

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Enrolled

Senate Bill 390

BY SENATORS MARONEY AND STOLLINGS

[Passed March 26, 2021; in effect from passage]

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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1 AN ACT to amend and reenact §33-4A-1, §33-4A-2, §33-4A-3, §33-4A-4, §33-4A-5, §33-4A-6,
2 §33-4A-7, and §33-4A-8 of the Code of West Virginia, 1931, as amended, all relating to
3 the all-payer claims database; reflecting that Health Care Authority is part of the
4 organizational structure of the Department of Health and Human Resources and is no
5 longer a separate governmental agency; and clarifying and accurately delineating the
6 roles of the entities responsible for the all-payer claims database.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4A. ALL-PAYER CLAIMS DATABASE.

§33-4A-1. Definitions.

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

4 (b) "Commissioner" means the West Virginia Insurance Commissioner.

5 (c) "Data" means the data elements from enrollment and eligibility files, specified types of
6 claims, and reference files for data elements not maintained in formats consistent with national
7 coding standards.

8 (d) "Health care payer" means any entity that pays or administers the payment of health
9 insurance claims or medical claims under workers' compensation insurance to providers in this
10 state, including workers' compensation insurers; accident and sickness insurers; nonprofit
11 hospital service corporations, medical service corporations, and dental service organizations;
12 nonprofit health service corporations; prepaid limited health service organizations; health
13 maintenance organizations; and government payers, including, but not limited to, Medicaid,
14 Medicare, and the Public Employees Insurance Agency; the term also includes any third-party
15 administrator, including any pharmacy benefits manager, that administers a fully funded plan:

16 A "health insurance claim" does not include:

17 (1) Any claim paid under an individual or group policy providing coverage only for accident
18 or disability income insurance or any combination thereof; coverage issued as a supplement to
19 liability insurance; liability insurance, including general liability insurance and automobile liability;
20 credit-only insurance; coverage for on-site medical clinics; other similar insurance coverage,
21 which may be specified by rule, under which benefits for medical care are secondary or incidental
22 to other insurance benefits; or

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

27 "Health insurance claims" shall only include information from Medicare supplemental
28 policies if the same information is obtained with respect to Medicare.

29 (e) "Personal identifiers" means information relating to an individual member or insured
30 that identifies, or can be used to identify, locate, or contact a particular individual member or
31 insured, including, but not limited to, the individual's name, street address, Social Security
32 number, e-mail address, and telephone number.

33 (f) "Secretary" means the Secretary of the West Virginia Department of Health and Human
34 Resources.

35 (g) "Third-party administrator" has the same meaning ascribed to it in §33-46-2 of this
36 code.

§33-4A-2. Establishment and development of an all-payer claims database.

1 (a) The secretary shall have primary responsibility for the collection, retention, and
2 dissemination of the data in an all-payer claims database (APCD). The commissioner shall have
3 primary responsibility for enforcement of data collection.

4 (b) The secretary shall provide for the development of a plan for the financial stability of
5 the APCD.

6 (c) The secretary shall provide for the use of the hospital uniform billing data collected by
7 the West Virginia Department of Health and Human Resources as a tool in the validation of APCD
8 reports.

§33-4A-3. Powers of the secretary; exemption from purchasing rules.

1 (a) The secretary may:

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

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

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

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

13 (5) Attempt to ensure that the requirements with respect to the reporting of data be
14 standardized;

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

17 (7) Exempt a payer or class of payers from the requirements of this article for cause.

18 (b) Contracts for professional services for the development and operation of the APCD
19 are not subject to the provisions of §5A-3-1 *et seq.* of this code relating to the Purchasing Division
20 of the Department of Administration. The award of such contracts shall be subject to a competitive
21 process established by the secretary.

22 (c) The secretary shall make an annual report to the Governor, which shall also be filed
23 with the Joint Committee on Government and Finance, summarizing the activities of the APCD in
24 the preceding calendar year.

§33-4A-4. Data subject to this article.

1 (a) All health care payers shall submit data to the secretary, or an entity designated by the
2 secretary, at such times and in a form specified in rule. Any health care payer that the secretary
3 or commissioner determines paid or administered the payment of health insurance claims in this
4 state for policies on fewer than 500 covered lives in the previous calendar year is exempt from
5 the requirements of this article.

6 (b) Data submitted in accordance with this article shall be considered confidential by law
7 and privileged, are exempt from disclosure pursuant to §29B-1-1 *et seq.* of this code, are not open
8 to public inspection, are not subject to subpoena, are not subject to discovery or admissible in
9 evidence in any criminal, private, civil, or administrative action, are not subject to production
10 pursuant to court order, and shall only be used and disclosed pursuant to law and legislative rules
11 promulgated pursuant to this article.

12 (c)(1) Data submitted to and retained by the all-payer claims database (APCD) shall be
13 available as a resource for the secretary and commissioner to conduct public health analyses,
14 conduct program analyses, review health care utilization, expenditures, and performance in West
15 Virginia, conduct academic research, and to enhance the ability of consumers to make informed
16 and cost-effective health care decisions.

17 (2) Data submitted to and retained by the APCD may, in accordance with this article and
18 the legislative rules promulgated pursuant to this article, also be available as a resource for
19 insurers, researchers, employers, providers, purchasers of health care, consumers, and state
20 agencies. Any such use shall be limited to public health, research, consumer reporting, and
21 program evaluation purposes.

22 (d) Notwithstanding any other provision of law to the contrary, the APCD may not disclose
23 any data that contain personal identifiers. The secretary, in accordance with procedures and
24 standards set forth in legislative rule, may approve access to data elements not prohibited from
25 disclosure by the APCD, as well as synthetic or created unique identifiers, for use by researchers,
26 including government agencies, with established protocols for safeguarding confidential or
27 privileged information. Use of the data by the secretary and commissioner shall not constitute a
28 disclosure.

§33-4A-5. User fees; waiver.

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

§33-4A-6. Enforcement; injunctive relief.

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

§33-4A-7. Special revenue account created.

1 (a) There is hereby created a special revenue account in the State Treasury, designated
2 the West Virginia All-Payer Claims Database Fund, which shall be an interest-bearing account
3 and may be invested in the manner permitted by §12-6-1 *et seq.* of this code, with the interest
4 income a proper credit to the fund and which shall not revert to the general revenue, unless
5 otherwise designated in law. The fund shall be overseen by the secretary and shall be used to
6 pay all proper costs incurred in implementing the provisions of this article.

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

- 8 (1) Penalties imposed on health care payers pursuant to this article and rules promulgated
- 9 thereunder;
- 10 (2) Funds received from the federal government;
- 11 (3) Appropriations from the Legislature; and
- 12 (4) All other payments, gifts, grants, bequests, or income from any source.

§33-4A-8. Rule-making authority.

1 To effectuate the provisions of this article, the secretary and commissioner may propose
2 joint rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this
3 code as necessary to implement this article. Such rules may include, but are not limited to, the
4 following:

- 5 (a) Procedures for the collection, retention, use, and disclosure of data from the all-payer
6 claims database (APCD), including procedures and safeguards to protect the privacy, integrity,
7 confidentiality, and availability of any data;
- 8 (b) Penalties against health care payers for violation of rules governing the submission of
9 data, including a schedule of fines for failure to file data or to pay assessments;
- 10 (c) Fees payable by users of the data and the process for a waiver or reduction of user
11 fees. Any such fees shall be established at a level that, when considered together with other
12 available funding sources, is deemed necessary to sustain the operation of the APCD;
- 13 (d) A proposed time frame for the creation of the database;
- 14 (e) Criteria for determining whether data collected, beyond the listed personal identifiers,
15 is confidential clinical data, confidential financial data, or privileged medical information, and
16 procedures to give affected providers and health care payers notice and opportunity to comment
17 in response to requests for information that may be considered confidential or privileged;
- 18 (f) Penalties, including fines and other administrative sanctions, that may be imposed by
19 the commissioner for a health care payer's failure to comply with requirements of this article and
20 rules adopted thereunder; and

21 (g) Establishment of advisory boards to provide advice to the secretary with respect to the
22 various functions of the APCD.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Mark Meyer
.....
Chairman, Senate Committee

Deen Dymally
.....
Chairman, House Committee

Originated in the Senate.

In effect from passage.

Joe Corri
.....
Clerk of the Senate

Steve Harrison
.....
Clerk of the House of Delegates

Y. P. Bell
.....
President of the Senate

Ken Insler
.....
Speaker of the House of Delegates

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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FILED

The within *is approved* this the *7th*
Day of *April* 2021.

James Justice
.....
Governor

PRESENTED TO THE GOVERNOR

APR 01 2021

Time 2:48 pm