



**BlueCross BlueShield
Association**

An Association of Independent
Blue Cross and Blue Shield Plans



May 14, 2021

State All Payer Claims Databases Advisory Committee
c/o Elizabeth Schumacher
Designated Federal Officer
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Submitted via to SAPCDAC@dol.gov

RE: BCBSA and AHIP Comments to State All Payer Claims Databases Advisory Committee

Dear State APCD Committee Members:

The Blue Cross Blue Shield Association (BCBSA) and America's Health Insurance Plans (AHIP) appreciate the opportunity to provide written comments to the State All Payer Claims Databases Advisory Committee in advance of its first public meeting scheduled for May 19, 2021. The Committee is charged with advising the Department of Labor on a standardized reporting format and procedural guidance related to voluntary reporting by group health plans to State All Payer Claims Databases (APCDs) of medical claims, pharmacy claims, dental claims, and eligibility and provider files collected from private and public payers, pursuant to section 115(b) of the No Surprises Act.

BCBSA is a national federation of 35 independent, community-based and locally operated Blue Cross and Blue Shield (BCBS) companies (Plans) that collectively provide health care coverage for one in three Americans. For more than 90 years, BCBS companies have offered quality health care coverage in all markets across America – serving those who purchase coverage on their own as well as those who obtain coverage through an employer, Medicare and Medicaid.

AHIP is the national association representing health insurance plans. Our members provide health and supplemental benefits to the American people through employer-sponsored coverage, the individual insurance market, and public programs. AHIP advocates for public policies that expand access to affordable health care coverage to all Americans through a competitive marketplace that fosters choice, quality, and innovation.

As the Committee engages in its work, BCBSA and AHIP wish to provide the following high-level comments for the Committee's consideration.

Affirm the Voluntary Nature of Reporting Under Section 115 of the No Surprises Act

The Committee in its recommendations to the Secretary should affirm ERISA's preemption, reinforced by the ruling in *Gobeille v. Liberty Mutual Insurance Company* that self-funded group health plans may elect – but must not be required – to submit data using the standardized reporting format to states that maintain APCDs. In its recommended guidance to states on processes used to collect the data, the Committee should state clearly and unequivocally that states cannot require self-funded plans to submit data to a state.

Establish National Industry Standards for APCD Data Elements and Exchange Format Leveraging Current and Emerging Industry Standards and Accredited Standards Bodies

We appreciate the acknowledgment by Congress and the Department to establish a standardized reporting format for APCDs. A standardized format will reduce administrative burden on payers and reporting entities and creates greater opportunities for meaningful research projects. We strongly urge the Committee to leverage technologically-advanced industry standards in practice today, rather than adopt an outdated data warehouse model or a new standard that has been untested by reporting entities or has failed to be adopted by an existing state APCD (e.g., the Common Data Layout format proposed by the APCD Council). One example of an industry standard is the 837 transaction form health insurance exchanges use when sharing data with the Centers for Medicare & Medicaid Services (CMS).¹ In addition, the U.S. Core Data for Interoperability (USCDI) represents a standard for data classes and constituent data elements capable of being exchanged with payers and providers and is already required by the Department of Health and Human Services' Office of the National Coordinator for Health Information Technology (ONC) and CMS final rules on interoperability standards.

Additionally, once the Committee completes its work and issues its final recommendations on standards to the Secretary, the Secretary should consider rulemaking to entrust the maintenance and any future updates of the standardized reporting format to an American National Standards Institute (ANSI) accredited standards development organization (SDO), such as Health Level 7 International (HL7). Accredited SDOs have an open, transparent, and participatory process for developing and maintaining standards and have the technical experience and expertise to properly maintain and update the format as necessary.

Develop a Uniform Reporting Format for Use in All States

The development of a single format for group health plans to submit data to state APCDs will encourage states to seek out more uniform data sets from plans and issuers in their respective states. However, the Committee's guidance to states should emphasize that its format may not be altered by states to include or exclude additional data elements, which would increase reporting burdens on group health plans. We also encourage the Committee to determine and identify data elements that are not accessible to group health plans, such as whether an

¹ Anthem Public Policy Institute, *Achieving States' Goals for All-Payer Claims Databases*, June 2018, available at: https://www.antheminc.com/cs/groups/wellpoint/documents/wlp_assets/d19n/mzq1/~edisp/pw_q345393.pdf

enrollee uses a coupon to reduce their out-of-pocket expenses for an item or service or the employment status of a covered individual.

Consumer Privacy and Data Security Protections

With respect to the Committee's recommendations regarding the process by which state APCDs collect data, privacy and data security should be of paramount concern given the vast amount of sensitive data subject to APCDs and the potential risks of re-identification through reverse engineering or data breaches. BCBSA and AHIP offer the Committee several strategies which would modernize state APCDs and potentially produce more meaningful, accurate, and timely data collection and fulfillment while also protecting data.

- **Distributed Data Model**: A decentralized approach would eliminate the need to maintain and keep secure a single, highly vulnerable data warehouse empowered to share data with third parties whose security protocols are unknown or unverified. We propose a distributed data model to provide a more secure and efficient way for users to access data. Under this model, de-identified claims data would remain housed with their sources but be made accessible to licensed requesters on a use-only and secure basis, consistent with an executed data use and confidentiality agreement and applicable institutional review board approval. The distributed model protects sensitive information by limiting access to de-identified (no personal health information by HIPAA standards) and aggregate financial data only, held at the local level. The distributed model minimizes the potential for a data breach because it does not allow for third-party access to sensitive information for potential misuse. Instead, the distributed model can provide secure data access to all authorized users for the purposes of benefit design and cost transparency efforts. This also allows for better tracking of data use requests on a case-by-case basis.²

To operationalize such a model, insurers and other reporting entities would provide data access to the APCD through a FHIR-based application programming interface (API) or an External Data Gathering Environment (EDGE) server (as used by CMS to administer the individual and small group market risk adjustment program). Insurers and third party administrators (TPAs) already use EDGE servers for bulk data transfers and APIs for a variety of functions, including enabling transparency tools for employer accounts and implementing federal health data interoperability requirements.

Importantly, this approach is consistent with the privacy and security framework in place under HIPAA, as the insurers or TPAs, as owners of the data, would be responsible for maintaining the data and ensuring security of the data, rather than the APCD or its third-party vendors, which might not be subject to HIPAA. The qualified requester (e.g., researcher, employer) can access the data directly from the source for analysis and produce reports under a secure licensing agreement, limiting the potential for third-party misuse and unauthorized access that comes with a centralized approach.

² Ibid.

- De-identification and Aggregation of Data: In conjunction with a distributed data model, de-identification and aggregation of data sets are critical measures to maintain consumer privacy and data security protections. Since the HIPAA Privacy Rule's inception, technological advances and readily accessible tools (e.g., search engines) have made it much more possible to re-identify an individual with very minimal data points. While the HIPAA de-identification requirement—use of an expert to determine that de-identification has made the risk of re-identification “very small”—is familiar to the industry, this standard is becoming more difficult to meet in the current age as data science tools become more capable of reverse engineering a dataset.³ This is why it is important to not only collect de-identified data (e.g., no name, phone number, address, Social Security Number, member ID number) but to also require any user of APCDs to agree to not re-identify the data.

Moreover, an effective, purpose-driven APCD that protects data adequately increasingly relies on both administrative safeguards like the distributed data model and a thoughtful approach to data aggregation among multiple payers. We strongly suggest consulting with payers on how best to effectuate privacy and security controls, ensure data quality, and aggregate data, including proprietary financial data. Payers have relevant and deep expertise in these areas and can help ensure the APCD functions in a way that supports the APCD's stated goals without unintended consequences. For example, payers collaborating with the Health Care Cost Institute's data license model have experience de-identifying data and aggregating it to avoid re-identification and disclosure of proprietary information.

- Robust Data Use and Confidentiality Agreements: We strongly support the No Surprises Act's explicit directive that an authorized user enter into a data use and confidentiality agreement with the state APCD and recommend additional guidance to states regarding the terms that must be included in this agreement. Such terms should include, but not be limited to: (1) requirements to follow privacy, security and administrative safeguards, including the prohibition on re-identification; (2) auditing rights by the source sending the data; and (3) clear consequences for violations of the agreement, including termination of the agreement and permanent debarment as an authorized user.⁴

Guidance pertaining to the data use and confidentiality agreement should also ensure that the authorized user's purpose for the data is defined clearly at the front end so that the APCD can review whether the APCD in fact can meet the user's goals and make adjustments to the data request when appropriate. The APCD can also track more accurately the nature of requests in order to measure whether the APCD itself is meeting its goals (as defined by statute or otherwise).

Ensure Opportunities to Review and Comment by Impacted Stakeholders Prior to Finalization of Recommendations

³ 45 C.F.R. §164.514(b)(1)(i); Peter Swire, *Possible Privacy, Cybersecurity, and Data Breach Issues in the Proposed National Medical Claims Database Under Section 303 of S. 1895*, Sept. 27, 2019, available at: <https://peterswire.net/wp-content/uploads/Sw-ire-white-paper-S-1895-privacy-security.2019.pdf>

⁴ Swire, *ibid.*

BCBSA and AHIP were disappointed that no representative from a health plan or issuer was named to serve on the Committee, but we encourage the Committee to engage plans and issuers – the very entities that will use the format to submit data to state APCDs – in robust discussion throughout the development of the format. Our members have extensive experience in working with state APCDs and would welcome the opportunity to provide input.

Additionally, as the Committee finalizes its proposal around data elements and required industry standards, the impacted stakeholders and the public in general should be given an opportunity to review and provide comments on the utility, ease of collection, and relevance to SAPCDAC objectives. Therefore, a draft of the final proposed standards and data format should be made available for review and comments and testimony should be obtained from those entities that will be using the format prior to finalization of the recommendations.

Committee Timeline

Finally, we recognize the Committee may be under a considerable time constraint given the statutory language contemplating delivery of the Committee’s recommendations 180 days after the Consolidated Appropriations Act, 2021’s enactment. Nonetheless, for the Committee’s work to be valuable, we suggest the Department should continue consulting with the Committee as frequently and as long as is needed to produce a high quality report with actionable, stakeholder-vetted recommendations. One approach that could be taken is for the Committee to deliver a preliminary report to the Department while a final report is completed that reflects stakeholder input and more thorough review and analysis.

Thank you again for the opportunity to comment. Both our respective organizations and our members would welcome the opportunity to provide information on our long-standing participation with APCDs at future committee meetings. If you have questions or wish to discuss these comments further, please contact Lauren Choi, BCBSA’s Managing Director, Health Data and Technology Policy at lauren.choi@bcbsa.com or Meghan Stringer, AHIP’s Senior Policy Advisor, Product and Commercial Policy at mstringer@ahip.org.

Sincerely,



Kris Haltmeyer
Vice President, Legislative and Regulatory Policy
Office of Policy and Representation
Blue Cross Blue Shield Association



Jeanette Thornton
Senior Vice President, Product,
Employer, and Commercial Policy
America’s Health Insurance Plans