All-Payer Claims Databases After Gobeille

Editor's note: *This post is part of a series stemming from the Fifth Annual Health Law Year in P/Review event held at Harvard Law School on Monday, January 23rd, 2017. The conference brought together leading experts to review major developments in health law over the previous year, and preview what is to come.*

With health care spending approaching 20 percent of Gross Domestic Product (GDP), controlling health care costs is a top priority not only for the federal government, but also the individual states. To develop successful strategies for cost control, states need comprehensive data on utilization of and spending on health care services. Medicare data are valuable but not representative of the entire national population or of the prices that private payers pay. In private insurance, prices are not under administrative control as they are in Medicare, and they vary widely in different geographic regions.

All-payer claims databases (APCDs) were developed, first in Maryland in 1995, to provide comprehensive state-level data on health-care utilization and spending, and there are now 16 APCDs nationwide. As the name implies, APCDs collect data from all payers, and the spending data reflect the actual negotiated prices of services. Thus, APCDs are a valuable source of information for state health policymakers and health services researchers. For example, in Massachusetts, the Health Policy Commission uses the state's APCD to set state-wide health care spending targets, which have been important in achieving state cost control.

Gobeille v. Liberty Mutual Insurance Co., Inc.

In 2016, however, the Supreme Court ruled, in *Gobeille v. Liberty Mutual Insurance Co., Inc.*, that state-mandated reporting of health claims data from self-insured health plans to Vermont's APCD was preempted by the federal Employee Retirement Income Security Act (ERISA). The six-to-two opinion was written by Justice Anthony Kennedy, with Justices Ginsburg and Sotomayor in dissent. ERISA contains a broad preemption clause, which establishes that ERISA supersedes any and all state laws insofar as they relate to any employee benefit plan. The ERISA preemption clause has been employed numerous times to strike down state regulations, defining a boundary between federal and state authority.

In *Gobeille*, the Court ruled that, because "[d]iffering, or even parallel, regulations from multiple jurisdictions could create wasteful administrative costs," the statute (establishing Vermont's APCD) is preempted. In his concurrence, Justice Breyer underscored the concern that having 50 different state-reporting requirements could be a substantial administrative burden for self-insured plans. As an alternative, Breyer proposed that the Department of Labor (DOL), the agency ultimately responsible for employee benefits security, could itself collect data on behalf of the APCDs.

The Department of Labor and Others Respond

In July 2016, just four months after the Court released its opinion in *Gobeille*, the DOL responded by issuing a Notice of Proposed Rulemaking to expand data reporting from self-insured plans, which represent 63 percent of private health insurance plans. (Note that the Supreme Court's decision in *Gobeille* does not apply to fully-insured plans, which represent the other 37 percent.) However, there are limitations to the Proposed Rulemaking (which is still in draft form and not yet finalized at the time of this writing). The Rulemaking calls only for summary data to be provided and not data on individual patient encounters. Also, it calls for annual reporting (not monthly or quarterly). These limitations would result in a less nimble database for the purposes of policymaking and research. Of course, it is still certainly better than no data at all.

Recently, the National Academy for State Health Policy, the National Association of Health Data Organizations, and the APCD Council announced that together they are developing a Common Data Layout (CDL) for the collection of claims data in a single national standard format. The CDL will contain uniform reporting elements, which would be applicable to both self-insured and fully insured plans.

APCDs have already provided great value in several important areas of policy development, transparency, and public health. For example, APCDs have been invaluable in tracking health care spending drivers and trends, and identifying geographic variation in health care spending. To promote cost and quality transparency for its citizens, New Hampshire developed a website based on APCD data, NH HealthCost, which collects provider-specific price and quality information for consumers, allowing them to shop for the best prices and highest-quality services. In Virginia, the state's APCD has been instrumental in tracking opioid prescription claims to contain opioid abuse.

Some large health insurers, including Aetna, Humana, Kaiser Permanente, and UnitedHealthcare, have voluntarily contributed claims data to a centralized database maintained by the Health Care Cost Institute. These data have been used to study cost variation in medical services in commercial insurance. David Newman and colleagues, and Zack Cooper and colleagues, both found substantial geographic variation in private-insurance spending for common medical services, due largely to variation in the prices paid for the services. In contrast, although there is also considerable variation in spending for specific medical services in Medicare, that variation is due largely to variation in the intensity of utilization of services. This more nuanced understanding of the differences between private insurance spending as compared to Medicare spending would not be possible without the data contributed voluntarily by insurers.

Whether the regulations proposed by the DOL will be successful in preserving APCDs remains uncertain. If the DOL's Notice of Proposed Rulemaking is finalized, its implementation will depend upon the leadership of the Trump administration. With a new Secretary of Labor yet to be installed it is not at all clear how the Trump administration will react to the concept of APCDs as a means of improving quality and reducing costs. Alternative strategies, such as providing incentives for voluntary data contributions by payers, may be necessary to support the APCDs, which have been significantly diminished after *Gobeille*.