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Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Family Protection Services Board TITLE NUMBER: 191

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 Advisory Board

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB199

SECTION §64-5-12, PASSED ON March 14, 2015

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: 5/4/15

Jacoby King
Authorized Signature

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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 §48-26-403.

1.3. Filing Date --

1.4. Effective Date 5/4/15

§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 §48.26.101 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 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 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.

§191-1-3. Purposes of the Board.

3.1. The purposes of the Board are to 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; 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.

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 of a license and Board personnel. This exception will be effective only with a consensus of the Board members present. 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.

3.2.c. Meetings may be held with a majority of the Board members present.

3.2.d. Officers will include a chair, a vice-chair, and a secretary/treasurer who will be selected on an annual basis. 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.

3.2.e. In the absence of the chair, the vice-chair or another member designated by the chair may conduct meetings of the Board.

3.2.f. The chair will have the following responsibilities and duties. (1) call and conduct all meetings; (2) participate in planning agendas for meetings; (3) speak as the official representative of the Board; (4) designate members of the board or members of the staff to appear on the board's behalf before the Legislature and other forums; and (4) supervise the duties of the staff of the Board.

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.

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 fifteen percent (15%) of funds allowed by law for the cost of administering provisions of §48-26-401(5).

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 designated members of the Board who serve by virtue of their positions shall request reimbursement for expenses through their employing agency or appointing committee.

3.2.j. The Board 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 may delegate to the 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.

§191-1-4. 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.

§191-1-5. Licensure of Domestic Violence Programs, Batterer Intervention and Prevention Programs, and Monitored Parenting and Exchange Programs.

All domestic violence, batterer intervention and prevention and monitored parenting and exchange programs must be licensed by the Board. The Board shall enforce standards and a process for licensure.

The Board shall, by certified letter, notify any organization operating without a license as a domestic violence, batterer intervention and prevention program or a monitored parenting and exchange program of its right to apply for licensure. The Board 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.1. The Board shall 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.

5.1.a.2. The organization must apply when it initially requests licensure and meet basic criteria as determined by the Board or when it wishes to reopen after closure.

5.1.a.3. 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.

5.1.a.4. If the board approves the preliminary application, the applicant may complete a full application form.

5.1.a.5. 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.

5.1.a.6. 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. If the Board finds that an application contains deficiencies which do not require denial of application, a list of deficiencies will be provided to the applicant along with a due date for receipt of additional information.

5.1.c. The Board shall renew the licenses of all domestic violence, batterer intervention and prevention programs and 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 programs in a timely manner no later than the thirty-first day of March each year.

5.2. Issuance of a License

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

5.2.b. All initial licenses shall be valid for up to one (1) year. The Board may conduct licensure reviews at any time during the licensure period, and may downgrade, suspend or revoke a license. Every licensed program shall conspicuously display the license.

5.3. Review of Existing Licensure.

5.3.a. The Board shall review all licensed domestic

violence, batterer intervention and prevention and monitored parenting and exchange programs prior to the expiration of the existing license. The review will be conducted using a checklist and documentation of compliance with the licensing standards found in Series 2 through 5 of the Board's rules.

5.3.b. The Board shall assure an on-site review of the established standards found in this rule for at least one-half of all 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.

5.3.c.1. Any areas of non-compliance shall be documented on the licensing review summary form 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 domestic violence, batterer intervention and prevention or monitored parenting and exchange program, and staff employed by the program.

5.3.c.2. 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 partner agencies to determine program effectiveness in relationship to community needs.

5.4. Issuance of a Provisional or Conditional License.

5.4.a.1. The Board may grant provisional licensure 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.

5.4.a.2. 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.

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

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.

5.4.b.3. A timeline for submission of the plan of correction or additional information.

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

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 domestic violence, batterer intervention and prevention or monitored parenting and exchange program that violates the standards established under Series 2, 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 hearings under subsection 5.6.

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.

5.5.a. 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. All other disciplinary actions by the board require a majority vote.

5.5.b. The Board shall send written notice of the license revocation or suspension by certified mail to the president of the domestic violence, batterer intervention and prevention, or monitored parenting and exchange program's governing board. The notice shall include a statement of the program's alleged violations of this rule. The program'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 license. The Board will not provide funds to a program 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. 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 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 section 701, article 26, chapter 48 of W.Va. Code 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 rule;

7.1.e. To protect against a clear and substantial danger of imminent injury by a person receiving services to himself or 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 Rule 7.2 below.

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.

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 all applicable federal laws.

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.