



Colorado All Payer Claims Database Guidance for Stakeholders on Impact of the U.S. Supreme Court Decision in *Gobeille v. Liberty Mutual*

Impact of *Gobeille v. Liberty Mutual Insurance Company* Decision: Summary

In *Gobeille v. Liberty Mutual Insurance Company*, issued March 1, 2016, the U.S. Supreme Court held that the federal Employment Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et. seq.* (“ERISA”), preempts and invalidates the sections of a Vermont statute that required self-insured health plans established by employers and regulated by ERISA to report health care claims data and other health care service information to Vermont’s All Payer Claims Database. The *Gobeille* decision does not affect the remaining portions of Vermont’s law requiring non-ERISA health insurers, health care providers, health care facilities, and governmental agencies to report information relating to health care costs, prices, quality, and utilization. As a result of the decision, Colorado may not require self-insured, ERISA-covered health plans (“ERISA plans”) in this state to submit claims data to Colorado’s All Payer Claims Database (“CO APCD”). CIVHC, the administrator of the CO APCD, is currently working with the Department of Health Care Policy and Financing (“HCPF”), the authorizing state agency for the CO APCD, and the state Attorney General’s office on a minor revision to the Colorado APCD regulations at 10 C.C.R. § 2505-5(1.200). This rule change will bring the regulation into compliance with the U.S. Supreme Court’s decision. Stakeholders can expect a more comprehensive update on the contents of and schedule for the rule change within the next several weeks.

The Supreme Court’s decision does not affect the obligation under Colorado law for non-ERISA self-insured health plans or other current payers to submit claims data to the Colorado APCD, nor does it prevent CIVHC from accepting claims data voluntarily submitted by ERISA plans. The continued inclusion of data in the CO APCD from all self-insured employer-sponsored health plans, including ERISA plans, helps to provide the most complete and representative view of health care pricing, spending and utilization in Colorado. Given this inherent value, CIVHC and HCPF envision ERISA plans in CO supporting this mission by voluntarily submitting claims data to the APCD.

Pursuant to a new rule promulgated in 2015, and following an opt-out period that expired at the end of 2015, CIVHC began receiving data from self-insured health plans that have 100 or more covered lives in Colorado in January 2016. These claims represent approximately 700,000 new Colorado lives adding to the 3.5 million lives currently reflected in the CO APCD database for Commercial (large group, small group and individual lines of business), Medicaid, Medicare Advantage, and Medicare fee-for-service plans. Claims data submitted by ERISA plans prior to the Supreme Court’s decision in *Gobeille* will remain a valuable part of the APCD, and CIVHC will continue to accept voluntary claims data submissions from ERISA plans going forward.

The Supreme Court’s decision in no way affects the mission or purpose of the CO APCD, which has been and remains to inform and advance the Triple Aim goals of better health, better care, and lower costs by providing stakeholders with comprehensive, transparent information about health care prices, spending and utilization in Colorado. HCPF and CIVHC are committed to ensuring that the CO APCD remains the



state's most comprehensive source of health care claims data. To that end, Colorado intends to continue to explore ways at the state and federal level to make claims data from ERISA plans available to APCDs.

Supreme Court Ruling: FAQs

I'm a self-insured, employer-funded health plan regulated by ERISA ("ERISA plan"). Am I required to submit health claims data to the CO APCD?

Although Colorado can no longer require ERISA plans to submit claims data to the CO APCD, CIVHC will continue to accept claims data that is voluntarily submitted by or on behalf of ERISA plans going forward.

As an ERISA plan, what happens to the data my ASO/TPA submitted on my behalf prior to the Supreme Court's March 1, 2016 decision? Will the data be used in public and non-public data releases moving forward?

Claims data submitted by or on behalf of ERISA plans prior to the Supreme Court's decision in *Gobeille* will remain a valuable part of the APCD and will be treated the same as data submitted from any other category of payer. Data contained in the CO APCD is used to provide transparent health care data via the public website www.comedprice.org and via non-public releases in accordance with state and federal law.

If I'm another category of payer, not an ERISA plan, can I stop submitting data to the CO APCD?

No. The Supreme Court's decision only applies to a narrow subsection of payers – specifically, to ERISA plans. The decision does not affect the legal obligation under the Colorado statute and implementing regulations for non-ERISA self-funded employer sponsored health plans that have 100 or more covered lives or any other entities that meet the definition of payer under 10 C.C.R. § 2505-5(1.200) to submit claims data to the CO APCD.

Is HCPF going to modify the existing CO APCD rule based on the Supreme Court decision?

Yes. CIVHC is working with the Colorado Department of Health Care Policy and Financing and the state Attorney General's office on a revision to the Colorado APCD regulations at 10 C.C.R. § 2505-5(1.200) that will bring the rules into compliance with the U.S. Supreme Court's decision. Stakeholders can expect a more comprehensive update on the contents of and schedule for the rule change by the end of March 2016.

I'm an ERISA plan. I have not yet submitted any data to the CO APCD and have not submitted an opt-out form. Do I still need to submit an opt-out form and will there be any penalties for my failure to timely submit an opt-out form?

No. ERISA plans no longer need to submit opt-out forms, and there will be no penalties for ERISA plans who failed to timely submit opt-out forms by the original December 28, 2015 deadline.

I'm an ERISA plan. I submitted an opt-out form after the deadline of December 28, 2015. Will my opt-out be honored?

Yes. CIVHC will honor all opt-outs submitted by ERISA plans before or after the December 28, 2015 deadline, and there will be no penalties for ERISA plans who failed to timely submit opt-out forms.

For additional questions, please contact CIVHC at 720-583-2095, info@civhc.org, or visit our website at <http://www.civhc.org/self-insured.aspx/>.