

HB 2745

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OFFICE OF THE CLERK
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2011



ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 2745**

(By Delegates Perry, Hartman, Walters, Hall,
Ashley and Azinger)
[By Request of the Insurance Commissioner]



Passed March 12, 2011

In Effect Ninety Days From Passage

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(BY DELEGATES PERRY, HARTMAN, WALTERS, HALL,
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[BY REQUEST OF THE INSURANCE COMMISSIONER]

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AN ACT amend and reenact §33-4-14 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §33-4A-1, §33-4A-2, §33-4A-3, §33-4A-4, §33-4A-5, §33-4A-6, §33-4A-7 and §33-4A-8, all relating to the Insurance Commissioner generally; providing that certain information provided by insurance companies to the Insurance Commissioner is confidential; exempting such confidential information from the freedom of information disclosure requirements; providing that such confidential information is not subject to subpoena or discoverable in a private civil action; commissioner's authority to release, share and receive documents otherwise treated as confidential in furtherance of the commissioner's official duties; stating conditions attached thereto; authorizing legislative rules; creating an all-payer claims database; defining terms; developing the database by the Insurance Commissioner,

Secretary of Health and Human Resources and Chairperson of the Health Care Authority and providing powers in regard thereto; exempting from purchasing rules; providing data subject to the database; providing for the protection of personal identifiers and the confidentiality of information; 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 §33-4-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §33-4A-1, §33-4A-2, §33-4A-3, §33-4A-4, §33-4A-5, §33-4A-6, §33-4A-7 and §33-4A-8, all to read as follows:

ARTICLE 4. GENERAL PROVISIONS.

§33-4-14. Financial statement filings; annual and quarterly statements; required format; foreign insurers; agents of the commissioner.

1 (a) Each licensed insurer shall annually on or before
2 March 1, unless the time is extended by the commissioner for
3 good cause shown, file with the commissioner a true
4 statement of its financial condition, transactions and affairs
5 as of the preceding December 31. Such statement shall be on
6 the appropriate National Association of Insurance
7 Commissioners annual statement blank; shall be prepared in
8 accordance with the National Association of Insurance
9 Commissioners annual statement instructions handbook; and
10 shall follow the accounting practices and procedures
11 prescribed by the National Association of Insurance
12 Commissioners accounting practices and procedures manual
13 as amended: *Provided*, That each licensed insurer shall also
14 file true statements of financial condition on a more frequent

15 basis if the commissioner so orders. The commissioner shall
16 establish the frequency, due date and form acceptable to him
17 or her for such filings: *Provided, however,* That the
18 statement of an alien insurer shall relate only to its
19 transactions and affairs in the United States unless the
20 commissioner requires otherwise.

21 (b) Each domestic insurer shall also file with the
22 commissioner a true quarterly statement of its financial
23 condition, transactions and affairs as of March 31, June 30,
24 and September 30, of each year. Quarterly statements shall
25 be due forty-five days after the end of each quarter. All
26 quarterly statements shall be submitted on the appropriate
27 National Association of Insurance Commissioners quarterly
28 statement blank; shall be prepared in accordance with the
29 National Association of Insurance Commissioners quarterly
30 statement instructions; and shall follow the accounting
31 practices and procedures prescribed by the National
32 Association of Insurance Commissioners accounting
33 practices and procedures manual, as amended. The
34 commissioner may subject any licensed insurer to the
35 requirements of this section whenever the commissioner
36 deems it necessary.

37 (c) The commissioner may require that all or part of the
38 information contained in the annual statement blank and the
39 quarterly statement blanks be submitted in a
40 computer-readable form compatible with the electronic data
41 processing system of the department.

42 (d) Each domestic, foreign and alien insurer, organization
43 or corporation that is subject to the requirements of this
44 section shall annually, on or before March 1 each year, and
45 forty-five days after the end of the first, second and third
46 calendar quarters, file with the National Association of
47 Insurance Commissioners a copy of its annual statement
48 convention blank and the quarterly statement blanks, along

49 with such additional filings as prescribed by the
50 commissioner and shall pay the fee established by the
51 National Association of Insurance Commissioners for filing,
52 review or processing of the information. The information
53 filed with the National Association of Insurance
54 Commissioners shall be in the same format and scope as that
55 required by the commissioner and shall include the signed
56 jurat page and any other required information. Any
57 amendments and addenda to the annual statement filing and
58 quarterly statement filings subsequently filed with the
59 commissioner shall also be filed with the National
60 Association of Insurance Commissioners.

61 (e) Foreign insurers that are domiciled in a state which
62 has a law substantially similar to subsection (a) of this section
63 shall be deemed in compliance with this section.

64 (f) In the absence of actual malice, members of the
65 National Association of Insurance Commissioners, their duly
66 authorized committees, subcommittees and task forces, their
67 delegates, National Association of Insurance Commissioners
68 employees and all others charged with the responsibility of
69 collecting, reviewing, analyzing and disseminating the
70 information developed from the filing of the annual statement
71 convention blanks and the quarterly statement blanks shall be
72 acting as agents of the commissioner under the authority of
73 this article and shall not be subject to civil liability for libel,
74 slander or any other cause of action by virtue of their
75 collection, review, and analysis or dissemination of the data
76 and information collected from the filings required
77 hereunder.

78 (g)(1) All financial analysis ratios and examination
79 synopses concerning insurance companies that are submitted
80 to the commissioner by the National Association of Insurance
81 Commissioners insurance regulatory information system,
82 and all actuarial reports, work papers and actuarial

83 summaries submitted by insurers in conjunction with their
84 annual financial statements is confidential by law and
85 privileged. These documents are not subject to disclosure
86 pursuant to chapter twenty-nine-b of this code, are not subject
87 to subpoena and are not subject to discovery or admissible as
88 evidence in any private civil action: *Provided*, That nothing
89 in this section may be construed to limit the ability of parties
90 in a civil action to discover such information from insurers
91 under the Rules of Civil Procedure.

92 (2) This subsection shall not be construed to limit the
93 commissioner's authority to release the documents to the
94 Actuarial Board for Counseling and Discipline (ABCD), so
95 long as the material is required for the purpose of
96 professional disciplinary proceedings and the ABCD
97 establishes procedures satisfactory to the commissioner for
98 preserving the confidentiality of the documents; nor shall this
99 section be construed to limit the commissioner's authority to
100 use the documents, materials or other information in
101 furtherance of any regulatory or legal action brought as part
102 of the commissioner's official duties.

103 (3) Neither the commissioner nor any person who
104 received documents, materials or other information while
105 acting under the authority of the commissioner shall be
106 permitted or required to testify in any private civil action
107 concerning any confidential documents, materials or
108 information subject to subdivision (1) of this subsection.

109 (4) In order to assist in the performance of the
110 commissioner's duties, the commissioner:

111 (A) May share documents, materials or other information,
112 including the confidential and privileged documents,
113 materials or information subject to subparagraph (1) of this
114 subsection with other state, federal and international
115 regulatory agencies, and with state, federal and international

116 law-enforcement authorities, provided that the recipient
117 agrees to maintain the confidentiality and privileged status of
118 the document, material or other information and has the legal
119 authority to maintain confidentiality; and

120 (B) May receive documents, materials or information,
121 including otherwise confidential and privileged documents,
122 materials or information, from the National Association of
123 Insurance Commissioners and its affiliates and subsidiaries,
124 and from regulatory and law-enforcement officials of other
125 foreign or domestic jurisdictions, and shall maintain as
126 confidential or privileged any document, material or
127 information received with notice or the understanding that it
128 is confidential or privileged under the laws of the jurisdiction
129 that is the source of the document, material or information.

130 (h) The commissioner may suspend, revoke or refuse to
131 renew the certificate of authority of any insurer failing to file
132 its annual statement or the quarterly statement blanks, or any
133 other statement of financial condition required by this
134 section, when due or within any extension of time which the
135 commissioner, for good cause, may have granted.

136 (i) Any variance to the requirements of this section shall
137 require the express authorization of the commissioner.

138 (j) The commissioner shall propose rules for legislative
139 approval in accordance with article three, chapter
140 twenty-nine-a of this code to effectuate the requirements of
141 this article.

ARTICLE 4A. ALL-PAYER CLAIMS DATABASE.

§33-4A-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
4 administrative 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 data 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
21 maintenance organizations; and government payers,
22 including but not limited to Medicaid, Medicare and the
23 public employees insurance agency; the term also includes
24 any third-party administrator including any pharmacy benefit
25 manager, that 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
32 liability; 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 name,
50 street address, social security number, e-mail address and
51 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.

**§33-4A-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.

8 in the development of multistate efforts to further the goals
9 of this article: *Provided*, That any such agreements must
10 include adequate protections with respect to the
11 confidentiality of the information to be shared and comply
12 with all 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
18 to 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
25 requirements of this article for cause.

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

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

1 (a) All health care payers shall submit data to the
2 commissioner or an entity designated by the commissioner at
3 such times and in a form specified in rule. Any health care
4 payer that the commissioner determines paid or administered
5 the payment of health insurance claims in this state for
6 policies on fewer than 500 covered lives in the previous
7 calendar year 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
18 be available as a resource for the MOU parties to
19 continuously review health care utilization, expenditures and
20 performance in West Virginia and to enhance the ability of
21 consumers to make informed and cost-effective health care
22 decisions.

23 (2) Data submitted to and retained by the APCD may, in
24 accordance with this article and the legislative rules
25 promulgated pursuant to this article, also be available as a
26 resource for insurers, researchers, employers, providers,
27 purchasers of health care, consumers, and state agencies.

28 (d) Notwithstanding any other provision of law to the
29 contrary, the APCD shall not disclose any data that contain
30 personal identifiers. The MOU parties, in accordance with
31 procedures and standards set forth in legislative rule, may
32 approve access to other data elements not prohibited from
33 disclosure by the APCD, as well as synthetic or created

34 unique identifiers, for use by researchers, including
35 government agencies, with established protocols for
36 safeguarding confidential or privileged information. The
37 MOU parties' use of the data shall not constitute a disclosure.

§33-4A-5. User fees; waiver.

1 Reasonable user fees may be set 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.

§33-4A-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 may
3 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.

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

1 (a) There is hereby created a special revenue account in
2 the 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 implementing
11 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.

§33-4A-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
17 a 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;

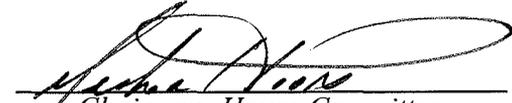
21 (d) A proposed time frame for the creation of the
22 database;

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

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

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

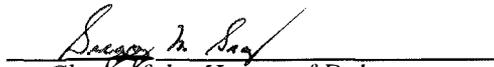
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

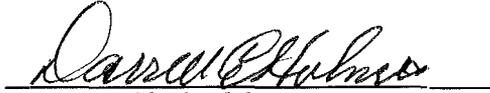

Chairman, House Committee


Chairman, Senate Committee

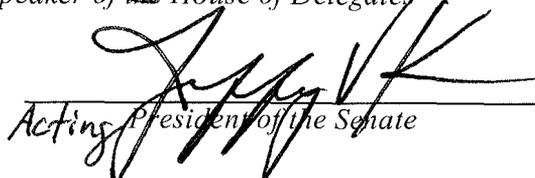
Originating in the House.

To take effect ninety days from passage.


Clerk of the House of Delegates


Clerk of the Senate


Speaker of the House of Delegates


Acting President of the Senate

The within is approved this the 4th
day of April, 2011.


Governor

2011 APR -4 PM 2:48
OFFICE OF THE
SECRETARY OF STATE
INDIANA

PRESENTED TO THE GOVERNOR

MAR 31 2011

Time 11:30 am
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