WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2011

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ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2745

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

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Passed March 12, 2011

In Effect Ninety Days From Passage
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.

(a) Each licensed insurer shall annually on or before March 1, unless the time is extended by the commissioner for good cause shown, file with the commissioner a true statement of its financial condition, transactions and affairs as of the preceding December 31. Such statement shall be on the appropriate National Association of Insurance Commissioners annual statement blank; shall be prepared in accordance with the National Association of Insurance Commissioners annual statement instructions handbook; and shall follow the accounting practices and procedures prescribed by the National Association of Insurance Commissioners accounting practices and procedures manual as amended: Provided, That each licensed insurer shall also file true statements of financial condition on a more frequent
basis if the commissioner so orders. The commissioner shall establish the frequency, due date and form acceptable to him or her for such filings: *Provided, however,* That the statement of an alien insurer shall relate only to its transactions and affairs in the United States unless the commissioner requires otherwise.

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

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

(d) Each domestic, foreign and alien insurer, organization or corporation that is subject to the requirements of this section shall annually, on or before March 1 each year, and forty-five days after the end of the first, second and third calendar quarters, file with the National Association of Insurance Commissioners a copy of its annual statement convention blank and the quarterly statement blanks, along
with such additional filings as prescribed by the commissioner and shall pay the fee established by the National Association of Insurance Commissioners for filing, review or processing of the information. The information filed with the National Association of Insurance Commissioners shall be in the same format and scope as that required by the commissioner and shall include the signed jurat page and any other required information. Any amendments and addenda to the annual statement filing and quarterly statement filings subsequently filed with the commissioner shall also be filed with the National Association of Insurance Commissioners.

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

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

(g)(1) All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the commissioner by the National Association of Insurance Commissioners insurance regulatory information system, and all actuarial reports, work papers and actuarial
summaries submitted by insurers in conjunction with their annual financial statements is confidential by law and privileged. These documents are not subject to disclosure pursuant to chapter twenty-nine-b of this code, are not subject to subpoena and are not subject to discovery or admissible as evidence in any private civil action: Provided, That nothing in this section may be construed to limit the ability of parties in a civil action to discover such information from insurers under the Rules of Civil Procedure.

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

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

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

(A) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subparagraph (1) of this subsection with other state, federal and international regulatory agencies, and with state, federal and international
law-enforcement authorities, provided that the recipient
agrees to maintain the confidentiality and privileged status of
the document, material or other information and has the legal
authority to maintain confidentiality; and

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

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

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

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

ARTICLE 4A. ALL-PAYER CLAIMS DATABASE.

§33-4A-1. Definitions.

(a) “All-payer claims database” or “APCD” means the
and discloses information concerning the claims and
administrative expenses of health care payers.

(b) "Chair" means the chairperson of the West Virginia
Health Care Authority.

c) "Commissioner" means the West Virginia Insurance
Commissioner.

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

e) "Health care payer" means any entity that pays or
administers the payment of health insurance claims or
medical claims under workers’ compensation insurance to
providers in this state, including workers’ compensation
insurers; accident and sickness insurers; nonprofit hospital
service corporations, medical service corporations and dental
service organizations; nonprofit health service corporations;
prepaid limited health service organizations; health
maintenance organizations; and government payers,
including but not limited to Medicaid, Medicare and the
public employees insurance agency; the term also includes
any third-party administrator including any pharmacy benefit
manager, that administers a fully-funded or self-funded plan.

A "health insurance claim" does not include:

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

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

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

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

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

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

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

(a) The secretary, commissioner and chair, collectively referred to herein as the “MOU parties”, shall enter into a memorandum of understanding to develop an all-payer claims database program.
in the development of multistate efforts to further the goals of this article: Provided, That any such agreements must include adequate protections with respect to the confidentiality of the information to be shared and comply with all state and federal laws and regulations;

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

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

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

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

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

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

§33-4A-4. Data subject to this article.
(a) All health care payers shall submit data to the commissioner or an entity designated by the commissioner at such times and in a form specified in rule. Any health care payer that the commissioner determines paid or administered the payment of health insurance claims in this state for policies on fewer than 500 covered lives in the previous calendar year is exempt from the requirements of this article.

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

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

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

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

§33-4A-5. User fees; waiver.

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

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

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

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

(a) There is hereby created a special revenue account in the State Treasury, designated the West Virginia All-Payer Claims Database Fund, which shall be an interest-bearing account and may be invested in the manner permitted by article six, chapter twelve of this code, with the interest income a proper credit to the fund and which shall not revert to the general revenue, unless otherwise designated in law. The fund shall be overseen by the commissioner, secretary and chair, shall be administered by the commissioner, and shall be used to pay all proper costs incurred in implementing the provisions of this article.
(b) The following funds shall be paid into this account:

(1) Penalties imposed on health care payers pursuant to this article and rules promulgated hereunder;

(2) Funds received from the federal government;

(3) Appropriations from the Legislature; and

(4) All other payments, gifts, grants, bequests or income from any source.


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

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

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

(c) Fees payable by users of the data and the process for a waiver or reduction of user fees. Any such fees shall be established at a level that, when considered together with other available funding sources, is deemed necessary to sustain the operation of the APCD;
(d) A proposed time frame for the creation of the database;

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

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

(g) Establishment of advisory boards to provide advice to the MOU parties with respect to the various functions of the 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 day of April, 2011.

Governor
PRESENTED TO THE GOVERNOR

MAR 3 I 2011

Time 11:30 a.m.

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