

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2388

(BY DELEGATES JENKINS, MEZZATESTA AND SPENCER)

[Passed March 14, 1998, in effect ninety days from passage.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new articles, designated article twenty-two-a and article twenty-two-b, relating to the administration of hearing loss testing for newborn infants; requiring certain payment for testing; authorizing the director of health to promulgate legislative rules to establish testing protocols and reasonable fee schedules; and authorizing an advisory committee; 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; providing an exemption to program participation when it conflicts with religious beliefs; authorizing the division of health to provide necessary medical and other needed referrals; and authorizing the

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division of health to propose legislative rules, including penalties, to ensure implementation of and compliance with the birth score program.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new articles, designated article twenty-two-a and article twenty-two-b, both to read as follows:

ARTICLE 22A. TESTING OF NEWBORN INFANTS FOR HEARING IMPAIRMENTS.

§16-22A-1. Testing required.

1 The physician or midwife in attendance at, or present
2 immediately after a live birth shall perform, or cause to be
3 performed, a test for hearing loss in the infant unless the
4 infant's parents refuse under subsection (c), section three
5 of this article to have the testing performed. For any
6 infant delivered at a nonlicensed facility, including home
7 births, the physician or other health care provider shall
8 inform the parents of the need to obtain testing within the
9 first month of life. The director of the division of health
10 shall prescribe the test or tests to be administered in
11 accordance with this article.

§16-22A-2. Rulemaking authorized.

1 The director of the division of health shall propose
2 legislative rules for promulgation in accordance with the
3 provisions of article three, chapter twenty-nine-a of this
4 code to: (1) Establish a reasonable fee schedule for tests
5 administered pursuant to this article, which shall be used to
6 cover program costs not otherwise covered by federal
7 grant funds specifically secured for this purpose; (2)
8 establish a cost-effective testing protocol based upon
9 available technology and national standards; (3) establish
10 reporting and referral requirements; and (4) establish a
11 date for implementation of the testing protocol, which
12 shall not be later than the first day of July, one thousand
13 nine hundred ninety-nine.

§16-22A-3. Fees for testing; payment of same.

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1 (a) Testing required under this article shall be a
2 covered benefit reimbursable by all health insurers except
3 for health insurers that offer only supplemental coverage
4 policies or policies which cover only specified diseases.
5 All policies issued pursuant to articles fifteen, sixteen,
6 twenty-four and twenty-five-a of chapter thirty-three of
7 this code shall provide coverage for the testing required
8 under this article.

9 (b) The department of health and human resources
10 shall pay for testing required under this article when the
11 newborn infant is eligible for medical assistance under the
12 provisions of section twelve, article five, chapter nine of
13 this code.

14 (c) In the absence of a third-party payor, the parents
15 of a newborn infant shall be informed of the testing
16 availability and its costs and they may refuse to have the
17 testing performed. Charges for the testing required under
18 this article shall be paid by the hospital or other health
19 care facility where the infant's birth occurred: *Provided,*
20 That nothing contained in this section may be construed
21 to preclude the hospital or other health care facility from
22 billing the infant's parents directly.

**§16-22A-4. Hearing impairment testing advisory committee
established.**

1 (a) There is hereby established a West Virginia hearing
2 impairment testing advisory committee which shall advise
3 the director of the division of health regarding the
4 protocol, validity, monitoring and cost of testing
5 procedures required under this article. This committee is
6 to meet four times per year for the initial two years and on
7 the call of the director thereafter. The director shall serve
8 as the chair and shall appoint twelve members, one
9 representing each of the following groups:

10 (1) A representative of the health insurance industry;

11 (2) An otolaryngologist or otologist;

12 (3) An audiologist with experience in evaluating
13 infants;

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- 14 (4) A neonatologist;
- 15 (5) A pediatrician;
- 16 (6) A hospital administrator;
- 17 (7) A speech or language pathologist;
- 18 (8) A teacher or administrative representative from the
- 19 West Virginia school of the deaf;
- 20 (9) A parent of a hearing-impaired child;
- 21 (10) A representative from the office of early
- 22 intervention services within the department of health and
- 23 human resources;
- 24 (11) A representative from the state department of
- 25 education; and
- 26 (12) A representative from the West Virginia
- 27 commission for the deaf and hard-of-hearing.
- 28 (b) Members of this advisory committee shall serve
- 29 without compensation. A majority of members constitutes
- 30 a quorum for the transaction of all business. Members
- 31 shall serve for two-year terms and may not serve for more
- 32 than two consecutive terms.

ARTICLE 22B. BIRTH SCORE PROGRAM.

§16-22B-1. Legislative findings; intent; purpose.

- 1 (a) The Legislature hereby finds that until 1984, West
- 2 Virginia had one of the highest rates of postneonatal
- 3 mortality in the United States, which is defined as infants
- 4 dying between one month and one year of age. In the
- 5 early 1980s, studies in West Virginia showed that infants at
- 6 greatest risk of dying during the first year after birth had
- 7 poor attendance at regular physician visits and often
- 8 received minimal health care. The system for assessing
- 9 infants at risk for postneonatal mortality, debilitating
- 10 conditions and developmental delays was erratic and many
- 11 West Virginia physicians were poorly trained about risk
- 12 assessment. Uniform guidelines for at-risk infants to enter
- 13 care did not exist.

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14 (b) In 1985, the birth scoring system, a cooperative
15 effort between the division of health and the West Virginia
16 University department of pediatrics was initiated. The
17 goals of the scoring system were: (1) To identify
18 newborns at greatest risk for death between one month
19 and one year of age; and (2) to link high risk infants with
20 physicians for close follow-up during the first year of life.

21 (c) Since its inception, the birth scoring system has
22 been expanded to identify and link infants at risk for
23 debilitating conditions and developmental delays with
24 necessary and available services. The program has been
25 greatly successful in identifying at-risk newborns and in
26 obtaining appropriate medical care for those infants.

27 (d) With the success of the birth scoring system at
28 reducing postneonatal mortality rates in the state, it is the
29 intention of the Legislature to establish the birth score
30 system as a universal, preventive program to be enacted at
31 the delivery of each newborn in the state. The purpose of
32 this article is to ensure that all of the state's birthing
33 hospitals and facilities adopt and implement this
34 prevention program.

§16-22B-2. Birth score program established.

1 (a) The division of health within the department of
2 health and human resources is hereby authorized to
3 establish and implement a birth score program designed to
4 combat postneonatal mortality and to detect debilitating
5 conditions and possible developmental delays in newborn
6 infants in the state.

7 (b) The purpose and goals of the birth score program
8 are to reduce the incidence of postneonatal mortality and
9 disease by:

10 (1) Identifying newborns at greatest risk for death
11 between one month and one year of age; and

12 (2) Linking these infants with physicians for close
13 follow-up during the first year of life.

14 (c) The birth score of a newborn infant shall be
15 determined pursuant to the program established by the

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16 division of health by trained hospital or birthing facility
17 personnel immediately after the infant is delivered.

§16-22B-3. Determination of birth score; referral to physician.

1 (a) Any hospital or birthing facility in which an infant
2 is born, any physician attending the infant, or any other
3 person attending the infant if not under the care of a
4 physician, shall require and ensure that a birth score is
5 determined for the newborn infant in order to assess the
6 level of risk for postneonatal mortality, debilitating
7 conditions and developmental delays: *Provided*, That no
8 birth score shall be determined or birth score program
9 implemented if the parent or guardian objects to the birth
10 score program on the grounds that it conflicts with their
11 religious tenets and practices. Any infant delivered at a
12 nonlicensed facility, including, but not limited to, home
13 births, shall have a birth score determined by the child's
14 primary physician within ten days of birth, subject to the
15 exception set forth in this subsection.

16 (b) When any infant receives a high risk birth score, as
17 determined by the program established by this article, the
18 parents shall be informed of the birth score and its
19 implications, and then linked with a local primary care
20 physician for a recommended six visits in the first six
21 months of the infant's life.

22 (c) The division of health, in cooperation with other
23 state departments and agencies, may provide necessary
24 medical and other referrals for services related to infants
25 determined to be at high risk for postneonatal mortality
26 and other debilitating conditions and developmental
27 delays.

§16-22B-4. Rules.

1 On or before the thirtieth day of June, one thousand
2 nine hundred ninety-eight, the division of health shall
3 propose rules for legislative approval in accordance with
4 the provisions of article three, chapter twenty-nine-a of
5 this code as may be needed to establish the program,
6 ensure compliance and assess penalties as needed to
7 implement the provisions of this article.