



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Human Services

TITLE-SERIES: 78-27

RULE TYPE: Procedural Amendment to Existing Rule: No Repeal of existing rule: No

RULE NAME: PROCEDURE TO CONTEST THE
SUBSTANTIATION OF CHILD ABUSE OR
NEGLECT

CITE STATUTORY AUTHORITY: 29A-5-1 et seq. and 49-4-601b

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 07/31/2020 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: April L. Robertson

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Charleston, WV 25301

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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

This rule establishes the procedure to contest the West Virginia Department of Health and Human Resources, Bureau of Children and Families substantiation of abuse or neglect. This rule should be read in conjunction with W. Va. Code §49-4-601b.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

HB 4092 required the DHHR to create a procedure to ensure individuals receive appropriate due process when the Department substantiates an allegation of abuse and neglect against the individual for whom there has been no judicial finding of abuse or neglect.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

n/a

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

n/a

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

n/a

D. FISCAL NOTE DETAIL:

| Effect of Proposal | Fiscal Year | | |
|------------------------------------|--|--|--|
| | 2020 Increase/Decrease (use "-") | 2021 Increase/Decrease (use "-") | Fiscal Year (Upon Full Implementation) |
| 1. Estimated Total Cost | | | 0 |
| Personal Services | | | 0 |
| Current Expenses | | | 0 |
| Repairs and Alterations | | | 0 |
| Assets | | | 0 |
| Other | | | 0 |
| 2. Estimated Total Revenues | | | 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

April L Robertson -- 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 78
PROCEDURAL RULE
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 27
PROCEDURE TO CONTEST THE SUBSTANTIATION OF CHILD ABUSE OR NEGLECT

§78-27-1. General.

1.1. Scope. -- This rule establishes the procedure to contest the West Virginia Department of Health and Human Resources, Bureau of Children and Families' substantiation of abuse or neglect. This rule should be read in conjunction with W. Va. Code §49-4-601b.

1.2. Authority. -- W. Va. Code §§29A-5-1 et seq., 49-4-601b.

1.3. Filing Date. --

1.4. Effective Date. --

§78-27-2. Definitions.

2.1. "Assessment" means the gathering of information by a child protective service worker to determine if a child has been abused or neglected by a parent, guardian, or custodian.

2.2. "Board of Review" means the board of review organized by the Department pursuant to W.Va. Code §9-2-6(13).

2.3. "Bureau" means the Bureau of Children and Families of the West Virginia Department of Health and Human Resources.

2.4. "Child abuse and neglect" or "Child abuse or neglect" means any act or omission that creates an abused child or a neglected child as those terms are defined in W. Va. Code §49-1-201.

2.5. "Custodian" means a person who has or shares actual physical possession or care and custody of a child regardless of whether such person has been granted custody of the child by a contract, agreement or legal proceedings.

2.6. "Department" means West Virginia Department of Health and Human Resources.

2.7. "Guardian" means an individual who has been court appointed to care for a child and make decisions on the child's behalf.

2.8. "Hearing request form" means a document created by the Board of Review that initiates the administrative hearing process.

2.9. "Institutional Investigative Unit" (IIU) means the unit within the Bureau that investigates child abuse and neglect allegations by foster parents or individuals employed by a child-care facility (78 CSR 1); residential facility (78 CSR 3); family child-care facility (78 CSR 18); family child-care home (78 CSR 19); out

of school time child-care center (78 CSR 21); a youth detention facility operated by the Department of Homeland Security, Division of Corrections and Rehabilitations, Bureau of Juvenile Services; or school personnel.

2.10. "Investigation" means the gathering of information by a child protective service worker or Institutional Investigative Unit worker to determine if a child has been abused or neglected by a parent, guardian, or custodian.

2.11. "Maltreatment substantiation" means the determination by a child protective service worker or IIU worker that the parent, guardian, or custodian has abused or neglected a child as defined in W. Va. Code §49-1-201. Maltreatment is considered to have occurred when a preponderance of the credible evidence indicates that the conduct of the parent, guardian, or custodian is child abuse or neglect.

2.12. "Maltreater" means a parent, guardian, or custodian who has been determined to have abused or neglected a child as defined in W. Va. Code §49-1-201.

2.13. "Notice" means a letter prepared by the Bureau to provide notification of a maltreatment substantiation.

2.14. "Supervisor" means an individual who oversees the work product of a child protective service worker or IIU worker.

§78-27-3. Notice Requirements upon a Maltreatment Substantiation.

3.1. If a child protective service worker or IIU worker through an assessment or investigation finds that a parent, guardian, or custodian abused or neglected a child as defined in W. Va. Code §49-2-101, then the Bureau shall provide written notice of the maltreatment substantiation to the parent, guardian, or custodian.

3.2. The notice shall contain the following information regarding the maltreatment substantiation:

3.2.1. The name of the child the maltreater was found to have abused or neglected.

3.2.2. The place(s) where the abuse or neglect occurred.

3.2.3. The date(s) on which the abuse or neglect occurred.

3.3. The notice shall explain the maltreater's due process rights, including:

3.3.1. The maltreater may contact the supervisor of the child protective service worker or IIU worker to discuss the maltreatment substantiation. The contact information of the supervisor must be included in the notice.

3.3.2. The maltreater has the right to protest the maltreatment substantiation through the Board of Review's grievance process and clear instructions regarding how to file a grievance with the Board of Review, including any applicable time limits, shall be included in the notice. The notice shall include the hearing request form.

3.3.3. The maltreater has the right to request a copy his or her file at no charge to the maltreater.

3.3.4. The maltreater has the right to appeal any adverse decision of the Board of Review to the circuit court pursuant to W. Va. Code §9-2-13.

3.4. The notice shall describe the Department's recording requirement for all maltreatment substantiations and a statement that the maltreatment substantiation may prevent the maltreater from holding certain jobs or from providing foster or kinship care to a child in the future.

3.5. The notice shall be mailed to the maltreater, at his or her last known mailing address, by certified mail, return receipt requested within 15 days of the maltreatment substantiation. Failure to accept the letter will be deemed as receipt of the notice.

§78-27-4. Procedure for Filing a Grievance.

4.1. To grieve a maltreatment substantiation, the maltreater must:

4.1.1. Complete the hearing request form.

4.1.2. Return the form to the supervisor or send the form to the Board of Review within 60 days of receipt of the notice.

4.2. Upon receipt of the hearing request form, the supervisor shall:

4.2.1. Review the investigation and determine if the maltreatment substantiation is appropriate. The supervisor may overturn the child protective service worker's or IIU worker's decision after consultation with program managers, child welfare consultants, or management deemed appropriate by the Department.

4.2.2. Complete the Bureau's section of the hearing request form, if the maltreatment substantiation is appropriate.

4.2.3. Send the completed hearing request form to the Board of Review. The form shall be sent to the Board of Review within 30 days of receipt.

4.3. Hearings shall be held by the Board of Review in accordance with W. Va. Code §29A-5-1, et seq. and 69 CSR 1.

§78-27-5. Procedure for overturning a maltreatment substantiation.

5.1. When a maltreatment substantiation is overturned, the Bureau shall ensure that the decision is recorded within 60 days of the signed order. If the Bureau elects to appeal such order, the time to record the decision is stayed.