

## **Title 78 Series 27**

Department of Human Services  
Bureau for Social Services  
Procedure to Contest the Substantiation of Child Abuse or Neglect

### **Summary of Amendments to the Rule:**

78CSR27 address the rules regarding the procedure to contest the DHHR Bureau for Social Services' substantiation of abuse and neglect. Amendments are proposed to the rule pursuant to the passage of SB 647 (2023).

### **Comment:**

It appears the intention of the proposed rule was to allow people who may have suffered from substance use disorder, or a mental health crisis, leading to substantiated reports of abuse/neglect to go through treatment and have their record cleared, as well as individuals who were essentially found "not guilty" through the court to have a clear record moving forward. Is that a correct reading?

### **Response:**

The Department has reviewed the comment. The amendment to the rule does not specify the intent but states when any allegation of abuse or neglect is substantiated and a judicial determination of child abuse or neglect is made, a person may petition the circuit court in which they were found to be an abusive or neglectful parent or guardian to have the bureau's record(s) of his or her abuse or neglect sealed after no less than five years have elapsed since the finding of abuse or neglect was made. When any allegation of abuse or neglect is substantiated by the bureau and a petition is filed with the circuit court, which does not result in a judicial determination that abuse and neglect occurred, the bureau must overturn its substantiation and consider the alleged abuse or neglect unsubstantiated. No changes were made to the rule in response to the comment.

### **Comment:**

By applying this metric of record sealing to all cases of abuse/neglect we fear the potential access that some individuals may now have to children. For example, child sexual abuse recidivism rates are higher than other forms of child abuse – within the reported cases, the recidivism rate in child sexual abuse cases actually go up over time. These cases are notoriously difficult to prosecute, as the victim/witness to the crime is a child and they often disclose at a later date leading to no forensic evidence. Often time, in interfamilial abuse, the offending individual may relinquish their rights to the child to avoid civil court and there may not be enough evidence to prosecute criminally. By our reading of the rule, the substantiated CPS records (found by a trained, licensed social worker), which in some cases may be the only safeguard for future children, could be sealed one year later because cases like this were not fully adjudicated in court -- is that correct?

### **Response:**

The Department has reviewed the comment and believes the responses above address this comment. No changes were made to the rule in response to the comment.



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**RE: Proposed Leg Rule 78-27**

1 message

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Olivia Hubbard <ohubbard@wvcan.org>

Wed, Jun 28, 2023 at 10:19 AM

To: "april.l.robertson@wv.gov" <april.l.robertson@wv.gov>

Good morning, Ms. Robertson!

I am writing on behalf of the West Virginia Child Advocacy Network in regard to proposed legislative rule 78-27: Procedure to Contest the Substantiation of Child Abuse or Neglect. The way we read the proposed rule, it appears that the intention was to allow people who may have suffered from substance use disorder, or a mental health crisis, leading to substantiated reports of abuse/neglect to go through treatment and have their records cleared, as well as individuals who were essentially found "not guilty" through the court to have a clear record moving forward. Is that a correct reading? If so, we believe that is a noble and appropriate goal which has our full support.

However, by applying this metric of record sealing to all cases of abuse/neglect we fear the potential access that some individuals may now have to children. For example, child sexual abuse recidivism rates are higher than other forms of child abuse -- within the reported cases (estimated to be less than a third of actual instances of child sexual abuse), the recidivism rate in child sexual abuse cases actually go up over time: 10-15% reoffend after five years, 20% after ten years, and 30-40% after twenty years. These cases are notoriously difficult to prosecute, as the victim/witness to the crime is a child and they often disclose at a later date leading to no forensic evidence. Often time, in interfamilial abuse, the offending individual may relinquish their rights to the child to avoid civil court and there may not be enough evidence to prosecute criminally. By our reading of this rule, the substantiated CPS records (found by a trained, licensed social worker), which in some cases may be the only safeguard for future children, could be sealed one year later because cases like this were not fully adjudicated in court -- is that correct?

While we appreciate the need for workforce, as well as the intention to allow for a "clean slate" when individuals have earned that right, we do not believe that this should come at the expense of children's safety.

Best,

Olivia

**Olivia Hubbard**

*Director of Advancement*

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