

COMMITTEE SUBSTITUTE

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## **Senate Bill No. 350**

(By Senators Minard and Stollings)

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[Originating in the Committee on Finance;  
reported March 1, 2011.]

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A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-16G-1, §33-16G-2, §33-16G-3, §33-16G-4, §33-16G-5, §33-16G-6, §33-16G-7 and §33-16G-8, all relating to an all-payer claims database; declaring purpose; defining terms; developing the database by the Insurance Commissioner, Secretary of Health and Human Resources and Chairperson of the Health Care Authority; authorizing joint emergency and legislative rules; providing for compliance with privacy laws; permitting fees and assessments

to be assessed; authorizing penalties to be set by rule; authorizing injunctive relief; establishing special revenue account; and allowing other sanctions.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §33-16G-1, §33-16G-2, §33-16G-3, §33-16G-4, §33-16G-5, §33-16G-6, §33-16G-7 and §33-16G-8, all to read as follows:

**ARTICLE 16G. ALL-PAYER CLAIMS DATABASE.**

**§33-16G-1. Definitions.**

1 (a) “All-payer claims database” or “APCD” means the  
2 program authorized by this article that collects, retains, uses  
3 and discloses information concerning the claims and admin-  
4 istrative expenses of health care payers.

5 (b) “Chair” means the chairperson of the West Virginia  
6 Health Care Authority.

7 (c) “Commissioner” means the West Virginia Insurance  
8 Commissioner.

9 (d) “Data” means the data elements from enrollment and  
10 eligibility files, specified types of claims, and reference files  
11 for date elements not maintained in formats consistent with  
12 national coding standards.

13 (e) “Health care payer” means any entity that pays or  
14 administers the payment of health insurance claims or  
15 medical claims under workers’ compensation insurance to  
16 providers in this state, including workers’ compensation  
17 insurers; accident and sickness insurers; nonprofit hospital  
18 service corporations, medical service corporations and dental  
19 service organizations; nonprofit health service corporations;  
20 prepaid limited health service organizations; health mainte-  
21 nance organizations; and government payers, including but  
22 not limited to Medicaid, Medicare and the public employees  
23 insurance agency; the term also includes any third-party  
24 administrator including any pharmacy benefit manager, that  
25 administers a fully-funded or self-funded plan:

26 A “health insurance claim” does not include:

27 (1) Any claim paid under an individual or group policy  
28 providing coverage only for accident, or disability income  
29 insurance or any combination thereof; coverage issued as a  
30 supplement to liability insurance; liability insurance,  
31 including general liability insurance and automobile liabil-  
32 ity; credit-only insurance; coverage for on-site medical  
33 clinics; other similar insurance coverage, which may be

34 specified by rule, under which benefits for medical care are  
35 secondary or incidental to other insurance benefits; or

36 (2) Any of the following if provided under a separate  
37 policy, certificate, or contract of insurance: Limited scope  
38 dental or vision benefits; benefits for long-term care, nursing  
39 home care, home health care, community-based care, or any  
40 combination thereof; coverage for only a specified disease or  
41 illness; or hospital indemnity or other fixed indemnity  
42 insurance.

43 “Health insurance claims” shall only include information  
44 from Medicare supplemental policies if the same information  
45 is obtained with respect to Medicare.

46 (f) “Personal identifiers” means information relating to an  
47 individual member or insured that identifies, or can be used  
48 to identify, locate or contact a particular individual member  
49 or insured, including but not limited to the individual’s  
50 name, street address, social security number, e-mail address  
51 and telephone number.

52 (g) “Secretary” means the Secretary of the West Virginia  
53 Department of Health and Human Services.

54 (h) “Third-party administrator” has the same meaning  
55 ascribed to it in section two, article forty-six of this chapter.

**§33-16G-2. Establishment and development of an all-payer claims database.**

1 (a) The secretary, commissioner and chair, collectively  
2 referred to herein as the “MOU parties”, shall enter into a  
3 memorandum of understanding to develop an all-payer  
4 claims database program.

5 (b) The memorandum of understanding shall, at a mini-  
6 mum:

7 (1) Provide that the commissioner will have primary  
8 responsibility for the collection of the data in order to  
9 facilitate the efficient administration of state oversight, the  
10 secretary will have primary responsibility for the retention  
11 of data supplied to the state under its health care oversight  
12 function, and the chair will have primary responsibility for  
13 the dissemination of the data;

14 (2) Delineate the MOU parties’ roles, describe the process  
15 to develop legislative rules required by this article, establish  
16 communication processes and a coordination plan, and  
17 address vendor relationship management;

18 (3) Provide for the development of a plan for the financial  
19 stability of the APCD, including provision for funding by the  
20 MOU parties’ agencies; and

21 (4) Provide for the use of the hospital discharge data  
22 collected by the West Virginia Health Care Authority as a  
23 tool in the validation of APCD reports.

**§33-16G-3. Powers of the commissioner, secretary and chair;  
exemption from purchasing rules.**

1 (a) The MOU parties may:

2 (1) Accept gifts, bequests, grants or other funds dedicated  
3 to the furtherance of the goals of the APCD;

4 (2) Select a vendor to handle data collection and processing  
5 and such other tasks as deemed appropriate;

6 (3) Enter into agreements with other states to perform joint  
7 administrative operations, share information and assist in  
8 the development of multistate efforts to further the goals of  
9 this article: *Provided*, That any such agreements must  
10 include adequate protections with respect to the confidenti-  
11 ality of the information to be shared and comply with all  
12 state and federal laws and regulations;

13 (4) Enter into memoranda of understanding with other  
14 governmental agencies to carry out any of its functions,  
15 including contracts with other states to perform joint  
16 administrative functions;

17 (5) Attempt to ensure that the requirements with respect to  
18 the reporting of data be standardized so as to minimize the  
19 expense to parties subject to similar requirements in other  
20 jurisdictions;

21 (6) Enter into voluntary agreements to obtain data from  
22 payers not subject to mandatory reporting under this article;  
23 and

24 (7) Exempt a payer for class of payers from the require-  
25 ments of this article for cause.

26 (b) Contracts for professional services for the development  
27 and operation of the APCD are not subject to the provisions  
28 of article three, chapter five-a of this code relating to the  
29 Purchasing Division of the Department of Administration.  
30 The award of such contracts shall be subject to a competitive  
31 process established by the MOU parties.

32 (c) The MOU parties shall make an annual report to the  
33 Governor, which shall also be filed with the Joint Committee  
34 on Government and Finance, summarizing the activities of  
35 the APCD in the preceding calendar year.

**§33-16G-4. Data subject to this article.**

1 (a) All health care payers shall submit data to the commis-  
2 sioner or an entity designated by the commissioner at such

3 times and in a form specified in rule. Any health care payer  
4 that the commissioner determines paid or administered the  
5 payment of health insurance claims in this state for policies  
6 on fewer than 500 covered lives in the previous calendar year  
7 is exempt from the requirements of this article.

8 (b) Data submitted in accordance with this article shall be  
9 considered confidential by law and privileged, are exempt  
10 from disclosure pursuant to chapter twenty-nine-b of this  
11 code, are not open to public inspection, are not subject to  
12 subpoena, are not subject to discovery or admissible in  
13 evidence in any criminal, private civil or administrative  
14 action, are not subject to production pursuant to court order,  
15 and shall only be used and disclosed pursuant to law and  
16 legislative rules promulgated pursuant to this article.

17 (c)(1) Data submitted to and retained by the APCD shall be  
18 available as a resource for the MOU parties to continuously  
19 review health care utilization, expenditures and performance  
20 in West Virginia and to enhance the ability of consumers to  
21 make informed and cost-effective health care decisions.

22 (2) Data submitted to and retained by the APCD may, in  
23 accordance with this article and the legislative rules promul-  
24 gated pursuant to this article, also be available as a resource



25 for insurers, researchers, employers, providers, purchasers of  
26 health care, consumers, and state agencies.

27 (d) Notwithstanding any other provision of law to the  
28 contrary, the APCD shall not disclose any data that contain  
29 personal identifiers. The MOU parties, in accordance with  
30 procedures and standards set forth in legislative rule, may  
31 approve access to other data elements not prohibited from  
32 disclosure by the APCD, as well as synthetic or created  
33 unique identifiers, for use by researchers, including govern-  
34 ment agencies, with established protocols for  
35 safeguarding confidential or privileged information. The  
36 MOU parties' use of the data shall not constitute a disclo-  
37 sure.

**§33-16G-5. User fees; waiver.**

1 Reasonable user fees may be set collected in the manner  
2 established in legislative rule, for the right to access and use  
3 the data available from the APCD. The chair may reduce or  
4 waive the fee if he or she determines that the user is unable  
5 to pay the scheduled fees and that the user has a viable plan  
6 to use the data or information in research of general value to  
7 the public health.

**§33-16G-6. Enforcement; injunctive relief.**

1 In the event of any violation of this article or any rule  
2 adopted thereunder, the commissioner, secretary or chair  
3 may seek to enjoin a further violation in the circuit court of  
4 Kanawha County. Injunctive relief ordered pursuant to this  
5 section may be in addition to any other remedies and  
6 enforcement actions available to the commissioner under this  
7 chapter.

**§33-16G-7. Special revenue account created.**

1 (a) There is hereby created a special revenue account in the  
2 State Treasury, designated the West Virginia All-Payer  
3 Claims Database Fund, which shall be an interest-bearing  
4 account and may be invested in the manner permitted by  
5 article six, chapter twelve of this code, with the interest  
6 income a proper credit to the fund and which shall not revert  
7 to the general revenue, unless otherwise designated in law.  
8 The fund shall be overseen by the commissioner, secretary  
9 and chair, shall be administered by the commissioner, and  
10 shall be used to pay all proper costs incurred in implement-  
11 ing the provisions of this article.

12 (b) The following funds shall be paid into this account:

- 13 (1) Penalties imposed on health care payers pursuant to  
14 this article and rules promulgated hereunder;
- 15 (2) Funds received from the federal government;
- 16 (3) Appropriations from the Legislature; and
- 17 (4) All other payments, gifts, grants, bequests or income  
18 from any source.

**§33-16G-8. Rule-making authority.**

1 To effectuate the provisions of this article, the MOU  
2 parties may propose joint rules for legislative approval in  
3 accordance with the provisions of article three, chapter  
4 twenty-nine-a of this code as necessary to implement this  
5 article. No actions to collect data or assess fees pursuant to  
6 this article may be undertaken until rules promulgated  
7 hereunder are made effective. Such rules may include, but  
8 are not limited to, the following:

9 (a) Procedures for the collection, retention, use and  
10 disclosure of data from the APCD, including procedures and  
11 safeguards to protect the privacy, integrity, confidentiality  
12 and availability of any data;

13 (b) Penalties against health care payers for violation of  
14 rules governing the submission of data, including a schedule  
15 of fines for failure to file data or to pay assessments;

16 (c) Fees payable by users of the data and the process for a  
17 waiver or reduction of user fees. Any such fees shall be  
18 established at a level that, when considered together with  
19 other available funding sources, is deemed necessary to  
20 sustain the operation of the APCD;

21 (d) A proposed time frame for the creation of the database;

22 (e) Criteria for determining whether data collected, beyond  
23 the listed personal identifiers, is confidential clinical,  
24 confidential financial data or privileged medical informa-  
25 tion, and procedures to give affected providers and health  
26 care payers notice and opportunity to comment in response  
27 to requests for information that may be considered confiden-  
28 tial or privileged;

29 (f) Penalties, including fines and other administrative  
30 sanctions, that may be imposed by the commissioner for a  
31 health care payer's failure to comply with requirements of  
32 this article and rules adopted hereunder; and

33 (g) Establishment of advisory boards to provide advice to  
34 the MOU parties with respect to the various functions of the  
35 APCD.