

STATE OF NEW HAMPSHIRE

Honorarium or Expense Reimbursement Report (RSA 15-B)



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Office/Appointment/Employment held: Health Policy Legal Counsel, NH Insurance Dept

List the full name, post office address, occupation, and principal place of business, if any, of the source of any reportable honorarium or expense reimbursement. When the source is a corporation or other entity, the name and work address of the person representing the corporation or entity in making the honorarium or expense reimbursement must be provided in addition to the name of the corporation or entity.

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If source is a Corporation or other Entity:

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Work Address of Representative: 2100 Pennsylvania Ave NW, Suite 305 Washington, DC 20052

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Value of Honorarium: \_\_\_\_\_ Date Received: \_\_\_\_\_ If exact value is unknown, provide an estimate of the value of the gift or honorarium and identify the value as an estimate.

Value of Expense Reimbursement: \$443.28 Date Received: 3/5/16 - check received 2/5/16 - event

Briefly describe the service or event this Honorarium or Expense Reimbursement relates to:

Speaker for session on US Supreme Court case, Gobeille v. Liberty Mutual

"I have read RSA 15-B and hereby swear or affirm that the foregoing information is true and complete to the best of my knowledge and belief."

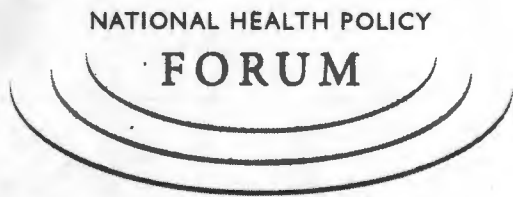
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9/07

RSA 15-B:9 Penalty. Any person who knowingly fails to comply with the provisions of this chapter or knowingly files a false report shall be guilty of a misdemeanor.

Return to: Secretary of State's Office, State House Room 204, Concord, NH 03301



## Show Me the Data! What's at Stake in the SCOTUS Case on Claims from Self-Insured Health Plans?

## FORUM SESSION ANNOUNCEMENT

### A DISCUSSION FEATURING:

**Trish Riley, MS**

*Executive Director*

National Academy for State Health Policy

**Kathryn Wilber, JD**

*Senior Counsel, Health Policy*

American Benefits Council

**Jennifer J. Patterson, JD**

*Health Policy Legal Counsel*

New Hampshire Insurance Department

**Jonathan Mathieu, PhD**

*Vice President of Research and Compliance*

Center for Improving Value in Health Care

FRIDAY, FEBRUARY 5, 2016

8:45–9:15 AM—Breakfast

9:15–11:00 AM—Discussion

### LOCATION

Reserve Officers Association  
One Constitution Avenue, NE  
Congressional Hall of Honor  
Fifth Floor

*(Across from the Dirksen  
Senate Office Building)*

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On December 2, 2015, the U.S. Supreme Court heard arguments in *Gobeille v. Liberty Mutual Insurance Company*, a case about whether the state of Vermont can require a self-funded employer health plan to provide medical claims and related information to the state's all-payer claims database (APCD).<sup>1</sup> APCDs aggregate data from public and private payers, including state Medicaid agencies, the Centers for Medicare & Medicaid Services, private insurance carriers, third-party administrators, pharmacy benefit managers, and dental benefit administrators. Typically, the data comes from medical, pharmacy, and dental claims, and eligibility and provider files.<sup>2</sup> States and other stakeholders use the comprehensive information from APCDs to support a range of activities aimed at improving health and health care, including analyzing service use, costs, and quality, and developing and implementing health care payment and delivery system reforms.

The state of Vermont has an APCD law that requires health care providers and payers to provide claims data and other information to the state. Alfred Gobeille is chair of the Green Mountain Care Board, which administers Vermont's APCD. Liberty Mutual Insurance Company is an employer in Vermont that self-insures to provide health benefits for its employees and contracts with Blue Cross Blue Shield of Massachusetts to administer the benefits. Liberty Mutual instructed Blue Cross not to provide data to Vermont's APCD for its employees in the state arguing that, as a self-insured plan regulated by the Employer Retirement Income Security Act of 1974 (ERISA), state reporting requirements don't apply.<sup>3</sup>

When an employer buys health benefits for its employees from an insurance company that assumes financial risk for covered lives, a state regulates the coverage. This arrangement is called fully insured. In contrast, when an employer self-insures and assumes financial risk for the cost of benefits, the federal government regulates coverage under ERISA. ERISA regulations preempt state laws that relate to self-insured employer health plans.

At issue in this case is whether ERISA preempts Vermont's APCD law. Vermont argues that ERISA does not preempt the law because: (i) it does not infringe on the core functions of ERISA, which relate to plan benefits and administration and fiduciary responsibility for managing health plans in the interest of beneficiaries, and (ii) Congress did not intend for ERISA to preempt laws that fall under states' traditional powers to protect public health and regulate health care. The APCD law, the state argues, should not

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be preempted because it provides information that supports public health and regulatory functions.<sup>4</sup>

Additionally, Vermont and its supporters assert that data from self-insured plans are necessary to provide a complete picture of health care in states.<sup>5</sup> Self-insured plans cover 63 percent of the working population,<sup>6</sup> a group with different demographic and health characteristics than those covered by Medicare, Medicaid, and fully insured private plans. Supporters also assert the APCD law creates a minimal burden, both because self-insured plans already have the necessary data to comply with the law and because the state's reporting requirements follow industry-wide technical standards mandated under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).<sup>7</sup>

Liberty Mutual counters that the requirements under Vermont's law conflict with Congress's intent under ERISA to create uniform, federal reporting requirements for self-insured plans. It also notes the ERISA purpose to ensure that plans can operate nationally, efficiently, and for the benefit of employees without undue burden from state and federal regulations that may conflict with one another.<sup>8</sup> The company and its supporters further argue that providing data to APCDs in multiple states with different requirements would be burdensome and divert resources from administering benefits.<sup>9</sup>

## APCDs AND HEALTH REFORM

A growing number of states are creating and using APCDs to support research and inform health care policies. Vermont is one of 18 states that have already established APCDs; 4 states are now implementing databases; and 21 more are in various stages of considering doing so, as evidenced by legislative activity, work by policy commissions and advisory bodies, and activities to convene stakeholders.<sup>10</sup> Most APCDs mandate data reporting.<sup>11</sup>

Researchers use the data from APCDs to study the cost, use, and quality of health care. Having a comprehensive resource is crucial for developing, implementing, and evaluating policies. The large amount of data supports a big-picture view of the state's health care system, and it facilitates comparative and population-based studies that are best undertaken with a full data set.<sup>12</sup> For example, in Vermont, researchers used the state's APCD to evaluate Blueprint

for Health, an all-payer, medical home program that includes support from a community health team. They found that the program reduced inpatient and outpatient hospital spending, and that participants used more preventive services than a comparison population. In addition, Medicaid spending increased for dental, social, and community-based services.<sup>13</sup>

The Supreme Court case implies tension between the benefits of state data collection on the one hand and the uniform regulation of self-insured plans on the other hand. But even if the court sides with Liberty Mutual, states may be able to collect sufficient data from self-insured plans that report information voluntarily. In Vermont, Liberty Mutual provides coverage for just 137 members and is the only self-insured plan that doesn't provide data. If the court rules in favor of Vermont, its decision would reinforce the many data collection efforts that are already under way.

## SESSION

This Forum session will consider the potential impact of the *Gobeille v. Liberty Mutual* case on states' efforts to create and use all-payer claims databases (APCDs). **Trish Riley, MS**, National Academy for State Health Policy, will summarize key facts and issues in the case, with an emphasis on its importance for states. **Kathryn Wilber, JD**, American Benefits Council, will address the importance of ERISA and the consistency it affords for employers who self-insure to provide health benefits. **Jennifer Patterson, JD**, New Hampshire Insurance Department, will describe New Hampshire's experience creating and using an APCD to nudge health care market change. **Jonathan Mathieu, PhD**, Center for Improving Value in Health Care, will describe Colorado's collaborative effort with stakeholders and the incremental strategy the state has used to develop and expand its APCD.

## ENDNOTES

1. The following documents summarize the case and its legal and policy issues, from slightly different perspectives. Tyler Vandeventer and Jason P. Ottomano, "Gobeille v. Liberty Mutual Insurance Company (14-181)," Cornell University Law School, Legal Information Institute, <https://www.law.cornell.edu/supct/cert/14-181>. Sara Rosenbaum, "Clash of the Titans: State All-Payer Claims Reporting Systems Meet ERISA Preemption," *The Millbank Quarterly*, 93, no. 4 (2015): pp. 683–686, [www.milbank.org/the-milbank-quarterly/current-issue/article/4061/clash-of-the-titans-state-all-payer-claims-reporting-systems-meet-erisa-preemption](http://www.milbank.org/the-milbank-quarterly/current-issue/article/4061/clash-of-the-titans-state-all-payer-claims-reporting-systems-meet-erisa-preemption). Trish Riley, "What's at Stake for States? The Lines Are Drawn in Gobeille v. Liberty



- Mutual," National Academy for State Health Policy, November 2015, [www.nashp.org/wp-content/uploads/2015/11/Gobeille.pdf](http://www.nashp.org/wp-content/uploads/2015/11/Gobeille.pdf). All briefs for this case are available from the SCOTUSblog, [www.scotusblog.com/case-files/cases/gobeille-v-liberty-mutual-insurance-company/](http://www.scotusblog.com/case-files/cases/gobeille-v-liberty-mutual-insurance-company/).
2. Jo Porter *et al.*, "The Basics of All-Payer Claims Databases: A Primer for States," APCD Council, 2014, pp. 1-2, <https://www.apcdouncil.org/basics-all-payer-claims-databases-primer-states>.
  3. Gobeille v. Liberty Mutual, Supreme Court Case No. 14-181, Brief in Opposition [Liberty Mutual Insurance Company], November 6, 2014, pp. 5-6, [http://sblog.s3.amazonaws.com/wp-content/uploads/2014/11/2014\\_11\\_06-Brief-in-Opposition\\_138032350\\_1.pdf](http://sblog.s3.amazonaws.com/wp-content/uploads/2014/11/2014_11_06-Brief-in-Opposition_138032350_1.pdf).
  4. Alfred J. Gobeille, in His Official Capacity as Chair of the Vermont Green Mountain Care Board, v. Liberty Mutual Insurance Company, On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit, August 13, 2014, pp. 14, 16-25, <http://sblog.s3.amazonaws.com/wp-content/uploads/2014/10/Gobeille-v-Liberty-Mutual-Cert-Petition.pdf>.
  5. Gobeille v. Liberty Mutual, On Petition for a Writ of Certiorari, p. 27; and Gobeille v. Liberty Mutual, S.C. Case No. 14-181, Brief of Amici Curiae Harvard Law School Center for Health Law and Policy Innovation, et al. in Support of Petitioner, September 4, 2015, pp. 11-27, [www.scotusblog.com/wp-content/uploads/2015/09/Amicus\\_brief\\_Gobeille\\_v\\_Liberty\\_Mutual\\_09\\_2015.pdf](http://www.scotusblog.com/wp-content/uploads/2015/09/Amicus_brief_Gobeille_v_Liberty_Mutual_09_2015.pdf).
  6. The Kaiser Family Foundation and Health Research & Educational Trust, *Employer Health Benefits: 2015 Annual Survey*, section 10, "Plan Funding," exhibit 10.1, "Percentage of Covered Workers in Partially or Completely Self-Funded Plans, by Firm Size, 1999-2015," p. 176, <http://files.kff.org/attachment/report-2015-employer-health-benefits-survey>.
  7. Gobeille v. Liberty Mutual, S.C. Case No. 14-181, Brief of Amici Curiae the National Association of Health Data Organizations (NAHDO), et al. in Support of Petitioner, September 4, 2015, pp. 5-10, [www.scotusblog.com/wp-content/uploads/2015/09/VHCURES-Amicus-Brief-of-NAHDO.pdf](http://www.scotusblog.com/wp-content/uploads/2015/09/VHCURES-Amicus-Brief-of-NAHDO.pdf).
  8. Gobeille v. Liberty Mutual, Brief in Opposition, pp. 15-18.
  9. Gobeille v. Liberty Mutual, Brief in Opposition, p. 18-21; and Gobeille v. Liberty Mutual, S.C. Case No. 14-181, Brief of the American Benefits Council et al. as Amici Curiae in Support of Respondent, October 20, 2015, pp. 11-14, [www.scotusblog.com/wp-content/uploads/2015/10/14-181-bsac-American-Benefits-Council-et-al.pdf](http://www.scotusblog.com/wp-content/uploads/2015/10/14-181-bsac-American-Benefits-Council-et-al.pdf).
  10. Information collected from the APCD Council's interactive web report of state efforts, accessed January 17, 2016, <https://www.apcdouncil.org/state/map>.
  11. Porter *et al.*, "The Basics of All-Payer Claims Databases," p. 2.
  12. Gobeille v. Liberty Mutual, S.C. Case No. 14-181, Brief of Amici Curiae Harvard Law School Center for Health Law and Policy Innovation, et al. in Support of Petitioner, September 4, 2015, pp. 5-6, 11-24.
  13. Craig Jones *et al.*, "Vermont's Community-Oriented All-Payer Medical Home Model Reduces Expenditures and Utilization While Delivering High-Quality Care," *Population Health Management*, September 2015 (forthcoming), <http://online.liebertpub.com/doi/pdfplus/10.1089/pop.2015.0055>.