

NAPHSIS

Protecting Personal Identity
Promoting Public Health

September 19, 2022

The Honorable Richard Neal
Chair
Committee on Ways and Means
U.S. House of Representatives

The Honorable Kevin Brady
Ranking Member
Committee on Ways and Means
U.S. House of Representatives

The Honorable Carolyn Maloney
Chair
Committee on Oversight and Reform
U.S. House of Representatives

The Honorable James Comer
Ranking Member
Committee on Oversight and Reform
U.S. House of Representatives

The Honorable Ron Wyden
Chair
Committee on Finance
U.S. Senate

The Honorable Mike Crapo
Ranking Member
Committee on Finance
U.S. Senate

The Honorable Gary Peters
Chair
Committee on Homeland Security and
Governmental Affairs
U.S. Senate

The Honorable Rob Portman
Ranking Member
Committee on Homeland Security and
Governmental Affairs
U.S. Senate

Dear Chair Neal, Ranking Member Brady, Chair Maloney, Ranking Member Comer, Chair Widen, Ranking Member Crapo, Chair Peters, and Ranking Member Portman:

Section 802 of the Consolidated Appropriations Act, 2021 required the Social Security Administration (SSA) to work with the National Academy for Public Administration (NAPA) to conduct a Study and Report to Congress on the Sources of and Access to Death Data. On behalf of our membership, NAPHSIS sincerely appreciates Congress requiring this report and ongoing Congressional efforts to improve government efficiency, reduce improper federal benefits payments with better access to state-owned death data, while, at the same time, making genuine efforts to understand the state's processes, laws, and responsibility for our citizen's vital records. We write today to share important points raised in the report and importantly, to highlight gaps in the final report.

NAPHSIS is the non-profit membership association representing the 57 states, territories, and cities legally responsible for the stewardship of vital records in the United States. The NAPA Report (Report) does an excellent job explaining the complex relationships between SSA,

NAPHSIS, state Vital Records Offices (VROs) and other users and providers of death data. The Report examines how compensation from SSA to the VROs may affect their financial sustainability as a result of amendments to Sec. 205(r) of the Fiscal Year 2021 Consolidated Appropriations Act (CCA). The report's detailed description of three major options for how official death records from the VROs may be structured reflect comprehensive research and thoughtful analysis.

Thank you for your consideration of our comments, which include discussion of the following issues:

- VROs rely on the sale of death certificates to support their essential role in public health and to establish and maintain individual identity for every citizen born in the United States.
- While SSA aims to receive certified death records within six days of the date of death, VROs are not responsible for delays in the reporting of deaths by physicians, medical examiners, and coroners.
- SSA has yet to acknowledge analyses that account for the cost of producing certified death records.
- SSA's error rate causes hardship for individuals and families and SSA has no process to share or receive updates to erroneous death records.
- SSA must address limits of its technical systems, including the lack of ability to accept updated death records and obsolete limits on data characters.

Death data are critical to SSA, the Department of the Treasury, and other federal agencies to eliminate improper payments by terminating benefits as quickly as possible. However, the data are initially collected at the state level and owned by the state, which raises a series of legal, budgetary, information security, and reporting issues. NAPHSIS, serving in its role representing the state level VROs worked with NAPA to aid the project team in their research as they studied the complexities involved in the stewardship of this essential data set.

As the primary link between the 57 VROs and NAPA's staff, NAPHSIS conducted and/or facilitated the administration of several surveys and interviews that served as the basis for the state sections of NAPA's report. After analyzing the final report, NAPHSIS identified key findings in our joint research that we believe will add to Congress's understanding—and ultimately, its decision-making—regarding the complex issues surrounding access to state-owned death data by SSA and other federal agencies. Since NAPHSIS was not afforded an opportunity to review a draft of the final report before public release, this correspondence offers corrections and comments from our perspective to better inform all interested parties.

We were pleased to see that the Report released on NAPA's website made the following points:

- VRO's are the authoritative source for quality and timely death data in the United States (page 22),

- VROs are universally financially challenged & rely on both data set and certificate sales to support their operations (pages 24-27),
- VROs are ultimately legally responsible for the data they provide to others, including SSA (page 31),
- VROs have little to no control over the timeliness of death data submitted to them by data providers such as physicians, coroners, medical examiners, funeral homes, etc., who must certify a death in order for it to be officially added to a jurisdiction's death database,
- SSA supported the initial Electronic Death Reporting (EDR) system implementation for 16 states in the early 2000s, but has not supported it since, and the systems require extensive modernization on a grand scale, (page 43-44)
- Concern about keeping state death data held by federal agencies from being disclosed appears to be understandable (page 37)
- SSA has no methodology or formula for calculating price of the death data contracts it holds with each VRO (page 74), and
- Being a death data clearinghouse doesn't align with SSA's mission (page 54).

While these attributes are true and clearly stated in the Report, there are a number of facts or subtleties left unstated that we believe are important to acknowledge and will aid Congress in its decision-making. These concerns are further outlined below.

Calculating the Cost of State-owned Death Data

While the Report accurately details the reasons why calculating one distinct price for the production of death data is an impossibility (pages 26 & 27), and also clearly reports that VROs rely on certificate fees for over 63% of their revenue (some as much as 92% - see page 25), the Report fails to make the connection between the current fee structure and the actual costs that jurisdictions incur to collect, verify and share death data, which is only one aspect of their many important responsibilities.

Each VRO develops its own pricing structure for the certified copy which supports the massive efforts outlined here to produce the data. In fact, the fee structure developed by each VRO is directly linked to its overall budget and ability to support itself and the essential work performed for our citizens, for identity purposes and for public health, and government agencies at all levels. The development of that fee structure is codified in Public Health Accreditation Board (PHAB) standards for VROs and by each jurisdiction's legislature, either in statute or law. These prices (see page 124) have been developed with great care and should be the basis of any future contract between the states and any federal agency.

While not used by SSA, the use of a VRO's commercial price for a certified death record is not uncommon among federal agencies. As one example, the Department of Veterans Affairs recently awarded a contract using each VRO's adjusted commercial price when it sought birth and death data on behalf of the Veterans Benefits Administration. The National Cemetery Administration and the Veterans Health Administration use the same system and price

structure to support their routine operations as well. The contract was awarded to NAPHSIS on a sole source basis because VROs are the only agencies that can generate an official death record. In addition, NAPHSIS doesn't just represent its members, it owns and operates several proprietary national data systems to facilitate state-owned data verification and exchange. In its Justification and Approval (J&A) for the sole source award, the VA provided substantial documentation to support the award to NAPHSIS using its commercial prices as the basis for its proposal. In this case, not only does another federal agency pay the individual VRO its commercial list price for a death certificate, it also pays *a search fee and a subscription fee*. As stated in the J&A, the resulting prices were determined by contracting personnel to be fair and reasonable.

With the new legislative requirements added to Section 205(r), Congress has taken steps to safeguard the states' remuneration for this contract. Notwithstanding the new legislative language of Sec. 205(r) and language in the current contract and the draft solicitation for the next contracting cycle between SSA and the VROs referencing costs, the contracts between SSA and the VROs are to be based on *price*, as defined by the Federal Acquisition Regulation (FAR). FAR 15.4 requires that prices be "fair and reasonable" and be supported by data related to prices (*e.g., established catalog or market prices, sales to non-governmental and governmental entities*). "*(Data submitted by the offeror shall include, at a minimum, appropriate data on the prices at which the same or similar items have been sold previously, adequate for evaluating the reasonableness of the price.*" (FAR 15.402)

The NAPA Report does not indicate, however, that the VRO fee structure is, in fact, precisely the way death data is priced for both commercial *and* government markets. Furthermore, the VROs are heavily reliant on this existing price structure.

Problems with the Current Contract between SSA & VROs for Death Data

SSA's ultimate goal is to receive 100% of all certified death records within six days of the date of death in order to terminate federal benefits payments as quickly as possible. In the NAPA Report, Table 1 on page 26 details the current fee structure SSA pays to VROs for death data, depending on the timeliness of data submission. On page 45, the report states that in 2021, only 56% of deaths reported by VROs were received by SSA within 6 business days. Under the terms of the contracts, VROs only received the full contract price if the death was reported to SSA within this window. The report acknowledges that "Accuracy, timeliness and completeness of the death data are not under the control of VROs" and details the many potential reasons for delay.

Current contracts include tiered pricing based on when a clean record is submitted to the SSA by the VRO. Records received within six days of death are currently paid the full price unit price and records received between 7-120 days of death are paid approximately 48% less than the full unit price. At \$0.01 per record, SSA effectively pays VROs nothing for records submitted after 120 days of death. What the report stops short of saying is that this price structure unfairly penalizes the VROs by paying them approximately \$2.7 million less than they would have received if the tier structure was not part of the contract.

The VROs understand the implicit goal in the tiered pricing structure, however, virtually all the records submitted after six days are due to delays by *certifiers* (e.g., physicians, funeral homes, coroners, etc.) and *not* due to delays within the control of VROs. Between day 6 and day 7 of the tiered pricing, the reimbursement to the jurisdiction drops by over 50% per record, but still saves SSA thousands and thousands of dollars per month. This approach unfairly penalizes VROs, particularly those that are already struggling financially, for circumstances that are outside their control. SSA's current practice is excessively punitive, and highly inequitable, especially if the death record still allows SSA to terminate benefits that would have continued to be paid improperly. Regardless of when a VRO notifies SSA of a death, SSA will be able to "save" further benefits payments that would have continued in the absence of such notification and may be able to recoup some or all of the payments that were improperly made prior to notification as well. These data represent enormous savings to SSA, yet it pays the VRO only \$0.01.

The report states (page 74) that "the reimbursement rate that SSA pays to the states for each death record shared is based on an amount negotiated between the parties and does not involve any standard costing formula or methodology." This is true, and while the report does detail why this is a difficult task for VROs, it stops short of sharing the actual history of previous contract negotiations between SSA & NAPHSIS. In 2015 & 2016, SSA asked NAPHSIS to develop a cost analysis methodology to aid in the pricing negotiation. SSA and NAPHSIS met, discussed, and agreed on a survey instrument to capture VRO expenses, how large a sample of survey responses to the 57 VROs had to be received in order to be considered representative of all VROs, and how an average price per death record would be determined, etc. SSA and NAPHSIS also determined how SSA's share of that average death record would be calculated. Upon delivery of the completed cost analysis behind its proposed pricing, a project that took several months for NAPHSIS members, SSA declined to accept it, suggesting that the base year of the proposed contract was higher than the increase in the Consumer Price Index for the same period. NAPHSIS understood that SSA wanted to see a straight-line increase from the then-current contract price to the first year of the proposed contract and option periods. The eventual contract produced an increase in price paid by SSA, literally, of only pennies, year after year.

There is also a general lack of transparency between SSA and the VROs regarding how the data is being used and by whom. SSA's agreement with other agencies using death data is described generally in the NAPA report, but it does not mention that there is no report or accounting of these customers, or their use cases delivered to the VROs. These data should be shared with the VROs as part of their contract with SSA and ideally, VROs should be permitted to access results of internal audits of these agreements.

Problems with SSA's Performance

On page 55, the NAPA report states that SSA's error rate is "below 1%." NAPHSIS would like to point out that 1% of an average of 2.5 million deaths nationally per year represents 25,000 people for whom SSA's error rate causes incredible hardship and legal issues. This highlights

issues internal to SSA, both with its process and with significant limitations on its system's functionality.

On page 56, the report erroneously characterizes the data sharing relationship between SSA and the VROs/NAPHSIS. To be clear, neither VROs nor NAPHSIS rely on SSA's "processes structure or expertise to correct erroneous death records." SSA has no way to share any corrections to its death records with the states, nor does it have a process to receive updates to a record from the states, which is the cause of many of these errors. In other words, SSA's inability to update its technology results in many errors. This is just one example of the many SSA performance issues relayed to NAPA during the member interview process that NAPHSIS facilitated. NAPHSIS members repeatedly described the poor quality of technical assistance, the lack of process, and inflexible, antiquated technology.

NAPHSIS believes that SSA should address several specific issues, including:

Updates to Existing Records: Currently, SSA does not possess a mechanism to accept a record previously submitted by a VRO that contains updated information. The source of the updated information could have been the family and/or estate of the deceased or could have been identified by the VRO in response to an SSA error code. Without a technical solution, providing an error code back to the VROs will not encourage them to develop and/or increase their outreach to data providers to relay this information. VROs would also have to develop technical solutions if SSA limits the ability to re-submit records that only contain Fact of Death (FOD) error codes. FOD error codes are not linked to the VRO death certificate in an automated fashion and would require manual intervention from the VRO staff to identify records for potential resubmission.

Once the VRO has identified and corrected the error, VROs face another issue, as SSA is unable to accept the corrected information electronically. While the VROs can *fix* records from the Verified EDR, Unverified EDR and Non-EDR categories, it is unclear from the proposed Scope of Work (SOW) for the new contract, exactly *how* SSA expects those changes to be re-submitted. In order for the VROs to efficiently and accurately make the changes specified in the SOW, SSA must make the system changes necessary for the corrected and resubmitted data to be accepted electronically. Accepting corrections to certified death records electronically is an important component of the agency's ability to suspend benefits payments appropriately and as quickly as possible.

Antiquated Limitations on Data Characters: In creating a death record, SSA systems will only accept a maximum number of specific characters for a data variable that are frequently not consistent with VRO legal definitions. For example, consider how the name of an individual is reported in both SSA and VRO death records. In contrast with SSA, VROs recognize legal names that include more than a single dash in terms of allowable characters. Apostrophes and diagonal lines in last names are commonplace and the usage of graphemes in names is also gaining wide usage. The death certificate itself is the identity document used by the family and/or estate of the deceased and

needs to be as accurate as possible to match other data from other sources, such as financial institutions. Informants do not understand that the complete spelling of names as the family knows them are perfectly fine on a VRO death certificate but may not be acceptable to SSA.

Similarly, sex/gender designations are also a source of data mismatch. Individuals may proceed with a change in gender identity but may not have the means or authority to make documentation changes to SSA records and birth certificates. The designation of sex/gender on a death certificate is made by the informant of record and does not require medical or documentation verification. VROs are not in a legal position to discuss with the family/informant *why* SSA will not accept the VRO death certificate if SSA's records do not match the sex/gender. SSA must also develop the ability to accept multiple submissions using the variant AKA name entries present in VRO death certificates as part of a single record-level transmission.

The limitations of current SSA system to be able to recognize and accept certain alphanumeric characters or symbols used for first and last names among different ethnic populations will only increase as the US population becomes more diverse. SSA's current systems are not designed to accept new language, naming and character recognition protocols in a machine-readable manner. Without significant system enhancements to accommodate these changes in our society, error issues will be increasingly problematic.

Finally, on page 55 the report erroneously describes the EDR process and the OVS system and how it functions. To be clear, SSA did NOT establish the EDR process. SSA only takes advantage of a system that already existed to aid in their business process. They could not charge for OVS verification because the system is owned and operated by NAPHSIS for the fulfillment of the contract. In other words, SSA is paying the VROs for OVS verification, not the other way around.

NAPHSIS believes it is necessary to address *both* the existing technical limits of SSA's systems and the financial ramifications of modernizing state systems effectively and sustainably. To do so, it is reasonable for SSA to anticipate that its contracts with the VROs will be adjusted upwards significantly to reflect their commercial pricing strategy and to do so, Congress will have to increase SSA's annual appropriation to accommodate adherence to the new legislative language. But as the NAPA report points out on page 8, SSA's use of state-owned death data prevents over \$50 million in improper payments every month. The new legislative language supports both an increase in remuneration to states in support of their overall systems and processes.

A final observation is that the legislative language and the Report do not explicitly address what happens at the end of the three-year life of the amendments to Sec. 205(r). This amendment *appears* to have characteristics of a time-limited demonstration. Typically, demonstrations are subject to rigorous evaluation during their lifetime, or upon their conclusion, to determine whether they should be continued, made permanent, or terminated. In this case, SSA is

authorized to share death data owned by the states with DNP for three years, yet there is no mention of a requirement to evaluate the impact of the change during that time.

NAPA did develop and comprehensively analyze three basic options for Congress to consider at some point in the future, perhaps corresponding to the expiration of the amendments, but there is no mention of an evaluation of the impact of the latest amendments to Sec. 205(r). NAPHSIS would welcome the opportunity to take part in any evaluation or formal pilot program and is happy to serve as a resource on this issue moving forward.

Thank you again for your leadership on this issue. Please do not hesitate to reach out if you or your staff have questions about the Report or our analysis.

Sincerely,

A handwritten signature in black ink, appearing to read 'Shawna Webster', with a light blue horizontal line underneath it.

Shawna Webster, CAE
Executive Director