state APCDs now meet state data collection needs; second, that future technology must be considered at some time; and third, that if there exist better technologies, what would be the considerations for transition to the new technology?

A member of the public, Christopher Gracon, from Independent Health, which had submitted written comments, commented that it was not necessary to find a standards developing organization (SDO) to house the CDL, as discussed by Subcommittee One, because existing SDOs have all the processes the Subcommittee said were needed - for maintenance requests, about how to submit things, and for making changes. Mr. Gracon also suggested that the Committee should tell DOL that the National Committee on Vital and Health Statistics would be making recommendations to HHS about state APCDs, because DOL would not want to use a different standard from that used by HHS.

Dr. Herbert Wong then spoke on behalf of Subcommittee Three, which is focused on a uniform process for security. He read the Subcommittee's draft document summarizing their discussion, including four recommendations that they had been fine-tuning. Their first recommendation was that the State All-Payer Claims Database Advisory Committee should be retained and the period of performance extended beyond June 25th, 2021, so that the Committee could fully address the issues related to the Committee's charge. The second recommendation was that state APCDs develop and implement rigorous privacy and security protections for health information, including comprehensive safeguards, to ensure the identities of individual patients remain secure. Third, states that establish an APCD should develop an infrastructure and implement a process to ensure timely release of the data to approved data requesters. Fourth, consideration should be given to multi-state aggregated dissemination models. Dr. Wong said that the Subcommittee members recognized that some APCDs already have in place well-thought-through processes like those discussed in the second and third recommendations.

A discussion by the full Committee followed the presentation. There were no public comments or questions on Subcommittee Three's presentation.

Maureen Mustard then noted that Frederick Isasi could not attend to give the presentation for Subcommittee Four, which focused on the process for self-funded payers to voluntarily participate in state-funded APCDs. Ms. Mustard said that this issue raised significant debate. Some groups would like data bases to be as complete as possible, so they favor an opt-out. Others believed that ERISA preemption must be understood to require opt-in. The Subcommittee would be meeting in the afternoon, but in the meantime, Ms. Mustard opened the floor to the entire Committee to discuss issues raised by Subcommittee Four and other issues. Some members wondered if their work would lead to more voluntary participation by self-funded payers, and whether states would be willing to eliminate the differences between their forms and data to make it possible to get self-funded plans to participate.

Ms. Mustard also mentioned that Elizabeth Schumacher had told her that a simple majority would represent agreement by the Committee, but that typically, committees deliberate until there is consensus. Ms. Mustard noted that might not happen in the next five days. She asked Ms. Schumacher whether there were any more questions or comments from the public. There were no more questions or comments from the public.

Ms. Mustard said that the members should first resolve differences that their Subcommittees may have, and bring to the full Committee their recommendations on Thursday, June 24. There were no more questions from the Committee members.

The meeting adjourned at 11:50 a.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 11, 2021 are accurate, and the accompanying documents constitute a complete compilation of the record of the meeting.

Signed

  
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Date

8/13/2021  
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