

1 SB350 SUB1

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 350**

5 (By Senators Minard and Stollings)

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7 [Originating in the Committee on Banking and Insurance;  
8 reported February 23, 2011.]  
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10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new article, designated §33-16G-1, §33-16G-2,  
12 §33-16G-3, §33-16G-4, §33-16G-5, §33-16G-6, §33-16G-7, §33-  
13 16G-8 and §33-16G-9, all relating to an all-payer claims  
14 database; declaring purpose; defining terms; developing the  
15 database by the Insurance Commissioner, Secretary of Health  
16 and Human Resources and Chairperson of the Health Care  
17 Authority; authorizing joint emergency and legislative rules;  
18 providing for compliance with privacy laws; permitting fees  
19 and assessments to be assessed; authorizing penalties to be  
20 set by rule; authorizing injunctive relief; establishing  
21 special revenue account; and allowing other sanctions.

22 *Be it enacted by the Legislature of West Virginia:*

23 That the Code of West Virginia, 1931, as amended, be amended  
24 by adding thereto a new article, designated §33-16G-1, §33-16G-2,  
25 §33-16G-3, §33-16G-4, §33-16G-5, §33-16G-6, §33-16G-7, §33-16G-8  
26 and §33-16G-9, all to read as follows:

1 **ARTICLE 16G. ALL-PAYER CLAIMS DATABASE.**

2 **§33-16G-1. Citation of article.**

3 This article may be cited as the West Virginia All-Payer  
4 Claims Database Act.

5 **§33-16G-2. Definitions.**

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

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

12 (c) "Commissioner" means the West Virginia Insurance  
13 Commissioner.

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

18 (e) "Health care payer" means any entity that pays or  
19 administers the payment of health insurance claims to providers in  
20 this state, including accident and sickness insurers; nonprofit  
21 hospital service corporations, medical service corporations and  
22 dental service organizations; nonprofit health service  
23 corporations; prepaid limited health service organizations; health  
24 maintenance organizations; and government payers, including but not  
25 limited to Medicaid, Medicare and the public employees insurance

1 agency; the term also includes any third-party administrator  
2 including any pharmacy benefit manager, that administers a fully-  
3 funded or self-funded plan:

4 *Provided, That "health insurance claim" does not include:*

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

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

20 *Provided, however, That "health insurance claims" shall only*  
21 *include information from Medicare supplemental policies if the same*  
22 *information is obtained with respect to Medicare.*

23 *Provided, further, That the commissioner may, in his or her*  
24 *sole discretion, exempt a payer or class of payers from the*  
25 *requirements of this article for cause.*

26 (f) "Personal identifiers" means information relating to an

1 individual member or insured that identifies, or can be used to  
2 identify, locate or contact a particular individual member or  
3 insured, including but not limited to the individual's name, street  
4 address, social security number, e-mail address and telephone  
5 number.

6 (g) "Secretary" means the Secretary of the West Virginia  
7 Department of Health and Human Services.

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

10 **§33-16G-3. Establishment and development of an all-payer claims**  
11 **database.**

12 (a) The secretary, commissioner and chair, collectively  
13 referred to herein as the "MOU parties," shall enter into a  
14 memorandum of understanding to develop an all-payer claims database  
15 program.

16 (b) The memorandum of understanding shall, at a minimum:

17 (1) Provide that the commissioner will have primary  
18 responsibility for the collection of the data in order to  
19 facilitate the efficient administration of state oversight, the  
20 secretary will have primary responsibility for the retention of  
21 data supplied to the state under its health care oversight  
22 function, and the chair will have primary responsibility for the  
23 dissemination of the data;

24 (2) Delineate the MOU parties' roles, describe the process to  
25 develop rules required by this article, establish communication  
26 processes and a coordination plan, and address vendor relationship

1 management;

2 (3) Provide for the development of a plan for the financial  
3 stability of the APCD, including provision for funding by the MOU  
4 parties' agencies; and

5 (4) Provide for the use of the hospital discharge data  
6 collected by the West Virginia Health Care Authority as a tool in  
7 the validation of APCD reports.

8 **§33-16G-4. Additional powers of commissioner, secretary and chair;**  
9 **exemption from purchasing rules.**

10 (a) The MOU parties may:

11 (1) Accept gifts, bequests, grants or other funds dedicated to  
12 the furtherance of the goals of the APCD;

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

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

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

26 (5) Attempt to ensure that the requirements with respect to

1 the reporting of data be standardized so as to minimize the expense  
2 to parties subject to similar requirements in other jurisdictions;  
3 and

4 (6) Enter into voluntary agreements to obtain data from payers  
5 not subject to mandatory reporting under this article.

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

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

16 **§33-16G-5. Data subject to this article.**

17 (a) All health care payers shall submit data to the  
18 commissioner or an entity designated by the commissioner at such  
19 times and in a form and manner specified in rule: *Provided,* That  
20 any health care payer that the commissioner determines paid or  
21 administered the payment of health insurance claims in this state  
22 for policies on fewer than 500 covered lives in the previous  
23 calendar year is exempt from the requirements of this article.

24 (b) Data submitted in accordance with this article shall be  
25 considered confidential by law and privileged, are exempt from  
26 disclosure pursuant to chapter twenty-nine-b of this code, are not

1 open to public inspection, are not subject to subpoena, are not  
2 subject to discovery or admissible in evidence in any criminal,  
3 private civil or administrative action, are not subject to  
4 production pursuant to court order, and shall only be used and  
5 disclosed pursuant to law and rules promulgated pursuant to this  
6 article.

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

12 (2) Data submitted to and retained by the APCD may, in  
13 accordance with this article and the rules adopted hereunder, also  
14 be available as a resource for insurers, researchers, employers,  
15 providers, purchasers of health care, consumers, and state  
16 agencies.

17 (d) Notwithstanding any other provision of law, the APCD shall  
18 not disclose any data that contain personal identifiers: *Provided,*  
19 That the MOU parties, in accordance with procedures and standards  
20 set forth in rule, may approve access to other data elements not  
21 prohibited from disclosure by the APCD, as well as synthetic or  
22 created unique identifiers, for use by researchers, including  
23 government agencies, with established protocols for  
24 safeguarding confidential or privileged information: *Provided,*  
25 *however,* That the MOU parties' use of the data shall not constitute  
26 a disclosure.

1 **§33-16G-6. User fees; waiver.**

2 Reasonable user fees may be collected, in amounts and in the  
3 manner established in rule, for the right to access and use the  
4 data available from the APCD: *Provided*, That the chair may reduce  
5 or waive the fee if he or she determines that the user is unable to  
6 pay the scheduled fees and that the user has a viable plan to use  
7 the data or information in research of general value to the public  
8 health.

9 **§33-16G-7. Enforcement; injunctive relief.**

10 In the event of any violation of this article or any rule  
11 adopted thereunder, the commissioner, secretary or chair may seek  
12 to enjoin a further violation in the circuit court of Kanawha  
13 County: *Provided*, That injunctive relief ordered pursuant to this  
14 section may be in addition to any other remedies and enforcement  
15 actions available to the commissioner under this chapter.

16 **§33-16G-8. Special revenue account created.**

17 (a) There is hereby created a special revenue account in the  
18 State Treasury, designated the "West Virginia All-Payer Claims  
19 Database Fund," which shall be an interest-bearing account and may  
20 be invested in the manner permitted by article six, chapter twelve  
21 of this code, with the interest income a proper credit to the fund,  
22 unless otherwise designated in law. The fund shall be overseen by  
23 the commissioner, secretary and chair, shall be administered by the  
24 commissioner, and shall be used to pay all proper costs incurred in  
25 implementing the provisions of this article.



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

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

4 (2) Funds received from the federal government;

5 (3) Appropriations from the Legislature; and

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

8 **§33-16G-9. Rule-making authority.**

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

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

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

23 (c) Fees payable by users of the data and the process for a  
24 waiver or reduction of user fees: *Provided*, That any such fees  
25 shall be established at a level that, when considered together with  
26 other available funding sources, is deemed necessary to sustain the

1 operation of the APCD;

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

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

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

13 (g) Establishment of advisory boards to provide advice to the  
14 MOU parties with respect to the various functions of the APCD.

NOTE: The purpose of this bill is to establish an all-payer claims database. The bill sets forth its purpose and defines terms. The bill requires the database to be developed by the Insurance Commissioner, Secretary of Health and Human Resources and chairperson of the Health Care Authority. The bill authorizes joint emergency and legislative rules. The bill provides for compliance with privacy laws. The bill also permits fees and assessments to be assessed. The bill authorizes penalties, injunctive relief and other sanctions. The bill further establishing a special revenue account.

§33-16G-1, §33-16G-2, §33-16G-3, §33-16G-4, §33-16G-5, §33-16G-6, §33-16G-7, §33-16G-8 and §33-16G-9 are new; therefore, strike-throughs and underscoring have been omitted.