

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 2745**

5 (By Delegates Perry, Hartman, Walters, Hall,
6 Ashley and Azinger)

7 (By Request of the Insurance Commissioner)

8 [Passed March 12, 2011; in effect ninety days from passage.]

9
10 AN ACT amend and reenact §33-4-14 of the Code of West Virginia,
11 1931, as amended; and to amend said code by adding thereto a
12 new article, designated §33-4A-1, §33-4A-2, §33-4A-3, §33-4A-
13 4, §33-4A-5, §33-4A-6, §33-4A-7 and §33-4A-8, all relating to
14 the Insurance Commissioner generally; providing that certain
15 information provided by insurance companies to the Insurance
16 Commissioner is confidential; exempting such confidential
17 information from the freedom of information disclosure
18 requirements; providing that such confidential information is
19 not subject to subpoena or discoverable in a private civil
20 action; commissioner's authority to release, share and receive
21 documents otherwise treated as confidential in furtherance of
22 the commissioner's official duties; stating conditions
23 attached thereto; authorizing legislative rules; creating an
24 all-payer claims database; defining terms; developing the
25 database by the Insurance Commissioner, Secretary of Health
26 and Human Resources and Chairperson of the Health Care
27 Authority and providing powers in regard thereto; exempting
28 from purchasing rules; providing data subject to the database;

1 providing for the protection of personal identifiers and the
2 confidentiality of information; permitting fees and
3 assessments to be assessed; authorizing penalties to be set
4 by rule; authorizing injunctive relief; establishing special
5 revenue account; and allowing other sanctions.

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

7 That §33-4-14 of the Code of West Virginia, 1931, as amended,
8 be amended and reenacted; and that said code be amended by adding
9 thereto a new article, designated §33-4A-1, §33-4A-2, §33-4A-3,
10 §33-4A-4, §33-4A-5, §33-4A-6, §33-4A-7 and §33-4A-8, all to read
11 as follows:

12 **ARTICLE 4. GENERAL PROVISIONS.**

13 **§33-4-14. Financial statement filings; annual and quarterly**
14 **statements; required format; foreign insurers; agents**
15 **of the commissioner.**

16 (a) Each licensed insurer shall annually on or before March
17 1, unless the time is extended by the commissioner for good cause
18 shown, file with the commissioner a true statement of its financial
19 condition, transactions and affairs as of the preceding December
20 31. Such statement shall be on the appropriate National
21 Association of Insurance Commissioners annual statement blank;
22 shall be prepared in accordance with the National Association of
23 Insurance Commissioners annual statement instructions handbook; and
24 shall follow the accounting practices and procedures prescribed by
25 the National Association of Insurance Commissioners accounting
26 practices and procedures manual as amended: *Provided*, That each
27 licensed insurer shall also file true statements of financial
28 condition on a more frequent basis if the commissioner so orders.

1 The commissioner shall establish the frequency, due date and form
2 acceptable to him or her for such filings: *Provided, however,* That
3 the statement of an alien insurer shall relate only to its
4 transactions and affairs in the United States unless the
5 commissioner requires otherwise.

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

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

25 (d) Each domestic, foreign and alien insurer, organization or
26 corporation that is subject to the requirements of this section
27 shall annually, on or before March 1 each year, and forty-five days
28 after the end of the first, second and third calendar quarters,

1 file with the National Association of Insurance Commissioners a
2 copy of its annual statement convention blank and the quarterly
3 statement blanks, along with such additional filings as prescribed
4 by the commissioner and shall pay the fee established by the
5 National Association of Insurance Commissioners for filing, review
6 or processing of the information. The information filed with the
7 National Association of Insurance Commissioners shall be in the
8 same format and scope as that required by the commissioner and
9 shall include the signed jurat page and any other required
10 information. Any amendments and addenda to the annual statement
11 filing and quarterly statement filings subsequently filed with the
12 commissioner shall also be filed with the National Association of
13 Insurance Commissioners.

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

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

1 hereunder.

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

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

25 (3) Neither the commissioner nor any person who received
26 documents, materials or other information while acting under the
27 authority of the commissioner shall be permitted or required to
28 testify in any private civil action concerning any confidential

1 documents, materials or information subject to subdivision (1) of
2 this subsection.

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

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

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

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

1 cause, may have granted.

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

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

7 **ARTICLE 4A. ALL-PAYER CLAIMS DATABASE.**

8 **§33-4A-1. Definitions.**

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

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

15 (c) "Commissioner" means the West Virginia Insurance
16 Commissioner.

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

21 (e) "Health care payer" means any entity that pays or
22 administers the payment of health insurance claims or medical
23 claims under workers' compensation insurance to providers in this
24 state, including workers' compensation insurers; accident and
25 sickness insurers; nonprofit hospital service corporations, medical
26 service corporations and dental service organizations; nonprofit
27 health service corporations; prepaid limited health service

1 organizations; health maintenance organizations; and government
2 payers, including but not limited to Medicaid, Medicare and the
3 public employees insurance agency; the term also includes any
4 third-party administrator including any pharmacy benefit manager,
5 that administers a fully-funded or self-funded plan:

6 A "health insurance claim" does not include:

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

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

22 "Health insurance claims" shall only include information from
23 Medicare supplemental policies if the same information is obtained
24 with respect to Medicare.

25 (f) "Personal identifiers" means information relating to an
26 individual member or insured that identifies, or can be used to
27 identify, locate or contact a particular individual member or
28 insured, including but not limited to the individual's name, street

1 address, social security number, e-mail address and telephone
2 number.

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

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

7 **§33-4A-2. Establishment and development of an all-payer claims**
8 **database.**

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

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

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

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

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

28 (4) Provide for the use of the hospital discharge data

1 collected by the West Virginia Health Care Authority as a tool in
2 the validation of APCD reports.

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

5 (a) The MOU parties may:

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

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

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

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

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

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

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

28 (b) Contracts for professional services for the development

1 and operation of the APCD are not subject to the provisions of
2 article three, chapter five-a of this code relating to the
3 Purchasing Division of the Department of Administration. The award
4 of such contracts shall be subject to a competitive process
5 established by the MOU parties.

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

10 **§33-4A-4. Data subject to this article.**

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

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

27 (c) (1) Data submitted to and retained by the APCD shall be
28 available as a resource for the MOU parties to continuously review

1 health care utilization, expenditures and performance in West
2 Virginia and to enhance the ability of consumers to make informed
3 and cost-effective health care decisions.

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

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

19 **§33-4A-5. User fees; waiver.**

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

26 **§33-4A-6. Enforcement; injunctive relief.**

27 In the event of any violation of this article or any rule
28 adopted thereunder, the commissioner, secretary or chair may seek

1 to enjoin a further violation in the circuit court of Kanawha
2 County. Injunctive relief ordered pursuant to this section may be
3 in addition to any other remedies and enforcement actions available
4 to the commissioner under this chapter.

5 **§33-4A-7. Special revenue account created.**

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

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

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

19 (2) Funds received from the federal government;

20 (3) Appropriations from the Legislature; and

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

23 **§33-4A-8. Rule-making authority.**

24 To effectuate the provisions of this article, the MOU parties
25 may propose joint rules for legislative approval in accordance with
26 the provisions of article three, chapter twenty-nine-a of this code
27 as necessary to implement this article. No actions to collect data
28 or assess fees pursuant to this article may be undertaken until

1 rules promulgated hereunder are made effective. Such rules may
2 include, but are not limited to, the following:

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

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

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

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

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

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

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