

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 2827**

BY DELEGATES ELLINGTON AND SUMMERS

[Originating the Committee on Health and Human  
Resources; Reported on March 14, 2017]



1 A BILL to amend and reenact §33-4A-1, §33-4A-2, §33-4A-3, §33-4A-4, §33-4A-5, §33-4A-6, §33-  
2 4A-7 and §33-4A-8 of the Code of West Virginia, 1931, as amended, all relating to the all  
3 payor claims database; defining terms; providing sole authority to the Secretary of the  
4 Department of Health and Human Resources; removing memorandum of understanding  
5 requirements.

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

1 That §33-4A-1, §33-4A-2, §33-4A-3, §33-4A-4, §33-4A-5, §33-4A-6, §33-4A-7 and §33-  
2 4A-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as  
3 follows:

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

**§33-4A-1. Definitions.**

1 The following terms are defined:

2 ~~(a) (1)~~ “All-payer claims database” or “APCD” means the program authorized by this article  
3 that collects, retains, uses and discloses information concerning the claims and administrative  
4 expenses of health care payers.

5 ~~(b)~~ “Chair” means the chairperson of the West Virginia Health Care Authority.

6 ~~(c)~~ “Commissioner” means the West Virginia Insurance Commissioner

7 ~~(d) (2)~~ “Data” means the data elements from enrollment and eligibility files, specified types  
8 of claims, and reference files for data elements not maintained in formats consistent with national  
9 coding standards.

10 ~~(e) (3)~~ “Health care payer” means any entity that pays or administers the payment of health  
11 insurance claims or medical claims under workers’ compensation insurance to providers in this  
12 state, including: workers’ compensation insurers; accident and sickness insurers; nonprofit  
13 hospital service corporations, medical service corporations; ~~and~~ dental service organizations;  
14 nonprofit health service corporations; prepaid limited health service organizations; health  
15 maintenance organizations; ~~and government payers, including, but not limited to, Medicaid;~~

16 Medicare; and the Public Employees Insurance Agency. ~~the term also includes any third party~~  
17 ~~administrator including any pharmacy benefit manager, that administers a fully funded or self-~~  
18 ~~funded plan:~~

19 A "health insurance claim" does not include:

20 ~~(4)~~ (A) Any claim paid under an individual or group policy providing coverage only for  
21 accident, or disability income insurance or any combination thereof; coverage issued as a  
22 supplement to liability insurance; liability insurance, including general liability insurance and  
23 automobile liability; credit-only insurance; coverage for on-site medical clinics; other similar  
24 insurance coverage, which may be specified by rule, under which benefits for medical care are  
25 secondary or incidental to other insurance benefits; or

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

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

32 ~~(f)~~ (4) "Personal identifiers" means information relating to an individual member or insured  
33 that identifies, or can be used to identify, locate or contact a particular individual member or  
34 insured, including, but not limited to, the individual's name, street address, social security number,  
35 e-mail address and telephone number.

36 ~~(g)~~ (5) "Secretary" means the Secretary of the West Virginia Department of Health and  
37 Human Services.

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

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

1           The secretary commissioner and chair, collectively referred to herein as the “MOU  
2 parties”, shall enter into a memorandum of understanding to shall develop an all-payer claims  
3 database program.

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

5           (1) Provide that the commissioner secretary will have primary responsibility for the  
6 collection of the data in order to facilitate the efficient administration of state oversight, the  
7 secretary will have primary responsibility for the retention of data supplied to the state under its  
8 health care oversight function, and the chair will have primary responsibility for the dissemination  
9 of the data;

10           (2) Delineate the MOU parties’ roles, describe the process to develop legislative rules  
11 required by this article, establish communication processes and a coordination plan, and address  
12 vendor relationship management;

13           (3) Provide for the development of a plan for the financial stability of the APCD, including  
14 provision for funding by the MOU parties’ agencies; and

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

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

1           (a) The MOU parties secretary may:

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

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

6           (3) Enter into agreements with other states to perform joint administrative operations,  
7 share information and assist in the development of multistate efforts to further the goals of this  
8 article. ~~Provided, That any such~~ These agreements must include adequate protections with

9 respect to the confidentiality of the information to be shared and comply with all state and federal  
10 laws and regulations;

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

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

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

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

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

23 ~~(c) The MOU parties shall make an annual report to the Governor, which shall also be filed~~  
24 ~~with the Joint Committee on Government and Finance, summarizing the activities of the APCD in~~  
25 ~~the preceding calendar year~~

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

1 (a) All health care payers shall submit data to the ~~commissioner~~ secretary or an entity  
2 designated by the ~~commissioner~~ secretary at such times and in a form specified in rule. Any health  
3 care payer that the ~~commissioner~~ secretary determines paid or administered the payment of  
4 health insurance claims in this state for policies on fewer than five hundred covered lives in the  
5 previous calendar year is exempt from the requirements of this article.

6 (b) Data submitted in accordance with this article shall be considered confidential by law  
7 and privileged, are exempt from disclosure pursuant to chapter twenty-nine-b of this code, are not  
8 open to public inspection, are not subject to subpoena, are not subject to discovery or admissible

9 in evidence in any criminal, private civil or administrative action, are not subject to production  
10 pursuant to court order, and shall only be used and disclosed pursuant to law and legislative rules  
11 promulgated pursuant to this article.

12 (c)(1) Data submitted to and retained by the APCD shall be available as a resource for the  
13 ~~MOU parties~~ Secretary to continuously review health care utilization, expenditures and  
14 performance in West Virginia and to enhance the ability of consumers to make informed and cost-  
15 effective health care decisions.

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

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

**§33-4A-5. User fees; waiver.**

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

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

1 In the event of any violation of this article or any rule adopted thereunder, the  
2 ~~commissioner~~ secretary or chair may seek to enjoin a further violation in the Circuit Court of

3 Kanawha County. Injunctive relief ordered pursuant to this section may be in addition to any other  
4 remedies and enforcement actions available to the commissioner under this chapter.

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

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

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

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

11 (2) Funds received from the federal government;

12 (3) Appropriations from the Legislature; and

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

**§33-4A-8. Rule-making authority.**

1 (a) To effectuate the provisions of this article, the ~~MOU parties~~ secretary may propose  
2 ~~joint~~ rules for legislative approval in accordance with the provisions of article three, chapter  
3 twenty-nine-a of this code as necessary to implement this article. No actions to collect data or  
4 assess fees pursuant to this article may be undertaken until rules promulgated hereunder are  
5 made effective. ~~Such rules may include, but are not limited to, the following~~ The rules shall include:

6 (a) ~~(1)~~ (1) Procedures for the collection, retention, use and disclosure of data from the APCD,  
7 including procedures and safeguards to protect the privacy, integrity, confidentiality and  
8 availability of any data;



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

11           ~~(c)~~ (3) Fees payable by users of the data and the process for a waiver or reduction of user  
12 fees. Any such fees shall be established at a level that, when considered together with other  
13 available funding sources, is deemed necessary to sustain the operation of the APCD;

14           ~~(d)~~ (4) A proposed time frame for the creation of the database;

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

20           ~~(f)~~ (6) Penalties, including fines and other administrative sanctions, that may be imposed  
21 by the ~~commissioner~~ secretary for a health care payer's failure to comply with requirements of  
22 this article and rules adopted hereunder. ~~and~~

23           ~~(g) Establishment of advisory boards to provide advice to the MOU parties with respect to~~  
24 ~~the various functions of the APCD.~~

25           (b) The Joint Legislative 114A Series 1 remains in effect and if not in conflict with these  
26 provisions, and shall remain in effect until they are amended or rescinded by the Secretary of the  
27 Department of Health and Human Resources.

NOTE: The purpose of this bill is to update the provisions of the all payor claims database.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.