

ALL PAYER CLAIMS DATABASE (APCD)

2012 ANNUAL REPORT

SUBMITTED BY THE WV INSURANCE COMMISSIONER, SECRETARY OF THE WV DEPARTMENT OF HEALTH AND HUMAN RESOURCES, AND THE CHAIRMAN OF THE WV HEALTH CARE AUTHORITY (COLLECTIVELY, 'THE MOU PARTIES')

Statutory background: In 2011, the Legislature enacted Enr. Com. Sub. for 2745 that provides for the development by the MOU parties of an all-payer claims database that will collect, retain, use and disclose information concerning the claims and administrative expenses of health care payers. See W. Va. Code §33-4A-1. W. Va. Code §33-4A-3(c) provides that "[t]he MOU parties shall make an annual report to the Governor, which shall also be filed with the Joint Committee on Government and Finance, summarizing the activities of the APCD in the preceding year."

Activities

- In accordance with W. Va. Code §33-4A-2, the MOU parties executed a 'Memorandum of Understanding' on January 24, 2012 (copy attached).
- In 2012, two joint legislative rules proposed by the MOU parties in 2011 were approved by the Legislature and made effective July 1, 2012.

-- W. Va. St. R. §114A-1¹, outlines which entities will be subject to the data submission requirements of the APCD; establishes guidelines for the development of a 'data submission manual' containing technical specifications; provides for the establishment of a standing advisory board; and outlines how the Insurance Commissioner may enforce the program requirements against insurers and third-party administrators.

-- W. Va. St. R. §114A-2², establishes privacy and security requirements with respect to the collection, retention and disclosure of the data.

- As part of the "Level I establishment grant" approved by HHS in 2011 in conjunction with federal health reform under the PPACA, WV Offices of the Insurance Commissioner has secured funding in the amount of \$1.45M for APCD IT, personnel, and consultant services, and HHS has approved OIC's June 2012 request that this unexpended funding remain as part of a no cost extension to the grant. OIC's 2011 grant application provides in relevant part as follows:

APCD Collection, Storage, Integration, and Analysis Software Leasing

Justification- The APCD will serve three critical roles in relation to the health insurance exchange. First, the APCD will serve as the baseline

¹ http://www.wvinsurance.gov/Portals/0/pdf/pol_leg/rules/ins/114A-1.pdf

² http://www.wvinsurance.gov/Portals/0/pdf/pol_leg/rules/ins/114A-2.pdf

source of data for risk corridors, the reinsurance program, and the risk adjustment initiative envisioned in the health insurance exchange. Primarily, the claims data collected from the private issuers in West Virginia's market will be used in a post claim formula to determine how premiums will be adjusted amongst carriers for the purpose of risk adjustment. Second, the APCD will serve as an evaluative tool in measuring how population health changes in the State as a result of initiatives through the Exchange. Finally, the APCD will be used in conjunction with existing data available in the State's CompareCare portal to improve consumer information regarding provider quality. It is envisioned that the Exchange will improve consumer choices, and improve the health market, by providing information on providers in issuer networks. The IT infrastructure will be developed and operated by a private sector firm with direct oversight by the OIC, DHHR, HCA. This firm will develop systems for collection of claims; storage; integration of APCD into consumer tools like CompareCare; quality analytical tools; and for risk adjustment software.

Formula- Flat fee based on Request for Information conducted by West Virginia Health Care Authority (see attachment)- To establish an APCD cost represents launch and development of services. Where services will be interfaced with ongoing efforts by West Virginia Bureau for Medical Services Data Warehouse initiative appropriate cost allocation through OMB Circular A87 will be used.

Duration- Project to be commenced over course of project grant year and to be extended with Level 2 grant funding.

Method of Selection- Competitive Bid

Method of Accountability-Performance based contract with deliverables evaluation. (Payment by deliverables that meet pre-established success criteria. All planning activities involving financial transactions and internal control procedures for the Exchange are designed to ensure the prevention of fraud, waste and or abuse of grant funds. The State of WV has well established quality oversight procedures for all financial activities involving federal funds, and the OIC will strictly adhere to those procedures. Jeremiah Samples is responsible for supervising this consultant's agreement until APCD ED is hired.

APCD Business and Operations Plan and Technical Assistance

Justification- The APCD will serve three critical roles in relation to the health insurance exchange. First, the APCD will serve as the baseline source of data for risk corridors, the reinsurance program, and the risk adjustment initiative envisioned in the health insurance exchange. Primarily, the claims data collected from the private issuers in West Virginia's market will be used in a post claim formula to determine how premiums will be adjusted amongst carriers for the purpose of risk adjustment. Second, the APCD will serve as an evaluative tool in

measuring how population health changes in The State as a result of initiatives through the Exchange. Finally, the APCD will be used in conjunction with existing data available in The State's CompareCare portal to improve consumer information regarding provider quality. It is envisioned that the Exchange will improve consumer choices, and improve the health market, by providing information on providers in issuer networks. This consultant will assist The State in developing a business and operations plan for the APCD. This consultant will also assist with technical assistance.

Formula- \$200 hourly rate x 2250 expected work hours = \$450,000

Duration- Project to be commenced over course of project grant year and to be extended with Level 2 grant funding.

Method of Selection- Competitive Bid

Method of Accountability-Performance based contract with deliverables evaluation. (Payment by deliverables that meet pre-established success criteria. All planning activities involving financial transactions and internal control procedures for the Exchange are designed to ensure the prevention of fraud, waste and or abuse of grant funds. The State of WV has well established quality oversight procedures for all financial activities involving federal funds, and the OIC will strictly adhere to those procedures. Jeremiah Samples is responsible for supervising this consultant's agreement until APCD ED is hired.

**MEMORANDUM OF UNDERSTANDING BETWEEN THE WV
DEPARTMENT OF HEALTH AND HUMAN RESOURCES,
OFFICES OF THE INSURANCE COMMISSIONER AND
HEALTH CARE AUTHORITY**

A. BACKGROUND AND PURPOSE

This agreement between the West Virginia Department of Health and Human Resources (DHHR), West Virginia Offices of the Insurance Commissioner (OIC) and the West Virginia Health Care Authority (HCA) collectively referred to herein as the "MOU parties," is intended to facilitate the development and operation of an all payer claims database program (APCD) in this state.

West Virginia Code §33-4A-1 *et seq.* (2011) mandates that the MOU parties enter into a memorandum of understanding to develop an APCD and delegates different duties to each of the MOU parties as well to the group as a whole. This MOU sets forth the manner in which the parties will interact with each other and with third parties in carrying out their individual and collective responsibilities.

B. OIC DUTIES AND RESPONSIBILITIES

1. As the primary regulator of insurance carriers and third party administrators (referred to collectively herein as "health care payers" or "payers"), OIC will have primary responsibility for activities related to the collection of the data from the payers.
2. OIC will be primarily responsible for the development of the technical specifications and policies for submission of data.
3. Oversight of payer compliance with the rules and policies governing reporting and submission of the health care data and any other required information will include seeking enforcement, in its own name or in conjunction with the other MOU parties, of the payers' duties through the use of remedies in the insurance code as well as through injunctive relief in the Kanawha County Circuit Court. *See* WV Code §33-4A-6.
4. OIC will have sole responsibility for determining which payers and other parties are subject to the requirements for submission of data.
5. OIC will administer the special revenue account created by WV Code 33-4A-7, which administration will include responsibility for investments through the investment management board.
6. OIC will provide semi-annual reports on investment activity and investment results to the other parties to facilitate their ability to oversee the account.
7. OIC will prepare the budget for the APCD under timeframes and conditions applicable to the general budget process for the agency. By July 15 of each year,

OIC will present a budget proposal for the next applicable fiscal year to DHHR and HCA, which proposal will include the sources and amount of all anticipated funding and cover all aspects of the operation of the APCD.

8. OIC, in consultation with HCA, will ensure that its data collection system complies with all privacy and security laws, regulations and policies with respect to the APCD program.

9. OIC, in consultation with HCA, will ensure that its use of the APCD data complies with all privacy and security laws, regulations and policies, including the procedure entitled "Response to Unauthorized Disclosures," <http://www.privacy.wv.gov/incidentresponse/Documents/Response%20to%20Unauthorized%20Disclosures.pdf>.

10. OIC will have primary responsibility for drafting rules or guidance concerning the following penalties for violations of rules governing the submission of data, including a schedule of fines for failure to file data or to pay any required fees and handling of moneys received by the program.

C. DHHR DUTIES AND RESPONSIBILITIES

1. As the state agency with the most experience in the handling, storing, retaining, securing and analyzing large amounts of health care data, DHHR will have primary responsibility for the maintenance of the data collected.

2. DHHR will evaluate its current data storage and retrieval systems to evaluate the existing capability to perform the storage and retrieval functions required for the data collected and shall report its findings to the other MOU parties. If the parties determine that the appropriate system is not adequate, DHHR will take the lead in development of the appropriate documents to obtain bids for a system, and all 3 MOU parties will participate in the determination of the system specifications, the evaluation of bids and the selection of a vendor.

3. DHHR will be responsible for retention and oversight of technical staff employed or contracted to design, build, modify or operate the data storage system.

4. DHHR will ensure that its data storage and retrieval system complies with all privacy and security laws, regulations and policies with respect to the APCD program.

5. DHHR, in consultation with HCA, will ensure that its use of the APCD data complies with all privacy and security laws, regulations and policies, including the procedure entitled "Response to Unauthorized Disclosures," <http://www.privacy.wv.gov/incidentresponse/Documents/Response%20to%20Unauthorized%20Disclosures.pdf>.

D. HCA DUTIES AND RESPONSIBILITIES

1. As the state agency with the most experience in the analysis of health care data and health data privacy, HCA will have primary responsibility for the release or disclosure of the data collected.
2. HCA will, with input of all parties to the MOU, develop rules and policies related to the appropriate uses and disclosures of the data to stakeholders, including the MOU parties, other state agencies, and private entities. With the input of the MOU parties, HCA will also develop rules with respect to the security of the data.
3. HCA will develop forms and procedures, including a Privacy Advisory Board, to guide the data release process. HCA will support the Executive Director regarding requests for data use and release. Upon the request of the Executive Director, the HCA will provide technical assistance regarding privacy and will prepare the data files for release.
4. HCA will develop a fee schedule for access to the data and a process for the waiver of such fees. HCA will invoice data requestors for user fees and shall direct them to remit payment directly to OIC to be deposited into the special revenue account created by W. Va. Code 33-4A-7.
5. HCA will ensure that its use of the APCD data complies with all privacy and security laws, regulations and policies, including the procedure entitled "Response to Unauthorized Disclosures," <http://www.privacy.wv.gov/incidentresponse/documents/Response%20to%20Unauthorized%20Disclosures.pdf>.
6. HCA will manage the data request and release process in support of the Executive Director and in compliance with all privacy and security laws, regulations and policies with respect to the APCD program. HCA will be responsible for retention and oversight of staff employed or contracted to support the data's use and disclosure, as well as its analysis of the data.
7. HCA will have primary responsibility for drafting rules or guidances concerning:
 - a. Procedures and safeguards for the privacy, integrity, confidentiality and availability of data;
 - b. Fees payable by users of the data and a procedure for granting waivers or reduction of such fees;
 - c. Criteria for determining whether data collected, beyond the listed personal identifiers, is confidential clinical data, confidential financial data or privileged medical information and not subject to release; and

d. Procedures to give affected providers and payers notice and opportunity to comment in response to requests for information that may be considered confidential or privileged.

E. FUNDING

The MOU parties shall develop a plan to provide for the short- and long-term financial stability of the APCD and shall include this plan in the initial annual report and in every subsequent such report. Such report shall contain each MOU party's forecast of its ability to contribute funding and any conditions to which such funding would be subject. Any such contribution shall be effectuated by a transfer of funds to the special revenue account created by W. Va. Code §33-4A-7. Each MOU party's forecast shall be reduced to a methodology to support its share and memorialized in a cost sheet, to be updated on a yearly basis and affixed to this agreement as an addendum. In response to receipt of payment by an MOU party, OIC shall provide documentation in return, sufficient to satisfy the WV Auditor's Office's requirements.

F. STAFFING

1. OIC shall, with the advice and consent of DHHR and HCA, develop a staffing plan under which designated employees of each agency will be assigned duties regarding the APCD. Each such employee will report to his or her respective agency and, unless the provisions of paragraph 4 below are invoked, shall be entirely paid by such agency.

2. OIC, with the advice and consent of DHHR and HCA, shall choose an executive director who shall be responsible for developing and managing an APCD and other databases as determined by the MOU parties. The ED may be a new employee of OIC, a current OIC employee assigned to such position, or an employee of another agency assigned to the OIC in accordance with section 4 below. While the ED will be "housed" within OIC, he or she shall work on behalf of all of the MOU parties and shall be autonomous from OIC. The ED shall lead the APCD program and shall facilitate among the MOU parties to reach consensus on major decisions.

3. Except with respect to technical staff employed or contracted to design, build, modify or operate the data storage system, whose job descriptions will be developed by DHHR, and the staff employed or contracted to support the data's use, disclosure and analysis of the data by HCA, the ED shall develop job descriptions for any additional full-time or part-time positions to be assigned to the APCD.

4. Employees of any state agency may be assigned by the head of such an agency to work under the direction of the ED pursuant to an interagency agreement between the APCD and such agency. The agency supplying the employee shall be permitted to bill to the budget of the APCD in order to recoup the costs of supplying personnel.

G. CONTRACTING AND VENDOR RELATIONS

Where possible in light of federal or grant funding requirements, every vendor contract primarily focused on APCD program for the collection, storage, joint analysis or dissemination of data shall be executed by the MOU party with primary responsibility over the activities covered by the contract. Every contract will designate one of the MOU parties or the ED to be responsible for managing that contract and for being the sole contact with the vendor for all contract issues unless the MOU parties and the ED jointly agree to designate another individual to be the contact person.

H. GRANTS

All proposals for grant applications shall be subject to approval of all 3 MOU parties. Prior to submission, the MOU parties shall designate a lead agency for managing all aspects of such grant, including the application process and the execution of necessary documents.

I. RULEMAKING

W. Va. Code §33-4A-8 requires the MOU parties to propose joint legislative rules to implement the APCD program. Although each of the MOU parties is responsible for drafting rules or other written procedures ("guidances") necessary for its area of primary responsibility as set forth above, the agreement of all parties is necessary before such a rule is submitted to the Legislative Rulemaking Review Committee or any guidance is made effective. Rules on subjects not solely within an area of primary responsibility may be proposed to the other MOU parties at any time, but no legislative rule may be submitted to the LRMRC and no emergency rule may be proposed to the Secretary of State without the written approval of all of the MOU parties.

The MOU parties will be jointly responsible for drafting rules or guidance concerning the following:

1. Exemptions of a payer or a class of payers from the requirements of the APCD program and the rules promulgated thereunder. See W. Va. Code 33-4A-3(a)(7); and
2. Technical specifications for the data submissions from payers, including the data elements to be captured.

J. RECORDKEEPING

Except with regard to contracts and fiscal documentation for which a particular MOU party is responsible, the OIC shall be the primary custodian of documentation regarding the APCD and shall distribute copies to the other MOU parties. Any original documentation created by the other MOU parties shall be delivered to the OIC as the primary custodian of the documents.

K. ANNUAL REPORT

The primary responsibility for preparing the annual report to the Governor summarizing the activities of the APCD shall reside with the OIC with assistance provided by the other MOU parties.

L. MOUs WITH OTHER GOVERNMENTAL ENTITIES

Any MOU party may, with the prior advice and consent the other two MOU parties, enter into an MOU or agreement with another governmental entity to perform duties that are deemed necessary to the success of this project.

M. PERIOD OF AGREEMENT

This agreement will continue indefinitely and can be modified at any time upon agreement of all MOU parties. Any amendments to this agreement shall be affixed to this agreement as an addendum hereto duly executed by each MOU party.

N. MISCELLANEOUS PROVISIONS.

This agreement does not confer any rights or benefits on any third party. The terms of this agreement are not intended to alter, amend, or rescind any provisions of State law. Any provision of this agreement, which conflicts with State law, will be null and void. Nothing in this agreement shall lessen the responsibilities or authorities of any of the MOU parties

O. INFORMATION SHARING AND CONFIDENTIALITY.

To promote increased cooperation and efficient use of resources, each MOU party agrees to share information upon request by another MOU party, to the extent permitted by applicable law. All non-public information shared between the MOU parties pursuant to this agreement is subject to all applicable limitations established by statute or regulation on interagency sharing of information.

P. NAME AND ADDRESSES OF CONTACTS

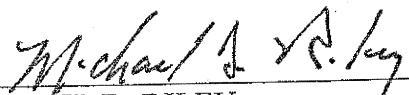
The following persons will act as the contact for his or her agency until a successor is designated by an MOU party. Any notices required to be given under this Agreement shall be delivered in person or sent by certified or registered mail to these contacts.

Jeremiah Samples
West Virginia Offices of the Insurance Commissioner
P.O. Box 50540
1124 Smith Street
Charleston, WV 25305-0540
304-558-6279 Ext. 1131

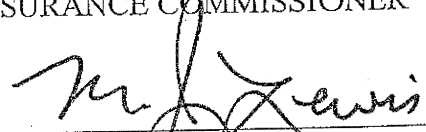
Nancy Sullivan
West Virginia Department of Health and Human Resources
One Davis Square, Suite 100
Charleston, WV 25301
304-558-9998

Amy Wenmoth, Director of Clinical Analysis
WV Health Care Authority
100 Dee Drive
Charleston, WV 25311
304-558-7000 Ext. 256

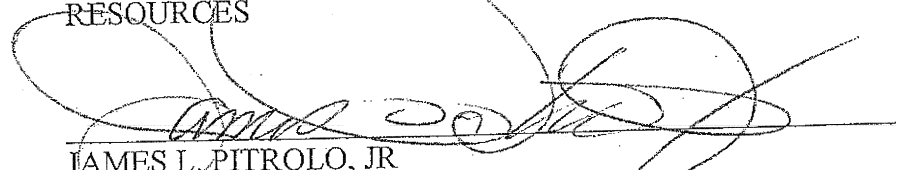
Dated this the 24th day of January, 2012.



MICHAEL D. RILEY,
ACTING INSURANCE COMMISSIONER, WEST VIRGINIA OFFICES OF THE
INSURANCE COMMISSIONER



MICHAEL J. LEWIS,
SECRETARY, WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN
RESOURCES



JAMES L. PITROLO, JR.
CHAIR, WEST VIRGINIA HEALTH CARE AUTHORITY

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Understanding to be executed by their duly authorized representatives as of the date first above written.

This Memorandum of Understanding has been signed in duplicate, both being equally authentic, to be effective as of January 1, 2012.