

# United States Senate

WASHINGTON, DC 20510

May 18, 2016

The Honorable Sylvia Mathews Burwell  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

The Honorable Thomas E. Perez  
Secretary  
Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

Dear Secretary Burwell and Secretary Perez,

Millions of Americans are unable to answer a simple question about their health care: how much will a procedure or service cost? This lack of transparency in the health care sector makes it almost impossible for consumers to compare the price and quality of different providers and treatment options. It prevents policymakers from controlling unnecessary variation in health care spending, and also contributes to the overall high cost of health care in the United States. The U.S. spends more on health care than any other OECD country and many experts believe that a significant portion of our nation's higher spending is attributable to price.<sup>1</sup> In 2010, the Institute of Medicine estimated that our health care system wastes in excess of \$100 billion on inflated prices.<sup>2</sup> We are writing today in support of critical, ongoing efforts to ensure families, providers, and policymakers have the tools they need to make informed choices about health care.

Many states, including our home states of Washington and Oregon, have worked to shed light on health care price information by establishing all payer claims databases (APCDs), which collect and compile information on the prices paid by public and private insurers for health care. By creating transparency around health care prices, the data in APCDs will aid policymakers, researchers, and consumers in many useful ways. This data will help public and private payers develop new payment models that reward providers who offer high quality care at lower prices.

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<sup>1</sup> Anderson, G. F., U. E. Reinhardt, P. S. Hussey, and V. Petrosyan. "It's The Prices, Stupid: Why The United States Is So Different From Other Countries." *Health Affairs* 22.3 (2003): 89-105

<sup>2</sup> IOM (Institute of Medicine), *The Healthcare Imperative: Lowering Costs and Improving Outcomes: Workshop Series Summary: Roundtable on Value & Science-Driven Health Care*. Washington, DC: The National Academies Press, 2010.

It will also help payers understand how health insurance plan designs that encourage beneficiaries to use high value providers affect health spending and utilization. APCDs allow the public to comparison shop for high-value care and make more informed treatment decisions for themselves and their families. They also allow state Insurance Commissioners to conduct more robust oversight of insurers' proposed rate filings, potentially lowering health insurance premiums. APCDs benefit whole communities as a resource for economic development by allowing companies contemplating a move to a given region to examine health care cost trends there. Finally, APCDs help answer questions about pressing public health concerns at a local level, for example, by uncovering hot spots in opioid prescribing.

We are concerned that, absent action to shore up the contribution of data to APCDs, the Supreme Court's recent decision in *Gobeille v. Liberty Mutual* threatens states' ability to answer these and other important research questions. In *Gobeille*, the Supreme Court ruled that state laws requiring self-funded employer-sponsored health insurance plans to submit data to the State APCD are preempted by the Employee Retirement Income Security Act (ERISA). Employer-sponsored health insurance represents a significant segment of the health insurance market, with over six in ten non-elderly workers with health insurance covered by self-insured plans in 2015.<sup>3</sup> The larger an employer is, the more likely it is that its employees are enrolled in self-insured plans.<sup>4</sup>

With submissions from self-funded employer-sponsored health insurance plans now purely voluntary, APCD data is likely to become skewed toward Medicaid enrollees, who tend to be sicker and more likely to have a disability than privately-insured individuals,<sup>5</sup> and Medicare enrollees, who are older than the commercially insured population. APCDs may also lose access to data that could help answer some of our most fundamental questions about health spending, health care markets, and public health. States should have the option to provide transparency into health care prices from all plan types, not just some.

As the implications of *Gobeille* unfold, we encourage you to examine what the Department of Labor and the Department of Health & Human Services can do to advance the goals of health care price transparency and restore access to claims data from self-funded employer-sponsored health insurance plans that may be lost as a result of the Supreme Court's decision.

Sincerely,



Senator Ron Wyden  
Ranking Member  
U.S. Senate Committee on Finance



Senator Patty Murray  
Ranking Member  
U.S. Senate Committee on Health,  
Education, Labor and Pensions (HELP)

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<sup>3</sup> Kaiser Family Foundation and Health Research & Education Trust, Employer Health Benefits: 2015 Annual Survey, available at <http://files.kff.org/attachment/report-2015-employer-health-benefits-survey>

<sup>4</sup> Ibid.

<sup>5</sup> Kaiser Family Foundation, Medicaid Enrollees are Sicker and More Disabled than the Privately-Insured, available at <http://kff.org/medicaid/slide/medicaid-enrollees-are-sicker-and-more-disabled-than-the-privately-insured/> (March 14, 2013).