

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

July 26, 2021
Minutes of Teleconference Meeting

DOL Attendees

Becki Marchand, Office of the Deputy Assistant Secretary for National Office Operations, EBSA and Acting Assistant Secretary Ali Khawar. Also from EBSA's Office of Health Plan Standards and Compliance Assistance (OHPSCA): Amber Rivers, Director; Elizabeth Schumacher, Deputy Director and the Committee's Designated Federal Officer (DFO); Angela Melina; Sharon Fountain; Justine Sorrentino; and Beth Schumann.

All Committee Members were present.

Others Who Spoke at the Meeting:

Kyle Russell, Virginia Health Information; John Freedman, Freedman Healthcare; Jacob Zelco; Kenley Money, APCD Director for Arkansas; Terry Lynn Palmer, Director of Data Analytics, Delaware; Wade Ieule, Project Manager, Consultant at OSHPD, California APCD; and Victoria Raisin, State of Georgia.

Meeting

Elizabeth Schumacher, DFO, called the meeting to order at 1:02 p.m., and noted that the agenda for the meeting was very full. She then introduced EBSA's Acting Assistant Secretary, Ali Khawar. Mr. Khawar thanked Committee Chair Maureen Mustard and all of the Committee members for their hard work and valuable expertise. He also thanked DFO Elizabeth Schumacher and the Committee staff from OHPSCA for their support of the Committee. Then Ms. Schumacher turned over the meeting to Maureen Mustard.

Ms. Mustard first thanked all the experts who'd shared their time, the DOL staff, and, most of all, the Committee members for their work, patience, time, and flexibility. She encouraged the members to speak up at this, the Committee's last public meeting, and said that if there were no Committee comments on a recommendation, she would assume they all agreed with it.

Ms. Mustard then introduced the first speaker, Kyle Russell, who noted that he had spoken to the full Committee at a previous public meeting, and that that presentation had ended with a discussion of self-funded plans opting out of state APCDs. Mr. Russell said that APCDs need data from self-funded ERISA plans to get a full view, across the state, of health care cost, quality, and frequency. He emphasized that if self-funded plans had an opt-in, only about 10% of self-funded plans would provide data. Consequently, changing an APCD's data layout will not result in additional self-funded plans reporting as long as these plans only participate if they opt in. The next speaker, John Freedman, stressed that it is important that the Committee's recommendations come together around the CDL.

Maureen Mustard reminded members of public that they were welcome to make public comments. She asked if the Committee members had any comment before she shared slides with those in attendance; there were no comments. Ms. Mustard said that the Committee members had been working collaboratively on the Committee's recommendations, which were all included in a report from which she had created slides, which could be shared more easily with the public.

Ms. Mustard, using slides throughout the meeting, presented the Committee's recommendations written in the draft Report.

Recommendation One stated that the DOL should use the CDL as the basis for the standardized reporting format for submitting data to APCDs. A state adopting the standardized format should adopt it in full, and if the APCD needs data elements not included in the CDL, the state should request this data in a separate report. These additional data elements should be added to the CDL over time. There should be a transition period for states to change their data reporting format to the CDL. A very brief discussion followed, but the Recommendation was accepted without change.

Recommendation Two suggested that the DOL work to include in the CDL elements for alternate payment models and other important variables needed to capture the totality of payments to providers in the CDL. A separate file could be used to collect these data elements. States should work with DOL to assess what should be added. A brief discussion followed, and the term "i.e." was changed to "e.g." to indicate that the variables mentioned were examples.

Recommendation Three stated that the data layout of the APCDs will need to evolve over time in response to changes in health care markets and innovations in payment policies; as such, the standard data layout will require updating over time. Ms. Mustard said that the issue is discussed later in the Report, but she believed that it fit in this Recommendation. A discussion followed. Ms. Mustard explained that certain information related to this Recommendation was in the Appendix to the Report. As requested by Dr. Tricia Lee Rolle, the phrase "APCD process" was changed to "Maintenance Process" in the details of the Recommendation and throughout the Report. As discussed below, this Recommendation underwent an additional change later in the meeting.

Recommendation Four was that carriers and TPAs submit data to APCDs in flat files. In the discussion that followed, Dr. Rolle said that she thought this Recommendation was supposed to allow states to start where they were. She thought that it should recommend but not require that new APCDs use flat files, because they might be able to find a better way to submit data. Ms. Mustard started to make changes reflecting these comments, but Mike Kapsa suggested rewriting the Recommendation outside the meeting. Ms. Mustard asked Ms. Schumacher whether the Committee could reword this Recommendation without another public meeting. Ms. Schumacher responded that if the Committee agreed to the substance of the changes in the current public meeting, and made those changes outside the meeting, no additional public meeting was necessary. Ms. Schumacher added that if the Committee could not agree on the substance of the Recommendation, or if the edits would change the substance of the Recommendation, another public meeting would be necessary.

Recommendation Five stated that States should, to the extent possible, collect data on a regular monthly timeline. Aligning this frequency would create the least disruption. If carriers and states agreed, there could be a process to change this reporting schedule. A short discussion followed, and the last sentence (about the process to change this timing) was eliminated.

Recommendation Six stated that the DOL, in consultation with APCD stakeholders, should create a process for keeping abreast of current, alternative, and emerging standards for data submission, and methods for quality assurance across multiple payer types. A discussion of this recommendation led to a discussion of whether all of the Recommendations were limited to submission of data by self-funded plans. According to Jo Porter, the Report stated that the goal of the Recommendations was to provide guidance applicable across as many payer types as possible, so that APCDs were not burdened by

receiving different types of submissions from different types of submitters. Stefan Gildemeister suggested that the Report state that the Committee recognized that a standard should extend to all commercial payer types, and suggested that where a recommendation is beyond the jurisdiction of the DOL, the Secretary should work across the administration with the appropriate federal agency, such as HHS.

Ms. Mustard opened the floor for public comments. The first comment was from Jacob Zelco, a biological engineer, who said that the common use of the CDL would make it easier for researchers to use multi-state data, which would benefit policy makers. Ms. Terry Lynn Palmer (Director of Data Analytics, Delaware) also discussed the need for states to have standardized data formats and data definitions. She said that along with the APCD, there should be a strong dictionary defining the data elements. Kenley Money (APCD Director for Arkansas) agreed that consistent data definitions were necessary, and wanted to know who would arbitrate a dispute when States disagreed on a definition. John Freedman said that flat files should be the standard, and that the Report should state that the one state that does not use flat files should be required to use flat files. He agreed that requiring or requesting data on a monthly basis makes a lot of sense. Wade Ieule (Project Manager, Consultant at OSHPD, California APCD) stated that the recommendation of flat files seemed inconsistent with the spirit of evolution. He also suggested that although the Committee was recommending monthly data collection, the data for alternate claims (i.e., claims that were not fee-for-service) was often submitted annually.

The Committee revisited the recommendations that were the subject of these public comments. The discussion focused on the idea of a data dictionary, which the Committee had not recommended, and which the CDL does not have. Ms. Mustard said that the idea of using arbiters when states disagreed on definitions was interesting. Most of the Committee members suggested that there should be a recommendation that the maintenance organization overseeing the CDL conduct ongoing training for submitters and APCDs, or that this idea should be added for future consideration. Most members agreed that the Report should state the need for a data dictionary. Dr. Rolle thought that Recommendations Four and Six made most sense if they were together, and suggested reordering the recommendations so that Six followed Four, and Five followed Six. The Committee members agreed and Ms. Mustard made this change.

Recommendation Seven stated that existing state APCDs should maintain, and new APCDs should create, rigorous privacy and security protections for the health information they receive, maintain and release, including comprehensive administrative, technical, and physical safeguards. One of the Recommendation's suggested that the DOL consider the utility and feasibility of creating uniform data release protocols and developing Data Use Agreements (DUAs) for state APCDs to protect the data and allow potential users to access the data with appropriate privacy safeguards. The Committee discussed these recommendations, but made no changes to the Recommendation.

Recommendation Eight was that, where permissible under state law, state APCDs should develop a structure and process to release data. Ms. Mustard noted that Colorado showcased "best practices" in this regard. The Committee had no comments or concerns with this Recommendation.

Recommendation Nine provided that while individual state APCDs have their own data dissemination processes, states should explore establishing a secure privacy-protective multi-state data aggregation and dissemination model that would permit wider use of the data. Several members of the Committee thought the Recommendation should be clarified in different ways. Ms. Mustard added to the end of the Recommendation, "Several public and private sector models exist which may serve as a framework."

Ms. Mustard paused for public comments. Ms. Kenley Money further discussed the need for a data dictionary, which she said is key to the standardization of data sets extracted for use across states. She said that when reviewing the CDL in adopting Delaware's APCD there were many questions about ambiguous terms, but that the CDL committee had been unable to answer them. The Committee members discussed this issue further. Ms. Mustard said that the narrative said that further work needs to be done about definitions. This sentence also could be added to the "work to be done" section. The Committee thought that the Report should recommend that there be complete data definitions as part of the data layout. Ms. Mustard revised Recommendation Three to read: "The APCD-CDL will need to have a detailed data dictionary created and the data layout of the APCDs will need to evolve over time in response to changes in health care markets and innovations in payment policies; as such, the standard data layout will require updating."

Ms. Mustard then read Recommendation Ten, which discussed voluntary data submission. This Recommendation stated that the Secretary of Labor, in partnership with the Secretary of HHS, should clarify and emphasize the public policy and business interests of having self-funded group health plans submit data to state APCDs. The Committee did not have any comments, questions, or concerns about this Recommendation.

Recommendation Eleven stated that the Secretary of Labor should make it easy for self-insured group health plans to participate in APCD data submission by establishing an effective and streamlined process for self-insured group health plans to opt in to data submission by creating a standard opt-in process." One detail stated that the decision to submit data rests with the self-insured group health plan, not with the plan's TPA. The Committee members discussed this detail and suggested it be rewritten to say that the TPA must honor a health plan's contractual request to provide data to specified APCDs, and that the Secretary of Labor should be clear that TPAs must honor plan sponsors' wishes. The Committee also added a reference to model contract language that could be linked to an example of model language in the appendix.

Recommendation Twelve stated: "The State All-Payer-Claims Database Advisory Committee's work should continue beyond submission of the Report. A committee focused on APCDs should continue on with the work to fully address the issues related to the Committee's charge (possibly with the current members, if they are willing to serve). This Committee would need to be adequately supported by DOL staff to perform its duties in an efficient manner." There was no discussion about this Recommendation.

Recommendation Thirteen stated that the DOL should engage employers who sponsor self-insured ERISA plans, to assess what, if any, changes to data submission processes might increase their participation in the APCDs. The Committee members discussed this Recommendation and suggested changes. Ms. Sanches said that the Report should consistently use the term "self-funded" or the term "self-insured," but not both terms. Ms. Mustard changed the term in the Recommendation to "self-funded" and said the Committee will go through the Report and consistently use the term "self-funded." Dr. Damberg suggested that this Recommendation would make more sense if it followed Recommendation Eleven, so the recommendation was moved there, and was followed by the former Recommendation Twelve. Mr. Kapsa requested that the word "union" be added to the Recommendation. The Recommendation was changed to say "DOL should engage employers and unions that self-fund...."

Recommendation Fourteen stated that given concerns about pervasive health inequities across race, ethnicity, gender, and geography, all these data elements, which are included in the CDL, should be collected. Ms. Mustard noted that the Committee had previously rejected this Recommendation, but

she wanted to make sure that the Committee did not have second thoughts. The Committee members agreed that the Recommendation should be kept, but with a few changes, including elimination of the word “geography” and replacing the word “employers” with the term “plan sponsors.” This was the final Recommendation.

Ms. Mustard then invited public comments. In answer to a question from Ms. Victoria Raisin from Georgia, the Committee clarified that Recommendation Seven did not preclude the identification of hospitals and providers. Ms. Mustard also clarified that the Committee’s recommendations were for the DOL, and had no implications for HHS funding of state APCDs. Jacob Zelco commented that the last recommendation would be extremely helpful to the health equity research community. Wade Ieule suggested that Recommendation Fourteen should include an opt-out, not an opt-in.

The Committee next discussed the last two slides, which listed issues for future consideration. Ms. Mustard suggested discussing these considerations so that edits could be made if necessary. The Committee discussed the first future consideration, that the Secretaries of DOL and HHS should set up a three year metric by which the Secretary of Labor could determine whether voluntary data submission by self-funded plans had increased, and if not, identify actions this determination might trigger. These actions included the recommendation that the Secretary of Labor consider using an opt-out provision instead of permitting self-funded plans to opt in to data sharing. There was a lively debate about whether this future consideration should be converted into a recommendation. Dr. Wong noted that some of the Committee members were no longer in attendance, and that the remaining members should be concerned about creating another recommendation.

The remaining Committee Members also discussed a future consideration addressing whether APCDs should be implementing HIPAA, although the entities involved usually are not “covered entities” for purposes of HIPAA. This statement was moved from future considerations to the body of the Report. The Committee members also eliminated a bullet that seemed to repeat the idea of a national APCD, and was duplicative of another future consideration. At this point, Ms. Sanches also said she was hesitant about making more changes, because so many Committee members were no longer in attendance. Some Committee members said they were comfortable making changes. Ms. Mustard said she was planning to redline the changes made in this meeting so that the Committee could wordsmith without changing a recommendation.

The Committee continued debating the considerations. Mr. Gildemeister said he was not sure whether wordsmithing alone would work. Ms. Mustard suggested trying to wordsmith, and if they could not agree, they would need to schedule another meeting. Ms. Schumacher reminded the Committee members that another meeting would require at least 14 days’ notice after publication in the Federal Register. She said she would be happy to get the notice started, in case it was needed

Maureen Mustard adjourned the meeting at 6:05 p.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 

Date 8/13/2021