

Office of Statewide Health Planning and Development

**Healthcare Payments Data Program
Review Committee Meeting**

January 16, 2020

Draft Meeting Minutes

Members Attending: Charles Bacchi, California Association of Health Plans (CAHP); Anne Eowan, Association of California Life and Health Insurance Companies (ACLHIC); Terry Hill, California Medical Association (CMA); Amber Ott, California Hospital Association (CHA); Emma Hoo, Pacific Business Group on Health (PBGH); John Kabateck, National Federation of Independent Businesses (NFIB); Ken Stuart, California Health Care Coalition; Anthony Wright, Health Access California; Joan Allen, Service Employees International Union- United Healthcare Workers West (SEIU-UHW); Cheryl Damberg, RAND Corporation; William Barcellona, America's Physician Groups.

Attending by Phone: No members attended by phone.

Not Attending: All members were present

Presenters: Michael Valle, Acting Chief Information Officer and Deputy Director, OSHPD; Jill Yegian, Consultant, OSHPD; Jonathan Mathieu, Senior Health Care Data/Policy Consultant, Freedman HealthCare; Linda Green, Vice President- Programs, Freedman HealthCare; Fran Mueller, Chief Deputy Director, OSHPD; Bobbie Wunsch, Consultant, OSHPD.

Others: Denise Love, National Association of Health Data Organizations (NAHDO); Norm Thurston, Executive Director, NAHDO.

Public Attendance: 11 members of the public attended.

Welcome and Meeting Minutes

The Review Committee Chair, Ken Stuart, brought the meeting to order and facilitated introductions. The December 19 Review Committee meeting minutes needed some formatting updates and will be voted on at the February meeting. Bobbie Wunsch went over the ground rules for the meeting.

Ken Stuart also reminded the committee that this is the last meeting to cover new material. The committee will be reviewing all of the previously approved recommendations at the February meeting, and doing any necessary edits to provide alignment across the recommendations.

Deputy Director's Report

Michael Valle provided a summary of what was discussed at the December Technical Workgroup. He noted that the group discussed the APCD-CDL™ Data Maintenance Request Process, with a plan for OSHPD to submit proposed revisions to the CDL that would go into effect in January 2021. All of the proposed revisions are included in the Technical Workgroup summary. Examples include clarifying the descriptions of certain data elements and referencing appropriate national standards. Michael also thanked the Technical Workgroup, which hosted its final meeting in January 2020, for all of their contributions which have been valuable to both the business of the Review Committee and the success of the program going forward.

Michael Valle also noted that the recently released Governor's Budget Proposal included several items related to healthcare data and cost transparency. He noted that OSHPD is looking forward to learning more about these proposed initiatives and what kind of support OSHPD and the HPD can provide.

Follow up from December 19

Jill Yegian gave a presentation on considerations for the development of a Data Release Committee. The presentation covered what other states do regarding transparency of data request applications, stipulations of being a committee authorized in statute in California as well as the effect of California conflict of interest and Public Records Act provisions.

Amber Ott, CHA, inquired what the timeline on approval of data requests in other states is. Linda Green noted that it varies. Utah takes an aggressive approach to get it done as quickly as 10 days, while some other states have more rigid processes, which may take 1-3 months. Amber followed up inquiring if it was a "first in first out" kind of model, which Norm Thurston confirmed it was. It was also noted that some requests can be fast tracked if they are repeat requests. Linda Green also noted that at the start up, most states take a more conservative approach as the committee matures.

Cheryl Damberg, RAND, inquired what other states say is the benefit of having a public comment period on data requests. Linda Green noted that it is for transparency primarily. She noted that there has been concern from payers and providers wanting to know what will be released and discussed about them, so the public comment period is an opportunity to share in advance what data is being requested. Cheryl Damberg also followed up with a second question inquiring if there are any requirements for researchers to release any of their findings. Jonathan Mathieu noted that Colorado has some provisions for release of findings in order to meet the statutory requirement of demonstrated benefit to the state of Colorado.

Ken Stuart, California Health Care Coalition, inquired if the length of time needed to respond to a data request application depends on the amount of resources available at the state level and how often the committee meets. Linda Green noted that data release committees usually have monthly in person meetings. She also noted that, regarding state resources, at a minimum there needs to be administrative and process management support, application intake support and business analytics support to make sure the data requested supports the proposed analysis. Ken followed up noting that it would be important that the committee be provided with all of the necessary information prior to the meeting in order to increase meeting efficiency. Norm Thurston noted that typically business analysts provide staff recommendations for the data release committee so that the meeting itself can go quickly.

Emma Hoo, PBGH, inquired if there is a way to structure use cases that represent priority areas for California and to segment out applications that meet those needs. Linda Green noted that the Data Release Committee can decide if they would like to have a policy that does that.

Joan Allen, SEIU-UHW, noted that she can think of a number of use case where having a transparent data application process could damage the use case. For example, by signaling a policy an organization is interested in. She asked if this was an issue and how it was handled in other in those states. Jonathan Mathieu noted that Colorado is an exception to the rule because they do not release data access requests, due to those concerns. However, Colorado does provide an annual legislative report that summarizes the information of all of the data requests that have been processed. There were no other state experiences provided.

Terry Hill, CMA, inquired if there is a legal review of the applications in most states. Jonathan Mathieu noted that not each of the applications will have a legal review, but if a specific application raises unique legal concerns, the practice is normally to request legal review. In Colorado, there were a relatively small number of applications requesting such a review, but they happened on a monthly basis. Norm Thurston also added that usually the process, for evaluating data request applications has been approved by attorneys, and as long as the process is being followed the attorneys are comfortable. Linda Green also added that some state data release committees also have attorney's that sit on the committee, representing either the APCD organization or the constituent organizations. Terry Hill also had a follow up question asking if the posted summaries of the applications would be done by the requestor, so that OSHPD staff would not have to summarize each data request application. Linda Green noted that that as part of the application the data requester is usually requested to provide that summary.

Ken Stuart, California Health Care Coalition, inquired what is an example of

something that might utilize a closed session. Jill Yegian noted that the authorizing statute has to give authority to have a closed session for specific topics that are defined in statute. Norm Thurston noted that some examples could be trade secrets, proprietary information or disciplinary rules on a data user. He did note that Utah has not had a reason to go into closed session during a data release committee meeting. Beth Herse also noted that while the data request application will address the intent of what the data is being requested for, the application itself does not need to go into the specific methodology of the study, which may be the more proprietary information committee members are concerned about.

Joan Allen, SEIU-UHW, inquired if, based on experience in other states, is the general assumption that the staff recommendation regarding the disposition of a data request is followed. Norm Thurston noted that he is not familiar with any states that blanket defer to staff for the recommendation of the disposition and that there is usually discussion, but the committee ultimately makes the final decision. Jonathan Mathieu noted that the staff function is to know the policies and guardrails around data access requests, and to ensure the proposed use is aligned with statutory purpose. Denise Love also noted that having staff recommendations helps to support equitable access so that the ground rules are transparent and there is not bias towards one user. She also noted that she has not often seen a data release committee overturn the recommendation made by staff. Norm Thurston followed up noting that the real benefit of the data release committee is evaluating novel ideas and assessing if that is the direction the committee wants to approve. In those situations, staff may make a recommendation, but the committee may have their own opinions about those issues, as they are new territory to set precedents with.

Charles Bacchi, CAHP, inquired if the same approach for data access is used for sister agencies such as CDPH or DMHC? Linda Green noted that there is usually a fast track process for government entities.

Cheryl Damberg, RAND, noted that it has been her experience that when requesting CMS data there is a lot of proforma requests which are reviewed and processed quickly. She noted that there is another subset of requests, requiring non-public data, which get escalated to the CMS privacy board. She noted that there might be some efficiencies in the CMS process and that it would be helpful to try to understand their process.

Joan Allen, SEIU-UHW, inquired if, based on experience in other states, there are issues with conflict of interest. Denise Love note that it has not been a huge issue, because policies are applied equitably. Norm Thurston provided an example of when in Utah a health system representative who was unfairly assessing competitor's data request applications the committee reminded him of the agreed upon policies and the behavior changed.

Beth Herse noted that in California there are standards in the law about what is a disqualifying financial interest, which would trigger a financial conflict of interest reporting. The financial interest has to be a reasonably foreseeable and substantially show that there is a material effect on the public official's finances. She also noted that there is a detailed level of analysis to determine what is "material".

Anne Eowan, ACLHIC, noted that for this committee there will need to be representatives with the necessary technical expertise who will be at health plans and hospitals. She noted that it would be important to establish a policy that will not preclude the technical experts from being on the committee. Jonathan Mathieu noted that some states have the Data Release Committee members sign a conflict of interest form for non-economic conflict of interest issues. An example would be if a data release committee member's colleague applies for data, that member would recuse themselves from providing input on that data request. Linda Green noted that there is typically a high standard of behavior, which is determined by the committee.

Anthony Wright, Health Access, inquired if anyone has considered issues around conflict of interest if the decision being made is not specifically about a data release committee member's institution, but if the decision would set precedent that could then impact decisions the member's institution makes regarding data requests. Denise Love noted that early on the data release committees start out much more conservatively and with caution. As the committee matures the process evolves to better accommodate data requests and increase efficiency as appropriate. Anthony Wright followed up with a second question regarding if the decision making will be a majority rules or consensus model. Jill Yegian noted that it will depend on the policy set at the start by the committee. Jonathan Mathieu noted that he has seen the consensus model work really well. He also noted that it is important to get the committee convened early so that everyone can agree to the policies upfront, which will hold committee members accountable and guard against self-interest creeping into decision making. He also noted that, as Denise Love mentioned earlier, there is nothing that prevents a competitor in the same space making the same requests. Anthony Wright also added that as a consumer advocate he is in favor of strong conflict of interest provisions. However, he noted that he does recognize the balance of having expertise on the committee that may require some negotiating around conflict of interest. He noted that he appreciates that most decisions the committee will want to get to consensus, and the conflict of interest provision becomes even more important with a consensus model where it can happen that one person can have essentially veto power. He noted it was helpful to hear Norm Thurston's earlier example of how conflict of interest provisions can help bring along a member who may be an outlier in decision making, due to self-interested reasons.

Ken Stuart, California Healthcare Coalition, noted that in his coalition meetings, if

members have a client relationship with the speaker the members note that upfront. There should be a requirement for at least verbal disclosure for any type of relationship.

Charles Bacchi, CAHP, noted that an important consideration is that the public nature of the meeting can serve the purpose of keeping member behavior aligned with the set expectations.

Amber Ott, CHA, wanted some clarification on how the Data Release Committee will be related to the Advisory Committee. Jill Yegian noted that the two are separate and distinct committees. The Data Release Committee will make recommendations to OSHPD regarding data access, and the Advisory Committee will be involved in ensuring the governing policies are consistent with legislative intent.

Recommendation 1

The recommendation as presented to the committee:

1. The Review Committee recommends that OSHPD should be authorized to establish a Data Release Committee to advise OSHPD on requests for access to non-public data. The Data Release Committee members should be appointed by the OSHPD Director and include a diverse range of stakeholder representatives. OSHPD will maintain information about requests and disposition of requests.

Charles Bacchi, CAHP, made a motion to move the recommendation.

Bill Barcellona, America's Physician Group, seconded Charles Bacchi's motion.

Anne Eowan, ACLHIC, inquired if the term "authorized" is being used to signal that this committee will be in statute. She noted that her thought is that OSHPD should not be "authorized" to convene this committee but "should" convene this committee. She also noted that the term "diverse range of stakeholders" is good but there should also be a diverse range of data submitters included not just PPO and HMO. She suggested adding a comma after "diverse range of stakeholders" and adding "including a diverse range of data submitters."

Terry Hill, CMA, noted that he is not sure if the recommendation captures the conversation that was had about Bagley-Keene provisions, closed session, or conflict of interest. Jill Yegian noted that by putting the Data Release Committee into statute, as the recommendation is suggesting, implicates Bagley Keene, Conflict of Interest and the Public Records Act (PRA). Beth Herse also reminded the committee that whether or not the Data Release Committee is Bagley-Keene or not, because OSHPD is a state entity, everything that is part of this process will be subject to the PRA. Terry Hill also asked if the prior recommendation from September which references a data access committee is the same as data

release committee. Jill Yegian confirmed that to be true and noted that will be part of the February Review Committee recommendation reconciliation meeting.

Ken Stuart, California Health Care Coalition, reminded the committee that as the Review Committee, the responsibility is to provide a recommendation to establishing the data release committee. The comments the committee is providing are helpful for when OSHPD is implementing the committee.

Amber Ott, CHA, confirmed that by voting in this recommendation, as it is written, the committee will be subject to Bagley-Keene. She also noted that the committee spent some time discussing the representation on the Advisory Committee. She inquired if the plan is for the Data Release Committee to have more granular representation. Jill Yegian noted that the team has gotten feedback that having representation of the people who are working with the data would be the most valuable. This would imply that there would be more individuals who are within the organizations rather than representing a group of organizations. However, the team has not yet thought through which exact organizations the individuals would be coming from.

Cheryl Damberg, RAND, noted that she would argue for giving OSHPD flexibility in developing the membership as the department will need to assess what core competencies will be needed by this group. She noted that it will be important to include not just representatives who know data, but representatives who also know protection of human subjects and legal issues.

Emma Hoo, PBGH, asked for some clarification around the scope of the committee, and whether or not this committee would only address data access requests for the data that is collected as a part of the HPD or would it also encompass outside data that would be linked to the HPD such as end of life data. Chris Krawczyk noted that each data set has their own authority for data access and usage. He also noted that there is an opportunity for reciprocity in the decision making and release of other data sets. Beth Herse noted that there is no way to short circuit that approval process, however there can be an opportunity to coordinate across the various processes. Emma Hoo followed up inquiring if the coordination could help align the timeline of the different processes (i.e. if one request is 30 days and the other is 6 months). Chris Krawczyk noted that the way the process currently flows for a OSHPD/CDPH data request is that the request would come into OSHPD to review the initial request. Then OSHPD would need to get confirmation of eligibility and approval for the use of the data from Committee of the Protection of Human Subjects (CPHS). Once that has happened CPHS would provide a conditional approval of the data request, which is required in order to release any vital statistics data from CDPH. With existing coordination processes, if these general requirements have been met, the Vital Statistics Approval committee takes on the request with a greater expediency. There will need to be a decision about how the HPD Data Release Committee will coordinate across these existing requirements, particularly with data linkage.

Michael Valle noted that this is also the current set up, and there are a number of efficiency improvements that are being developed that will make this process even smoother once the HPD data comes in.

Anthony Wright, Health Access, provided an amendment to capture that the data release committee will have expertise in privacy and security in addition to knowledge on the data. He suggested adding a comma after “diverse stakeholders” and adding “with expertise in privacy, security, and public health.” He commented that this would reassure the public that this committee will have knowledge on these areas. The way it is currently written as “diverse stakeholders” does not fully capture that.

Joan Allen, SEIU-UHW, noted that she wanted to ensure there is a way to fast track applications that are repeat requests for non-public data that or that are similar enough to other data requests. She noted that she is not sure that this recommendation, as written, captures that not every request will need to go through the full process. She recommended adding “as needed” after “non-public data” or something equivalent to recognize that there are two different categories of applications – routine and non-routine.

Cheryl Damberg, RAND added that she agrees with Joan Allen’s comments and that there was a similar issue with the CMS privacy board, where a repeat data request would have to be re- reviewed each time, which added inefficiencies to the process. She also noted that there are certain requests where data is non-public, where there are greater privacy sensitivities, which is what the Data Release Committee should be dedicated to. She noted that CMS currently has many more data requests than can be processed by the privacy board, and it can take 6-8 months to have a data request reviewed. She cautioned that a similar volume of request issue could befall this group if there are not processes in place to increase efficiency. Norm Thurston commented that the two types of requests for non-public data that may not need full committee review include renewals without amendments, and short -term limited data sets.

John Kabateck, NFIB, inquired if there would be a reason or value to have someone from the business community or benefit management represented on the data release committee. Bobbie Wunsch noted that would be captured under the “diverse range of stakeholders.” John Kabateck followed up with a second question if there is there a typical number of Data Release Committee members and if there is typically a term for serving. Jonathan Mathieu noted that in Colorado the data release committee was made up of 10 people which was manageable and diverse, and they did not elect to use terms.

Charles Bacchi, CAHP, proposed an amended motion with the following suggestions:

- Replace the word “authorize” with “required”
- After the word “representatives” add “with expertise in issues that need to

- be considered in the release non-public data”
- Add a new sentence at the end to say “OSHPD and the data release committee should develop processes to ensure the timely consideration and release of the data”.

Cheryl Damberg, RAND, noted that the last proposed sentences feels that its broader than just the Data Release Committee and could possibly be its own separate recommendation.

Charles Bacchi, CAHP, agreed with Cheryl’s comment but noted that the Data Release Committee itself deserves its own piece regarding timeliness. He noted that there may be a need for a new recommendation, to be presented at the next meeting, that addresses general OSHPD timeliness.

Ken Stuart, California Healthcare Coalition, inquired if this issue of timeliness is more of a policy issue than a legislative recommendation.

Joan Allen, SEIU-UHW, noted that this amendment does not yet capture that not every request will need to go through such a detailed review. She suggested adding “as needed” after “access to non-public data.” Charles Bacchi noted that he did not feel comfortable with “as needed”, because that leaves the question of “as needed by who?” Joan Allen suggested instead of “as needed” to say, “at the discretion of OSHPD.”

Terry Hill, CMA, noted that there really is no reason for this committee to spend time looking at repeat requests. He commented that he felt the last sentence as written would cover that issue.

Emma Hoo, PBGH, commented if there was a need to define what is a policy issue that would be handled by the Advisory Committee, versus what is a data release issue that would be reviewed by the Data Release Committee. Ken Stuart reminded the committee that these recommendations will ultimately go to the legislature, and the job of the committee is to ensure that the language in the recommendations explains to the legislature what they need to do to create the committee, while the more granular operational and policy decisions will be made down the road by OSHPD.

Anne Eowan, ACLHIC, noted that she supports the way that it is currently written, as it communicates that there will be a process that is developed, while “as needed” leaves it too open.

Anthony Wright, Health Access, noted that he is ok with the current language though he does not know if it fully captures what Joan Allen was seeking to capture. He also added that while he is not interested in getting into the weeds of what the specific makeup of the Data Release Committee will be, he did note that the Review Committee has previously called out the concepts of privacy, security

and public health. While the committee has agreed that these are important principles to uphold, without specific representation of these sectors on the Data Release Committee, the confidence that those principles will be implemented is lacking. By adding these members to the recommendation, it would be signaling that the Data Release Committee would be focused on upholding those principles. He suggested adding “including privacy, security, and public health” after the newly added clause “with expertise in issues that need to be considered in the release of non-public data.” Charles Bacchi inquired if this addition would signal limiting the Data Release Committee appointments only to those members. Anthony Wright noted that is not his intent.

Bill Barcellona, America’s Physician Group, noted that the Review Committee is discussing advisory committees, while the ultimate responsibility for privacy, security and public health rests with the Director and the Director’s staff. He noted that he feels the recommendation does not need to be this prescriptive.

Anne Eowan, ACLHIC, agreed with Bill Barcellona’s point and noted that anything that OSHPD ultimately approves will have to meet strict privacy, security standards. She noted that there will be internal controls to ensure these principles are upheld.

Charles Bacchi noted that he will not add the suggested amendment by Anthony Wright as there was not consensus on the committee to add it.

The committee voted to approve the recommendation as amended 11-0.

The recommendation as approved by the committee:

The Review Committee recommends that OSHPD should be ~~authorized~~ **required** to establish a Data Release Committee to advise OSHPD on requests for access to non-public data. The Data Release Committee members should be appointed by the OSHPD Director and include a diverse range of stakeholder representatives **with expertise in issues that need to be considered in the release of non-public data**. OSHPD will maintain information about requests and disposition of requests. **OSHPD and the Data Release Committee should develop processes for the timely consideration and release of data.**

State Government Financing

Fran Mueller provided a high-level overview of how the state budget process works including a timeline for the development of the budget. She noted that the basic process for budgeting in California is based on incremental changes, through the Budget Change Proposals due to new requirements on departments. She stressed the importance of stakeholder input in the negotiation of the final approved budget. Lastly, she talked about how OSHPD is a unique department which is mostly funded by special funds.

Emma Hoo, PBGH, inquired how the Center for Data Insights and Innovation will relate to OSHPD. Fran Mueller noted that the Center for Data Insights and Innovation is a California Health and Human Services Agency (CHHS) proposal, which is intended to centralize existing data assets across CHHS. Fran noted the center will exist at the Agency level and will likely provide centralized services and policy guidance and support regarding data usage for all CHHS departments, including OSHPD. Lastly, Fran noted that the OSHPD will know more as the Administration provides more information moving forward.

Sustainability

Jill Yegian, Linda Green, and Jonathan Mathieu presented on various funding options that are used across states to sustain APCDs. The presentation started with a reminder of the value proposition of this database. The presentation also included a discussion on Medicaid Match, data user fees and grants. The committee also did a brainstorm of other potential funding sources.

Charles Bacchi, CAHP, inquired if the role of a restricted revenue fund is specifically for user fees or would other funding sources for the HPD also go into the fund. Michael Valle noted that all the non-governmental revenue would go into the restricted revenue fund. Charles Bacchi followed up with a question regarding the role of the newly proposed Office of Health Care Affordability, and its relationship to the HPD. Michael Valle noted that OSHPD looks forward to learning more about the Governor's budget proposal and how OSHPD can be of support. He also noted that OSHPD sees these new proposals as a place where the HPD System can be a value add. OSHPD noted that they will share the CHHS briefing document with the Review Committee.

Amber Ott, CHA, asked to be reminded of how the previously allocated \$60 million is being used and if that money will be able to cover any years of operation. Michael Valle noted that the \$60 million is available to OSHPD to spend until CY 2024-25. Based on current estimates, OSHPD is expecting to be able to use this money to fund the planning, implementation and 1 to 2 years of operations.

Joan Allen, SEIU- UHW, inquired if the state share for the Medicaid Match, has to come from the general fund, or can it be from other sources. Linda Green noted that Medicaid looks first for stable source of state share funding, however it does not need to be exclusively general fund. Rhode Island is using data user fees as their state share of the match and has been successful in drawing down federal funds.

Amber Ott, CHA, inquired if there is a federal upper limit on the amount that a state can draw down at the 90-10 rate. Linda Green noted that the process to obtain this funding is through the Advanced Planning Directive (APD) process,

which defines the budget process, the technology, the governance process etc. and governs the amount of money a state can draw down. Amber Ott commented that it sounds like there may not be any upper bound in funding, if a state can make a case. Norm Thurston did add that getting this funding can be administratively burdensome, and that California should be prepared for a long process.

Anthony Wright, Health Access, inquired if the funding that comes from CMS can only be used for the Medicaid portion of the database or for the entire database. Linda Green noted that it varies from state to state. In Rhode Island and Delaware, the money was not only reserved for the Medicaid population while in Colorado it was. Norm Thurston noted that there is also some variation across CMS regional office. Anthony Wright also noted that there is some pending federal legislation which includes a line item of funding for APCDs, he inquired if there are any, implications of that legislation passing. Linda Green noted that right now it is unclear how this legislation would impact Medicaid match. She noted that in the past, federal grants have not affected Medicaid match. She also noted that it is unclear what those funds are intended for. The language currently speaks to a national APCD and it is not clear how far the projected funds would go or what the distribution mechanism would be.

Amber Ott, CHA, inquired if a reasonable estimated would be that if the full cost is \$15 million, and Medi-Cal is 1/3 of the population and if the federal government covers about 50% the federal share would be about \$2.5 million. Linda Green noted that is one way to calculate it and that is reasonable.

Charles Bacchi, CAHP, inquired what is the estimated cost of standing up the APCD. Ted Calvert noted that the allocated \$60 million will cover the implementation of the system and operation until Calendar Year 2024-25. Charles Bacchi noted if the HPD can get the 90 -10 match on the allocated \$60 million there will be even more money left over that can be utilized for operations. Ted Calvert noted that there are two issues there, 1) the \$60 million is time limited meaning it is not an ongoing stable source of revenue to be matched and 2) one of the issues with Medicaid Match dollars is that they are tied to what is requested in the APD.

Ken Stuart, California Health Care Coalition, commented if there is \$30 million being spent on planning and implementation and \$30 million left for the next 2 years of operations, the HPD could get 90-10 Medicaid Match on the \$30 million. Ted Calvert noted that in order to do that there a number of administrative requirements that have to be met to get the 90-10 funding, including a CMS review of all of the contracts, which would add a lot of time to the development and standing up of the database. The team is recommending using the CMS funding for ongoing operations not the initial planning.

Amber Ott, CHA, inquired how a data user fee is set without knowing what the

demand for the data will be. Jonathan Mathieu noted that it is very difficult to set a user fee in advance, but Colorado has worked with consulting firms to assess what the market value could be, however with a caveat that APCDs are unique. He also noted that in the earlier years of the HPD data user will uptick but may be slow to start. However, California does have an advantage in that this database will be the largest of its kind, so the demand up front may be higher than it has been in other states. At the start Colorado took a somewhat educated guess, which then led to negotiations and the development of a scholarship fund. Ultimately the state will have to be ready for flexibility and adjustments while the HPD System matures. Norm Thurston also added that for the development of the fee schedule for Utah, they started with a high price, because lowering prices is more palpable than raising prices. He also noted that the \$150,000 licensing fee is for the University of Utah, which can be a similar model that California can use.

Cheryl Damberg, RAND, noted that she wanted some more clarification on what these licensing agreements consist of. Norm Thurston noted that usually they are for large institutions that have a number of users. From a public policy perspective, this gives access to the data to a lot more people than would normally have access to it without large institution backing. Cheryl did note that a concern she has is that not all institutions would be able to afford such a high price point for a licensing fee. She noted that one of the ways CMS has solved this, is that they offer a “reuse” fee for data requests in the same organization for the same data that does not require CMS to re-cut the data. Norm Thurston noted that an issue that happened with the University of Utah was that anyone across the country could get a “co-authorship” with a University of Utah researcher and get access to the Utah APCD, so the Utah APCD had to adjust the model to address that. Cheryl Damberg noted that the licensing agreement set up may not work for every organization, and that should be kept in mind when developing the fee schedule

Ken Stuart, California Health Care Coalition, noted that when Cal Hospital Compare lost financial support from 2 health plans support, the board provided an opportunity to health plans to use the data in return for funding, which resulted in plans committing their financial support. He noted that there will be a great deal of interest in the HPD system as it will provide an opportunity for organizations to move away from high cost data analytic firms.

Emma Hoo, PBGH, inquired how many states make a limited data set available for sale, like a Truven market scan, and how do they reconcile selling that information for revenue generation with the rigorous data access review process that the committee previously discussed. Norm Thurston noted that he does not think any states are giving out limited data sets without a data review process, but some states have Public Use Files which are record level but de-identified. Jonathan Mathieu noted that this relates back to the minimum necessary standards under HIPAA, and most states have taken the stance that even indirect identifiers under HIPAA are identifiable information and require a careful

review to ensure that only the data minimally necessary to meet the intended project needs is released. Jill Yegian also commented that the team has met with vendors to learn about these issues and has heard that often the products they are selling remove identifiers that may be of value to the researchers or analysts.

Charles Bacchi, CAHP, noted that licensing fees have an opportunity to be an ongoing funding source to the HPD, while user fees will be dependent on how many users use the data. He noted that it might be helpful to give more attention to developing licensing fees, which seem like a more stable source than individual user fees, while still maintaining a balance with providing access to individual data users or smaller organizations who may not be able to meet the licensing fee requirements.

Ken Stuart, California Health Care Coalition, inquired if there is a way to ensure that the money that has been appropriated by the state for a future project but has not been spent yet, is not reversed. Michael Valle commented that there needs to be a restricted revenue fund to perform the function of holding on that appropriation or any revenue that is generated for the program. Michael also noted that the legislature has the authority to re-appropriate funding, and this is done in partnership with OSHPD and if OSHPD's program administration budgetary needs have not changed, the funding should be re-appropriated. Anthony Wright also added that there are some nuanced differences in terms of how the funding was allocated initially, for example there is a 2025 expiration on the \$60 million allocated for this project, so that is a determining factor of if it would get re-appropriated. Ultimately though one legislature cannot bind the decisions of future legislatures, as was the case earlier this year when one house in the legislature tried to take back the initially appropriated \$60 million. Ken Stuart noted that the Review Committee is not going to control the funding, and the committee is creating a path forward to recommend funding options.

Recommendations

Recommendation 1 as presented to the committee:

Restricted Revenue Fund for the HPD Program: The Review Committee recommends a restricted revenue fund or account be created for the HPD Program, and revenue to support the HPD Program should be directed to that fund. Any funds not used during a given year will be available in future years, upon appropriation by the Legislature.

Anne Eowan, ACLHIC, made a motion to move this recommendation.

Bill Barcellona, America's Physician Group, seconded Anne Eowan's motion.

Anthony Wright, Health Access, inquired if this should be a "restricted revenue fund" or a "special fund" and what the implications of Proposition 25 are on

whether the revenue generated is a tax or a fee. He wanted to ensure that this fund is not just to protect the money but also goes along with the California construct that fees should go to their relevant purposes.

Joan Allen, SEIU-UHW, noted that if the recommendation means “special fund” should it should say “special fund” to ensure that the Legislature understands what is being requested.

Bobbie Wunsch noted that the OSHPD staff will check if “special fund” or “restricted revenue fund” is more accurate and may propose a revised recommendation at the February meeting.

The committee voted to approve the recommendation as written 11-0.

Final recommendation as approved by the committee:

Restricted Revenue Fund for the HPD Program: The Review Committee recommends a restricted revenue fund or account be created for the HPD Program, and revenue to support the HPD Program should be directed to that fund. Any funds not used during a given year will be available in future years, upon appropriation by the Legislature.

Recommendation 2 as presented to the committee:

Pursue CMS Medicaid Matching Funds: The Review Committee recommends pursuing maximum possible CMS Medicaid matching funds to support the HPD Program.

Anthony Wright, Health Access, made a motion to move this recommendation.

Joan Allen, SEIU-UHW, seconded Anthony Wright’s motion.

Emma Hoo, PBGH, suggested an amendment to add after matching funds “or other federal funds” in order to encompass other options.

The committee voted to approve the recommendation as amended 11-0.

Final recommendation as approved by the committee:

Pursue CMS Medicaid Matching Funds: The Review Committee recommends pursuing maximum possible CMS Medicaid matching funds, **or other federal funds**, to support the HPD Program

Recommendation 3 as presented to the committee:

Charge Data User Fees to Support the HPD Program: The Review Committee

recommends developing a fee schedule and charging data user fees for data products to support the HPD Program.

Bill Barcellona, America's Physician Group, made a motion to move this recommendation.

Anthony Wright, Health Access, seconded Bill Barcellona's motion.

Emma Hoo, PBGH, inquired if, given the prior discussion regarding licensing versus user fees, the recommendation should specify between the two. Jill Yegian noted that the team felt the recommendation as written would encompass all revenue generated from users.

Joan Allen, SEIU-UHW, noted that given the bullet from a past slide regarding variable fee schedule for different entity types, the recommendation should capture that. She suggested adding another sentence that says, "with recognition that fees may differ based on requesting entity."

Terry Hill, CMA, noted that Colorado does not vary the fees but instead provides a scholarship fund. He noted that he would not want the recommendation to specify variable fee schedule if there might be other ways to reduce payments for certain entities.

Charles Bacchi, CAHP, noted that there is a balance between providing access for public good and the need for an ongoing revenue source. There could be another sentence added that communicates that OSHPD will need to balance support for small organizations and ongoing support from large organizations.

Ken Stuart, California Health Care Coalition inquired if in the construction of the legislative report, will there be commentary to supplement the purpose of a particular recommendation. Michael Valle noted that context can definitely be provided and that OSHPD will be seeking input from the Advisory Committee which is another way additional input can be taken in from stakeholders. Ken Stuart followed up noting if OSHPD can confirm that this additional context will be included in the report, the recommendation can be kept more straight forward.

Joan Allen, SEIU-UHW, noted that she would like to see this notion reflected in the recommendation.

Emma Hoo, PBGH, suggested to add "and stakeholder access to data" at the end, which Joan Allen agreed captured her concern.

The committee voted to approve the recommendation as amended 11-0.

Final recommendation as approved by the committee:

Charge Data User Fees to Support the HPD Program: The Review Committee recommends developing a fee schedule and charging data user fees for data products to support the HPD Program **and stakeholder access to data.**

Recommendation 4 as presented to the committee:

Explore Other Revenue Sources: The Review Committee recommends that for the remainder of HPD Program operational expenditures, other revenue sources should be considered in collaboration with stakeholders.

Anthony Wright, Health Access, made a motion to move this recommendation.

Cheryl Damberg, RAND, seconded Anthony Wright's motion.

The committee voted to approve the recommendation as written 11-0.

Final recommendation as approved by the committee:

Explore Other Revenue Sources: The Review Committee recommends that for the remainder of HPD Program operational expenditures, other revenue sources should be considered in collaboration with stakeholders.

Discussion on what other revenue sources are possible:

The committee shared other ideas for options for funding could be.

Cheryl Damberg, RAND, noted that residents of the state of California have a stake in this database, and could contribute through a tax of something modest such as \$0.50 per resident.

Emma Hoo, PBGH, noted that this could be added to the structure of the voluntary contributions when you file your taxes.

Charles Bacchi, CAHP, noted that California has a large number of research universities, with large budgets, and suggested developing an annual relationship between the UC system and the HPD. He also noted that with the new budget items introduced – Office of Health Care Affordability and Center for Data Innovation – there may be general fund support or a portion that could go towards the HPD.

Anthony Wright, Health Access, noted that currently OSHPD is supported by hospital submitter fees. Health Access can imagine a scenario where the HPD Program is funded by fees on health plans. He noted that it is essentially what Cheryl is talking about, as premiums currently fund the health system today, and it is not atypical to do this. He noted that the Review Committee has discussed other funding options including user fees and federal funding, which would

significantly bring down the cost, resulting in less financial burden falling on data submitters. He added that Health Access has no interest in piling on fees and understands the concerns regarding rising premiums. He also understands that there is not consensus right now for this idea to be moved forward, but that there is currently precedent in California to use submitter fees as a way to fund health programs, and he wanted it to be noted that this can be part of the funding mix.

Cheryl Damberg, RAND, inquired if the federal matching funds are a long-term source of funding or time limited. Ted Calvert noted that if the HPD is successful in making a case that the HPD system is part of the Medicaid IT system, supporting the Medicaid program, Medicaid Match can be a long-term source of funding. Amber Ott also commented that the California Health Information Survey has been successful in making this case and pulling down ongoing federal funding.

Bill Barcellona, America's Physician Group, noted that he supports the idea of an assessment on submitters to build a sustainable database in the long term. He used the example of the development of Symphony, which came out very early with a submitter fee and became successful quickly. He added that there needs to be a caveat that submitters would get access to the database in return for the assessment.

Amber Ott, CHA, noted that currently to fund OHSPD the hospitals do pay a fee, and have access to the full data set without any limitations therefore if the plans are going to pay a fee, they should get full access to the data. However, she noted that she does not think an opportunity exists for plans to get access to all of the data, due to anti-competitive concerns discussed, and if they are not able to get the data, they should not have to pay the fee.

Cheryl Damberg, RAND, noted that ultimately the consumer would be paying for the database through premiums. Even if plans were to get a more limited data set it seems it would still be beneficial to all of the people of the state of California and the increase in premiums is similar to the tax idea, where the money would flow through the health plans instead of the consumers directly.

Charles Bacchi, CAHP, noted that for the health plans are already contributing in many ways to support the HPD system, and it does not make sense to tack on an additional assessment. First, plans will have to expend resources to be able to submit data to the HPD system. Second, this data has a huge value, and the health plans are the ones providing this data, which is a second way plans are contributing. Additionally, as the database matures there will be new requirements that will require subsequent updates as well as associated costs on providers, which will potentially require health plans to up reimbursement rates for providers. Lastly, if plans do see the value of using the data, they can pay for it through the data user fees.

Anne Eowan, ACLHIC, suggested doing an economic analysis of how much plans are already contributing just to submit the data, to understand the true cost to the plans, and in turn impact on premiums.

John Kabateck, NFIB, agreed that an economic analysis would be helpful to assess what the plans are paying and what the costs to consumers and businesses will be.

Emma Hoo, PBGH, raised a concern about treating this as a new cost, because in her perspective as a purchaser she has an expectation for accuracy and reportability of data to self-funded employers, or other purchasers. She also noted that the intention, that was had at the outset to use a standardized format such as the APCD-CDL™, was to minimize costs related to each subsequent data request. Overall, she noted that she considers preparing the health plan systems for the HPD as an incremental build to enhance the ability to look at additional data components such as capitation, rather than just starting fresh. There are existing data feeds going from the plans to Medicare and other to other multi-payer databases, therefore the build for the HPD is additive rather than new.

Ken Stuart, California Health Care Coalition, noted that the committee has been cognizant of the cost to plans and providers. However, he noted that one of the main purposes of doing this project is to make data available to address the drivers of the cost of care, which are quality and appropriateness of care. He noted that the \$60 million that was allocated came from taxpayer money, and whatever is accomplished here will benefit every employee plan sponsor and all Californians who are covered by an employer plan sponsored program. He noted that in addition to Medicaid funds and user fees, it would be helpful to do an assessment of what the actual cost to the health plans will be. He did agree that health plans and insurers should be the last to be asked to contribute, as they are already contributing so much, however we are far out from even having a solid understanding of what that contribution amount would be.

Amber Ott, CHA, noted that in San Francisco there is a restaurant tax, that could be used as a model. It could be tiered cost across the state and would also be progressive in the sense that those who have the means to eat out regularly would pay more than those who don't.

Joan Allen, SEIU-UHW, noted that the San Francisco restaurant tax is like the idea of a submitter fee. The tax is not an actual tax but rather a line item that the restaurant highlights to show they are following the mandate. The consumers should be able to see the benefit of this increase in their premiums.

Charles Bacchi, CAHP, noted that there are other entities that would find great value of this data who are in the same vein as plans and are submitting data to plans, which would then get submitted to OSHPD. He noted that he does not

think that independent solo practitioners or members of CMA are going to be able to utilize the database, however large healthcare systems would be able to utilize the database, so including hospital systems and large capitated groups as paying submitter fees on an annual basis.

Bill Barcellona, America's Physician Group, also noted that in the realm of submitter fees you can include Third Party Administrators and management services organization other entities who would utilize the data.

Public Comment

There was no public comment at this time.

Agenda for Upcoming Review Committee Meeting & Adjournment

Ken Stuart thanked the committee and OSHPD Staff. She commented that the upcoming meeting in February will be the close out meeting and an opportunity to review and reconcile all of the recommendations that will be going into the legislative report.