

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

**FILED**

2001 JUL 20 P 3:57

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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

AGENCY: Division of Health - DHHR TITLE NUMBER: 64

CITE AUTHORITY: W. Va. Code §§16-22B-4 and 16-1-4

AMENDMENT TO AN EXISTING RULE: YES  NO

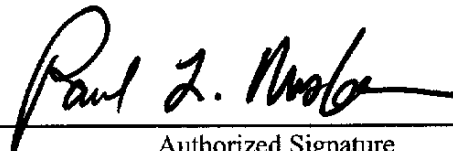
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 83

TITLE OF RULE BEING PROPOSED: Birth Score Program

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.



Authorized Signature

## **BIRTH SCORE PROGRAM**

### **BRIEF SUMMARY OF THE RULE**

This rule establishes that every newborn infant shall be evaluated through the West Virginia Birth Score-Developmental Risk Screen, by procedures approved by the state division of health for the assessment of risk for postneonatal mortality and developmental delays, in an effort to reduce the negative consequences of such risk.

## **Birth Score Program**

### **Proposed Rules**

#### **Statement of Circumstances Which Require the Proposed Rule**

This rule has been legislatively mandated by House Bill 2388 that was passed on March 14, 1998. By assessing newborn infants for risk of postneonatal mortality and developmental delays, the negative consequences of such risk may be reduced. By identifying newborn infants at greatest risk for death between the ages of one month and one year, linkages between these infants and physicians for close follow-up during the first year of life may reduce the risk of post neonatal mortality, debilitating conditions, and developmental delays.

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: July 20, 2001

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM:(Agency name, Address & Phone No.)

Division of Health - DHHR

State Capitol Complex, Building 3 - Room 201

Charleston, WV 25305

Telephone: (304) 558-5598

LEGISLATIVE RULE TITLE: Birth Score Program, 64CSR83

1. Authorizing statute(s) citation: WV Code Sections 16-22B-4 and 16-1-4

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 11, 2001

b. What other notice, including advertising, did you give of the hearing?  
Notice of the proposed rule was sent to entities to be regulated by the rule,  
including the WV Hospital Association, County Health Departments,  
Right From The Start Regional Care Coordination Agencies, and  
The 37 Birthing Facilities in the state.

c. Date of Public Hearing(s) or Public Comment Period ended:  
July 11, 2001

- 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):

July 20, 2001

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule (please type):

Martha Barnitt

Office of Regulatory Support - DHHR

Building 3, Room 201, Capitol Complex

Charleston, West Virginia 25305

304-558-5598

- g. IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule (please type):

Jennifer Hill

Office of Maternal, Child, and Family Health

350 Capitol Street, Room 427

Charleston, West Virginia 25301 - 3714

304-558-5388

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

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b. Date of hearing or comment period:

N/A

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c. On what date did you file in the State Register the findings and determinations required together with the reasons therefore?

N/A

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d. Attach findings and determinations and reasons:

Attached N/A

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**FISCAL NOTE FOR PROPOSED RULES**

**Rule Title:** Birth Score Program 64 CSR 83

**Type of Rule:**  **Legislative**                       **Interpretive**                       **Procedural**

**Agency:** Division of Health  
Department of Health and Human Resources

**Address:** Building 3, Capitol Complex  
Charleston, W. Va. 25305

1. Effect of the Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
<b>Estimated Total Cost</b>				\$ 296,246	\$ 296,246
<b>Personal Services</b>					
<b>Current Expense</b>				\$ 296,246	\$ 296,246
<b>Repairs &amp; Alterations</b>					
<b>Equipment</b>					
<b>Other</b>					
<b>Revenue</b>					

**2. Explanation of above estimates.**

**Current Expenses**

	<u>Federal Share</u>	<u>State Share</u>	<u>Total Costs</u>
Contract with West Virginia University	0	\$262,966	\$262,966
Cost for accelerated visits required for "at risk" children	<u>\$101,674</u>	<u>33,280</u>	<u>134,954</u>
	\$101,675	\$296,246	\$397,920

**3. Objectives of this rule:**

This rule is establishing the West Virginia birth score program; establishing legislative findings and intent; authorizing the division of health to establish and implement a birth score program which identifies newborn children at high risk for postneonatal mortality, debilitating conditions and developmental delays and refers those children to primary care physicians for subsequent follow-up care; requiring hospitals, birthing facilities, attending physicians and other persons attending a birth to require and ensure that a birth score is determined; authorizing the division of health to provide necessary medical and other needed referrals; establishing penalties for failure

to comply with the program; and creation of special fund.

**4. Explanation of Overall Economic Impact of Proposed Rule.**

**A. Economic Impact on State Government.**

The Bureau for Public Health currently contracts with West Virginia University to provide support for the continuation of a pediatric birth scoring system operated under the auspices of the West Virginia University School of Medicine, Department of Pediatrics. The contract amount for this service for the current fiscal year is \$262,966.

The 2,000 children receiving 2 additional health check ups in the first 6 months of life at the rate of \$58.17 costs the various payors \$232,680. Approximately 58% (of the State's births are to Medicaid moms who subsequently receive Medicaid for their infants for their first year of life; consequently, the cost to the Bureau for Medical Services would be approximately \$134,954. The Federal share would be \$101,674 and the State match would be \$33,280.

**B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens.**

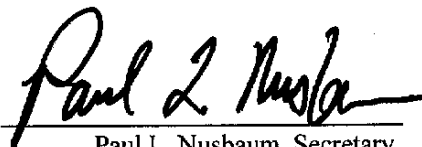
The 840 children receiving 2 additional health check ups in the first 6 months of life at the rate of \$58.17 costs the various payors \$232,680.

**C. Economic Impact on Citizens/Public at Large.**

A uniform system for all citizens of West Virginia will be implemented. This system will assure that their children are screened and scored for possible birth defects.

**Date:** July 20, 2001

**Signature of Agency Head or Authorized Representative**



Paul L. Nusbaum, Secretary  
Department of Health and Human Resources

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2001 JUL 20 P 3: 57

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

Agency Changes to

64 CSR 83

**§64-83-3. Definitions.**

Expanded definition of **Birth Score Program** to read:

3.1. Birth Score Program. – A system established by the Bureau for Public Health and administered by the West Virginia University Department of Pediatrics for assessing newborns shortly after birth.

Added the word "total" in 5.3. to clarify:

5.3. When a health care provider or the infant's primary physician determines a **total** birth score on a newborn, they shall:

5.3.a. Inform the parents or guardians of the birth score findings upon completion of the scoring; and

5.3.b. Provide the parents or guardian with a copy of the Birth Score Developmental Risk Screen.

Added sentence to clarify:

5.4. When a health care provider determines a **high** birth score on a newborn, the health care provider shall:

5.4.a. Link with the newborn's established local primary care provider for recommended schedule of well child visits at two (2), four (4), eight (8), twelve (12), sixteen (16) and twenty-four (24) weeks of age.

**64 CSR 83**  
**Title 64**  
**Legislative Rules**  
**Bureau for Public Health**

**Series 83**  
**Birth Score Program**

**§64-83-1. General.**

1.1 Scope. – This rule establishes the birth score program to identify newborns at risk for postneonatal mortality, debilitating conditions and developmental delays. This rule should be read in conjunction with W.Va. Code §16-22B-1 et seq. The W.Va. Code is available in public libraries and on the Legislature's webpage, <http://www.legis.state.wv.us/>.

1.2. Authority. – W. Va. Code §§16-22B-4 and 16-1-4.

1.3. Filing Date. –

1.4. Effective Date. –

**§64-83-2. Application and Enforcement.**

2.1. Application. – This rule applies to any newborn born in West Virginia, to the health care provider attending the newborn at birth, birthing hospitals and facilities, the West Virginia University Birth Score Office, and primary care providers.

2.2. Enforcement. – This rule is enforced by the Commissioner of the Bureau for Public Health.

**§64-83-3. Definitions.**

3.1. Birth Score Program. – A system established by the Bureau for Public Health and administered by the West Virginia University Department of Pediatrics for assessing newborns shortly after birth.

3.2. Birth Score Developmental Risk Screen. - Medical assessment conducted immediately after birth to identify newborns at greatest risk within the first year of life for postneonatal mortality, debilitating conditions, and developmental delays.

3.3. Commissioner. – The Commissioner of the Bureau for Public Health or his or her lawful designee.

3.4. Early Discharge. - Birth admissions lasting twenty-four (24) hours or less.

3.5. Health Care Facility. - Any licensed medical facility that offers birthing services.

3.6. Health Care Provider. – A physician or licensed midwife present during or immediately after delivery.

3.7. High Birth Score. - Newborns who are determined to be at high risk for post-neonatal mortality, debilitating conditions or developmental delays.

3.8. Low Birth Score. - Newborns who are determined to be at low risk for post-neonatal mortality, debilitating conditions or developmental delays.

3.9. Primary Care Provider (PCP). - A physician, physician's assistant, nurse, nurse practitioner or other licensed medical professional responsible for the infant's health services after discharge from the health care facility.

3.10. Total Birth Score. - The sum of the numerical scores of the criteria on the Birth Score Developmental Risk Screen.

3.11. Well Child Visits. - A comprehensive preventive evaluation of a child's health status to assure the child is meeting physical and developmental milestones according to current national American Academy of Pediatrics standards.

**§64-83-4. Purpose and goals.**

4.1. The birth score program shall identify newborns at greatest risk for:

4.1.a. Death between one (1) month and one (1) year of age;

4.1.b. Debilitating conditions;

4.1.c. Developmental delays; and

4.1.d. Newborn hearing loss.

4.2. The birth score program shall link newborns identified as high risk with primary care providers and available medical and social services.

**§64-83-5. Protocol, Reporting and Referral.**

5.1. The health care provider shall, except when the parent or guardian objects on grounds of religious belief, determine the total birth score on every newborn shortly after delivery when the birth occurs in a hospital or other licensed health facility. If the

birth occurs at a nonlicensed facility, the infant's primary physician shall determine the birth score within ten (10) days after birth.

5.2. The health care provider or the infant's primary physician shall record or caused to be recorded in the medical record and on the Birth Score Developmental Risk Screen, the total birth score.

5.3. When a health care provider or the infant's primary physician determines a total birth score on a newborn, he or she shall:

5.3.a. Inform the parent or guardian of the birth score findings upon completion of the scoring; and

5.3.b. Provide the parent or guardian with a copy of the Birth Score Developmental Risk Screen.

5.4. When a health care provider determines a high birth score on a newborn, the health care provider shall:

5.4.a. Link with the newborn's established local primary care provider for a recommended schedule of well child visits at two (2), four (4), eight (8), twelve (12), sixteen (16) and twenty-four (24) weeks of age.

5.5. When the newborn does not have a primary care provider, the health care facility will refer the newborn's parent or guardian to a list of local primary care providers who perform well child visits.

5.6. The health care provider shall send a written copy of the screening results within ten (10) days of the newborn's birth date to the Birth Score Office, West Virginia University Department of Pediatrics, P.O. Box 9214, Morgantown, WV 26506-9214.

5.7. The Birth Score Office shall collect developmental risk /newborn hearing screen data and make referrals to educational, medical, and social support services.

#### **§64-83-6. Program Monitoring.**

6.1. The Bureau for Public Health shall:

6.1.a. For each health care facility, keep on file at the Office of Maternal, Child and Family Health a written copy of the procedures that apply to the Birth Score, the Developmental Risk and the Newborn Hearing Screening programs, and the policies regarding early discharge; and

6.1.b. Monitor compliance with the Birth Score Program, taking into account early discharge trends, and will take corrective action in accordance with the

policies and procedures already established in the health care facilities.

**§64-83-7. Confidentiality.**

7.1. Any person who obtains confidential information while implementing W.Va. Code §16-22B-1 et seq. may disclose it only to reporting sources, persons demonstrating a need essential to health related research or care of the infant, or as required by law.

7.2. Any person who obtains confidential information while implementing W.Va. Code §16-22B-1 et seq. shall provide a written statement of confidentiality stating that he or she fully understands the privacy of the information and will maintain it.

**§64-83-8. Penalties.**

8.1. Any person who violates the provisions of W.Va. Code §16-22B-1 et seq. or this rule is subject to the penalties provided in W.Va. Code §16-1-18.

**§64-83-9. Administrative Due Process.**

9.1. Those persons aggrieved by the enforcement of this rule may make a written request for a contested case hearing in accordance with the Bureau for Public Health rule, "Rules of Procedure for Contested Case Hearing and Declaratory Rulings," 64CSR1.