



Summary of Comments

The *Gobeille v. Liberty Mutual Insurance Co.* decision dealt a blow to state APCDs by holding that ERISA preempts state APCD reporting requirements with respect to self-funded group health plans. Nationally about 63% of all workers with employer-based health insurance are in self-funded plans and that number is growing. The loss of this large data set limits APCDs' capacity to provide robust, *all* payer data on health care cost and quality. However, the Supreme Court's decision, particularly Justice Breyer's concurrence, suggested that the Department of Labor (DOL) may fix the loss of data to state APCDs by imposing a federal requirement that ERISA plans submit health care claims data.

On July 21 the DOL issued a Notice of Proposed Rulemaking requesting public comments on its proposed reporting requirements for group health plans, called Schedule J, and sought specific comments in light of the *Gobeille* decision. The deadline to submit comments is **October 4, 2016**.

The attached comments developed by NASHP in collaboration with the APCD Council and NAHDO, respond to DOL's proposed rules. These comments are the result of months of intensive efforts to develop a proposal that will restore the data lost as a result of *Gobeille* within the legal framework of DOL's current rulemaking. In light of *Gobeille*, DOL cannot simply grant states the ability to collect state-specific data. But DOL does have broad responsibility for data collection from employee health plans. Our comments make the case that APCDs can assist DOL meet its responsibility to oversee cost and quality in health plans and to provide a pathway, using Schedule J as a vehicle, to begin data collection as soon as the rule is finalized, not in 2019 when the rule proposes to operationalize Schedule J.

The comments and proposal incorporate the following key elements:

- **Adoption of a standardized set of health care claims data, the Common Data Layout.** The *Gobeille* decision turned on the burden imposed upon self-funded plans that must report differently to different state APCDs. The uniformity of the Common Data Layout is key to minimize burden to ERISA plans and adhere to ERISA's goals of uniformity, consistent with *Gobeille*. Several months of intensive efforts were dedicated to the development of consensus among states, carriers, and data experts to adopt the Common Data Layout.
- **Any DOL requirement for plans to submit health care claims data must be tied to its proposed Schedule J.** New substantive data reporting requirements from DOL must go through rulemaking procedures. Time is of the essence for State APCDs, so any proposal for collecting health care claims data must be integrated into this current rulemaking vehicle. Although Schedule J as proposed is inadequate to address the loss of data from state APCDs or DOL's stated goals of improving transparency and oversight over group health plans, we propose a way for DOL to fill the gap to serve its own reporting needs and restore APCDs' access to self-funded data.

- **We propose that DOL implement a pilot program to collect health care claims data in cooperation with State APCDs.** The federal-state pilot approach is attractive because it allows DOL to leverage existing state APCD data collection and analytic capacity, reduces administrative burden and duplication, and leaves APCD investments intact. States would be granted authority to collect a uniform dataset from self-funded plans on a monthly or quarterly basis that would be aggregated into an annual report to DOL to provide more robust data within Schedule J.
- **DOL needs to be comfortable that it has the statutory authority to require collection of health care claims data and to partner with States under a pilot approach.** This comment establishes for the administrative record the statutory provisions of ERISA and the Public Health Service Act that provide DOL this authority.
- **We make the policy case regarding the importance of DOL action.** This policy argument includes describing how DOL will benefit from working with state APCDs to collect and analyze health care claims data as well as the importance of supporting state APCDs' work and access to data from self-funded plans.