



WEST VIRGINIA SECRETARY OF STATE
KRIS 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: Health TITLE-SERIES: 64-100
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: Yes
RULE NAME: 64-100 Pulse Oximetry Newborn Testing

PRIMARY CONTACT

NAME: Virginia M Payne
ADDRESS: 321 Capitol Street
Charleston, WV 25301
EMAIL: virginia.m.payne@wv.gov
PHONE NUMBER: 304-389-9183

CITE STATUTORY AUTHORITY: WV Code §§16-44-1 and 16-44-2

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:

WV Code §§16-44-1 and 16-44-2

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: 6/25/2026

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/25/2026

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 which implements the Pulse Oximetry Newborn Testing Act requires testing and provides timing requirements for such testing. This rule is being repealed in its entirety and combined with 64CSR91.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This rule is being repealed in its entirety and combined with 64CSR91.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

None

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

None

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2026 Increase/Decrease (use "-")	2027 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	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

Virginia M Payne -- 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 64
LEGISLATIVE RULE
BUREAU FOR PUBLIC HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 100
PULSE OXIMETRY NEWBORN TESTING

~~§64-100-1. General.~~

~~1.1. Scope — This rule which implements the Pulse Oximetry Newborn Testing Act requires testing and provides timing requirements for such testing. This rule should be read in conjunction with WV Code §16-44-1 and §16-44-2. The WV Code is available in public libraries and on the Legislature's web page, <http://www.legis.state.wv.us/>.~~

~~1.2. Authority — WV Code §§16-44-1 and 16-44-2.~~

~~1.3. Filing Date — July 12, 2013.~~

~~1.4. Effective Date — August 12, 2013.~~

~~§64-100-2. Application.~~

~~2.1. Application — This rule applies to all birthing facilities licensed by the Department of Health and Human Resources that provide birthing services and newborn care services.~~

~~§64-100-3. Definitions.~~

~~3.1. Birthing Facility — An inpatient or ambulatory health care facility licensed by the Department of Health and Human Resources that provides birthing and newborn care services.~~

~~3.2. Commissioner — The Commissioner of the Bureau for Public Health or his or her authorized representative.~~

~~3.3. Congenital Heart Defects (CHD) — Structural abnormalities of the heart that are present at birth. Some critical congenital heart defects can cause severe and life-threatening symptoms which require intervention within the first days of life.~~

~~3.4. Pulse Oximetry Testing — A noninvasive test that estimates the percentage of hemoglobin in blood that is saturated with oxygen.~~

~~§64-100-4. Responsibilities of Birthing Facilities.~~

~~4.1. A birthing facility shall cause to be performed a pulse oximetry screening on every newborn in its care.~~

~~4.2. The pulse oximetry screening shall be performed when the newborn is twenty-four to forty-eight hours of age, or as late as possible if the newborn is to be discharged from the facility before he or she is twenty-four hours of age.~~

~~4.3. The pulse oximetry screening results shall be recorded on the newborn's Birth Score sheet or through an alternate means of data collection that has been approved by the Commissioner.~~

~~§64-100-5. Recommended Protocol for Pulse Oximetry Testing.~~

~~5.1. The following are recommendations from the United States Secretary of Health and Human Services' Advisory Committee on Heritable Disorders in Newborns and Children, the American Academy of Pediatrics, and the Centers for Disease Control and Prevention.~~

~~5.2. Pulse oximetry should be performed on the right hand and one foot. If the newborn's oxygen saturation is $>95\%$ in either extremity, with a $<3\%$ difference between the two, he or she will be considered to have passed the screening test and no additional evaluation will be required unless signs or symptoms of CHD are present.~~

~~5.3. If the oxygen saturation is $<95\%$ in both the hand and foot or there is a $>3\%$ difference between the hand and foot on three measures, each separated by one hour, the newborn should be evaluated by his or her pediatrician and referred, if indicated, for an echocardiogram at an ultrasound facility that has experience in newborn cardiac echocardiograms. The echocardiogram shall be interpreted by a pediatric cardiologist who shall then make appropriate arrangements for follow-up when necessary.~~

~~5.4. A newborn with oxygen saturation that is $<90\%$ in either the hand or foot should be referred immediately for additional evaluation.~~

~~5.5. The pulse oximetry guidelines and supporting information may be found online at <http://www.wvdhhr.org/mefh>.~~

~~§64-100-6. Confidentiality.~~

~~The pulse oximetry screening results recorded on the birth score sheet or other data reporting form are confidential and shall not be released or disclosed to anyone other than the child, his or her parents, guardian or representatives for any reason other than data analysis and planning purposes by public health officials.~~

~~§64-100-7. Administrative Due Process.~~

~~Any persons adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in the bureau for public health's rule, Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64CSR1.~~