

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #3

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2011 JUL 30 P 2:30

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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

AGENCY: Family Protection Services Board TITLE NUMBER: 191

CITE AUTHORITY: WV Code 48-26-403

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Operation of the Family Protection Services Board

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

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.

Judith King  
Authorized Signature

## BRIEF SUMMARY OF RULE 191CSR1

This rule amends an existing rule. It includes the following:

§1 - This section covers scope and authority.

§2 - This section includes some new definitions including custodial responsibility and intimate partner. Because definitions were moved to the beginning of the rule, the entire section was underlined and the existing section was stricken.

§3 - This section establishes the purpose of the board, meeting requirements, board makeup, responsibilities of the chair, board authority to hire or contract with staff, and board's responsibility advise the Secretary of DHHR.

§4 - This section establishes that the Board will collect certain data to provide to the Governor and Legislature.

§5 - This section establishes licensure including the application, the expectations, the process of dealing with deficiencies, the issuance of the license, the review of existing licenses, the issuance of a provisional or conditional license and revocation procedures.

§6 - This section provides a judicial review process.

§7 - This provides funding information.

## STATEMENT OF CIRCUMSTANCES THAT REQUIRED THE PROPOSED RULE

This rule has not been updated since 2003. In 2013, the WV Legislature passed HB2603 which updated the responsibilities of the Family Protection Services Board and all licensing programs for which the Board is responsible. Thus all of the associated rules are being amended to comply with the new code.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: 191CSR1

Type of Rule:  Legislative  Interpretive  Procedural

Agency: Family Protection Services Board

Address: Family Protection Services Board  
c/o Division of Justice and Community Services  
1204 Kanawha Blvd. East  
Charleston, WV 25301

Phone Number: 304 292-5100 (Judy King) Email: rdvic99@earthlink.net

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This measure will not effect the costs and revenues of state government. As stated, this rule is supported by special revenue accounts. The Domestic Violence Legal Services Fund and the Family Protection Fund provide support for this program.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: 191CSR1

Rule Title: \_\_\_\_\_

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

This rule will have no effect on the general revenue budget. It is paid for out of special revenue accounts. There is no increase or decrease in fees.

**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

This rule is supported by existing fees and will not necessitate increasing the fees. The Board is asking for the amount available for their work to be increased from 5% to 15% of their special revenue account.. There are no plans to increase funding at this time but since the board's work is increasing each year with additional programs applying for licensure, there is the potential for a need for additional staff during the effectiveness of this rule. This requires some flexibility.

Date: 6/26/14

Signature of Agency Head or Authorized Representative

Juday King

**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: 7/30/14

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* Family Protection Services Board  
c/o Division of Justice and Community Services  
1206 Kanawha Blvd. East  
Charleston, WV 25301  
(304) 292-5100 (Judy King) President of Board

LEGISLATIVE RULE TITLE: 191CSR1

1. Authorizing statute(s) citation WV Code Section 48-26-403

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 27th, 2014

b. What other notice, including advertising, did you give of the hearing?  
A notice of opportunity for public comment was sent to all providers licensed by this board and all interested parties identified by the board with directions to the Secretary of State website.

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
Public comment period ended at noon on 7/28/2014.

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)

After public comment filed 7/30/2014

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

Patricia Bailey, Executive Director of  
Women's Resource Center and Vice President of the BPSB  
P.O. Box 1476  
Beckley, WV 25802-1476

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Work Phone 304 255-2559

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Work Fax 304 255-1585

Cell 304 673-0064

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- 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)

Same as "f"

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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 of a hearing for the taking of evidence and a general description of the issues to be decided.

~~No such requirements~~

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b. Date of hearing or comment period:

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

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d. Attach findings and determinations and reasons:

Attached 

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TITLE 191  
LEGISLATIVE RULE  
FAMILY PROTECTION SERVICES BOARD

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

SERIES 1  
OPERATION OF THE FAMILY PROTECTION SERVICES BOARD

**§191-1-1. General.**

1.1. Scope -- This rule establishes the operating procedures of the Family Protection Services Board.

1.2. Authority -- W. Va. Code §§~~48-26-401(4), 48-26-404, 48-26-1003(a)~~  
§48-26-403.

1.3. Filing Date --

1.4. Effective Date --

**§191-1-2. Definitions.**

For purposes of these rules, the following definitions shall apply:

2.1. "Advocacy" means assisting victims and survivors of domestic violence, dating violence, sexual assault, stalking or human trafficking, and their children, in securing rights, remedies and services, by directly providing for, or referring to public and private agencies to provide for, safety planning; shelter; housing; legal services; outreach; counseling; case management; information and referral; training; employment; child care; health care; transportation; financial literacy education, financial planning and related economic empowerment services; parenting and other educational services; and other support services.

2.2. "Batterer intervention and prevention program", previously referred to as a program of intervention for perpetrators, means a licensed educational program that provides classes to individuals who commit acts of domestic violence or abuse, offering nonviolent strategies and values that promote respect and equality in intimate partner relationships.

2.3. "Board" means the Family Protection Services Board created pursuant to Chapter 53 of the Acts of the Legislature of 1989 and subsequently recodified by W. Va. Code ~~§48-26-301~~ §48.26.101 et seq.

2.4. "Closure" means the temporary or permanent prohibition of specified services and the corresponding suspension of licensure of a program or program component that violates the standards established by the board or that threatens the health, well being or safety of its program participants or staff.

2.5. "Custodial responsibility" refers to physical custodianship and supervision of a child as defined in WV Code §48-1-219. It ~~may include~~ usually includes, but does not necessarily require, the exercise of residential or overnight responsibility.

2.6. "Department" means the Department of Health and Human Resources or any successor agency however so named.

2.7. "Domestic Violence Legal Services Fund" means the special revenue account established by WV Code § 48-26-603 for the purposes set forth in that section.

2.8. "Family Protection Fund" means the special revenue account established by Chapter 74 of the Acts of the Legislature of 1981, held by the department, for the purpose of collecting marriage license fees pursuant to WV Code §59-1-10, divorce surcharge fees pursuant to WV Code §59-1-28-a, fees for failure to present a premarital education course completion certificate pursuant to WV Code § 59-1-10 and any other funding source, including any source created in another section of WV Code, and distributed to licensed domestic violence programs, in accordance with the formula designated by the board.

2.9. "Domestic violence program" means a licensed program of a locally controlled nonprofit organization, established primarily for the purpose of providing advocacy services, comprising both a shelter component and an outreach component, to victims of domestic violence, dating violence, sexual assault, stalking or human trafficking, and their children: *Provided, That* the board may temporarily or permanently close either the shelter

component or the outreach component of a domestic violence program.

2.10. "Intimate partner" means a current or former spouse, a person with whom one shares a child in common, a person with whom one is cohabiting or has cohabited, or a person with whom one is or has been in a relationship of a romantic or intimate nature.

2.11. Licenses defined.

2.11.a. "Conditional license" means a license issued for up to ninety days, to programs that have violations of safety or accountability standards that may threaten the health, well-being or safety of its program participants or staff, or the responsible operation of the program, or that have a history or pattern of noncompliance with established standards.

2.11.b. "Provisional license" means a license issued for up to one hundred and eighty days, to programs that are not in compliance with nonlife threatening safety, programmatic, facility or administrative standards, that may be extended for an additional six months, if the board determines that the program is making active progress toward compliance.

2.11.c. "Full license" means a license issued for up to the maximum licensure period of three years, to programs that are in compliance with the standards established by the board and have no violations of safety or accountability standards that may threaten the health, well-being or safety of its program participants or staff, or the responsible operation of the program.

2.12. "Monitored exchange" means the observation of movement of a child or children from the custodial responsibility of one parent or guardian to the custodial responsibility of the other parent or other adult without allowing contact between the adults.-

2.13. "Monitored parenting" means the contact between a non-custodial parent without custodial responsibility, guardian or other adult and one or more children, in the presence of a third person who monitors the contact to promote the safety of the participants.

2.14. "Monitored parenting and exchange program" means a licensed program offered by a locally controlled nonprofit organization for purposes of providing a neutral, safe and child-friendly environment to allow the child or children access to a parent or other adult without allowing contact between the adults.

2.15. "Outreach" means a licensed domestic violence program's community-based activities that increase awareness and availability of services, in every county within the program's regional service area, to victims and survivors of domestic violence, dating violence, sexual assault, stalking or human trafficking, and their children.

2.16. "Partner Agencies" means state and community organizations whose mission and purpose require their response to the needs of victims of domestic violence and their children.

2.17. "Secretary" means the Secretary of the Department of Health and Human Resources.

2.18. "Shelter" means residential services offered by a licensed domestic violence program on a temporary basis, to persons who are victims of domestic violence, dating violence, sexual assault, stalking or human trafficking, and their children.

~~§191-1-2. §191-1-3. Purposes of the Board.~~

~~2.1. 3.1. The purposes of the Board are to provide ongoing administration and allocation of the West Virginia Family Protection Funds; to establish and enforce a system of standards for the annual licensure of domestic violence programs and perpetrator intervention programs; to establish and enforce a system of standards for the annual certification monitored parenting and exchange centers; to research and study issues pertinent to programs for victims of domestic violence and report the results to the Governor and the Legislature. receive and consider applications for licensure of domestic violence programs, batterer intervention and prevention programs and monitored parenting and exchange programs; assess the need for domestic violence programs, batterer intervention and prevention programs and monitored parenting and exchange programs, including the use of licensure pre-application and application processes;~~

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conduct licensure renewal reviews of domestic violence programs, batterer intervention and prevention programs and monitored parenting and exchange programs, that will ensure the safety, well-being and health of the programs' participants and staff; allocate the Family Protection Fund and direct the Department of Health and Human Resources to distribute funds to licensed domestic violence programs in accordance with a formula determined by the board; submit an annual report on the status of licensed programs to the Governor and the Legislature's Joint Committee on Government and Finance; and conduct hearings as necessary.

~~2.2.b. 3.2.b.~~ All meetings will be publicly announced in accordance with W. Va. Code §6-9A-3 with notice to the Secretary of State's Office. That notice shall include the time, place and purpose of the meeting. The Board shall, in accordance with state law, hold open meetings except when an executive session is necessary for the discussion of sensitive issues regarding the issuance, denial, or suspension or revocation of a license and Board personnel. This exception will be effective only with a consensus of the Board members present. ~~An open meeting regarding the issuance, denial, suspension or revocation of a license may be held at the request of the agency whose license is in question.~~ If an emergency session is necessary, the Board shall file a notice with the Secretary of State's Office any time prior to the meeting. Such notice shall state the time, place and purpose of the meeting ~~and the facts and circumstances of the emergency.~~

~~2.2.c. 3.2.c.~~ Meetings may be held with a ~~quorum of three~~ majority of the Board members present.

~~2.2.d. 3.2.d.~~ Officers will include a chair, a vice-chair, and a secretary/treasurer who will be selected on an annual basis. ~~The selection process will be held during the second quarter meeting.~~ Terms of office will begin on July 1 of each year and will end the following June 30. Selection shall be made by a majority of the constituent membership.

~~2.2.e. 3.2.e.~~ ~~Only the chair or the vice-chair~~ The chair may designate another member to conduct meetings of the Board.

~~2.2.f. 3.2.f.~~ The chair will have the following responsibilities and duties. (1) call and conduct all meetings;

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(2) participate in plan planning agendas for meetings; (3) speak as the official voice of the Board with ~~media, the W. Va. Legislature, the West Virginia Coalition Against Domestic Violence, the programs licensed and funded by the Board, the Attorney General's Office, the general public, and with all organizations inquiring about licensure and funding~~, except in situations where the chair designates responsibility to another member or staff; and (4) supervise the duties of the staff of the Board.

~~2.2.g.~~ 3.2.g. The vice-chair will assume any or all of the responsibilities and duties of the chair in the chair's absence, unless the chair designates a responsibility or duty to another member.

~~2.2.h.~~ 3.2.h. The Board shall hire or contract staff to complete the Board's work as necessary. Funds will be allocated for this purpose from the ~~five (5%)~~ fifteen percent (15%) of funds allowed by law for the cost of administering provisions of ~~\$48-26-401(12)~~ \$48-26-401(5).

~~2.2.i.~~ 3.2.i. Expenses incurred by Board members while pursuing the work of the Board shall be reimbursed by the funds designated for administrative activities. Board members shall, at all times, comply with the most current State of West Virginia travel regulations. The Board shall supply its members and staff with appropriate forms to request reimbursement. The ~~ex-officio~~ designated members of the Board who serve by virtue of their positions shall request reimbursement for expenses through their employing agency or appointing committee.

~~2.2.j.~~ 3.2.j. The Board ~~shall~~ may advise the Secretary of the Department of Human Services and the chair of the Governor's Committee on Crime, Delinquency and Correction on matters of concern relative to his or her responsibilities under W. Va. Code §§48-26-101 et seq. and the Board ~~shall~~ may delegate to the ~~commissioner~~ Secretary such powers and duties of the Board as the Board may deem appropriate to delegate, including, but not limited to, the authority to approve, disapprove, revoke or suspend licenses.

~~§191-1-3. Definitions~~

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~~For purposes of these rules, the following definitions shall apply:~~

~~"Advocacy" means assisting victims and survivors of domestic violence, dating violence, sexual assault, stalking or human trafficking, and their children, in securing rights, remedies and services, by directly providing for, or referring to public and private agencies to provide for, safety planning, shelter, housing, legal services, outreach, counseling, case management, information and referral, training, employment, child care, health care, transportation, financial literacy education, financial planning and related economic empowerment services, parenting and other educational services, and other support services.~~

~~"Batterer intervention and prevention program", previously referred to as a program of intervention for perpetrators, means a licensed educational program that provides classes to individuals who commit acts of domestic violence or abuse, offering nonviolent strategies and values that promote respect and equality in intimate partner relationships.~~

~~3.1. "Board" means the Family Protection Services Board created pursuant to Chapter 53 of the Acts of the Legislature of 1989 and subsequently recodified by W. Va. Code §48-26-301.~~

~~"Closure" means the temporary or permanent prohibition of specified services and the corresponding suspension of licensure of a program or program component that violates the standards established by the board or that threatens the health, well being or safety of its program participants or staff.~~

~~3.2. "Custodial parent" means a biological parent, adoptive parent, legal guardian, state agency and its representatives who has temporary or permanent legal custody of a child.~~

~~3.3. "Custodial responsibility" refers to physical custodianship and supervision of a child as defined in WV Code §48-1-219. It may include usually includes, but does not necessarily require, the exercise of residential or overnight responsibility.~~

~~3.4. "Department" means the Department of Health and Human Resources or any successor agency however so named.~~

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~~"Domestic Violence Legal Services Fund" means the special revenue account established by WV Code § 40-26-603 for the purposes set forth in that section.~~

~~"Family Protection Fund" means the special revenue account established by Chapter 74 of the Acts of the Legislature of 1981, held by the department, for the purpose of collecting marriage license fees pursuant to WV Code §59-1-10, divorce surcharge fees pursuant to WV Code §59-1-28-a, fees for failure to present a premarital education course completion certificate pursuant to WV Code § 59-1-10 and any other funding source, including any source created in another section of WV Code, and distributed to licensed domestic violence programs, in accordance with the formula designated by the board.~~

~~3.5. "Family Protection Program" means a licensed domestic or family violence program offered by a locally controlled non-profit organization created primarily for the purpose of providing services, including residential shelters and outreach services, to victims of domestic violence or abuse and their children. "Domestic violence program" means a licensed program of a locally controlled nonprofit organization, established primarily for the purpose of providing advocacy services, comprising both a shelter component and an outreach component, to victims of domestic violence, dating violence, sexual assault, stalking or human trafficking, and their children: Provided, That the board may temporarily or permanently close either the shelter component or the outreach component of a domestic violence program.~~

~~"Intimate partner" means a current or former spouse, a person with whom one shares a child in common, a person with whom one is cohabiting or has cohabited, or a person with whom one is or has been in a relationship of a romantic or intimate nature.~~

~~Licenses defined.~~

~~(a) "Conditional license" means a license issued for up to ninety days, to programs that have violations of safety or accountability standards that may threaten the health, well-being or safety of its program participants or staff, or the responsible operation of the program, or that have a history or pattern of noncompliance with established standards.~~

~~(b) "Provisional license" means a license issued for up to one hundred and eighty days, to programs that are not in compliance~~

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~~with nonlife threatening safety, programmatic, facility or administrative standards, that may be extended for an additional six months, if the board determines that the program is making active progress toward compliance.~~

~~(c) "Full license" means a license issued for up to the maximum licensure period of three years, to programs that are in compliance with the standards established by the board and have no violations of safety or accountability standards that may threaten the health, well-being or safety of its program participants or staff, or the responsible operation of the program.~~

~~3.6. "Monitored exchange" means the supervision observation of movement of a child to the noncustodial parent at the start of the visit and back to the custodial parent at the end of the visit. or children from the custodial responsibility of one parent or guardian to the custodial responsibility of the other parent or other adult without allowing contact between the adults. This type of monitored contact is for those cases in which contact causes conflict between the adults but the contact between the parent and child could be expected to proceed without incident.~~

~~3.7. "Monitored parenting" means the contact between a non-custodial parent without custodial responsibility, guardian or other adult and one or more children, in the presence of a third person responsible for observing and ensuring the safety of those involved who monitors the contact to promote the safety of the participants.~~

~~"Monitored parenting and exchange program" means a licensed program offered by a locally controlled nonprofit organization for purposes of providing a neutral, safe and child friendly environment to allow the child or children access to a parent or other adult without allowing contact between the adults.~~

~~3.8. "Noncustodial parent" means a biological parent or other adult authorized by a court to have supervised contact with a child~~

~~3.9. "Outreach Service" means a licensed domestic violence program's community based activities that increase awareness and availability of services, in every county within the program's~~

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~~regional service area, to victims and survivors of domestic violence, dating violence, sexual assault, stalking or human trafficking, and their children. service formally associated with a licensed family protection program and established for the purposes of providing direct services, community education and prevention activities, information, referral, safety planning and crisis counseling to victims of domestic violence.~~

~~3.10. "Participant" means the custodial parent, the noncustodial parent, or the child receiving monitored contact.~~

~~3.11. "Partner Agencies" means state and community organizations whose mission and purpose require their response to the needs of victims of domestic violence and their children. ??? Need?~~

~~3.12. "Perpetrator Intervention Program" means a licensed perpetrator intervention program that accepts perpetrators of domestic violence or family violence into educational intervention groups.~~

~~3.13. "Secretary" means the Secretary of the Department of Health and Human Resources.~~

~~3.14. "Shelter" means residential services offered by a licensed domestic violence program on a temporary basis, to persons who are victims of domestic violence, dating violence, sexual assault, stalking or human trafficking, and their children. a locally controlled non-profit organization created primarily for the purpose of receiving, on a temporary basis, individuals who are victims of domestic violence, abuse or rape and their children and for providing services to these individuals as specified in Series 2 of the Board's rules.~~

~~3.15. "Supervised visitation" means the provision of therapeutic evaluation and/or intervention to help improve the parent-child interactions. Supervised visitation may only be provided by order of a court and only by trained certified or licensed mental health professionals or social workers.~~

**§191-1-4. Board Reports**

The Board shall collect data about licensed programs for use in an annual report on the status of licensed programs to be

~~submitted to the Governor and the Joint Committee on Government and Finance, study issues pertinent to family protection programs for domestic violence victims and prepare an annual report the to governor and the Legislature within the first 20 days of the legislative session regarding those issues.~~

**§191-1-5. Licensure of Family Protection Domestic Violence Programs, Perpetrator Batterer Intervention and Prevention Programs, and Shelters Monitored Parenting and Exchange Programs.**

~~All family protection domestic violence, perpetrator batterer intervention and prevention programs and shelters and monitored parenting and exchange programs must be licensed by the Board in order to provide services to victims and/or perpetrators. The Board shall enforce standards and a process for the annual licensure for all family protection and perpetrator intervention programs and shelters in the state.~~

~~5.1.e. The Board shall, by certified letter, notify any organization operating without a license as a family protection domestic violence, perpetrator batterer intervention and prevention program or a shelter monitored parenting and exchange program of its right to apply for licensure. The Board shall may petition the circuit court for an order preventing the operation of any organization which refuses to obtain a license as required under this rule and W. Va. Code §§48-26-101 et seq.~~

5.1. License Application

~~5.1.a. The Board shall provide a standard license application to any organization that wishes to establish a family protection or perpetrator intervention programs and/or shelter upon request establish preliminary application and full application forms for the initial licensing of domestic violence programs, batterer intervention and prevention programs and monitored parenting and exchange programs.~~

~~The organization must complete an application apply when it initially requests licensure and meet basic criteria as determined by the Board or when it wishes to reopen after closure. After initial licensure, family protection and perpetrator intervention programs and shelters shall be evaluated by the Board on an annual basis, and an on-site review will be conducted every two years.~~

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To meet basic eligibility requirements an applicant for licensure must complete a preliminary application form to demonstrate local need for the proposed service, method of governance and accountability, administrative and programmatic design, and fiscal efficiency. The board shall respond in writing within sixty days of receipt of the preliminary application;

If the board approves the preliminary application, the applicant may complete a full application form;

The board shall determine whether all documentation set forth on the licensure checklist of the full application has been submitted, and may request supplemental or clarifying information or documentation;

The board shall grant or deny a license within sixty days of the receipt of the completed full application form and all supplemental or clarifying information or documentation requested by the board.

~~5.1.b. The Board shall consider all applications submitted for licensure in light of the need for services, the ability of the applicant to successfully operate a family protection, perpetrator intervention program, or a shelter, the applicant's ability to obtain adequate funding for the delivery of services, the capacity of the program to comply with the Board's standards, and the applicant's interest and ability to provide quality services.~~

~~5.1.c. 5.1.b.~~ If the Board finds that an application contains deficiencies which do not require denial of application, the application and a list of deficiencies will be returned provided to the applicant, and the applicant will have thirty (30) days to resubmit a revised application along with a due date for receipt of additional information.

~~5.1.d. 5.1.c.~~ The Board shall renew, ~~on an annual basis,~~ the licenses of all family protection domestic violence, and perpetrator batterer intervention and prevention programs and shelters monitored parenting and exchange programs that are in compliance with this rule and with Series 2, or 3, 4 or 5 of the Board's rules. Forms for license renewal shall be distributed by the Board to licensed family protection, and perpetrator intervention programs, and shelters in a timely manner no later

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than the ~~fifteenth~~ thirty-first day of March each year.

~~5.1.e. The Board shall, by certified letter, notify any organization operating without a license as a family protection, perpetrator intervention program or a shelter of its right to apply for licensure. The Board shall petition the circuit court for an order preventing the operation of any organization which refuses to obtain a license as required under this rule and W. Va. Code §§48-26-101 et seq.~~

### 5.2. Issuance of A License

5.2.a. The Board shall issue ~~a~~ an initial or renewal license to any organization which has ~~applied for a license and~~ been approved by the Board as having complied with all established standards set forth in this rule and in Series 2, or 3, 4, or 5 of the Board's rules or any rules subsequently promulgated. Compliance with the standards shall be evaluated by ~~peer reviewers, by Board members, by Board staff, by other knowledgeable persons,~~ or by any ~~a~~ combination thereof as determined by the Board.

5.2.b. All initial licenses shall be valid for up to one (1) year ~~commencing on the first day of July and terminating on the thirtieth day of June of the next year.~~ The Board shall grant or deny license within forty-five (45) days of receiving the license application. The Board may conduct licensure reviews at any time during the licensure period, and may downgrade, suspend or revoke a license. Every licensed family protection, perpetrator intervention program and shelter shall conspicuously display the license.

### 5.3. ~~Evaluation for~~ Review of Existing Licensure

5.3.a. The Board shall ~~annually evaluate~~ review all licensed family protection domestic violence, perpetrator batterer intervention and prevention and monitored parenting and exchange programs, and shelters operating in the state prior to the expiration of the existing license and will review all programs and shelters on-site a minimum of once every two years. The evaluation review will be conducted using a checklist and documentation of compliance with the licensing standards found in Series 2 ~~and 3~~ through 5 of the Board's rules.

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5.3.b. The Board shall ~~annually~~ assure an on-site review of the established standards found in this rule for at least one-half of all ~~licensed~~ programs which are licensed for a year or less. Review of the remaining programs which are licensed for a year or less shall be determined by the Board. The Board shall conduct, prior to the expiration of the license, an on-site review of all programs which are licensed for more than one year. The standards compliance review will be completed utilizing the most current revision of the standards checklist authorized by the Board. ~~The annual evaluation will be scheduled in a timely manner by the Board to allow the Board to consider the results prior to the expiration of the current year's license.~~

5.3.c. Any areas of non-compliance shall be ~~reported~~ documented on the licensing review summary form checklist by the person(s) authorized by the Board to conduct the review. The Board shall review each area of non-compliance and consider the relative risk it poses to the health, safety and well-being of individuals being served by the family protection domestic violence, perpetrator batterer intervention and prevention or monitored parenting and exchange program, or shelter and staff employed by the program ~~or shelter~~.

The board may conduct licensure reviews at any time during the licensure period, and may downgrade, suspend or revoke a license.

5.3.d. The Board may contact the program's ~~or shelter's~~ partner agencies to determine program effectiveness in relationship to community needs.

### ~~5.4. Waiver of Licensure.~~

~~The Board may grant a waiver of licensure if the Board finds it necessary for the good of victims or perpetrators who would be served by the family protection, perpetrator intervention program or shelter in question. The Board shall review all waivers semi-annually.~~

### ~~5.5.~~ 5.4. Issuance of a Provisional or Conditional License.

~~5.5.a.~~ 5.4.a. The Board may grant provisional licensure ~~if the Board finds it necessary for the good of participants who will be served by the family protection,~~

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~~perpetrator intervention program, or shelter in question for up to one hundred and eighty days, to a program that is not in compliance with non-life threatening safety, programmatic, facility or administrative standards. A provisional license may be extended for up to an additional one hundred and eighty days, if the board, in its sole discretion, determines that the program is making active progress toward compliance. All provisional certifications shall be reviewed semi-annually.~~

The Board may grant conditional licensure for up to ninety days to a program that has violations of safety or accountability standards that may threaten the health, well-being or safety of its participants or staff, or the responsible operation of the program, or that have a history or pattern of noncompliance with established standards. If a program does not correct the violations within the conditional license period, the board may institute closure proceedings.

~~5.5.b. 5.4.b. Upon a finding by the Board that a family protection domestic violence, perpetrator batterer intervention and prevention or monitored parenting and exchange program, or shelter is not in compliance with this rule and is eligible for a provisional or conditional license, the Board may issue a provisional license and shall give the family protection, perpetrator intervention program or shelter written notice of deficiency that shall include, but not be limited to the following:~~

~~5.5.b.1. 5.4.b.1. A statement of program deficiencies or need for additional information.~~

~~5.4.b.2. A requirement to submit a plan of correction regarding the deficiencies or additional information.~~

~~5.5.b.3. 5.4.b.3. A timeline for the Board's review submission of the plan of correction or additional information.~~

~~5.5.b.4. A requirement that the plan be modified and resubmitted to the Board within twenty (20) days should the original plan not address the identified deficiencies.~~

~~5.5.b.5. 5.4.b.4. A requirement that compliance occur within a time period set by the Board.~~

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~~5.5.b.6. Verification of the issuance of a provisional license until compliance is achieved or until the Board takes action deemed necessary for the safety of the clients.~~

~~5.6. 5.5. Revocation or Suspension of a License and Closure of a Licensed Program.~~

The Board may suspend or revoke a license and, in connection therewith temporarily or permanently close any family protection domestic violence, perpetrator batterer intervention and prevention or monitored parenting and exchange program or shelter that violates the standards established under Series 2 and 3, 4, or 5 of the Board's rules, or that threatens the health, well-being or safety of its participants or staff, subject to the requirements in this rule regarding public hearings under subdivision d of this subsection 5.6. of these rules.

If either the shelter component or the outreach component of a domestic violence program is closed, the remaining component of the program may continue to be licensed and to receive funds.

If a shelter is closed, the governing body of the program, in conjunction with the board, shall establish a plan to place the participants in other shelters or alternative housing.

~~5.6.a. 5.5.a. Four members of the Board must vote in the affirmative before a license may be revoked or suspended. In order to close a domestic violence program or one of its components, a batterer intervention and prevention program or a monitored parenting and exchange program, the board must vote unanimously in the affirmative.~~

~~5.6.b. When there is an immediate threat to the health, well-being and safety of shelter residents, or an unplanned closure by the family protection program's or shelter's governing board, the Board shall place the residents and/or participants in other family protection programs or shelters, or some other appropriate safe and secure place.~~

~~5.6.c. 5.5.b. The Board shall send written notice of the license revocation or suspension by certified mail to the president of the family protection domestic violence, perpetrator batterer intervention and prevention, program's or shelter's or monitored parenting and exchange program's governing board. The notice shall~~

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include a statement of the program's ~~or shelter's~~ alleged violations of this rule. The program's ~~or shelter's~~ board of directors will have fifteen (15) days after receipt of the notice, to respond to the allegations. This response shall be in writing. If there is no written response, the Board will proceed with the revocation or suspension of the program's ~~or shelter's~~ license. The Board will not provide funds to a ~~family protection, perpetrator intervention program or shelter~~ whose license has been revoked or suspended; however, the board may temporarily or permanently close either the shelter component or the outreach component of a domestic violence program and the remaining component of the program may continue to be licensed and to receive funds.

~~5.6.d. If the Board is provided with a response to the violations, a public hearing will be held within thirty (30) days in the municipality or county in which the program is located.~~

### 5.6. Hearing Procedures: Judicial Review.

5.6.1. When a license for a program is downgraded or discontinued through permanent or temporary closure, the program's governing body is entitled to a hearing before the board.

5.6.1.a. Hearings shall be held in accordance with the provisions of article five, chapter twenty-nine-a of this code.

5.6.1.b. The board may conduct the hearing or elect to have a hearing examiner or an administrative law judge conduct the hearing. If the hearing is conducted by a hearing examiner or an administrative law judge:

5.6.1.b.1. The hearing examiner or administrative law judge shall be licensed to practice law in this state and shall conform to the Code of Conduct for Administrative Law Judges as set forth by the Ethics Commission in legislative rule;

5.6.1.b.2. At the conclusion of a hearing, the hearing examiner or administrative law judge shall prepare a proposed written order containing recommended findings of fact and conclusions of law and may include recommended sanctions, including closure, if the board so directs;

5.6.1.b.3. The board may accept, reject, modify or amend the recommendations of the hearing examiner or administrative law judge; and

5.6.1.b.4. If the board rejects, modifies or amends the recommendations, the board shall state in the order a reasoned, articulate justification based on the record for the rejection, modification or amendment.

5.6.2. Pursuant to the provisions of section one, article five, chapter twenty-nine-a of this code, informal disposition may also be made by the board by stipulation, agreed settlement, consent order or default. Further, the board may suspend its decision and place a license on conditional or provisional status.

5.6.3. A licensee adversely affected by a decision of the board entered after a hearing may seek an appeal to the Circuit Court, in accordance with the provisions of section four, article five, chapter twenty-nine-a of this code, and may appeal a decision of the Circuit Court to the West Virginia Supreme Court of Appeals, in accordance with the provisions of article six, chapter twenty-nine-a of this code.

5.6.4. The Board shall adopt policies and procedures related to hearings as defined in §48-26-408 by July 1, 2015.

#### **§191-1-6. Domestic Violence Legal Services Fund.**

##### 6.1. Fund allocation

The Board annually allocates the Domestic Violence Legal Services Fund for distribution by the Department. Any change in the amount allocated shall be approved by the Board, based on the Board's determination of need and a review of financial status by the Department.

##### 6.2. Expenditures and Fees

6.2.a. Expenditures from the fund shall be limited to attorneys employed or contracted by licensed domestic violence programs, or employed or contracted by West Virginia's federally designated legal services program, its successor organization or other nonprofit organization as determined by the department, that establish a collaborative relationship with a licensed

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domestic violence program, to provide civil legal services to victims of domestic violence.

6.2.b. Any court of this state may order a nonprevailing party to pay an amount equivalent to the reasonable attorney's fee to which the prevailing litigant would be entitled into the Domestic Violence Legal Services Fund, established in subsection (a) of this section, if the following circumstances occur:

6.2.b.1. A prevailing litigant is entitled by statute or common law to a reasonable attorney's fee, and

6.2.b.2. The prevailing litigant's legal counsel informs the court that no fee will be requested.

**§191-1-7. Confidentiality.**

7.1. No program licensed by the Family Protection Services Board may disclose, reveal or release or be compelled to disclose, reveal or release, any written records or personal or personally identifying information about a program participant created or maintained in providing services, regardless of whether the information has been encoded, encrypted, hashed, or otherwise protected, pursuant to s article 701 of W.Va. Code Chapter 48-26 except:

7.1.a. Upon written consent, or upon oral consent in emergency situations defined by legislative rule, of the person seeking or who has sought services from the program;

7.1.b. In any proceeding brought under sections four and five, article six, chapter nine of this code or article six, chapter forty-nine of this code;

7.1.c. As mandated by article six-a, chapter forty-nine and article six, chapter nine of this code;

7.1.d. Pursuant to an order of any court based upon a finding that said information is sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining the confidentiality established by this section;

7.1.e. To protect against a clear and substantial danger of imminent injury by a person receiving services to himself or

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herself or another; or

7.1.f. As authorized by the releases signed by batterer intervention and prevention program participants pursuant to the provisions of subsection (b) of this section.

7.2. Batterer intervention and prevention program participants shall authorize the release of information by signing the following releases:

7.2.a. Allowing the provider to inform the victim or alleged victim and the victim's advocates that the batterer is participating in a batterer intervention and prevention program with the provider and to provide information to the victim or alleged victim and her or his advocates, if necessary, for the victim's or alleged victim's safety;

7.2.b. Allowing prior and current service providers to provide information about the batterer to the provider;

7.2.c. Allowing the provider, for good cause, to provide information about the batterer to relevant legal entities, including courts, parole officers, probation officers, child protective services, adult protective services, law enforcement, licensed domestic violence programs, or other referral agencies;

7.2.d. Allowing the provider to report to the court, if the participation was court ordered, and to the victim or alleged victim, if she or he requests and provides a method of notification, and to his or her advocate, any assault, failure to comply with program requirements, failure to attend the program, threat of harm by the batterer, reason for termination and recommendations for changes in the court order; and

7.2.e. Allowing the provider to report to the victim or alleged victim, or his or her advocate, without the participant's authorization, all perceived threats of harm, the participant's failure to attend and reason for termination.

7.3. Monitored parenting and exchange programs may disclose to one parent or guardian, without the permission of the other parent or guardian, any perceived threat of harm or violation of the court order or violation of the monitored parenting and exchange program rules by the other parent or guardian.

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7.4. Monitored parenting and exchange programs may not release information about the child without consent of the parent with custodial responsibility or guardian.

7.5. In addition to the provisions set forth in this section, the release of a victim's personally identifying information is subject to the provisions of 42 U.S.C. § 13925(b)(2).

7.6. No consent or authorization for the transmission or disclosure of confidential information is effective unless it is signed by the program participant whose information is being disclosed. Every person signing an authorization shall be given a copy.

7.7. A victim of domestic violence, dating violence, sexual assault, or stalking shall not be required to provide consent to release his or her personally identifying information as a condition of eligibility for the services, nor may any personally-identifying information be shared in order to comply with federal or state reporting, evaluation, or data collection requirements: Provided, That nothing in this section prohibits a program from reporting suspected abuse or neglect, as defined by law, when the program is mandated by law to report suspected abuse or neglect.

### 191-1-8. Americans with Disabilities Act Compliance.

All programs that own or lease buildings shall comply with the American with Disabilities Act requirements or make arrangements to accommodate individuals with special needs.

### 5.7. ~~Receivership of Program.~~

~~— The Board may place a family protection, perpetrator intervention program or shelter under receivership when the health, well being and/or safety of its clients are threatened. The Board shall oversee the operation of the program to preserve the services for clients. The Board shall have access to and may use all assets of the program. After placing a family protection, perpetrator intervention program or shelter into receivership and prior to the closing of a program, the Board shall send written notice of the intent to place a family protection program into receivership by certified mail to the~~

~~president of the family protection, perpetrator intervention program's or shelter's board of directors.~~

~~5.7.a. The Board shall provide for and hold a public hearing in the municipality or county in which the program is located prior to the closure of a program by a program into receivership, subject to the requirements of section 5.6.d of this rule.~~

~~5.7.b. The Board shall provide the governing body and/or legal counsel of the program or shelter notice of hearing time, date and location at least ten (10) days prior to the hearing date. The Board shall also provide notice of the hearing to the Secretary of State in compliance with W. Va. Code §§6-9A et seq. The Board shall provide notice of the hearing through a local newspaper's legal notice section at least ten (10) days prior to the hearing date. The hearing will be held in accordance with W. Va. Code §§29A-5 et seq.~~

~~5.7.c. The Board chair shall conduct the hearing, and s/he shall have full authority to call recesses, to remove individuals exhibiting inappropriate behavior from the hearing, and to call for an executive session of the Board, if necessary, in accordance with the provisions of W. Va. Code §§6-9A-1 et seq. Four (4) members must be present to hear the violations and the program's response.~~

~~§191-1-6. Certification of Monitored Parenting and Exchange Programs.~~

~~6.1. The Board shall oversee a process for the certification of all monitored parenting and exchange programs in the state. The purpose of certification is to assure the safety and welfare of the children, adults and program staff during supervised contact. Once safety is assured, the welfare of the child(ren) is the paramount consideration at all stages. Nothing in these rules shall preclude a monitored parenting and exchange program from offering both monitored parenting and exchange services and supervised services.~~

~~6.2. Application for Certification~~

~~6.2.a. All monitored parenting and exchange programs that~~

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~~represent themselves as certified for monitored contact shall be certified by the Board.~~

~~6.2.b. The Board will provide a standard application form for certification of monitored parenting and exchange programs upon request. An organization shall complete an application when it initially requests certification or when it wishes to reopen after closure. After initial certification, monitored parenting and exchange programs will be evaluated by the Board on an annual basis.~~

~~6.2.c. The Board shall consider all applications submitted for certification of a monitored parenting and exchange program in light of the need for services, the ability of the applicant to successfully operate a program, the applicant's ability to obtain adequate funding for the delivery of services, and the applicant's interest and ability to provide quality services.~~

~~6.2.d. If the Board finds that an application contains deficiencies, the application and a list of deficiencies will be returned to the applicant, and the applicant will have thirty (30) days to resubmit a revised application.~~

~~6.2.e. The Board shall, on an annual basis, renew the certification of all monitored parenting and exchange programs that are in compliance with this rule and with Series 4 of the Board's rules. The Board shall distribute forms for certification renewal to certified monitored parenting and exchange programs no later than the fifteenth day of March each year. All certifications will be valid for one (1) year commencing on the first day of July and terminating on the thirtieth day of June of the next year. The Board shall grant or deny any certification application within forty five (45) days of receiving the application. Every certified monitored parenting and exchange programs shall conspicuously display the certification.~~

~~6.2.f. The Board shall notify, by certified letter, any organization operating a program without certification as a monitored parenting and exchange program of its right to apply for certification.~~

### ~~6.3. Evaluation for Certification~~

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~~6.3.a. The Board shall annually evaluate all certified monitored parenting and exchange programs operating in the state. The evaluation shall be conducted using the certification standards found in Series 4 of the Board's rule.~~

~~6.3.b. The Board shall review each area of non-compliance and consider the relative risk it poses to the health, safety and well-being of individuals being served by the monitored parenting and exchange program and of staff employed by that program.~~

~~6.3.c. The Board shall determine whether trained staff from a certified monitored parenting and exchange program, a member of the Board, or staff of the Board shall conduct the evaluation.~~

### ~~6.4. Award of Certification.~~

~~The Board shall award certification annually to any organization which has applied for certification and been approved by the Board as having complied with all established standards set forth in this rule and in Series 4 of the Board's rules. Compliance with the standards will be evaluated by peer reviewers, by Board members, by Board staff, or any combination thereof as determined by the Board.~~

~~6.5. Waiver of Licensure. The Board may grant a waiver of certification if the Board finds it necessary for the good of participants who would be served by the monitored parenting and exchange program in question. The Board shall review all such waivers semi-annually.~~

### ~~6.6. Provisional Certification.~~

~~6.6.a. The Board may grant provisional certification if the Board finds it necessary for the good of participants who will be served by the monitored parenting and exchange program in question. All provisional certifications shall be reviewed semi-annually.~~

~~6.6.b. Upon a finding by the Board that a monitored parenting and exchange program is not in compliance with Series 4 of the Board's rules, the Board may issue a provisional certification and shall give the program written notice of deficiency that shall include, but not be limited to, the following.~~

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~~6.5.b.1. A statement of program deficiencies.~~

~~6.5.b.2. A requirement to submit a plan of correction regarding the deficiencies.~~

~~6.5.b.3. A timeline for the Board's review of the plan of correction.~~

~~6.5.b.4. A requirement that compliance occur within a time period set by the Board.~~

~~6.5.b.5. Verification of the issuance of provisional certification until compliance is achieved or until the Board takes action deemed necessary for the safety of participants.~~

~~6.6. Revocation or Suspension of Certification.~~

~~6.6.a. The Board may revoke or suspend certification of any monitored parenting and exchange program that violates the provisions of this rule or Series 4 of the Board's rules, subject to paragraph 3 of this subdivision regarding public hearings. Four (4) members of the Board must vote in the affirmative before certification may be revoked or suspended.~~

~~6.6.a.1. The Board shall send written notice of the revocation or suspension by certified mail to the president of the monitored parenting and exchange program's governing board. The notice shall contain a statement of the alleged violations of the Board's rules.~~

~~6.6.a.2. The Board shall permit the program's board of directors fifteen (15) days from date of receipt of the notice to respond in writing to the alleged violations. If there is no written response, the Board will proceed with the revocation or suspension of the monitored parenting and exchange program's certification.~~

~~6.6.a.3. If the Board is provided with a response to the violations, a public hearing will be held in the municipality or county in which the program is located within thirty (30) days of receipt of the response.~~

~~6.6.b. The Board shall provide for and hold a public hearing in the municipality or county in which the program is~~

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~~located prior to the closure of a program through the revocation or suspension of the certification.~~

~~6.6.b.1. The Board shall provide notice of hearing time, date and location to the governing body or legal counsel of the program at least ten (10) days prior to the hearing date. The Board shall provide notice of the hearing to the Secretary of State in compliance with W. Va. Code §§6-9A et seq. The Board shall also give local public notice by advertisement in a local newspaper's legal notice section at least ten (10) days prior to the hearing date.~~

~~6.6.b.2. The hearing shall be conducted by the Board chair, and he or she shall have full authority to call recesses, to remove persons exhibiting inappropriate behavior from the hearing, and to call for an executive session of the Board if necessary. Four (4) members shall be present to hear the violations and the program's response.~~