

COMMITTEE SUBSTITUTE

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Senate Bill No. 350

(By Senators Minard and Stollings)

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

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.