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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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August 21, 2000

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Beth Marquart
Health, Division of
Building 6, Room 201
Charleston, WV 25301

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Newborn Hearing Screening, 64CSR24**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative rule
 - (a) as originally filed
 - (b) as modified by the agency

_____ / _____
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.

3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.

4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.

5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Health

Subject: Newborn Hearing Screening, 64CSR24

PERTINENT DATES

Filed for public comment: March 24, 2000
Public comment period ended: April 28, 2000
Filed following public comment period: June 7, 2000
Filed LRMRC: June 7, 2000
Filed as emergency: April 19, 2000

Fiscal Impact: \$190,133 increase

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ABSTRACT

The proposed rule is new. The following is a section-by-section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 relates to application and enforcement. It states that the rule applies to all infants born in West Virginia and health care providers caring for infants at birth. It provides that the rule is enforced by the Director of the Division of Health.

Section 3 defines terms.

Section 4 relates to when screening is required. It sets forth the statutory requirements that all infants born in a licensed health care facility be screened for hearing impairments, except where there is no thirty-party payor for the screening. It provides for when an infant is born in a non-licensed facility, the health care provider is to inform the parents of the need to obtain screening within a month and to refer the infant for screening in accordance with the rule.

Section 5 relates to screening protocol. It requires the Director to prescribe newborn screening procedures and requires that personnel trained in the use of equipment are to perform the

screening according to the American Academy of Pediatrics standards.

Section 6 relates to a screening fee schedule. It requires that the fee for newborn hearing screening be included in the covered delivery charges for a newborn when the birth occurs at a license health care facility. It also requires that the fee for newborn hearing screening is subject to an annual review.

Section 7 relates to screening payment. It provides that for infants covered by Medicaid, the cost of the screening is to be incorporated into the Diagnostic Related Group (DRG) process as an add-on provision or adjustment. It sets forth the statutory requirement that the screening for insured infants be covered by the health insurer, and that in the absence of a third-party payor, the health care facility is to pay the charges.

Section 8 relates to screening, reporting and referral. It requires the health care provider to record the screening results in the infant's medical records and on the Birth Score Developmental Risk Screen, to report the results to the parents and to send a copy to the Birth Score Office at West Virginia University's Department of Pediatrics.

Section 9 relates to confidentiality. It restricts disclosure of confidential information and requires any person who obtains confidential information to provide a statement that he or she fully understands the confidentiality of the information and will maintain it.

Section 10 relates to penalties. It provides that any person violating the statute or the rule is subject to the penalties provided in W.Va. Code §16-1-18.

AUTHORITY

Statutory authority: W.Va. Code, §16-22A-2, which provides as follows:

The director of the division of health shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to: (1) Establish a reasonable fee schedule for tests administered pursuant to this article, which shall be used to cover program costs not otherwise covered by federal grant funds specifically secured for this purpose; (2) establish a cost-effective

testing protocol based upon available technology and national standards; (3) establish reporting and referral requirements; and (4) establish a date for implementation of the testing protocol, which shall not be later than the first day of July, one thousand nine hundred ninety-nine.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

In counsel's opinion, the rule falls short of complying with the intent of the statute. W.Va. Code §16-22A-2 requires that the testing protocol was to be implemented by July 1, 1999. The rule provides that it go into effect July 1, 2001. It also requires the Director to establish a reasonable fee schedule to cover program costs. Although there is a section in the proposed rule entitled screening fee schedule, there is no fee schedule. It also requires the Director to establish a cost-effective testing protocol based on available technology and national standards. The rule provides that the Director to provide screening procedures instead of setting forth the required procedures. Lastly, Section 2 requires the Director to establish referral requirements. Although Section 8 of the proposed rule purports to contain provisions relating to referral, there are no provisions relating to referral in that section.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

Yes, in that the effective date as stated above differs from that set forth in the statute.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.