The Health Care Cost Transparency Board's

Advisory Committee on Data Issues

August 21st, 2024

Washington State Health Care Authority

Tab 1

Washington State Health Care Authority

Health Care Cost Transparency Board's Advisory Committee on Data Issues

Wednesday, August 21, 2024
3:30 – 5:00 PM
Hybrid Zoom and in-person

Agenda

Members of the Advisory Committee on Data Issues		
☐ Christa Able	☐ David DiGiuseppe	☐ Hunter Plumer
☐ Megan Atkinson	☐ Chandra Hicks	☐ Mark Pregler
☐ Amanda Avalos	☐ Leah Hole-Marshall	☐ Russ Shust
☐ Jonathan Bennett	☐ Lichiou Lee	☐ Mandy Stahre
☐ Bruce Brazier	☐ David Mancuso	☐ Julie Sylvester
☐ Jason Brown	☐ Ana Morales	

Chair of the Advisory Committee on Data Issues	Bianca Frogner

Time	Agenda Items	Tab	Lead
3:30-3:35 (5 min)	Welcome, Agenda, Introduction of New Member, and Roll Call	1	Bianca Frogner, Chair
3:35-3:40 (5 min)	Approval of Meeting Summary	2	Bianca Frogner, Chair
3:40-3:45 (5 min)	Public Comment	3	Rachelle Bogue Health Care Authority (HCA)
3:50-3:55 (5 min)	Update of 7/30 Cost Board Meeting	4	Bianca Frogner, Chair
3:55-4:00 (5 min)	Business Oversight	5	Jeanene Smith Health Management Associates (HMA)
4:00-4:40 (40 min)	Business Oversight Data Collection Panel	6	• Jane Beyer (OIC) • Mandy Stahre (OFM) • AAG Travis Kennedy (ATG) • Ian Doyle (DOR)
4:40-5:00 (20 min)	Discussion	7	Jeanene Smith, Gary Cohen, HMA
5:00	Adjourn		Rachelle Bogue, HCA

Welcome New Member!

Advisory Committee on Data Issues

- David DiGiuseppe
  - Vice President of Healthcare Economics at Community Health Plan of Washington
  - Expertise in health care data, spanning behavioral health, risk adjustment strategies, and value-based purchasing
  - Serves on the Finance Technical Advisory Committee of the Universal Health Care Commission

Tab 2

Washington State Health Care Authority

Advisory Committee on Data Issues summary

June 12, 2024

Virtual meeting held electronically (Zoom) and in person at the Health Care Authority (HCA)
4–5 p.m.

Note: this meeting was video recorded in its entirety. The recording and all materials provided to and considered by the Committees is available on the **Advisory Committee on Data Issues** webpage.

Members present

Christa Able
Megan Atkinson
Amanda Avalos
Jonathan Bennett
Chandra Hicks
Lichiou Lee
David Mancuso
Ana Morales
Hunter Plumer
Mark Pregler
Russ Shust

Members absent

Bruce Brazier
Jason Brown
Leah Hole-Marshall
Mandy Stahre
Julie Sylvester

Call to order

Marty Ross, committee facilitator, called the meeting of the Advisory Committee on Data Issues and Advisory Committee (committee) to order at 4:09 p.m.

Agenda items

Welcome, Introduction of New Chair, Roll Call, Agenda, Purpose & Charter

Marty Ross, Health Care Authority (HCA)
Bianca Frogner, Committee Chair

Marty welcomed the committee members and quickly reintroducted the new committee chair, Bianca Frogner, who briefly described her background and the work ahead. After a brief overview of the agenda, roll was taken.

Approval of Meeting Summary

The committee **voted to approve** the October 3, 2023 Advisory Committee on Data Issues meeting summary, which was the last non-joint session.

Public Comment

Marty Ross, HCA

There were no written or verbal public comments offered.

Facility Fees: Data Needs

Gary Cohen, Health Management Associates (HMA)

During the May 15, 2024, meeting, the Health Care Cost Transparency Board (Cost Board) discussed the subject of facility fees and assigned the committee to study the issue and devise recommendations to the Cost Board. Facility fees are fees initially levied by providers to cover the expense of making Emergency Rooms available 24 hours per day. In 2022, hospitals collected $125 million in revenue from facility fees. These fees can cost consumers thousands of dollars in out-of-pocket expense. Current reporting required by law is very limited in scope. The Department of Health only receives data that describes the lowest and highest amounts charged, and a sum total from each hospital system. Further, there are gaps regarding what entities must report this data and without enforcement mechanisms, the data is considered incomplete. Options to address these fees have been implemented in other states, including improved transparency and limitations or prohibitions of these fees.

One committee member asked about whether there were limits or caps on fees charged, and whether the burden to patients was well understood. Generally, other states have prohibited, rather than capped, these fees. Another committee member asked about what exactly the definition of a facility fee was. A precise definition was offered from the statute for review. Another member requested a chance to digest this information and provide an answer in writing for review at a later meeting.

Business Oversight: Data Needs

Jeanene Smith, HMA

Background was offered on the business oversight landscape regarding mergers and acquisition, private equity investment, and other transactions in the health care market. Different types of transactions include vertical and horizontal integration, cross-sector mergers, closures due to insolvency (especially in rural settings), and purchases by private equity firms. One option for regulation, that has also been used in other states, include expanding the review or approval authority of the Office of the Attorney General (AGO) or another entity. Implementation of a tracking database is another approach used, allowing for more sophisitcated analysis.

Currently, the AGO oversees health care mergers and acquisitions, but only reviews such transactions from an anti-trust standpoint, with thresholds regarding who must report based on number of entitites, number of providers involved, and revenue. The data around acquisition by private equity is even more sparse, with no organized effort in place to track these specific purchases. Beyond the AGO, the Department of Health, Office of

the Insurance Commissioner, Medicaid, and Washington Medical Commission have specific and narrow oversight powers.

Discussion began with an offer of numerous resources and links to information provided in the meeting packet, as the subject will be studied further at the next committee meeting. One member suggested that the Office of Financial Management would have information as well that would be relevant to this subject. Another member offered a perspective on closures, noting that closures are the result of financial jeopardy. Small organizations may lack leverage with larger carriers to secure fair compensation on all provided services. Additional comments were requested to be sent in via email.

Adjournment

The meeting was adjourned at 4:03 p.m.

Next Meeting

Wednesday, August 21, 2024
Meeting to be held in-person and on Zoom
TBD

Tab 3

Public Comment

Tab 4

Update from the Cost Board

Last meeting held on July 30, 2024

- Facility fees panel and member discussion
  - National perspective
  - Provider perspective
- Potential policy recommendations for facility fees
- New committee member nominations from the Nominating Committee
  - Stakeholders: Michele Ritala
  - Data Issues: David DiGiuseppe

Tab 5

Washington State
Health Care Authority

Business Oversight Review

Advisory Committee on Data Issues

August 21st, 2024

Washington State Health Care Authority

Review of Business Oversight Work

- Policy options reviewed at Cost Board Retreat on 2/9/24
  - The option "*Mergers and Acquisitions/Private Equity/Ownership/Closures*" garnered substantial interest
  - Concept simplified to "Business Oversight" moving forward

Policy	Votes
Provider Rate Setting (2) and Price Growth Caps (7)	9
Limiting Facility Fees	8
Mergers and Acquisitions/Private Equity/Ownership/Closures	7
Restricting Anti-Competitive Clauses in Health Care Contracting	7
Increased Hospital Price Transparency	4
Community Benefit Transparency	4

Review of Business Oversight Work, cont'd

- Business Oversight presentation by HMA at Cost Board meeting, 5/15/24
  - Presented a survey of transaction oversight authority across the country
  - The Board referred the subject to the Data Issues Committee for further study

Authority	Nonprofit or For Profit	AG Authority	Dept of Health	+ Health Care Market Oversight Entity
Notice & Review *(Must go to court to challenge)*	Nonprofit only	AZ, GA, ID, MI, ND, NH, NJ, PA, TN, VA	AZ, NJ	
	Both	CO, HI, IL, MA, MN, **WA***	HI, MN, **NY***	**MA*, CA***
Approve; Approve with Conditions or Disapprove	Nonprofit only	CA, LA, MD, NE, OH, OR, VT, WI	MA, NE, VT	
	Both	CT, **NY*,** RI	CT, RI, WA (CON only), WI	**OR***

***Have authority for nonhospital transactions, including provider groups/private equity transactions**

From Models for Enhanced Health Care Market Oversight from Milbank Memorial Fund

Review of Business Oversight Work, cont'd

- The current state of Business Oversight presentation by HMA at the Data Issues Committee, 6/12/24
  - Reviewed the monitoring of health care consolidation in Washington
  - Discussed where transaction data is captured

Focus	AGO	DOH	OIC	Other
Hospitals	If Merger meets "Material Change" criteria	Cert. of Need (CON) Licensing Financials / Utilization	Only if related to health plan ownership	
Private Equity	If Acquisition meets "Material Change" criteria	If changes to licensing information	Only if related to health plan ownership	
Provider Ownership / Closure	Only if part of a merger	Hospital licensing and CON; utilization and Financial Data	Health plan ownership via financial reporting	**WA Medical Commission:** Some location information via provider licensing **Medicaid:** Related to application as Apple Health provider

Business Oversight Panel

Hearing from other state agencies about data needs

- Jane Beyer, OIC
  - Senior Health Policy Advisor & Cost Board Member
- Mandy Stahre, OFM
  - Senior Forecast and Research Manager & Data Issues Committee Member
- Travis A Kennedy, ATG
  - Assistant Attorney General, Antitrust Division
- Ian Doyle, DOR
  - Tax Policy Specialist, Legislation and Policy

Tab 6

Health Care Affordability Reports

Presentation to HCCT Bd. Advisory Committee on Data Issues

Jane Beyer, Senior Health Policy Advisor

August 21, 2024

OFFICE of the
INSURANCE
COMMISSIONER
WASHINGTON STATE

Legislative direction

Legislative direction

- 2023: Legislature directed the Office of the Insurance Commissioner and the Office of the Attorney General to evaluate policy options that could improve overall affordability for consumers, employers and taxpayers.
  - Preliminary Reports – December 1, 2023
  - Final report – August 1, 2024

WA OIC

Source: ESSB 5187, Sec 144(13) & Sec. 126(33)

Components of Preliminary Reports

Office of the Insurance Commissioner report:

- The structure of Washington's current health care system, including information about vertical and horizontal consolidation of health insurers, hospitals and health care providers.
- Private equity investment trends in Washington.
- An overview of potential policy options to improve health care affordability, some already adopted to some degree in Washington.

Attorney General Office report:

- An overview of current enforcement of federal and state antitrust laws aimed at securing strong market competition.
- A review of how other states monitor and challenge health care consolidation (i.e. mergers and acquisitions).
- A review of non-compete agreements in health care and anti-competitive provisions in insurer/provider contracts.

Structure of Washington's health care system

Vertical and Horizontal Integration Among Hospitals

- 40 of the 101 hospitals in the state are part of the five largest hospital systems: Providence/Swedish, MultiCare, Virginia Mason Franciscan Health, UW Medicine, and PeaceHealth and another 15 are part of smaller multi-hospital systems.

- 79.51% of all licensed beds are part of multi-hospital systems.

- In 2022, 9% of hospital systems owned skilled nursing facilities (SNFs), 82% owned hospital-affiliated clinics, 28% owned freestanding clinics, and 13% own a home health agency.

- Approximately 50% of physicians are employed by hospitals and of these, 65.6% are employed by multi-hospital systems.

Vertical Integration Among Insurers

- Insurers actively purchasing physician groups and clinics- UnitedHealth Group (Optum) is reportedly the largest employer of physicians nationally.
- Insurers or their holding companies have integrated with other sectors including:
  - Pharmacy benefit managers (PBMs)
  - Pharmacy services
  - Health care benefit managers
  - Third-party administrators
  - Data and analytics
- Beyond acting as health insurers, also involved in various aspects of the care that Washingtonians receive.

Carrier Vertical Integration in Washington

Table 6: Health Plan Affiliations

Holding Company		Health Plan	Pharmacy Care Services	Health Care Benefits Manager	Data/Analytics/ Clinical Guidelines	Third-Party Administrator	Clinical Services	Other Affiliates
Cambia Health Solutions	*Check if applicable*	✓	✓		✓	✓		✓
	If yes, subsidiary name(s)	Regence BlueShield Asuris Northwest Health BridgeSpan Health Company	Prime therapeutics (collectively owned by several Blues) includes Magellan Rx		Partnering with MultiCare on IT and other innovations	Regence Group Administrators (administers self-funded employer plans) Parent of Health Management Administrators (health plan administrator for self-funded plans)		Cambia Health Foundation (philanthropic arm) Acquired real estate assets of Capital Medical Center
CVS Health Corporation	*Check if applicable*	✓	✓			✓	✓	✓
	If yes, subsidiary name(s)	Aetna	CVS Pharmacies Longs Drugs Navarro Discount Pharmacies Omnicare Aetna Pharmacy CVS Specialty Rx CVS Caremark (PBM)			Aetna	Accordant (disease management) CVS Minute Clinics Signify Health (home health) Coram (home infusion services) HealthHUB	Gold Emblem products Partnership with Microsoft: digital health

Carrier Vertical Integration in Washington

Holding Company		Health Plan	Pharmacy Care Services	Health Care Benefits Manager	Data/Analytics/ Clinical Guidelines	Third-Party Administrator	Clinical Services	Other Affiliates
Kaiser Foundation Group	*Check if applicable*	✓	✓			✓	✓	
	If yes, subsidiary name(s)	Kaiser Foundation Health Plan of Washington	Operates its own pharmacy and PBM, with MedImpact & Optum acting as a PBM in some states (varies by product line)			Kaiser Permanente	Permanente Medical Groups (including acquiring Group Health Cooperative of Puget Sound Kaiser Permanente Central Hospital Clinics and offices throughout the state Lab services	
Premera	*Check if applicable*	✓		✓			✓	✓
	If yes, subsidiary name(s)	Premera Blue Cross		Calypso Healthcare Solutions			Kinwell Medical Group	Vivacity (Wellness solutions for employers)
UnitedHealth Group	*Check if applicable*	✓	✓	✓	✓	✓	✓	✓
	If yes, subsidiary name(s)	UnitedHealthcare of Washington United Healthcare Insurance Company	Optum Rx Optum Specialty Diplomat (specialty Rx provider)	United Behavioral Health OptumHealth Care Solutions, LLC OrthoNet LLC Spectera	Optum Change Healthcare InterQual	UMR	Optum Health: Polyclinic Northwest Physicians Networks Everett Clinic* Monarch Health Refresh MH Prospero (home health) Landmark (home health agency) LHC (aging in place services)	VA Mason Franciscan Health partnered with Optum to be the preferred medical center for Polyclinic patients

Private Equity

- Growing national trend – little public information available and some controversy about the impact on cost and quality of care.
  - Recent review of 55 studies: private equity ownership was most consistently associated with increased cost to patients/payers and mixed to harmful impacts on quality of care.
- Key investment areas: specialists (dermatology, ophthalmology, gastroenterology, primary care, OB/GYN, radiology, orthopedics, oncology, urology, and cardiology) and other health care facilities and services, e.g. hospice and home health care.
- From 2014−2023, 97 health care acquisitions in Washington State
- Private equity & physician staffing companies.
  - TeamHealth – 1 of 6 largest emergency medicine staffing companies nationally.
  - US Anesthesia Partners – Operates in 8 states; largest majority physician-owned + led anesthesia group in the PNW.

Final Affordability Report

Actuarial and economic analysis of:

1. Creating a reinsurance program
2. Increasing health insurer minimum medical loss ratio requirements
3. Using reference-based pricing for health care facility and provider payments
4. Using hospital global budgeting
5. Meeting HCCT Board cost growth benchmarks

Affordability reports

Looking ahead….

Potential additional data to inform policy deliberations:

- APCD data:
  - Used APCD claims data for reference-based pricing analysis. APCD does not include non-claims payments and may have understated or missing claims. APCD expenditure data lower than some other reports (WHA, Rand). Other states & Nat'l Ass'n of Health Data Organizations (NAHDO) working on integrating non-claims payment data into APCD's.
- Ownership/affiliation data:
  - Information in preliminary report was based upon web searches and other public data. Not a complete "picture" of ownership and affiliations. Massachusetts has an ownership reporting program, which they are working on updating.
  - Recent blog post from the Center for Health Insurance Reform.
- ***NOTE***: New Insurance Commissioner in January 2025. OIC is not currently taking a position on these items.

Questions?

Jane Beyer

Senior Health Policy Advisor

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August 21st, 2024

Current Data and Challenges

Mandy Stahre
Senior Forecast and Research Manager

Sample of OFM current data sources

- Administrative data – WA-APCD
  Health care claims, pharmacy, dental, eligibility files
- Hospital discharge – CHARS
  Inpatient, observation, revisit
- Hospital financial reports
  Mergers and acquisitions, nonprofit status, hospital ownership
- Forecast – ProviderOne
  eligibility
- Surveys– BRFSS, PRAMS, American Community Survey
  Insurance coverage, barriers to access, health status

- Nurses at facilities are charged for time and effort through facility fees
- EHR data and claims data are not constructed for analytical data analysis
- Linkage of patients across databases is difficult – inconsistent ID numbers
- Validation of current data sources related to health care corporation financial information
- Timing of corporate decisions related to direct patient services is not always known
- Cost and length of time to access data

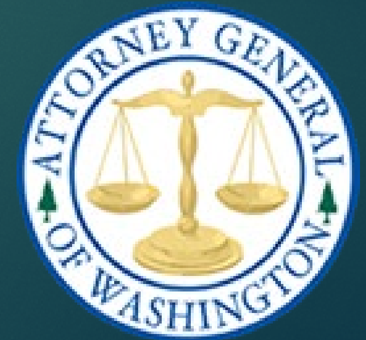
Washington's Health Care Notification Program

TRAVIS KENNEDY

ANTITRUST DIVISION

Role of Antitrust Division in Healthcare Antitrust Enforcement

- HCN review is intended to protect healthcare competition in WA.
  - Goal is to deter anticompetitive transactions and provide the AGO with notice to evaluate possible anticompetitive transactions.
  - AGO Antitrust Division reviews each transaction to determine whether it violates the WA Consumer Protection Act ("CPA") and may warrant an enforcement action, including whether the transaction violates:
    - RCW 19.86.030 – prohibits unlawful restraints of trade.
    - RCW 19.86.060 – prohibits mergers or acquisitions "where the effect of such acquisition may be to substantially lessen competition or tend to create a monopoly."
  - The AGO can also enforce federal antitrust statutes prohibiting unlawful restraints of trade and mergers that may substantially lessen competition or tend to create a monopoly.



HCN Statute

- Enacted in 2019, and took effect in 2020.
- Statute is found at 19.390, *et seq*.
- Statute governs which type of transactions must be reported, how much pre-transaction notice is required, the information that must be provided to the AGO, confidentiality, and penalties for failing to comply with the notice requirement.
- On average, the AGO receives 2-3 notices per month.

Statutory Text: RCW 19.390.030

- (1) Not less than **sixty days** prior to the effective date of any transaction that results in a material change, the parties to the transaction shall submit written notice to the attorney general of such material change.

- (2) For the purposes of this section, a material change includes a **merger, acquisition, or contracting affiliation** between two or more entities of the following types:
  - (a) Hospitals;
  - (b) Hospital systems; or
  - (c) Provider organizations.

Statutory Text: RCW 19.390.030

- Applies to Out of State Entities in Certain Circumstances:
  - (3) A material change includes proposed changes identified in subsection (2) of this section **between a Washington entity and an out-of-state entity** where the out-of-state entity generates **ten million dollars** or more in health care services revenue from patients residing in Washington state, and the entities are of the types identified in subsection (2) of this section. Any party to a material change that is licensed or operating in Washington state shall submit a notice as required under this section.
- Does not apply if entities previously had common ownership or a contracting affiliation.

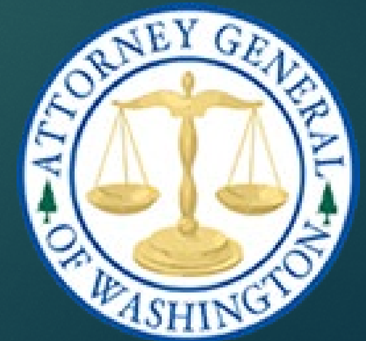
Production of Documents and Data to the AGO

- The statute requires the parties to provide notice, but does not require they provide a specific set of documents to the AGO.
- AGO can request additional information from the parties.
  - This may include data requests.
- AGO can also request additional documents and data from third-parties through civil investigative demands.
  - May include request for data from payers.
- May also interview witnesses or conduct investigative depositions.

Confidentiality

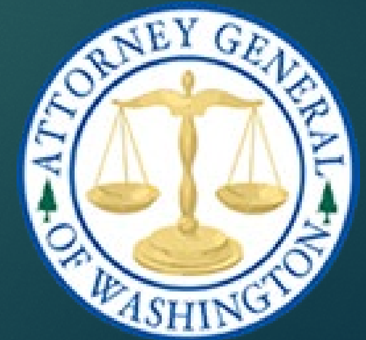
- WA HCN statute protects confidentiality of materials submitted to the AGO:

  - "Information submitted to the attorney general pursuant to this chapter shall be maintained and used by the attorney general in the same manner and under the same protections as provided in RCW 19.86.110. The information, including documentary material, answers to written interrogatories, or transcripts of oral testimony produced pursuant to a demand or copies, must not, unless otherwise ordered by a superior court for good cause shown, be produced for inspection or copying pursuant to chapter 42.56 RCW by the person who produced the material, answered written interrogatories or gave oral testimony." RCW 19.390.070.



Confidentiality

- RCW 19.86.110(7) relates to the use of materials produced in response to AG Civil Investigative Demands.
  - Statute indicated that "No documentary material, answers to written interrogatories, or transcripts of oral testimony produced pursuant to a demand, or copies thereof, shall, unless otherwise ordered by a superior court for good cause shown, be produced for inspection or copying by, nor shall the contents thereof be disclosed to, other than an authorized employee of the attorney general, without the consent of the person who produced such material, answered written interrogatories, or gave oral testimony …"
- Limited exceptions in the CPA to the general rule against non-disclosure.



Department of Revenue

Washington state's primary tax agency

Presented by Ian Doyle

August 21, 2024

Tax Reporting

- Taxes from public profit and non-profit hospitals are reported in broad categories that encompass many different activities.
  - Retail sales
  - Service and other
  - Wholesale
  - Public or nonprofit hospital business and occupation tax

Exemptions

- Many exemptions and exclusions are not reported on our tax return. The department does have an exemption study which estimates the impacts of these exemptions.
  - Amounts received as contributions, donations, or endowment funds, so long as no specific service is performed as a condition for receiving the funds
  - Income exempt from B&O tax for services provided to patient (RCW 82.04.4289)
  - Kidney dialysis facilities operated by nonprofit organizations and nonprofit hospitals if the hospital accurately identifies and accounts for this specific income
  - Nursing homes operated by nonprofit organizations
  - Homes for unwed mothers operated by nonprofit organizations

Data Sharing Limitations

- Confidential Taxpayer Information cannot be shared without authorization by the taxpayer.
- Aggregated data must meet certain requirements, including taxpayer count and one business may not be responsible for the majority of taxable income.
- Exemptions are not always required to be reported to the department, limiting what data we have on exempt activities.
- Broad categories on the tax return limit the department's ability to determine what the income was derived from.

Tab 7

Business Oversight Discussion

Business oversight discussion: throughlines

- Ownership and affiliation data
  - Hospitals, hospital systems, provider organizations
  - Retrospective database with a reporting mechanism moving forward
- Merger and acquisition monitoring with focus on consumer impact
  - Beyond antitrust enforcement
  - Access to more extensive documentation
- More comprehensive All Payer Claims Database (APCD)
  - Missing non-claims data
- Lack of specific data regarding nonprofit healthcare
  - Exempted data *from* organizations and what can be transmitted

Discussion questions

- How could the state use the data Washington already has to understand the impact on consumers and purchasers (e.g., the state) of consolidation and private equity investment?
- How could data be gathered and shared more efficiently to reduce administrative burden on data providers?
  - Should this data be more centralized, integrated, and accessible?
- Does the state collect the data necessary to comprehensively consider business oversight with regards to health care affordability?
  - What data is missing?

Next steps

- Department of Health (DOH) is expected to present in November on topics related to business oversight, which may include:
  - Licensure
  - Charity care
  - Certificate of need
- Development of recommendations for the Cost Board
  - Identifying gaps
  - Supporting additional enforcement mechanisms

Thank You!

Next Meeting: November 20th