

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #1

Do Not Mark in this Box
FILED

1991 AUG -7 PH 3:52

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Board of Risk & Insurance Management TITLE NUMBER: _____

RULE TYPE: Legislative; CITE AUTHORITY 29-12-5C

AMENDMENT TO AN EXISTING RULE: YES___ NO x

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: IV (4)

TITLE OF RULE BEING PROPOSED: Discontinuation of Professional
Malpractice Program established by HB#4151

DATE OF PUBLIC HEARING: _____ TIME: _____

LOCATION OF PUBLIC HEARING: Written comments to be made by Sept. 9, 1991.

COMMENTS LIMITED TO: ORAL___, WRITTEN x, BOTH___

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Board of Risk &

Insurance Management

1900 Kanawha Blvd. East

Charleston, WV 25305

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Discontinuation of Professional Malpractice Program
established by HB#4151

Type of Rule: x Legislative Interpretive Procedural

Agency: Board of Risk & Insurance Mgt. Address 1900 Kanawha Blvd., East
Charleston, WV 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services					
Current Expense			NA		
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:

3. Objectives of these rules:

To discontinue Professional Malpractice Program as established by
 HB#4151.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens.

C. Economic Impact on Citizens/Public at Large.

Date: 8/8/91

Signature of Agency Head or Authorized Representative

Henry J. D. Davis III

115 CSR 4

TITLE 115
LEGISLATIVE RULES
WEST VIRGINIA BOARD OF RISK AND INSURANCE MANAGEMENT

SERIES 4

DISCONTINUATION OF PROFESSIONAL MALPRACTICE INSURANCE

§115-4-1. GENERAL

1.1 Scope.--This Legislative Rule provides for the discontinuation of the professional malpractice insurance program provided by West Virginia Code §29-12-5c, as amended by House Bill 4151, enacted March 10, 1990.

1.2 Authority.--West Virginia Code §29-12-5c.

1.3 Filing Date.--_____

1.4 Effective Date.--_____

§115-4-2. PURPOSE

Pursuant to West Virginia Code §29-12-5c, if participation in the professional malpractice insurance program is insufficient to make the program economically feasible, then the program may be discontinued by rules and regulations promulgated by the Board of Risk and Insurance Management with approval of the Insurance Commissioner.

§115-4-3. FINDINGS

3.1 Survey.--To determine the level of participation to be expected and the appropriate premium charge, on June 15, 1990 the Board of Risk and Insurance Management mailed the attached survey to 691 obstetricians, obstetricians/gynecologists and family practitioners. The survey was also mailed by the West Virginia Hospital Association to its members for emergency room practitioners to complete.

3.2 Survey Results.--The attached survey results show that of the 691 plus medical practitioners surveyed, 509 did not respond or did not complete the survey. In particular, question #5 of the survey, asking if the practitioner would participate in a State liability program, was not answered. Of the 182 practitioners responding to question #5, only 65 indicated that

they would participate in either an excess or primary liability program. Furthermore, at least 20 percent of the 65 responding in the affirmative to question #5 are already insured by the Board of Risk and Insurance Management, either as a State employee or as an employee of a non-profit clinic insured through the Public Entities Insurance Program.

3.3 Approval by Insurance Commissioner.--Following a review of the survey, the Insurance Commissioner approved the discontinuation of the professional malpractice insurance program. The letter of approval is attached.

§115-4-4. DISCONTINUATION OF THE PROGRAM

Pursuant to West Virginia Code §29-12-5c, the Board of Risk and Insurance Management, with the approval of the Insurance Commissioner, hereby discontinues the professional malpractice insurance program.



STATE OF WEST VIRGINIA
Offices of the Insurance Commissioner

Administrative
Division

GASTON CAPERTON
Governor

HANLEY C. CLARK
Insurance Commissioner

July 10, 1991

Mr. Lawrence E. Hite, Chairman
State Board of Risk
and Insurance Management
One Insurance Way
Ona, West Virginia 25545

Dear Mr. Hite:

At your monthly meeting held on Tuesday, July 2, 1991, you informed my Deputy Donna Walker that the Board unanimously agreed that the primary and excess liability programs established under House Bill 4151 should be discontinued. You further requested that I submit my approval for such an action.

Having carefully reviewed the survey conducted by your staff on the medical practitioners eligible to participate in these programs, I concur with your decision that these programs be discontinued. The survey results show that less than ten percent (10%) of all eligible medical practitioners expressed a willingness to participate. Of that ten percent (10%), twenty percent (20%) are already incurred by the Board of Risk, either as a state employee or as an employee of a nonprofit clinic insured through the Public Entities Insurance Program. This lack of support by the medical practitioners clearly meets the grounds expressly noted in HB 4151 for discontinuance since "participation in the program is insufficient to make said program economically feasible."

Sincerely,

Hanley C. Clark
Hanley C. Clark
Insurance Commissioner

HCC/DHW/csp

cc: Robert S. Corey
Director, BRIM

Harry "Skip" Morris
Underwriting Manager, BRIM

Honorable Patricia H. White
WV House of Delegates

Honorable William R. Sharpe, Jr.
WV Senate

2019 WASHINGTON STREET, EAST • CHARLESTON, WEST VIRGINIA 25305

Telephone (304) 348-3354 • Facsimile (304) 348-0412

"We are an Equal Opportunity Employer"

STATE OF WEST VIRGINIA
BOARD OF RISK AND INSURANCE MANAGEMENT



1900 KANAWHA BOULEVARD EAST, CHARLESTON, WEST VIRGINIA 25305-0001

(304) 348-2291 ADMINISTRATION

(304) 348-0154 FAX

(800) 345-4669 TOLL FREE W.V.

TO: ALL MEDICAL PRACTITIONERS
FROM: WEST VIRGINIA BOARD OF RISK AND INSURANCE
DATE: JUNE 15, 1990

RE: PROFESSIONAL LIABILITY INSURANCE FOR OBSTETRIC
TREATMENT OF MEDICAID PATIENTS
HOUSE BILL 4151

The West Virginia Legislature passed into law House Bill 4151 (HB 4151) which authorizes the Board of Risk and Insurance Management to provide primary and excess liability coverage to all medical practitioners for obstetric treatment of medicaid patients.

The primary limit of liability will be \$ 1,000,000 per occurrence. The excess limit of liability will be \$ 1,000,000 per occurrence and may go to \$ 3,000,000 per occurrence depending on the participation in the program. The coverage will be for obstetric treatment of medicaid patients only and does not provide coverage for non-medicaid OB patients.

The Board of Risk and Insurance Management through this letter is surveying the medical practitioners in an effort to determine those who may want to participate in a professional liability program for OB treatment of medicaid patients. The survey will also be used in developing an appropriate premium charge for the coverage. This program cannot succeed unless significant participation comes from the medical community.

Please complete the survey and return to the address listed above by July 10, 1990. If you have any questions please feel free to contact this office.

STATE OF WEST VIRGINIA
BOARD OF RISK AND INSURANCE MANAGEMENT



1900 KANAWHA BOULEVARD EAST, CHARLESTON, WEST VIRGINIA 25305-0001

(304) 348-2291 ADMINISTRATION

(304) 348-0154 FAX

(800) 345-4669 TOLL FREE W.V.

PROFESSIONAL LIABILITY SURVEY

NAME: _____

ADDRESS: _____

SOC SEC#: _____ WV MED LIC# _____

SPECIALTY: _____

- | | YES | NO |
|--|-------|-------|
| 1. ARE YOU CURRENTLY IN ACTIVE PRACTICE | _____ | _____ |
| 2. ARE YOU QUALIFIED TO PROVIDE OB TREATMENT | _____ | _____ |
| 3. DO YOU CURRENTLY PROVIDE OB TREATMENT | _____ | _____ |
| 4. IF YES DID YOU PROVIDE OB TREATMENT FOR
MEDICAID PATIENTS IN THE LAST 12 MONTHS | _____ | _____ |
| A. TOTAL NUMBER OF OB TREATMENT PATIENTS
IN LAST 12 MONTHS | _____ | _____ |
| B. TOTAL NUMBER OF OB TREATMENT MEDICAID
PATIENTS IN LAST TWELVE MONTHS | _____ | _____ |
| 5. WOULD YOU PARTICIPATE IN A STATE RUN
PROFESSIONAL LIABILITY PROGRAM FOR OB
TREATMENT OF MEDICAID PATIENTS DEPENDING
ON REASONABLE PREMIUMS | _____ | _____ |
| WHAT TYPE OF COVERAGE: A. PRIMARY | _____ | _____ |
| B. EXCESS | _____ | _____ |
| 6. WHO IS YOUR CURRENT PROFESSIONAL
LIABILITY INSURANCE CARRIER ? | _____ | |
| 7. ARE YOU INSURED ON A CLAIMS MADE
OR OCCURRENCE FORM ? | _____ | |
| 8. WHAT LIMITS OF PROFESSIONAL
LIABILITY COVERAGE DO YOU CARRY ? | _____ | |
| 9. WHAT IS YOUR CURRENT PROFESSIONAL
LIABILITY ANNUAL PREMIUM ? | _____ | |
| 10. WHO IS YOUR CURRENT EMPLOYER
IF APPLICABLE ? | _____ | |

TABLE OF PRISPEC BY PART

PRISPEC (SPECIALTY CODE) PART (PARTICIPATE)

FREQUENCY	!			
PERCENT	!			
ROW PCT	!			
COL PCT	!	NO	YES	TOTAL
-----+-----+-----+-----+-----				
FAMILY PRACTICE	!	89	23	112
	!	48.90	12.64	61.54
	!	79.46	20.54	
	!	76.07	35.38	
-----+-----+-----+-----+-----				
GYNECOLOGY	!	1	1	2
	!	0.55	0.55	1.10
	!	50.00	50.00	
	!	0.85	1.54	
-----+-----+-----+-----+-----				
OBSTETRICS	!	1	0	1
	!	0.55	0.00	0.55
	!	100.00	0.00	
	!	0.85	0.00	
-----+-----+-----+-----+-----				
OBSTETRICS/GYNEC	!	26	41	67
	!	14.29	22.53	36.81
	!	38.81	61.19	
	!	22.22	63.08	
-----+-----+-----+-----+-----				
TOTAL		117	65	182
		64.29	35.71	100.00

FREQUENCY MISSING = 509

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4151

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE R. BURK)
[By Request of the Executive]

[Passed March 10, 1990. In effect from passage.]

AN ACT to amend and reenact section five-c, article twelve, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing the amount and type of insurance coverage for obstetric treatment of medicaid patients; including provisions for primary insurance coverage for specified medical practitioners; excess insurance coverage for specified medical practitioners; and authorizing the board of risk and insurance management, with approval of the insurance commissioner, to promulgate rules and regulations.

Be it enacted by the Legislature of West Virginia:

That section five-c, article twelve, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 12. STATE INSURANCE.

§29-12-5c. Insurance for damages allegedly resulting from obstetric treatment of medicaid patients.

1 (a) In accordance with the provisions of this article.
2 the state board of risk and insurance management shall
3 provide professional malpractice insurance for all
4 medical practitioners who provide obstetric treatment to
5 patients which is reimbursed or reimbursable by state
6 medicaid funds: *Provided*, That such medical practi-
7 tioner has, prior to the alleged negligent act or acts,
8 become a participant in the primary professional
9 malpractice insurance program.

10 Said primary insurance shall cover any claim,
11 demand, action, suit or judgment by reason of alleged
12 negligence in the course of providing such obstetric
13 treatment which results in injury. Such primary
14 insurance coverage shall be in an amount to be deter-
15 mined by the state board of risk and insurance manage-
16 ment, but in no event less than one million dollars for
17 each occurrence.

18 Such primary insurance coverage shall be mandatory
19 for medical practitioners covered for obstetric treatment
20 by the board of risk and insurance management. Such
21 primary coverage shall be optional for any other
22 medical practitioner who treats medicaid obstetric
23 patients.

24 The board of risk and insurance management shall
25 establish the criteria for the program for the approval
26 of the insurance commissioner on or before the fifteenth
27 day of June, one thousand nine hundred ninety.

28 The insurance coverage specified in this subsection
29 shall not apply to any hospital which is the site of the
30 obstetric treatment or to any employee of said hospital,
31 except that a medical practitioner providing the
32 obstetric treatment who is also an employee of the
33 hospital which is the site of the treatment shall be
34 included in the insurance coverage required by this
35 section.

36 (b) In accordance with the provisions of this article,
37 the state board of risk and insurance management shall
38 provide optional excess professional malpractice insu-
39 rance for all medical practitioners who provide obstetric

40 treatment to patients which is reimbursed or reimburs-
41 sable by state medicaid funds: *Provided*, That such
42 medical practitioner has, prior to the alleged negligent
43 act or acts, become a participant in the excess insurance
44 program. Such excess insurance coverage shall, in no
45 event, exceed three million dollars.

46 For the purposes of this subsection, excess insurance
47 shall be defined as coverage over and above any other
48 primary or collectible malpractice liability coverage. In
49 no event shall this coverage be primary. Each insured
50 must carry primary insurance of at least one million
51 dollars. Such liability excess malpractice coverage shall
52 be in an amount to be determined by the state board
53 of risk and insurance management, but in no event less
54 than one million dollars for each occurrence.

55 The board of risk and insurance management shall
56 establish the criteria for an optional program of excess
57 professional malpractice insurance for the approval of
58 the insurance commissioner on or before the fifteenth
59 day of June, one thousand nine hundred ninety.

60 (c) For the purpose of this section, the definition of
61 medical practitioner shall be limited to physicians,
62 obstetric/gynecological nurse practitioners, certified
63 nurse midwives, nurse anesthetists, and physicians
64 assistants.

65 (d) Any premiums assessed and collected under the
66 provisions of this section, or rules and regulations
67 promulgated pursuant to the provisions of this section,
68 shall be placed in a separate insurance pool known as
69 the obstetrical/gynecological liability pool. Said pool is
70 to be administered and maintained by the board of risk
71 and insurance management.

72 (e) The board of risk and insurance management,
73 with approval of the insurance commissioner, shall have
74 the authority to make needful rules and regulations for
75 the administration of this section, as provided in the
76 State Administrative Procedures Act in chapter twenty-
77 nine-a of this code: *Provided*, That the board of risk and
78 insurance management, with approval of the insurance

Enr. Com. Sub. for H. B. 4151] 4

79 commissioner, shall have the authority to promulgate
80 rules and regulations regarding the discontinuance of
81 the program if participation in the program is insuffi-
82 cient to make said program economically feasible.