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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

**OFFICE OF WEST VIRGINIA
SECRETARY OF STATE**

*Building 1, Room MB-49
1900 Kanawha Boulevard, East
Charleston, WV 25305-0610
(304) 347-4840
(304) 347-4919 FAX*

email: tanders@mail.wvnet.edu

*Senator Mike Ross, Cochair
Delegate Virginia Mahan, Cochair
Debra A. Graham, Counsel*

*Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Teri Anderson, Administrative Assistant*

February 13, 2001

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

TO: Ken Hechler, Secretary of State, State Register

TO: Beth Marquart
Human Services, Division of
Capitol Complex
Building 3, Room 201

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Child Placing Agencies Licensure, 78CSR2**

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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Human Services

Subject: Child Placing Agencies Licensure, 78CSR2

PERTINENT DATES

Filed for public comment: July 20, 2000
Public comment period ended: August 21, 2000
Filed following public comment period: August 30, 2000
Filed LRMRC: August 30, 2000
Filed as emergency:

Fiscal Impact: None

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

DEC 19 9 07 AM '00

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ABSTRACT

The proposed rule repeals and replaces a current legislative rule. 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 agencies that place children in temporary living arrangements and is enforced by the Secretary of the Department of Health and Human Resources.

Section 3 defines terms.

Section 4 relates to licensing information and provisions. It requires child placing agencies to obtain a license from the Secretary which is valid for two years. It sets forth the application procedures including the information the agency must submit with its application. This section also contains provisions regarding issuance of a provisional license, renewal of a license, and revocation of a license.

Section 5 relates to inspections, complaints, plans of correction and waivers. It requires an agency to permit the Secretary unrestricted access to the agency to conduct announced and unannounced inspections. It also requires an agency to provide any requested information to the Secretary and the Institutional Investigative Unit in the investigation of a complaint. It allows the Secretary to require an agency to submit a plan of correction after a complaint investigation. The Secretary is required to approve the plan of correction prior to implementation of the plan of correction.

This section requires an agency to comply with the Code and this rule unless the Secretary has granted a written waiver or variance. It requires an agency's written request for a waiver or variance to cite the specific requirement of the rule for which a request for a waiver or variance is being made and to state the reasons for seeking the waiver or variance.

Section 6 relates to governance. It requires an agency to have a written administrative manual containing its policies and a detailed plan of operations. It also requires an agency to have a governing board or other supervisory structure and sets forth responsibilities of the governing board or supervisory structure.

This section also requires an agency to maintain the confidentiality of its records. It requires an agency to maintain records for children in placement; foster and adoptive parents; employees; and biological parents. It sets forth requirements for the contents of these various records. This section also requires an agency to have a written protocol for quality assurance that monitors and evaluates the agency's services and programs.

Section 7 relates to the staffing process. It requires an agency to have a staffing plan to provide for the effective implementation of its services and programs that includes a job description detailing the responsibilities, qualifications and supervisory chain of command for each position in the agency. This section also requires an agency to have written employment policies and an employee manual that is provided to each employee upon employment.

Section 8 relates to employee requirements. It sets forth specific qualifications for the executive director; administrative

and supervisory employees; case managers and home finders; and para-professional employees.

This section requires an agency to have a comprehensive plan for employee orientation, ongoing training, development and supervisory review, and sets forth requirements for the various components of the plan. This section also has requirements for contracted professional services and volunteers.

Section 9 relates to the child's and family's basic rights. It sets forth those rights which an agency must ensure for the child and the child's biological family. For example, a child receiving services from the agency has the right to adequate shelter, food and clothing and to education and training. This section requires an agency to have policies to ensure that the child's maximum health and safety needs are met. It contains provisions regarding children with extraordinary medical needs; religion; multiethnic placements; behavior management and discipline; the child's financial resources and clothing.

Section 10 relates to placement plans and procedures. It states that an agency shall accept referrals from persons or organizations that have an interest in the welfare, security or treatment of the child and the child's family and that have authority to make the referral. It requires the agency to designate an employee who is responsible for the intake process. It also requires an agency to have a written service agreement between the child's parents or guardian and the agency and sets forth the requirements for the agreement.

This section requires an agency to develop an intake service plan within seven days of placement and states what must be included in the plan. This section requires the agency to complete a detailed narrative child assessment prior to developing the service plan. It sets forth the information that must be contained in the assessment.

Under this section, the agency is required to use a team to develop a service plan for foster care. A planning team is to develop a service plan for each child within 30 days of the child's placement in foster care. The specific provisions which must be included in the service plan are set forth. The service plan is to be reviewed by the planning team at least once every three months.

specified information. It requires an agency to annually evaluate adoptive parents who have not had a child placed with them and complete a narrative summary containing certain specified information.

Section 20 relates to training for parents. It requires an agency, as a condition of approval, to require each foster and adoptive parent to participate in a specified training curriculum.

Section 21 relates to foster child placement and home closure information. It requires an agency to have written protocols for the presentation of a child to the prospective foster parents, emergency child placement in prospective foster care and involuntary closure of a foster home and specifies provisions to be contained in the written protocols.

Section 22 relates to services to biological parents. It requires an agency to ensure the protection of the legal rights of the child's biological parents under a protocol containing certain specified information. It also requires that certain specified services such as counseling be provided to the biological parents.

Section 23 relates to adoption. It requires foster parents to be included in the child's adoption planning team. It requires an agency to have written protocols containing specified information that are to be followed when presenting a newborn child or an older child's background information to the prospective adoptive parents.

This section also requires an agency to have a protocol for placement planning and placement services. It also requires an agency to have a written description of the support services offered following placement. It sets forth time frames for contact and visits following the placement.

This section requires an agency to have a protocol to follow when disruption in an adoptive placement is being considered or appears imminent and a protocol to follow for subsequent placement after a disruption of the adoptive placement. Finally, this section requires an agency to have a written protocol for the finalization of the adoption and also one for post-legal services it offers.

Section 24 relates to the transitional living services program. It requires an agency to have a manual of policies, procedures and forms for transitional living services available to all employees. It sets forth eligibility criteria for transitional living services, such as age requirements and consent requirements. It also requires an agency to develop policies regarding dwellings used for transitional living. An agency is to assess a child's or young adult's progress in applying basic living skills at least every six months.

Section 25 relates to the community reentry program. It requires an agency to develop an operating manual for employees for children placed in a community reentry program. It also sets forth eligibility criteria for the community reentry program. This section also requires an agency to develop a protocol to provide onsite supervision and to ensure that a dwelling in the community reentry program meets certain standards.

Section 26 relates to the grievance procedure. It requires an agency to have a written grievance procedure for children and foster, adoptive and biological families.

Section 27 relates to administrative due process. It references the Department's rule, Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 42CSR1.

AUTHORITY

Statutory authority: W.Va. Code, §49-2B-4, which provides, in part, as follows:

(a) The commissioner shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code regarding the licensure, approval, certification and registration of child care facilities and the implementation of the provisions of this article...

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?

Yes.

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

No.

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.