

Senate Bill No. 350

(By Senators Minard and Stollings)

[Introduced January 31, 2011; referred to the Committee on Banking and Insurance; and then to the Committee on Finance.]

**FISCAL
NOTE**

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, §33-16G-3, §33-16G-4, §33-16G-5, §33-16G-6, §33-16G-7, §33-16G-8

1 and §33-16G-9, all to read as follows:

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

3 **§33-16G-1. Purpose; conflicting laws.**

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

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

21 **§33-16G-2. Definitions.**

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

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

1 (c) "Chair" means the chairperson of the West Virginia Health
2 Care Authority.

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

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

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

22 (g) "Health care payer" means any entity that pays or
23 administers the payment of health insurance claims in this state,
24 including accident and sickness insurers; nonprofit hospital,
25 medical and dental service organizations; nonprofit health service

1 corporations; prepaid limited health service organizations; and
2 health maintenance organizations; the term also includes any third-
3 party administrator or pharmacy benefit manager that administers a
4 fully-funded or self-funded plan.

5 **§33-16G-3. Establishment and development of an all-payer claims**
6 **database.**

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

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

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

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

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

24 (4) Provide for the use of the hospital discharge data
25 collected by the West Virginia Health Care Authority as a tool in

1 the validation of APCD reports.

2 **§33-16G-4. Additional powers of commissioner, secretary and chair;**
3 **exemption from purchasing rules.**

4 (a) The MOU parties may:

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

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

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

15 (4) 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 (5) 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; and

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

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.

7 (c) The MOU parties shall make an annual report to the
8 Governor, which shall also be filed with the Legislature,
9 summarizing the activities of the APCD in the preceding calendar
10 year.

11 **§33-16G-5. Data subject to this article.**

12 (a) All health care payers shall submit data to the
13 commissioner or an entity designated by the commissioner at such
14 times and in a form and manner specified in rule.

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

24 (c) In accordance with this article and the rules adopted
25 hereunder and to the extent otherwise allowed by law, data

1 submitted to and retained by the APCD shall be available as a
2 resource for insurers, researchers, employers, providers,
3 purchasers of health care, consumers, and state agencies to
4 continuously review health care utilization, expenditures and
5 performance in West Virginia and to enhance the ability of
6 consumers to make informed and cost-effective health care
7 decisions.

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

18 **§33-16G-6. Fees; waiver.**

19 (a) Reasonable user fees may be collected, in amounts and in
20 the manner established in rule, for the right to access and use the
21 data available from the APCD: *Provided,* That the chair may reduce
22 or waive the fee if he or she determines that the user is unable to
23 pay the scheduled fees or that the user has a viable plan to use
24 the data or information in research of general value to the public
25 health.

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

3 **§33-16G-7. Enforcement; injunctive relief.**

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

10 **§33-16G-8. Special revenue account created.**

11 (a) There is hereby created a special revenue account in the
12 State Treasury, designated the "West Virginia All-Payer Claims
13 Database Fund," which shall be an interest-bearing account and may
14 be invested in the manner permitted by article six, chapter twelve
15 of this code, with the interest income a proper credit to the fund,
16 unless otherwise designated in law. The fund shall be administered
17 by the commissioner, secretary and chair, and shall be used to pay
18 all proper costs incurred in implementing the provisions of this
19 article. Moneys deposited into this account are available for
20 expenditure as the executive director may direct in accordance with
21 the provisions of this article.

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

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

25 (2) Funds from the federal government received and dedicated

1 for the purposes of the APCD;

2 (3) Appropriations from the Legislature; and

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

5 **§33-16G-9. Rule-making authority.**

6 To effectuate the provisions of this article, the MOU parties
7 may propose joint rules for legislative approval in accordance with
8 the provisions of article three, chapter twenty-nine-a of this code
9 as necessary to implement this article, and may initially
10 promulgate emergency rules pursuant to the provisions of section
11 fifteen, article three, chapter twenty-nine-a of this code; such
12 rules may include, but are not limited to, the following:

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

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

20 (c) Fees payable by health care providers and health care
21 payers;

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

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

25 (f) Criteria for determining whether data collected, beyond

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

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

11 (h) Establishment of advisory boards to provide advice to the
12 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.