

**TITLE 114A  
LEGISLATIVE RULE  
ALL-PAYER CLAIMS DATABASE PROGRAM - SECRETARY, DEPARTMENT OF HEALTH  
AND HUMAN RESOURCES, COMMISSIONER, OFFICE OF THE INSURANCE  
COMMISSIONER AND CHAIR, WEST VIRGINIA HEALTH CARE AUTHORITY**

**SERIES 2  
ALL-PAYER CLAIMS DATABASE PROGRAM'S PRIVACY AND SECURITY RULE**

**§114A-2-1. General.**

1.1. Scope. -- This legislative rule implements the privacy and security provisions of the All-Payer Claims Database Program found at W. Va. Code §33-4A-1 *et seq.* as administered by the Department of Health and Human Resources, the Offices of the Insurance Commissioner, and the West Virginia Health Care Authority.

1.2. Authority. -- W. Va. Code §§33-4A-4(b), (d), 33-4A-8(a) and (e).

1.3. Filing Date. -- \_\_\_\_\_, 2012

1.4. Effective Date. -- \_\_\_\_\_, 2012

**§114A-2-2. Definitions.**

As used in this legislative rule, all terms that are defined in section 1 of the Act have those same meanings which are in some cases further clarified in this section. Terms not defined in the Act have the following meanings unless the context expressly requires otherwise.

2.1. "Act" means the all-payer claims database act, W. Va. Code §33-4A-1 *et seq.*

2.2. "All-payer claims database" or "APCD" means the program authorized by this article that collects, retains, uses and discloses information concerning the claims and administrative expenses of health care payers.

2.2. "Chair" means the chairperson of the West Virginia Health Care Authority.

2.3. "Commissioner" means the West Virginia Insurance Commissioner.

2.4. "Data" means the data elements from enrollment and eligibility files, specified types of claims, and reference files for data elements not maintained in formats consistent with national coding standards.

2.5. "Health care payer" means any entity that pays or administers the payment of health insurance claims or medical claims under workers' compensation insurance to providers in this state, including workers' compensation insurers; accident and sickness insurers; nonprofit hospital service corporations, medical service corporations and dental service organizations; nonprofit health service corporations; prepaid limited health service organizations; health maintenance organizations; and government payers, including but not limited to Medicaid, Medicare and the public employees insurance agency; the term also includes any third-party administrator including any pharmacy benefit manager, that administers a fully-funded or self-funded plan: A "health insurance claim" does not include:

2.5.a. Any claim paid under an individual or group policy providing coverage only for accident, or disability income insurance or any combination thereof; coverage issued as a supplement to liability insurance; liability insurance, including general liability insurance and automobile liability; credit-only insurance; coverage for on-site medical clinics; other similar insurance coverage, which may be specified by rule, under which benefits for medical care are secondary or incidental to other insurance benefits; or,

2.5.b. Any of the following if provided under a separate policy, certificate, or contract of

insurance: Limited scope dental or vision benefits; benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; coverage for only a specified disease or illness; or hospital indemnity or other fixed indemnity insurance.

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

2.6. "MOU parties" means the secretary, commissioner and chair, collectively.

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

2.8. "Secretary" means the Secretary of the West Virginia Department of Health and Human Services.

2.9. "Third-party administrator" has the same meaning ascribed to it in section two, article forty-six of this chapter.

#### **§114A-2-3. Data Collection Privacy and Security Requirements.**

3.1. All data transmitted by health care payers to the APCD shall be transmitted over a secure electronic communications network, provided by the commissioner or his or her vendor. Transmission to the commissioner, or his or her data collection vendor, shall constitute transmission to the APCD.

3.2. Transmission of the data from each health care payer to the APCD shall be in a secure manner that prevents unauthorized access and ensures confidentiality, integrity and availability. This data transmission shall be secured to the level required by the HIPAA Security and Privacy Rules, 45 CFR § 164.102 *et seq.* and shall be encrypted per NIST Special Publication 800-52, Guidelines for the Selection

and use of Transport Layer Security Implementations, National Institute of Standards and Technology, June 2005, as amended or superseded.

#### **§114A-2-4. Data Retention and Initial Use Privacy and Security Requirements.**

4.1. All data retained by the APCD program shall be retained in a secure manner that prevents unauthorized access and ensures confidentiality, integrity and availability of all data transmitted to the APCD, at the levels required by the HIPAA Security and Privacy Rules, 45 CFR § 164.102 *et seq.* and shall be encrypted per NIST Special Publication 800-111, Guide to Storage Encryption Technologies for End User Devices, November 2007, as amended or superseded.

4.2. The MOU parties shall only use the data to assess the completeness and quality of health care payers' submissions in order to determine compliance with established data reporting requirements and standards. For purposes of this initial use, all personal identifiers shall remain encrypted and not visible to the MOU parties. Results of the completeness and quality assessments may be shared with the Advisory Group.

4.3. No additional uses and no disclosures contemplated by this program shall be made until such time as the MOU parties promulgate rules specifically delineating the same.