



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Family Protection Services Board

RULE TYPE: Legislative

TITLE-SERIES: 191-02

RULE NAME: DOMESTIC VIOLENCE PROGRAM
LICENSURE STANDARDS

CITE AUTHORITY: 48-26-403

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

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 191
LEGISLATIVE RULE
FAMILY PROTECTION SERVICES BOARD

SERIES 2
DOMESTIC VIOLENCE PROGRAM LICENSURE STANDARDS

§191-2-1. General.

1.1. Scope -- This rule establishes general standards and procedures for the licensure of domestic violence programs as specified in W. Va. Code §48-26-401 and ~~the Code of State Rules, Title 191, Series 1 191CSR1. The West Virginia Code is available in public libraries and on the Legislature's web page at <http://www.legis.state.wv.us/>.~~

1.2. Authority -- W. Va. Code §48-26-403.

1.3. Filing Date -- ~~May 4, 2015.~~

1.4. Effective Date -- ~~May 4, 2015.~~

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

§191-2-2. Definitions

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

2.1. “Advocacy” means assisting victims and survivors of domestic and family violence, dating violence, sexual assault, stalking or human trafficking, and their children, in obtaining support and assistance 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 supportive services.

2.2. “Board” means the Family Protection Services Board created pursuant to Chapter 53 of the Acts of the Legislature of 1989 and subsequently recodified in §48-26-204.

2.3. “Certified Domestic Violence Advocate” means an advocate employed by a licensed domestic violence program who has been approved by the ~~Board of Directors of West Virginia Coalition Against Domestic Violence as meeting the eligibility standards outlined in the Coalition’s Domestic Violence Advocate Certification Project Program.~~

~~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. 2.4. “Crisis Intervention” means supportive intervention services provided by licensed domestic violence programs. The services include but are not limited to assisting victims of domestic and family violence, dating violence, sexual assault, stalking or human trafficking, and their children, in identifying~~

~~and assessing their situation and accessing resources for resolution. a helping process that focuses on the resolutions of the immediate crisis through the use of personal, social, and environmental resources.~~

~~2.6~~ 2.5. “Department” means the Department of ~~Health and Human Resources~~ Services.

~~2.7~~ 2.6. “Direct Services” means acts of assistance provided directly to victims and survivors including, but not limited to, emergency shelter, crisis intervention, 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.

~~2.8~~ 2.7. “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 component, to victims and 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.

2.8. “Extension Space Services” means non-residential services provided by a licensed domestic violence program. Extension space services include, but are not limited to, crisis intervention, safety planning, housing assistance, legal advocacy, 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.

~~2.9.~~ “~~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 section ten, article one, chapter fifty nine of this code, divorce surcharge fees pursuant to section twenty eight a, article one, chapter fifty nine of this code, fees for failure to present a premarital education course completion certificate pursuant to section ten, article one, chapter fifty nine of this code and any other funding source, including any source created in another section of this code, and distributed to licensed domestic violence programs, in accordance with the formula designated by the board.~~

~~2.10.~~ 2.9. “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.

~~2.11.~~ 2.10. “Safety Planning” means a process where victims and survivors of domestic ~~and family~~ violence, dating violence, sexual assault, stalking or human trafficking, and their children, are assisted in identifying specific actions that help them maximize their safety.

~~2.12.~~ 2.11. “Shelter” means ~~residential services offered~~ a physical shelter operated by a licensed domestic violence program on a temporary basis, to where persons who are victims and survivors of domestic violence, dating violence, sexual assault, stalking or human trafficking, and their children may temporarily reside.

§191-2-3. Licensing Standards for Domestic Violence Programs.

3.1. Domestic violence program requirements:

3.1.a. A domestic violence program shall have a mission statement that, ~~among other things,~~ acknowledges the existence of the program for the primary purpose of providing ~~advocacy~~ services, comprising both a shelter component and an ~~outreach~~ extension component, to victims and survivors of domestic violence, dating violence, sexual assault, stalking or human trafficking, and their children.

3.1.b. A domestic violence program shall have and enforce a written policy stating that victims and survivors have the right to make their own decisions, to retain the responsibility of their children, and to be free from violent behavior.

3.1.c. A domestic violence program's financial records shall be in compliance with accepted audit standards.

3.1.d. A domestic violence program shall maintain demographic and service records of individuals served.

~~3.1.e.~~ 3.1.e. A domestic violence program shall have and enforce a written policy that preserves the individual's right of confidentiality and complies with all federal and state privacy laws. The written policy shall also include the following:

~~3.1.e.1.~~ 3.1.e.1. ~~No~~ A licensed domestic violence program pursuant to this rule may not 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, except:

~~3.1.e.1.a.~~ 3.1.e.1.a. Upon a written ~~consent~~ release, or upon oral consent in emergency situations ~~defined by legislative rule~~, of the person seeking or who has sought services from the program;

~~3.1.e.1.b.~~ 3.1.e.1.b. In any proceeding brought under W. Va. Code §9-6-4, W. Va. Code §9-6-5 or sections four and five, article six, chapter nine of this code or article six, chapter forty nine of this code; W. Va. Code §49-2-801 et seq.;

~~3.1.e.1.c.~~ 3.1.e.1.c. As mandated by ~~article six a, chapter forty nine and article six, chapter nine of this code; W. Va. Code §49-2-810 et seq., and W. Va. Code §9-6-1 et seq.~~;

~~3.1.e.1.d.~~ 3.1.e.1.d. Pursuant to an order of any court based upon a finding that ~~said~~ the information is sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining the confidentiality established by this section; and

~~3.1.e.1.e.~~ 3.1.e.1.e. To protect against a clear and substantial danger of imminent injury by a person receiving services to himself or herself or another;

~~3.1.e.2.~~ 3.1.e.2. In addition to the provisions set forth in this section, the release of a victim's or survivor's personally identifying information is subject to the provisions of ~~42 U.S.C. § 13925(b)(2).~~ 34 U.S.C. § 12291(b)(2).

~~3.1.e.3.~~ 3.1.e.3. No ~~consent~~ release 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~~ a release shall be given a copy.

~~3.1.e.4.~~ 3.1.e.4. A victim or survivor of domestic violence, dating violence, sexual assault, or stalking shall not be required to provide consent to release ~~his, her, or their~~ 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.~~

~~3.1.d.~~ 3.1.f. A domestic violence program shall have and enforce a written policy that requires all cases of suspected child abuse, child sexual abuse, and child abandonment be reported according to the requirements of ~~W.Va. Code §49-6a-2.~~ W. Va. Code §49-2-803.

~~3.1.e.~~ 3.1.g. A domestic violence program shall have and enforce a written policy that requires reporting of suspected abuse and neglect of an incapacitated adult or facility resident to adult protective services according to ~~requirement~~ the requirements of W. Va. Code §9-6-11.

3.1.h. Information may be shared to assist a Fatality and Morality Review Team request made pursuant to W. Va. Code 61-12A-1, provided that:

3.1.h.1. The program participant is deceased;

3.1.h.2. All information disclosed to the Fatality and Mortality Review Team remains confidential pursuant to W. Va. Code 61-12A-4; and

3.1.h.3. The licensed program makes a reasonable effort to obtain a release from the victim's personal representative (if one has been appointed) and from the guardian of the victim's children (but not if the guardian is the abuser of the deceased parent).

~~3.1.f.~~ 3.1.i. Domestic violence program staff shall demonstrate knowledge of the Domestic Violence Act, W. Va. Code §§48-26 *et seq.* and provide that information to those individuals to whom it applies.

~~3.1.g.~~ 3.1.j. A domestic violence program shall, at a minimum, provide the following individualized services:

~~3.1.g.1.~~ 3.1.j.1. Case management;

~~3.1.g.21.~~ 3.1.j.2. Advocacy;

~~3.1.g.32.~~ 3.1.j.3. Crisis intervention;

~~3.1.g.43.~~ 3.1.j.4. Information and referral to other community resources;

~~3.1.g.54.~~ 3.1.j.5. Counseling, which may be provided within the program or arranged with other community agencies;

~~3.1.g.65.~~ 3.1.j.6. ~~24-hour hotline services~~ Hotline services available 24 hours a day;

~~3.1.g.76.~~ 3.1.j.7. Safety planning;

~~3.1.g.87.~~ 3.1.j.8. Temporary emergency shelter;

~~3.1.g.98.~~ 3.1.j.9. Community education, awareness and prevention activities; and

~~3.1.g.10.~~ 3.1.j.10. Sexual assault services unless they are already being provided by a local sexual assault program.

~~3.1.h.~~ 3.1.k. A domestic violence program shall ensure that all purchase of client service agreements are in writing. Those agreements shall contain all terms and conditions required to define the individuals to be served, the services to be provided, the procedures for payment and the payment amount.

~~3.1.i.~~ 3.1.l. A domestic violence program shall maintain appropriate ~~outreach~~ extension space in every county in their catchment area.

3.1.l.1. An extension space shall be available during established office hours, and accessible at other times by a toll-free telephone number.

3.1.l.2. An extension space shall be provided in a location in the county designated by the licensed domestic violence program that has suitable space and equipment for the provision of direct services to victims of domestic violence, dating violence, sexual assault, stalking or human trafficking, and their children.

3.1.l.3. Extension space services shall include, but not be limited to:

3.1.l.3.a. Case management;

3.1.l.3.b. Advocacy;

3.1.l.3.c. Community education, awareness and prevention activities;

3.1.l.3.d. Information and referral to other community resources;

3.1.l.3.e. Safety planning;

3.1.l.3.f. Crisis intervention;

3.1.l.3.g. Counseling, which may be provided within the program or arranged with other community agencies; and

3.1.l.3.h. Referral to shelter and housing services.

~~3.1.j. A domestic violence program shall carry fire and liability insurance covering any individuals in its residential facility. In addition, the program shall have insurance which covers liability to third parties or individuals in residence arising from the use of any vehicle, whether owned or not owned by the facility, used by any of the program's staff or agents on program business. --~~

~~3.1.k.~~ 3.1.m. A domestic violence program shall have a written policy of its referral process, admission policies, exit interview process, and follow-up procedures for clients.

~~3.1.l.~~ 3.1.n. A domestic violence program shall employ staff to cover the following areas: administration and supervision of the program; program direction to provide overall development; coordination of personnel and facilities; coordination of volunteer activities; direct ~~resident~~ services; case management; record keeping; and community education activities.

3.1.o. Prior to accepting a person as an employee or volunteer in the domestic violence program, the program shall conduct a criminal background records check.

~~3.1.m.~~ 3.1.p. A domestic violence program shall make available and display the telephone number of the Domestic Violence Services Complaint toll free number at all locations.

~~3.1.n.~~ 3.1.q. Domestic violence programs that own or lease buildings shall be in compliance with the American with Disabilities Act or make arrangements to accommodate individuals with special needs.

3.1.r. Domestic violence programs are not required to have a shelter component if they meet the qualifications and provide the enhanced services pursuant to 28 CFR Part 90 and 45 CFR Part 1370.

3.2. Board of Directors.

3.2.a. A domestic violence program shall be governed by a board of directors ~~which that~~ shall be responsible for and have authority over the policies and activities of the program, and ~~which that~~ is broadly representative of the community served.

3.2.b. The board of directors shall adopt written by-laws and policies that define the powers and duties of the governing body, its committees, the executive director(s), and the advisory group, where one exists. Copies of the articles of incorporation and the by-laws shall be maintained by the board of directors.

3.2.c. The board of directors shall be responsible for ensuring the program's continual compliance and conformity with: terms and conditions of all funding sources.

3.2.d. The board of directors ~~will~~ shall require the program director to submit a written programmatic and financial report at each board meeting.

3.2.e. Every member of the board of directors shall disclose in writing any financial transactions with the program involving the member or her or his immediate family. The board of directors ~~must~~ shall approve any contract or transaction of disclosure where financial interests of this nature have been made.

3.2.f. The board of directors shall designate an individual(s) to act as program director and shall delegate the necessary authority to ~~such that~~ that person(s) to manage the affairs of the program effectively.

3.2.g. The board of directors shall meet at a minimum on a quarterly basis and shall keep written minutes of all meetings, including attendance and whether or not a quorum was present.

3.2.h. The board of directors shall maintain a current listing of its members, including the name, the position, and the term of membership (if applicable) for each member.

3.2.i. The board of directors shall ensure that the domestic violence program is adequately funded and fiscally sound. To this end, the board of directors ~~shall be~~ is responsible for the following:

3.2.i.1. Assessing the adequacy of operating funds for at least ~~six~~ three months into the future, i.e., reserves, guarantee of loans or other funds and fees, and developing a fund-raising strategy when necessary;

3.2.i.2. Reviewing and approving the program's annual budget;

3.2.i.3. Providing for an annual audit, or financial review as required by state and federal grants, of all accounts by an independent certified public accountant who is neither an employee of the program nor a member of the board of directors;

3.2.i.4. Monitoring disbursement of all funds on at least a quarterly basis to assure that they are made in accordance with the program's objectives as specified by the board of directors;

3.2.i.5. Assuring that a program maintains liability insurance coverage for staff, volunteers, and members of the board of directors;

3.2.i.6. Assuring that the program requests and receives funding from public and multiple private sources; and

3.2.i.7. Assuring community support for the program, as demonstrated by material contributions and other in-kind or cash donations, or both.

3.2.j. A domestic violence program's board of directors shall adopt written personnel policies that:

3.2.j.1. Pertain to all paid or volunteer staff;

3.2.j.2. Specify actions that will be taken by the agency if personnel fails fail to comply with employee, contractor, or volunteer policies.

3.2.j.3. Include job descriptions and position qualifications for each position within the program;

3.2.j.4. Set forth, in written form, rules of conduct for personnel:

3.2.j.5. Require that individuals providing professional or therapeutic counseling, and/or professional social work, or both, have appropriate credentials and are licensed when applicable; and

3.2.j.6. Assure that at least one-third of its direct service providers are certified by the West Virginia Coalition Against Domestic Violence as Domestic Violence Advocates Advocate Certification Program;

3.2.j.7. Provide new staff with orientation and training; and

3.2.j.8. Assure that all direct service staff attend at least two domestic violence advocate certification trainings per year approved by the West Virginia Coalition Against Domestic Violence.

~~3.3. A domestic violence program shall maintain demographic and service records of individuals served.~~

§191-2-4. Additional Health and Safety Licensing Standards for Domestic Violence and Culturally Specific Shelters.

In addition to complying with the domestic violence program standards in sections 3 and 6 of this rule, domestic violence shelters shall comply with the following standards.

4.1. A shelter shall have written policies that prohibit the possession and use of weapons, except in the case of law enforcement officers who are on the premises acting in their official capacity, violence, and

~~alcohol or illegal drug or alcohol~~ use within the shelter. A copy of the policies shall be supplied to and signed by residents to acknowledge their agreement to adhere to the policies.

4.2. A shelter shall meet the applicable federal, state and local fire, health, and safety standards, including, but not limited to:

4.2.a. Smoke detectors on each floor, including in the sleeping area(s), the kitchen and the furnace areas;

4.2.b. A window or access to a fire escape from the sleeping areas;

4.2.c. At least one ~~(1)~~ fire extinguisher on each floor of the shelter and one located in the kitchen area;

4.2.d. Clear exits for escape in case of fire;

4.2.e. No lead paint;

4.2.f. Dead bolts used on shelter doors ~~which~~ that are not double-keyed; it must be possible to release dead bolts from the inside without a key to allow for escape in case of fire;

4.2.g. Separate storage, out of the reach of children, of flammable, poisonous and caustic materials located in the shelter;

4.2.h. Childproof covers in electrical outlets not in use;

4.2.i. Nutritional meals, food storage, cooking facilities, refrigeration, utensils, and equipment;

4.2.j. Dining areas ~~which~~ that are clean and well ventilated;

4.2.k. Bathing, lavatory, and toilet facilities available on the premises ~~which~~ that allow for individual privacy. These facilities ~~must~~ shall be maintained in good operating condition and must be cleaned on a regular basis;

4.2.l. Sleeping beds available for each resident; ~~Cribs~~ cribs or playpens shall be available for infants and toddlers;

4.2.m. ~~Centrally located secure storage with a double locking system for medications belonging to residents~~ Resources for each resident to store medications in a manner that is inaccessible to other residents;

4.2.n. Resident access to ~~telephones~~ electronic communication devices and internet; and

4.2.o. Securable external entrances or exits, including doors, windows, and skylights.

4.3. A shelter shall post in a conspicuous and accessible place current certificates indicating the ~~current~~ compliance with and that the facility is in compliance with ~~meets~~ all state and local fire and health requirements.

4.4. A shelter shall provide a clean and comfortable environment for residents. A shelter shall provide sufficient warmth during the cold months and ventilation during the warm months. Heaters and fireplaces

with open flames shall not be used. Doors and windows ~~which~~ that are open in warm weather shall have insect screening in good repair, with safety latches.

4.5. A shelter shall have supplies for personal hygiene available for all residents.

4.6. A shelter shall provide a safe play space for children. Any playground equipment shall be located, installed, and maintained in a safe manner.

4.7. A shelter shall provide a space that is distinct from the living area to serve as an administrative office and a private counseling office.

4.8. A shelter shall ensure that all structures and grounds of the facility are maintained in good repair and are reasonably free from foreseeable danger to health and safety.

4.9. A shelter shall provide non-combustible covered containers when garbage and rubbish is stored outside. Garbage shall be removed at least weekly.

4.10. A shelter shall have a written policy for obtaining alternative lodging, including hotels, to house victims of domestic violence and their children or survivors when the residential facility is not appropriate or available, filled to capacity, or to meet individualized needs, ~~is unable to accommodate special needs populations;~~

4.11. A shelter shall be staffed 24-hours per day by a trained staff person or trained volunteer when a resident is in the facility.

4.12. A domestic violence program shall carry fire and liability insurance covering any individuals in its residential facility. In addition, the program shall have insurance that covers liability to third parties or individuals in residence arising from the use of any vehicle, whether owned by the facility, or used by any of the program's staff or agents on program business.

4.13. Residence in a shelter does not create a landlord/tenant relationship. The domestic violence program shall develop a policy for exiting residents and for providing follow up services for those who exit.

~~§191 2 5. Licensing Standards for Domestic Violence Outreach Extension Offices.~~

~~A domestic violence program must comply with the following standards for outreach extension offices.~~

~~5.1. Outreach services shall be available during established office hours, and accessible at other times by a toll free telephone number.~~

~~5.2. Outreach services office shall be provided in a location in the county designated by the licensed domestic violence program that has suitable space and equipment for the provision of direct services to victims of domestic and family violence, dating violence, sexual assault, stalking or human trafficking, and their children.~~

~~5.3. Outreach services shall maintain demographic and service records of individuals served.~~

~~5.4. Outreach services financial records shall be kept by the licensed domestic violence program and in compliance with accepted audit standards.~~

~~5.5. Outreach services shall include, but not be limited to:~~

~~5.5.a. Advocacy;~~

~~5.5.b. Community education, awareness and prevention activities;~~

~~5.5.c. Information and referral to other community resources;~~

~~5.5.d. Safety planning;~~

~~5.5.e. Crisis intervention;~~

~~5.5.f. Sexual assault services unless already being provided by a local sexual assault program;~~

~~5.5.f. Counseling, which may be provided within the program or arranged with other community agencies;~~

~~5.5.g. 24 hour services; and~~

~~5.5.i. Case management.~~

~~5.6. Extension services shall be supported by the community, as demonstrated by one or more of the following: donated goods; donated space; in-kind donations; cash; volunteers; etc.~~

~~5.7. In cases where the licensed domestic violence program contracts with another organization to provide outreach services, that organization shall maintain its own financial records and comply with all preceding standards except those contained in subsection 4 of this section.~~

~~§191-2-6.~~ §191-2-5. Funding of Domestic Violence Programs.

~~6.1.~~ 5.1. Annually licensed domestic violence programs will submit an application for funding to ~~DHHR~~ the Department using the most recent application form.

~~6.2.~~ 5.2. The following agencies and practitioners shall not be funded by the Family Protection Fund:

~~6.2.a.~~ 5.2.a. Agencies ~~which~~ that provide counseling, therapy, and other social services to victims of domestic ~~and family~~ violence, dating violence, sexual assault, stalking or human trafficking, and their children, but were not created or organized for the expressed purpose of serving such domestic violence, dating violence, sexual assault, stalking or human trafficking victims; and

~~6.2.b.~~ 5.2.b. Agencies ~~which~~ that were created or organized for the expressed purpose of providing services to homeless individuals and families; and

~~6.2.c.~~ 5.2.c. Private practitioners who are providing services to victims of domestic and family violence, dating violence, sexual assault, stalking or human trafficking and their children.