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2 COMMITTEE SUBSTITUTE

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6 **Senate Bill No. 350**

7 (By Senators Minard and Stollings)

8 \_\_\_\_\_  
9 [Originating in the Committee on Finance;

10 reported March 1, 2011.]

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

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

25 That the Code of West Virginia, 1931, as amended, be amended  
26 by adding thereto a new article, designated §33-16G-1, §33-16G-2,

1 §33-16G-3, §33-16G-4, §33-16G-5, §33-16G-6, §33-16G-7 and §33-16G-  
2 8, all to read as follows:

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

4 **§33-16G-1. Definitions.**

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

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

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

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

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

1 third-party administrator including any pharmacy benefit manager,  
2 that administers a fully-funded or self-funded plan:

3 A "health insurance claim" does not include:

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

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

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

22 (f) "Personal identifiers" means information relating to an  
23 individual member or insured that identifies, or can be used to  
24 identify, locate or contact a particular individual member or  
25 insured, including but not limited to the individual's name, street  
26 address, social security number, e-mail address and telephone

1 number.

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

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

6 **§33-16G-2. Establishment and development of an all-payer claims**  
7 **database.**

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

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

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

20 (2) Delineate the MOU parties' roles, describe the process to  
21 develop legislative rules required by this article, establish  
22 communication processes and a coordination plan, and address vendor  
23 relationship management;

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

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

4 **§33-16G-3. Powers of the commissioner, secretary and chair;**  
5 **exemption from purchasing rules.**

6 (a) The MOU parties may:

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

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

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

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

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

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

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

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

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

13 **§33-16G-4. Data subject to this article.**

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

21 (b) Data submitted in accordance with this article shall be  
22 considered confidential by law and privileged, are exempt from  
23 disclosure pursuant to chapter twenty-nine-b of this code, are not  
24 open to public inspection, are not subject to subpoena, are not  
25 subject to discovery or admissible in evidence in any criminal,  
26 private civil or administrative action, are not subject to

1 production pursuant to court order, and shall only be used and  
2 disclosed pursuant to law and legislative rules promulgated  
3 pursuant to this article.

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

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

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

24 **§33-16G-5. User fees; waiver.**

25 Reasonable user fees may be set collected in the manner  
26 established in legislative rule, for the right to access and use

1 the data available from the APCD. The chair may reduce or waive  
2 the fee if he or she determines that the user is unable to pay the  
3 scheduled fees and that the user has a viable plan to use the data  
4 or information in research of general value to the public health.

5 **§33-16G-6. Enforcement; injunctive relief.**

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

12 **§33-16G-7. Special revenue account created.**

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

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

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

26 (2) Funds received from the federal government;



1 (3) Appropriations from the Legislature; and

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

4 **§33-16G-8. Rule-making authority.**

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

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

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

19 (c) Fees payable by users of the data and the process for a  
20 waiver or reduction of user fees. Any such fees shall be  
21 established at a level that, when considered together with other  
22 available funding sources, is deemed necessary to sustain the  
23 operation of the APCD;

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

25 (e) Criteria for determining whether data collected, beyond  
26 the listed personal identifiers, is confidential clinical,

1 confidential financial data or privileged medical information, and  
2 procedures to give affected providers and health care payers notice  
3 and opportunity to comment in response to requests for information  
4 that may be considered confidential or privileged;

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

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