



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Secretary Of DHHR Insurance Commissioner And Chair Of The Health Care Authority TITLE-SERIES: 114A-02

RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: Yes

RULE NAME: 114A-02 All-Payer Claims Database Program's Privacy and Security Rule

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: 33-4A-8

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

To effectuate the provisions of this article, the secretary and commissioner may propose joint rules for legislative approval in accordance with the provisions of 29A-3-1 et seq. of this code as necessary to implement this article.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/30/2021

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/30/2021

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

n/a

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This rule originally implemented the privacy and security provisions of the All-Payer Claims Database.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The provisions of this rule are being incorporated into 114A-01 and this rule may be repealed.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

n/a

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

n/a

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

n/a

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			0
Personal Services			0
Current Expenses			0
Repairs and Alterations			0
Assets			0
Other			0
2. Estimated Total Revenues			0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

n/a

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

April L Robertson -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

~~TITLE 114A
LEGISLATIVE RULE
SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN RESOURCES,
INSURANCE COMMISSIONER, AND THE CHAIR OF THE HEALTH CARE AUTHORITY~~

~~SERIES 2
ALL PAYER CLAIMS DATABASE — PRIVACY AND SECURITY REQUIREMENTS~~

~~§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 Insurance Commissioner, and the Chair of the Health Care Authority.~~

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

~~1.3. Filing Date. — April 20, 2012.~~

~~1.4. Effective Date. — July 1, 2012.~~

~~§114A 2 2. Definitions.~~

~~As used in this legislative rule, all terms that are defined in section 1 of the Act and in series 1 of this Title have those same meanings.~~

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

~~2.2. "Title" means Title 114A.~~

~~§114A 2 3. Data Collection Privacy and Security Requirements.~~

~~3.1. Data submitters shall transmit all data to the APCD or its designee over the APCD's secure electronic communications network.~~

~~3.2. Transmission of the data from each data submitter to the APCD shall be in a secure manner that prevents unauthorized access and ensures authenticity, confidentiality, and integrity. — 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, June 2005, NIST Special Publication 800-77, Guide to IPsec VPNs, December 2005, or NIST Special Publication 800-113, Guide to SSL VPNs, July 2008, or others which are Federal Information Processing Standards 140-2, May 2001, validated, all as amended or superseded.~~

~~§114A 2 4. Data Retention and Initial Use and Disclosure Privacy and Security Requirements.~~

~~4.1. The APCD program shall retain the data 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 data submitters' submissions in order to determine compliance with established data reporting requirements and standards. The MOU parties shall only disclose data back to the respective data submitter, where the completeness and quality review indicates a problem with the data, and such disclosure is required to facilitate the data collection process. 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 APCD's Advisory Board.~~

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