

H. B. 2951

(By Delegates Perry and Hartman)
(By Request of the Insurance Commissioner)
[Introduced January 31, 2011; referred to the
Committee on the Judiciary then Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §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, all relating to an all-payer claims database; declaring purpose; defining terms; developing the database by the Insurance Commissioner, Secretary of Health and Human Resources and chairperson of the Health Care Authority; authorizing joint emergency and legislative rules; providing for compliance with privacy laws; 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 the Code of West Virginia, 1931, as amended, be amended 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, §33-16G-8
2 and §33-16G-9, all to read as follows:

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

4 **§33-16G-1. Purpose; conflicting laws.**

5 The Legislature recognizes that the costs of health care are
6 rising at rates that are not sustainable and that consumers should
7 have access to the highest quality care; therefore it is imperative
8 that the cost and quality of health care be understood so that
9 effective solutions can be found. One means that other states have
10 used successfully to illuminate trends in health care costs and
11 quality is the development of a database of health insurance claims
12 to capture information about the provision and payment of health
13 care. The purpose of this article is to establish such a database
14 and thereby facilitate the analysis and reporting of health care
15 utilization, access, cost, and quality to inform the health care
16 and health planning decisions of consumers, providers, payers and
17 policy-makers.

18 To the extent any provision of this article conflicts with any
19 other provision of this code related to the collection and
20 dissemination of health care data, the provisions of this article
21 shall control.

22 **§33-16G-2. Definitions.**

23 (a) "Commissioner" means the West Virginia Insurance
24 Commissioner.

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

3 (c) "Chair" means the chairperson of the West Virginia Health
4 Care Authority.

5 (d) "Data" mean the data elements from specified types of
6 claims to be included in the all-payer claims database.

7 (e) "Personal identifiers" means information relating to an
8 individual member or insured that identifies, or can be used to
9 identify, locate or contact a particular individual member or
10 insured, including but not limited to the individual's name, street
11 address, e-mail address, telephone number, fax number, photograph,
12 social security number, medical record number, health plan
13 beneficiary number, account number, certificate/license number,
14 vehicle identifiers and serial numbers, including license plate
15 numbers, device identifiers and serial numbers, web universal
16 resource locators, internet protocol address numbers, and biometric
17 identifiers, including finger and voice prints.

18 (f) "All-payer claims database" or "APCD" means the program
19 authorized by this article that collects, retains, uses and
20 discloses information concerning the claims and administrative
21 expenses of health care payers, health care payers' contracted
22 prices with health care providers, and other information on
23 provider payment methods and levels.

24 (g) "Health care payer" means any entity that pays or

1 administers the payment of health insurance claims in this state,
2 including accident and sickness insurers; nonprofit hospital,
3 medical and dental service organizations; nonprofit health service
4 corporations; prepaid limited health service organizations; and
5 health maintenance organizations; the term also includes any
6 third-party administrator or pharmacy benefit manager that
7 administers a fully-funded or self-funded plan.

8 **§33-16G-3. Establishment and development of an all-payer claims**
9 **database.**

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

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

15 (1) Provide that the commissioner will have primary
16 responsibility for the collection of the data, the secretary will
17 have primary responsibility for the retention of such data, and the
18 chair will have primary responsibility for the dissemination of the
19 data;

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

24 (3) Provide for the development of a plan for the financial

1 stability of the APCD, including provision for funding by the MOU
2 parties' agencies; and

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

6 **§33-16G-4. Additional powers of commissioner, secretary and chair;**
7 **exemption from purchasing rules.**

8 (a) The MOU parties may:

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

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

13 (3) Hire an executive director to exercise ongoing oversight
14 of the operations of the APCD, including making disclosure
15 decisions regarding APCD data: *Provided*, That the memorandum of
16 understanding executed pursuant to section three of this article
17 may provide that any contracts related to the establishment and
18 operation of the APCD may be executed by the executive director;

19 (4) Enter into agreements with other states to perform joint
20 administrative operations, share information and assist in the
21 development of multi-state efforts to further the goals of this
22 article: *Provided*, That any such agreements must include adequate
23 protections with respect to the confidentiality of the information
24 to be shared and comply with all state and federal laws and

1 regulations;

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

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

8 (b) Contracts for professional services for the development
9 and operation of the APCD are not subject to the provisions of
10 article three, chapter five-a of this code relating to the
11 Purchasing Division of the Department of Administration.

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

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

1 private civil or administrative action, are not subject to
2 production pursuant to court order, and shall only be used and
3 disclosed pursuant to law and rules promulgated pursuant to this
4 article.

5 (c) In accordance with this article and the rules adopted
6 hereunder and to the extent otherwise allowed by law, data
7 submitted to and retained by the APCD shall be available as a
8 resource for insurers, researchers, employers, providers,
9 purchasers of health care, consumers, and state agencies to
10 continuously review health care utilization, expenditures and
11 performance in West Virginia and to enhance the ability of
12 consumers to make informed and cost-effective health care
13 decisions.

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

24 **§33-16G-6. Fees; waiver.**

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

8 (b) The MOU parties may by rule set fees payable by health
9 care payers and health care providers.

10 **§33-16G-7. Enforcement; injunctive relief.**

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

17 **§33-16G-8. Special revenue account created.**

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

1 all proper costs incurred in implementing the provisions of this
2 article. Moneys deposited into this account are available for
3 expenditure as the executive director may direct in accordance with
4 the provisions of this article.

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

6 (1) Fees and penalties imposed on providers and health care
7 payers pursuant to this article and rules promulgated hereunder;

8 (2) Funds from the federal government received and dedicated
9 for the purposes of the APCD;

10 (3) Appropriations from the Legislature; and

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

13 **§33-16G-9. Rulemaking authority.**

14 To effectuate the provisions of this article, the MOU parties
15 may propose joint rules for legislative approval in accordance with
16 the provisions of article three, chapter twenty-nine-a of this code
17 as necessary to implement this article, and may initially
18 promulgate emergency rules pursuant to the provisions of section
19 fifteen, article three, chapter twenty-nine-a of this code; such
20 rules may include, but are not limited to, the following:

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

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

4 (c) Fees payable by health care providers and health care
5 payers;

6 (d) Fees for users of the data and the process for a waiver or
7 reduction of user fees;

8 (e) A proposed time frame for the creation of the database;

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

15 (g) Penalties, including fines and other administrative
16 sanctions, that may be imposed by the commissioner for a health
17 care payer's failure to comply with requirements of this article
18 and rules adopted hereunder and by the secretary or chair for a
19 provider's failure to comply with such requirements; and

20 (h) Establishment of advisory boards to provide advice to the
21 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, it has been completely underscored.