

How-To Guide
January 2022

How-To Guide: Breaking Barriers in Data Ownership, Access, and Use

Catalyst for Payment Reform designed this how-to guide and corresponding resources to help employers and other health care purchasers gain greater access to and use of their data in fulfilling their Plan fiduciary obligations.

| Table of Contents

Introduction.....3

About Catalyst for Payment Reform & Tool Impetus.....3

Purchaser Challenges with Data Access & Use.....4

Navigating the Tools.....5

Conclusion.....6

Introduction

For self-insured employers and other health care purchasers, claims for health care services and other clinical data drive the decision-making strategy for managing health care benefits. As health care costs continue to rise unabated, purchasers depend on data to tailor their health care provider networks, benefit designs and care management strategies and fulfill their obligations as Plan fiduciary.

Until recently, health insurance carriers acted as the single source for all health care data; but over the past decade, health care purchasers have increasingly replaced full-service health insurance companies with third-party administrators (TPAs), creating bespoke health plans that carve out services to multiple health care vendors. These might include, for example, pharmacy benefit managers (PBMs), care navigation services, centers of excellence networks, data analytics hubs, and care and condition management services – to name only a few. Ideally, each business associate (as defined under the Health Insurance Portability & Accountability Act) within this health care ecosystem should share information safely and securely with their purchaser clients and with each other, in service of their shared members. Unfortunately, it's become increasingly common for carriers, TPAs, and vendors to stonewall each other and their purchaser clients, setting up unnecessary obstacles to data use or denying access entirely -- in the name of trade secrets or propriety. This harms purchasers and plan members, stymying the former's efforts to implement a fully informed health benefits strategy, and the latter's need for seamlessly coordinated care.

Catalyst for Payment Reform's (CPR's) *Purchaser Tools for Breaking Barriers in Data Ownership, Access, & Use* provides a valuable resource to health care purchasers who seek greater accountability, transparency, and collaboration from TPAs and from their vendor partners. Within the tools, purchasers will find resources they can use to establish commitments from TPAs and vendors concerning data ownership, data use and distribution, and compliance with state and federal data transparency policy.

This how-to guide includes the following sections:

- Introduction to Catalyst for Payment Reform and the impetus for these tools;
- Summary of obstacles purchasers face in the acquisition and dissemination of their own data;
- Components of the tools and recommendations for using each resource.

About Catalyst for Payment Reform & Tool Impetus

[Catalyst for Payment Reform](#) (CPR) is an independent, 501c3 nonprofit on a mission to catalyze employers, public purchasers, and others to implement strategies that produce higher-value health care and improve the functioning of the health care marketplace. CPR derives momentum from its [membership](#), a group of 30+ progressive employers and other health care purchasers who collaborate to advance health care payment and delivery reforms, innovative benefit and provider network designs, and transparency on costs and quality in the health care system. CPR develops tools, conducts research, and offers education to help purchasers work collectively to push for higher-value health care.

For the past 10+ years, CPR's [Aligned Sourcing & Contracting Toolkit](#) has provided purchasers with a collective set of commitments they can work to secure from potential or existing TPA partners. Leveraging CPR's Request for Information (RFI) Questionnaire, Model Contract Language, and Renewal Questionnaire, purchasers have aligned their purchasing power around a shared set of priorities, and compelled health plans to accelerate product, network, and payment reform strategies.

"Getting data from insurance companies and PBMs is like trying to get raw meat from a caged lion."

Robert Andrews, CEO Health Transformation Alliance

Quoted in [Fortune Magazine](#), June 1, 2021

In 2020, purchasers within CPR's membership highlighted the increasing difficulties they've encountered in accessing their own claims data from their TPA partners. Concurrently, a vendor approached CPR expressing the same challenge, jeopardizing a purchaser's high-value program and plan member experience. CPR conducted research with approximately 15 consultants, vendors, and analytics companies, who unanimously validated the purchasers' and vendor's concerns.

Having concluded that these data sharing challenges pose a significant barrier to our members and other purchasers, CPR worked with a group of subject matter experts from a diverse array of stakeholder groups, including data warehouse & analytics vendors, navigation and transparency vendors, and benefit consultants to curate a deeper understanding of the types of barriers TPAs impose to restrict access to purchasers' claims data. Simultaneously, CPR convened a collaborative of regional and national purchasers to share their experiences and insights on data sharing challenges and solicit their perspectives on strategies to address data sharing restrictions. To rationalize our key findings, CPR is consulting representatives from major national and regional health plans. Although CPR considers the TPA point of view with a higher degree of skepticism, this verification process enables CPR to obtain a 360-degree perspective from vested interest groups.

CPR's initial intent was to create an extension of our Aligned Sourcing & Contracting Toolkit, focused specifically on data stewardship and directionally aimed at TPAs; however, through the course of our purchaser interviews and discussions, CPR learned that other health care vendors can also obstruct data access. Consequently, CPR developed tools that purchasers can use to exact data stewardship commitments from their TPAs and *also* from other contracted vendor business associates.

Purchaser Challenges with Data Access & Use

Now more than ever, employers and other self-insured health care purchasers need timely, comprehensive and accurate data to fulfill their Plan fiduciary obligations to maximize the value of their health care benefits spend. However, purchasers report increasing obstacles and restrictions that stymie their ability to access, analyze and disseminate critical health care data and information. These challenges include:

- **Data ownership:** Third-party administrators (TPAs) and vendors claim certain self-insured purchaser data as proprietary even though these data are derived from the purchasers' own population and represent health care services for which the purchaser has paid; moreover, as Plan sponsors, self-insured employers and other purchasers require their own claims data to serve as Plan fiduciary. TPAs should commit in their contract language that purchasers own their individual data — i.e., data that represents the insurance claims and clinical data stem from their own plan members' use of health care services. Individual data comprise the full set of purchaser-specific unredacted data, including pre-processed claims, post-processed claims, and clinical data. In addition, purchasers own all purchaser-specific *derived* data, defined as purchaser's individual data that has been applied, in whole or in part, to yield insights or intelligence. In a similar vein, vendor contracts should acknowledge purchasers' ownership of the same data elements that originate from purchaser's plan member population.
- **Data access and use:** TPAs and vendors notoriously place unnecessary obstacles and restrictions on data access and application or provide incomplete/inconsistent data files. TPAs (and vendors where applicable) should provide purchaser-specific data that enable purchasers and their business associates to offer member support, conduct program evaluations, identify performance improvement opportunities, measure outcomes, and otherwise optimize the purchaser's strategy. In addition, TPAs and vendors should exercise a rationalized and disciplined application of data use agreements (DUAs) and non-disclosure agreements (NDAs).
- **Data transmission:** The process that most TPAs and vendors use for data transmission is outdated and inconsistent. Data files should be complete, consistent, and timely in the transfer of information to allow purchasers and/or their business associates to take action.

Navigation the Tools

Within the *Purchaser Tools for Breaking Barriers in Data Ownership, Access, and Use*, purchasers will find the following resources:

1. Data Stewardship Self-Assessment & Request for Information (RFI) Questionnaires: Purchasers can use CPR's *Data Stewardship Self-Assessment & RFI Questionnaires* to ask incumbent or potential TPAs or vendors to self-assess their position on data ownership, access, use, and transmission against the purchaser's expectations. Alternatively, a purchaser can incorporate the question set into its own RFI and/or Request for Proposal.
 - a. TPA Data Stewardship Self-Assessment & RFI Questionnaire – directed toward an incumbent or potential TPA or health insurance carrier.
 - b. Vendor Data Stewardship Self-Assessment & RFI Questionnaire – directed toward an incumbent or potential business associate who provides supplementary health care services to purchasers and their members.
2. Model Contract Language: Purchasers can use CPR's *Data Stewardship Model Contract Language* as an addendum to its broader Administrative Services Only (ASO) agreement with Purchaser's TPA or vendor partners. This Addendum outlines Purchaser expectations for how TPAs and other business associates facilitate progress towards enhanced data stewardship by codifying data ownership, data access and use

obligations, and other data-related commitments. CPR recommends that purchasers consult with an attorney before using and/or modifying this draft contractual language.

- a. Addendum to Administrative Services Only (ASO) Agreement on Data Ownership, Access, Sharing, and Transmission – directed toward TPAs and health insurance companies;
- b. Addendum to Vendor Contract on Data Ownership, Access, Sharing, and Transmission – directed toward business associates who provide supplementary health care services to purchaser and its members

Upon release of these tools, CPR intends to keep pressure on enhancing data stewardship between purchasers and their TPAs and vendors through a variety of activities, which may include:

1. Addressing data ownership, access, and use stances with major national and regional health plans through CPR's health plan user groups;
2. Providing purchasers with other resources, e.g., case studies that document success stories from purchasers who have enhanced their data ownership, access, and utility, and/or DUA/NDA template(s);
3. Spotlighting purchaser challenges through CPR's *Listening in (with Permission)* podcast;
4. A public campaign that highlights data ownership, access, and use barriers.

Conclusion

Data is the new health care currency, and purchasers are experiencing more challenges than ever to access their own data. If purchasers collectively use the resources CPR developed for the *Purchaser Tools for Breaking Barriers in Data Ownership, Access, & Use*, they will send a stronger, more consistent signal to stakeholders erecting these barriers. The result will be a more predictable flow of data to purchasers and their business associates, which in the end, supports purchasers in their strategic decision-making, and provides plan members with a better health care experience.

