WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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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: BOARD OF RISK & INSURANCE MANAGEMENT TITLE NUMBER: ______

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

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

NO COMMENTS RECEIVED

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

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SECRETARY OF STATE

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 Increase	Annual Decrease	Fiscal Year Current	Fiscal Year Next	Fiscal Year 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.

DATE: SEPTEMBER 11, 1991

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: BOARD OF RISK & INSURANCE MANAGEMENT

LEGISLATIVE RULE TITLE: Discontinuation of Professional Malpractice Insurance

1. Authorizing statute(s) citation 29-12-5C

2. a. Date filed in State Register with Notice of Hearing:

   August 7, 1991

   b. What other notice, including advertising, did you give of the hearing?

   Comment Period

   c. Date of hearing(s): NA

   d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

   Attached ________ No comments received X

   e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

   September 10, 1991

   f. Name and phone number(s) of agency person(s) to contact for additional information:

   Harry "Skip" Morris 348-2291

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

Administrat
Division

GASTON CAPERTON
Governor

HANLEY C. CLA.
Insurance Commission

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

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 occurence. The excess limit of liability will be $ 1,000,000 per occurence and may go to $ 3,000,000 per occurence 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 48.90 79.46 76.07	23 12.64 20.54 35.38	112 61.54
GYNECOLOGY	1 0.55 50.00 0.85	1 0.55 50.00 1.54	2 1.10
OBSTETRICS	1 0.55 100.00 0.85	0 0.00 0.00 0.00	1 0.55
OBSTETRICS/GYNEC	26 14.29 38.81 22.22	41 22.53 61.19 63.08	67 36.81
TOTAL	117 64.29	65 35.71	182 100.00

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.

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

Said primary insurance shall cover any claim, demand, action, suit or judgment by reason of alleged negligence in the course of providing such obstetric treatment which results in injury. Such primary insurance coverage shall be in an amount to be determined by the state board of risk and insurance management, but in no event less than one million dollars for each occurrence.

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

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

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

(b) In accordance with the provisions of this article the state board of risk and insurance management shall provide optional excess professional malpractice insurance for all medical practitioners who provide obstetric treatment to patients which is reimbursed or reimbursable by state medicaid funds: *Provided*, That such medical practitioner has, prior to the alleged negligent act or acts, become a participant in the excess insurance program. Such excess insurance coverage shall, in no event, exceed three million dollars.

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

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

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

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

(e) The board of risk and insurance management, with approval of the insurance commissioner, shall have the authority to make needful rules and regulations for the administration of this section, as provided in the State Administrative Procedures Act in chapter twenty-nine-a of this code: *Provided*, That the board of risk and insurance management, with approval of the insurance commissioner, shall have the authority to promulgate rules and regulations regarding the discontinuance of the program if participation in the program is insufficient to make said program economically feasible.