



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

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

AGENCY: Human Services TITLE-SERIES: 78-27
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: Procedure to Contest the Substantiation of Child Abuse or Neglect

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: 29A-5-1

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

49-4-601b

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 5/30/2023

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 6/29/2023

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This rule establishes the procedure to contest the Department's substantiation of abuse or neglect.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

Passage of SB647 (2023) requires changes to the rule.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

n/a

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

n/a

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

n/a

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2023 Increase/Decrease (use "-")	2024 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			0
Personal Services			0
Current Expenses			0
Repairs and Alterations			0
Assets			0
Other			0
2. Estimated Total Revenues			0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

n/a

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 SERVICES~~
BUREAU FOR SOCIAL SERVICES

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 Human Services~~, Bureau of ~~Children and Families~~ for Social Services' 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.* and §49-4-601b.

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

1.4. Effective Date. -- ~~July 1, 2024.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2029.

§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, or both, 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~~ for Social Services of the West Virginia Department of ~~Health and Human Resources Human Services~~.

2.4. "Child abuse and neglect" or "Child abuse or neglect" or "Child abuse and/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~~ Human Services.

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 (78CSR1); residential facility (78CSR3); family child-care facility (78CSR18); family child-care home (78CSR19); out of school time child-care center (78CSR21); 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~~ IIU worker to determine if a child has been abused or neglected, or both, 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, or both.

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 §49-4-601 et seq. 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 5 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; and

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 of 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/or neglect is recorded with the bureau. The notice shall also inform the maltreater that the fact that a finding of a substantiated abuse and/or 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; and

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 as deemed appropriate by the Department;

6.2.2. Complete the bureau's section of the hearing request form if the maltreatment substantiation is appropriate; and

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 69CSR1.

§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.

§78-27-8. Procedure for sealing records of maltreatment substantiation.

8.1. When any allegation of abuse or neglect is substantiated and a petition for abuse or neglect could be filed pursuant to W. Va. Code §49-4-601, et seq., and the bureau does not file a petition, all bureau records related to the allegation shall be sealed one year after the substantiation is made: *Provided, That the person who is the subject of the allegation does not have another substantiation of abuse or neglect against them during the one-year period following the initial substantiation.*

8.1.1. The provisions of subsection 8.1 of this rule do not apply to a person against whom an allegation is substantiated but the circumstances do not allow for the filing of a petition for abuse or neglect pursuant to W. Va. Code §49-4-601, et seq.

8.2. 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 or neglect occurred, the bureau must overturn its substantiation and consider the alleged abuse or neglect unsubstantiated. The bureau shall follow the same procedure for overturning a maltreatment substantiation listed in section 7 of this rule.

8.3. 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.

8.3.1 In its consideration of a petition filed under subsection 8.3. of this rule, a court may, in its discretion, look at all factors related to the petition including, but not limited to, efforts at rehabilitation and family reunification.

8.3.2. A petition to seal records under subsection 8.3. of this rule may not be filed if the person has been the subject of another, separate substantiated allegation of abuse or neglect during the five years between the initial finding of abuse or neglect and the filing of the petition.

8.4. If a person's records are sealed under subsections 8.1. or 8.3. of this rule, the records cannot be referred to by the department when conducting any background checks of the person pursuant to inquiries relating to potential employment.