

HB 2745

2011 APR -4 PM 2:48

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 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;

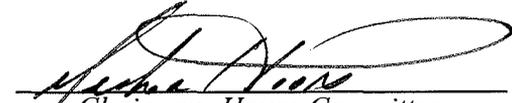
21 (d) A proposed time frame for the creation of the  
22 database;

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.

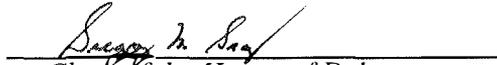
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

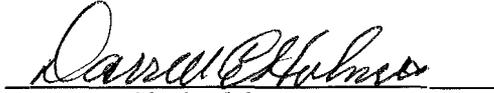
  
Chairman, House Committee

  
Chairman, Senate Committee

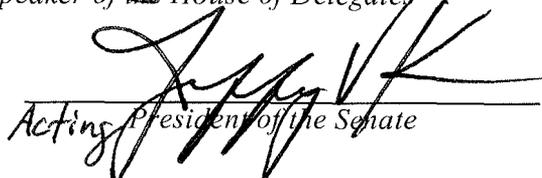
Originating in the House.

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 4<sup>th</sup> day of April, 2011.

  
Governor

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OFFICE OF THE  
SECRETARY OF STATE  
INDIANA

PRESENTED TO THE GOVERNOR

MAR 31 2011

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