



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

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

AGENCY: Human Services TITLE-SERIES: 78-27

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

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

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

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) 2427

Section 64-5-1(n) Passed On 4/6/2021 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

July 1, 2021

This rule shall terminate and have no further force or effect from the following date:

August 01, 2026

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

April L Robertson -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

**TITLE 78
LEGISLATIVE RULE
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

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

§78-27-1. General.

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

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

1.3. Filing Date. -- April 30, 2021.

1.4. Effective Date. -- July 1, 2021.

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2026.

§78-27-2. Definitions.

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

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

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

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

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

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

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

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

2.9. "Institutional Investigative Unit" (IIU) means the unit within the Bureau that investigates child abuse and neglect allegations by foster parents or individuals employed by a child-care facility (78 CSR 1); residential facility (78 CSR 3); family child-care facility (78 CSR 18); family child-care home (78 CSR 19); out of school time child-care center (78 CSR 21); a youth detention facility operated by the Department of Homeland Security, Division of Corrections and Rehabilitations, Bureau of Juvenile Services; or school personnel.

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

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

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

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

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

§78-27-3. Substantiation of abuse and neglect.

3.1. The Bureau may consider an allegation against a person of abuse or neglect of a child to have been substantiated for purposes of its records in either of the following two circumstances:

3.1.1. The allegation of abuse or neglect has been the subject of a petition under Chapter 49 of the W. Va. Code that resulted in an adjudication finding that the person committed one or more acts of abuse or neglect of a child, and that adjudication has not been reversed or vacated on appeal; or

3.1.2. The Bureau, as a result of its own investigation has determined that an allegation against a person of abuse or neglect of a child has been substantiated, whether or not there has been an adjudication under subdivision 3.1.1. of this rule: *Provided*, That when there has been no adjudication, sections four and five of this rule apply.

§78-27-4. Allegations of abuse or neglect substantiated on or before July 1, 2021.

4.1. Any person may write to the Bureau and inquire if the Bureau has included him or her in its records of persons against whom there has been a substantiated claim of abuse or neglect of a child. The person making the inquiry shall provide the Bureau with his or her full name, date of birth, address, and social security number.

4.2. Within 30 days of the request, the Bureau shall inform the person that (a) the Bureau has no record of any substantiated claim against the person of abuse or neglect of a child; or (b) the Bureau does

have a record of a substantiated allegation against the person of abuse or neglect of a child. If the substantiation is not based upon an adjudication described in subdivision 3.1.1. of this rule, the Bureau shall provide the notice required under section five of this rule, and all of the rights and obligations of the Bureau and the person apply as if the Bureau's substantiation had occurred after July 1, 2021.

§78-27-5. Notice requirements upon a maltreatment substantiation.

5.1. After July 1, 2021, if the Bureau determines that an allegation against a person of abuse or neglect of a child has been substantiated, the Bureau shall provide written notice to the maltreater of its determination.

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

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

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

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

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

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

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

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

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

5.4. The notice shall inform the maltreater that a finding of a substantiated abuse and neglect is recorded with the Bureau. The notice shall also inform the maltreater that the fact that a finding of a substantiated abuse and neglect is recorded with the Bureau may keep the maltreater from certain types of employment and may also prevent him or her from foster or kinship care of a child.

5.5. The notice shall be mailed to the maltreater, at his or her last known mailing address, by certified mail, return receipt requested within 15 days of the maltreatment substantiation.

§78-27-6. Procedure for filing a grievance.

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

6.1.1. Complete the hearing request form.

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

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

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

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

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

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

§78-27-7. Procedure for overturning a maltreatment substantiation.

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