



## Memorandum

**To:** All Payer All Claims (APAC) Stakeholders

**From:** Stacey Schubert, Research & Data Manager

**Date:** May 10, 2017

**Subject:** Impact of *Gobeille v. Liberty Mutual* Decision

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On March 1, 2016, the U.S. Supreme Court issued its decision in *Gobeille v. Liberty Mutual Insurance Company*, regarding whether states can require certain types of health plans to submit data to all-payer claims databases. In *Gobeille*, the Supreme Court held that the federal Employment Retirement Income Security Act of 1974 (ERISA), preempts sections of a Vermont statute that required health plans regulated by ERISA, including self-insured plans, to report health care claims to Vermont's All Payer Claims Database. The *Gobeille* decision does not affect the remaining portions of Vermont's law requiring non-ERISA health insurers, health care providers, health care facilities, and governmental agencies to report information relating to health care costs, prices, quality, and utilization. As a result of the decision, the Oregon Health Authority (OHA) may no longer require self-insured ERISA-covered health plans with covered lives in Oregon to submit claims data to the All Payer All Claims database (APAC). *Gobeille* does not prevent OHA from requiring that fully-insured ERISA-covered plans, which are not subject to ERISA preemption, and public health plans which are not covered by ERISA, continue to submit claims data to APAC.

APAC was established to measure and provide information about the quality, quantity, and value of health care in Oregon in order to further health system transformation, and advance the Triple Aim goals of better health, better care, and lower costs. APAC has received data from self-insured health plans since its inception, and the continued inclusion of data from ERISA plans will help provide a comprehensive view of cost, quality, and utilization in Oregon's health care system. Claims data submitted by ERISA plans prior to the Supreme Court's decision in *Gobeille* will remain a valuable part of APAC, and OHA will continue to accept voluntary data submissions from ERISA self-insured plans going forward.

The Supreme Court's decision does not affect the obligation under Oregon law for non-ERISA self-insured health plans to submit claims data to APAC. It also does not prevent OHA from accepting claims data voluntarily submitted by or on behalf of ERISA self-insured plans. OHA made revisions to the APAC administrative rules (OAR 409-025-0100 to 409-025-0170) to align the rules with the U.S. Supreme Court's decision in *Gobeille*.

## **APAC and *Gobeille v. Liberty Mutual*: FAQs**

### **What does this decision mean for APAC?**

On March 1, 2016, the U.S. Supreme Court ruled that states may no longer require ERISA self-insured plans to report claims to all-payer claims databases. As such, OHA will no longer require mandatory reporters to submit data for ERISA self-insured plans. APAC will continue to require submissions for the following lines of business: Medicare Parts C and D; Medicaid; individual, small group, and large group insured plans; associations and trusts; PEBB plans, OEGB plans, and non-ERISA self-insured plans. This decision will not impact the data elements layout or submission schedule by which mandatory reporters are required to submit to APAC. Instructions about submissions are posted to the APAC website: <http://www.oregon.gov/oha/analytics/Pages/All-Payer-All-Claims.aspx>.

### **What does this mean for mandatory reporters that administer ERISA self-insured health plans?**

Although OHA may no longer require mandatory reporters to submit data for ERISA self-insured plans to APAC, OHA will continue to accept data submitted voluntarily by or on behalf of these plans. The Supreme Court decision does not affect OHA's authority to collect data for non-ERISA self-insured plans or fully-insured ERISA plans. Those entities that administer both ERISA and non-ERISA self-insured plans must continue to submit data for required lines of business.

### **My organization only has ERISA self-insured covered lives in Oregon, but I have previously received a letter from OHA notifying me of mandatory reporter status. How should I proceed?**

Please contact OHA at [APAC.Admin@dhsoha.state.or.us](mailto:APAC.Admin@dhsoha.state.or.us). OHA will send you a form in which you may testify that your organization has **zero** covered lives in Oregon that fall into the lines of business that are required to report to APAC. The organization will then be exempted from reporting to APAC. As stated above, mandatory reporters must still report for all required lines of business, which are Medicare Parts C and D; Medicaid; individual, small group, and large group insured plans; associations and trusts; PEBB plans, OEGB plans, and non-ERISA self-insured plans.

### **What happens to data that was submitted for ERISA self-insured plans prior to the Supreme Court's March 1, 2016 decision?**

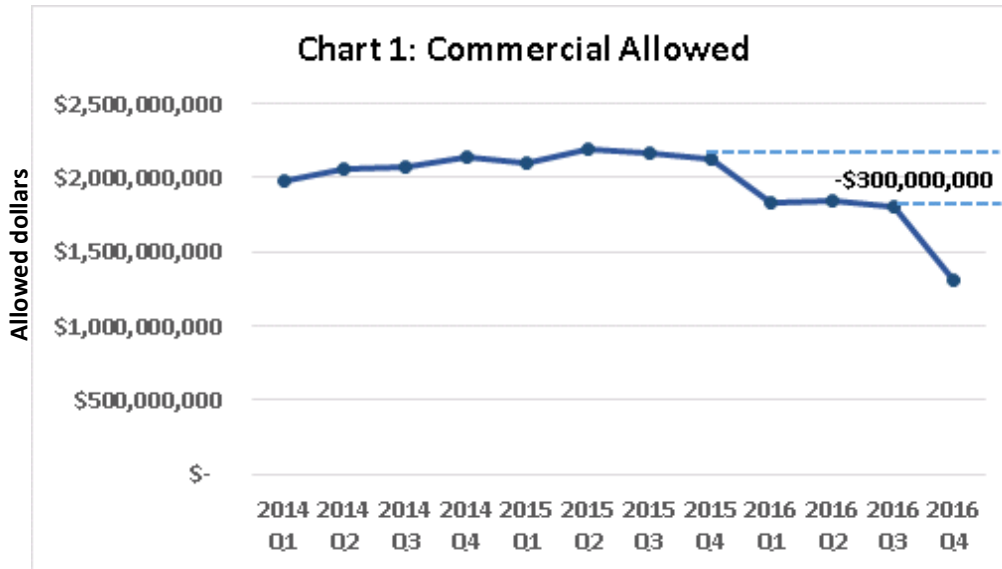
Claims data submitted by or on behalf of ERISA self-insured plans prior to the Supreme Court's decision will remain a valuable part of APAC and will be treated the same as data submitted from any other category of payer. Data from APAC provides transparent health care information and is used by OHA and released to other data users in accordance with state and federal laws. Data submitted prior to the Supreme Court decision may be included in public and non-public data releases. As corrections to historic APAC data are submitted after the *Gobeille* decision, however, some of the legacy data from ERISA self-insured plans may be overwritten. When this happens, historic claims and enrollment data are affected.

### **What does this decision mean for mandatory reporters that administer non-ERISA self-insured health plans or fully-insured ERISA health plans?**

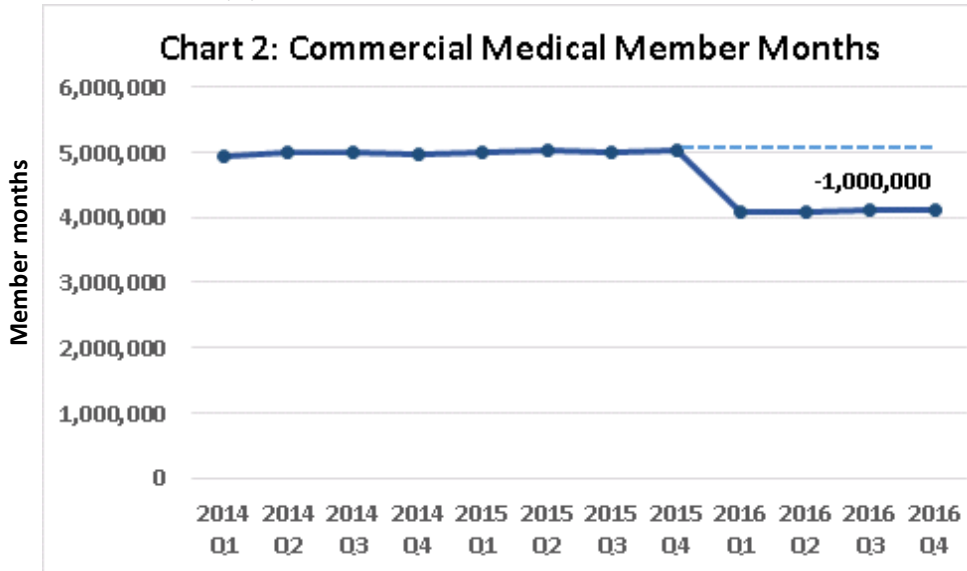
The Supreme Court's decision only applies to a narrow subsection of health plans—specifically, to ERISA self-insured health plans. Mandatory reporters that administer non-ERISA self-insured health plans or fully-insured ERISA health plans are still legally obligated to submit data to APAC in accordance with ORS 442.464, 442.466, and 442.993 as well as OAR 409-025-0110 to 409-025-0170.

### How does this decision impact data trends?

The APAC data reveal a clear impact starting 2016 Q1, when mandatory reporters began excluding claims and enrollment from ERISA self-insured plans. Specifically, commercial allowed dollars decreased by about 300 million (Chart 1) and medical member months decreased by about 1 million (Chart 2). The decrease in allowed dollars in 2016 Q4 (Chart 1) is due to claims lag, and does not represent additional effects from the *Gobeille* decision.



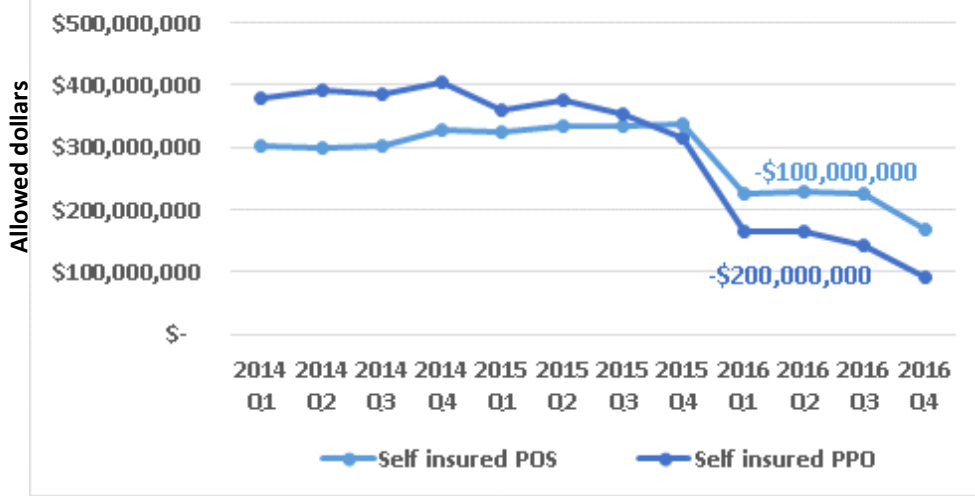
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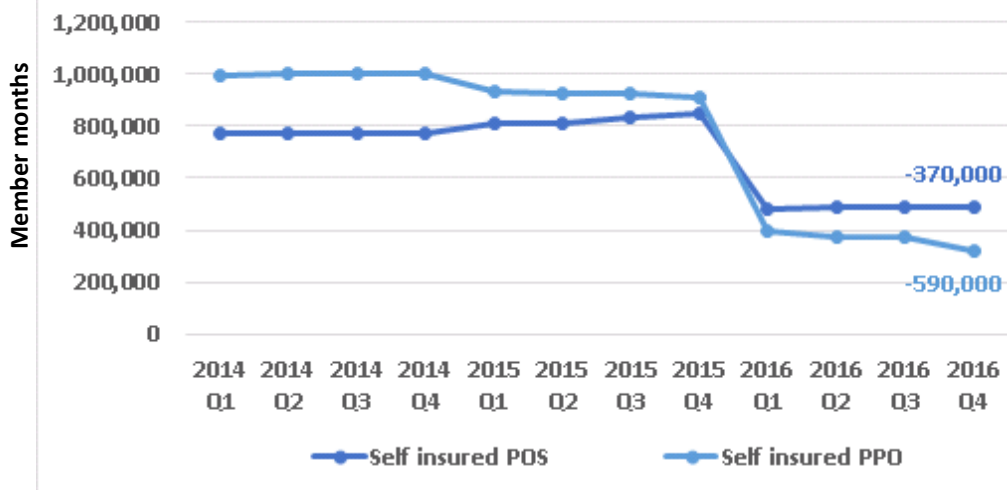
The changes to allowed dollars and medical member months are predominantly limited to two product codes: Self-insured Preferred Provider Organization (PPO) and Self-insured Point of Service (POS). These changes are shown in Chart 3 (Allowed) and Chart 4 (Medical Member Months). The decrease in allowed dollars in 2016 Q4 (Chart 3) is due to claims lag, and does not represent additional effects from the *Gobeille* decision.

**Chart 3: Commercial Allowed by Product Code**



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**Chart 4: Medical Member Months by Product Code**



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