

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Form #5

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Family Protection Services Board TITLE NUMBER: 191

CITE AUTHORITY: 48-2C-4(d), 48-2C-13

RULE TYPE: PROCEDURAL INTERPRETIVE

EXEMPT LEGISLATIVE RULE

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

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
Services Board

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS August 10, 2000

Dorcia Thomas

Authorized Signature

Circumstances Which Require This Rule

§48-2C-4 of the West Virginia Code establishes the Family Protection Services Board and the duties of the Board. This rule addresses the operating procedures of the board.

**Summary of Proposed Revisions
To
Procedural Rule Title 191, Series 1
Operation of the Family Violence Protection Services Board**

The proposed revisions to this rule will add uniformity of Board procedures that overlap with Title 191, Series 2 "Licensure of Domestic Violence and Perpetrator Intervention Programs".

TITLE 191
LEGISLATIVE RULE
FAMILY PROTECTION SERVICES BOARD

SERIES 1
OPERATION OF THE FAMILY PROTECTION SERVICES BOARD

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SECRETARY OF STATE

§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 §§48-2C-4(d), 48-2C-13.

1.3. Filing Date

1.4. Effective Date

~~1.5. Repeal of former rule — This procedural rule repeals and replaces Title 191 Series 1 "Operation of the Family Protection Services Board and Licensure and Funding of Domestic Violence Programs" filed June 25, 1997 and effective July 15, 1997.~~

§191-1-2. Purposes of the Board

2.1. The purposes of the Board are to provide ongoing administration and allocation of the West Virginia Family Protection Funds; to establish and enforce a system of standards for the annual licensure of domestic violence programs and perpetrator intervention programs; to research and study issues pertinent to programs for victims of domestic violence and report the results to the Governor and the Legislature.

2.2. The Board will operate according to the following:

2.2.a. The Board will meet at least three times each calendar year in the first, second and last quarters. The exact dates, locations and subjects of regular meetings will be established with sufficient lead time for public announcement of meetings. Special and emergency meetings may be called at the discretion of the chair as frequently as necessary to assure the integrity of the Board's funding and licensure responsibilities. Emergency meetings may be called at the discretion of the chair when circumstances arise regarding licensure or the funding of a domestic violence program.

2.2.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, suspension or revocation of a license and Board personnel. This exception will be effective only with a consensus of the Board members present. An open meeting regarding the issuance, denial, suspension or revocation of a license may be held at the request of the agency whose license is in question. If an emergency session is necessary, the Board shall file a notice any time prior to the meeting. Such notice shall state the time, place and purpose of the meeting and the facts and circumstances of the emergency.

2.2.c. Meetings may be held with a quorum of three Board members present.

2.2.d. Officers will include a chair, a vice-chair, and a secretary/treasurer who will be selected on an annual basis. The selection process will be held during the second quarter meeting. 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.

2.2.e. Only the chair or the vice-chair may conduct meetings of the Board.

2.2.f. The chair will have the following responsibilities and duties. (1) call and conduct all meetings; (2) plan agendas for meetings; (3) speak as the official voice of the Board with media, the W. Va. Legislature, the West Virginia Coalition Against Domestic Violence, the programs licensed and funded by the Board, the Attorney General's Office, the general public, and with all organizations inquiring about licensure and funding; and (4) supervise the duties of the staff of the Board.

2.2.g. The vice-chair will assume any or all of the responsibilities and duties of the chair in the chair's absence.

2.2.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 five percent (5%) of funds allowed by law for the cost of administering provisions of § 48-2C-4(l).

2.2.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 ex-officio members of the Board who serve by

virtue of their positions shall request reimbursement for expenses through their employing agency or appointing committee.

2.2.j. The Board shall advise the Secretary of the Department of Human Services on matters of concern relative to his or her responsibilities under West Virginia Code §48-2C-1 et seq. and the Board shall delegate to the commissioner 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.

§191-1-3. Definitions

3.1. "Board" means the Family Protection Services Board created pursuant to West Virginia Code §48-2C-3.

3.2. "Secretary" means the Secretary of the Department of Health and Human Services Resources, ~~or any successor agency however so named.~~

3.3. "Department" means the Department of Health and Human Services Resources or any successor agency however so named.

3.4. "Family Protection Program" means a licensed domestic or family violence program offered by a locally controlled non-profit organization created primarily for the purpose of providing services, ~~including residential shelters,~~ to victims of domestic violence or abuse and their children.

3.5. "Shelter" means a locally controlled non-profit organization facility ~~that was created primarily for the purpose of receiving, to provide residential services,~~ on a temporary basis, ~~to persons who are victims of domestic violence, abuse or rape as well as the children of such victims~~ and for providing comprehensive services to such persons.

3.6. "Perpetrator Intervention Program" means a licensed perpetrator ~~intervention domestic violence~~ program that accepts perpetrators of domestic violence or family violence into educational intervention groups.

§191-1-4. Board Reports

4.1. The Board shall study issues pertinent to family protection programs for domestic violence victims and prepare an annual report the governor and the Legislature within the first 20 days of the Legislative session regarding those issues.

§191-1-5. Licensure

5.1. Standards - The family protection services Board shall enforce a system of standards for the annual licensure for all family protection programs and perpetrator intervention programs in the state.

~~5.2. Exceptions To Standards - These standards shall not apply to the following agencies and practitioners which shall not be funded by the Board:~~

~~5.2.a. Agencies which provide counseling, therapy and other social services to victims of domestic violence, but were not created or organized for the expressed purpose of serving domestic violence victims.~~

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

~~5.2.c. Local private practitioners who are providing services to victims of domestic violence within the scope of their professional license or by other professions including but not limited to: 1) Social Workers certified under the West Virginia Social Work Licensure Law or by the National Academy of Social Workers; 2) marriage counselors or family therapists certified by the American Association for Marriage and Family Therapy; or 3) addiction counselors certified by the West Virginia Association of Alcohol and Drug Abuse Counselors, or 4) physicians and other health care practitioners.~~

5.3. Application for Licensure

5.3.a. ~~In order to provide services to victims and perpetrators, All family protection programs and perpetrator intervention programs must be licensed by the Family Protection Services Board in order to provide services to victims and/or perpetrators.~~

5.3.b. The Board will provide a standard application form for licensure to family protection programs and perpetrator intervention programs upon request. An organization must complete an application for licensure when it initially requests licensure or when it wishes to reopen after closure. After initial licensure, family protection programs and perpetrator intervention programs will be evaluated by the Board on an annual basis.

5.3.c. The Board shall receive and consider all applications submitted for the development and licensure of a family protection program and/or a perpetrator intervention program. The Board shall consider all such applications in light of the

need for services, the viability of the applicant to successfully operate a family protection program or a perpetrator intervention program, the applicant's ability to obtain adequate funding for the delivery of services, capacity of the program to comply with the standards, and the applicant's interest and ability to provide quality services.

5.3.d. If the Board finds that an application contains deficiencies, the application and a list of deficiencies will be returned to the applicant and the applicant will have 30 days to resubmit a revised application.

5.3.e. On an annual basis, the Board shall renew the licenses of all family protection programs and perpetrator intervention programs that are in compliance with the licensing standards pursuant to Title 191, Series 2, and Sections 4,5,6 and 7. Forms for license renewal shall be distributed by the Board to family protection programs and perpetrator intervention programs in a timely manner no later than the first day of March each year. Family protection programs and perpetrator intervention programs shall submit renewal applications to the Board no later than the fifteenth day of April each year. All licenses will have a term of one year commencing on the first day of July and terminating on the thirtieth day of June on the next year. The Board shall grant or deny any license application within forty-five (45) days of the receipt of an application. The Board shall require all licensed family protection programs and perpetrator intervention programs to conspicuously display the license.

5.3.f. Any organization operating without a license as a family protection program or a perpetrator intervention program shall be notified by the Board, by certified letter, of its right need to apply for licensure. The Board may ~~retain the right to petition the circuit court for an order preventing that would prevent the operation of an organization which refuses to obtain a license apply for licensure as specified required~~ under this rule and ~~article 2-C of chapter 48 of the W. Va. Code. West Virginia Code §48-2C-1 et seq.~~

5.4. Evaluation for Licensure

5.4.a. The Board shall annually evaluate all family protection programs and perpetrator intervention programs operating in the state. The evaluation and peer review will be conducted using the licensing standards found in Title 191, Series 2, and Sections 4,5,6 and 7. The evaluation system requires that all family protection programs and perpetrator intervention programs complete a self-review utilizing the standards compliance checklist on an annual basis in preparation for the on-site review.

5.4.b. The Board shall ~~conduct a process~~ annually to assure an on-site review of ~~all family protection programs and perpetrator intervention programs. The on-site review will monitor program compliance with the standards found in Title 191, Series 2, and Sections 4,5,6 and 7.~~ the established standards in Title 191, Series

Sections 4,5,6, and 7. The standards compliance review will be completed utilizing the most current revision of the standards' checklist authorized by the Board. The annual peer review will be scheduled in a timely manner by the Board in order to allow the Board to consider the results prior to the expiration of the previous year's license.

5.4.c. ~~The peer reviewer shall report~~ Any areas of non-compliance shall be reported on the licensing checklist by the reviewer on the licensing checklist. 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 family protection program or perpetrator intervention program and staff employed by the program.

5.5. Award of License

5.5.a. The Board shall award a license annually to any organization which has applied for a license and been approved by the Board as having complied with all established standards as stated in ~~Title 191, Series 2, Sections 4,5,6 and 7~~ this rule. Compliance with the standards will be evaluated ~~either by use of the standards by~~ peer reviewers, by Board members, by Board staff, or a combination of these parties as determined by the Board.

5.6. Waiver of Licensure

5.6.a. The Board may grant a provisional license or grant a waiver of licensure if the Board deems a waiver or provisional license is necessary for the good of victims or perpetrators who will be served by the family protection program or perpetrator intervention program in question. All such waivers or provisional licenses shall be reviewed semi-annually.

5.7. ~~Improvement Period.~~ Provisional License.

~~5.7.a. The Board may also allow a family protection program or a perpetrator intervention program a period of improvement after the notice of the Board's intent to revoke or suspend the license. Within ten days of receiving notice, the family protection program or perpetrator intervention program must submit a written plan of action that will bring the family protection program or perpetrator intervention program into compliance with the standards within 30 days. The Board shall provide funds to a family protection program which is operating under a period of improvement. Four members of the Board must vote in the affirmative in order to re-license a family protection program or a perpetrator intervention program to allow for a period of improvement.~~

5.7.a. Upon a finding by the Board that a family protection program or a perpetrator intervention program is not in compliance with this rule, the Board shall give

the family protection program or the perpetrator intervention program written notice that shall include but not be limited to the following:

5.7.a.1. Program deficiencies.

5.7.a.2. A requirement for a program to submit a plan of correction regarding the deficiencies.

5.7.a.3. Modification of the plan within 20 days to the Board should the original plan not address the identified deficiencies.

5.7.a.4. Requirement that compliance occur within a time period set by the Board.

5.7.a.5. Verification of the issuance of a provisional license until compliance is achieved or until the Board takes action deemed necessary for the safety of the clients.

5.8. Revocation or Suspension of License.

5.8.a. The Board may close any family protection or perpetrator intervention program that which violates the standards licensing requirements established in Title 191, Series 2, Sections 4,5,6 and 7, subject to the requirements in this rule regarding public hearings. Four members of the Board must vote in the affirmative before a license is revoked or suspended.

~~5.8.a.1. In an instance Where there is an immediate threat to the health, well-being and safety of shelter residents, or an unplanned closure by the family protection or perpetrator intervention program's governing Board of directors, the family protection services Board shall place the residents and/or participants in other family protection programs or perpetrator intervention programs, shelters, or some other appropriate safe and secure place. Four members of the Board must vote in the affirmative before a license is revoked or suspended.~~

5.8.a.2. The Board shall send written notice of the revocation or suspension to the family protection or perpetrator intervention program's governing Board of directors. The notice will be mailed by certified mail to the program's president of the governing Board of directors. The notice shall include the program violations. The family protection or perpetrator intervention program's Board of directors will have 30 days to respond to the violations. This response must be in writing. If there is no written response, the family protection services Board will proceed with the revocation or suspension of the family protection or perpetrator

intervention program's license. The Board will not provide funds to a family protection program whose license has been revoked or suspended.

5.8.a.3. If the family protection services Board is provided with a response to the violations, a public hearing will be held within 60 days in the confines of the municipality or county in which the program is located.

5.8.b. Receivership of Program. The Board may place a family protection program or a perpetrator intervention program under receivership when the health, well being and safety of its clients are threatened. The Board shall oversee the operation of the said program to preserve the services for clients. The Board shall have access to and may use all assets of the program. Notice of the Board's intent to place a family protection program or a perpetrator intervention into receivership shall be made by certified mail or in person by a member of the Board to the governing body of the family protection program or perpetrator intervention program.

5.8.c. The Board shall provide for and hold a public hearing prior to the closure of a program through the revocation or suspension of the license or placing a program into receivership.

5.5.d. Notice of the hearing shall be given to the Secretary of State in compliance with W. Va. Code §6-9A et seq. Local public notice shall also be given through a local newspaper's legal notice section at least ten days prior to the hearing date. The hearing will be held in accordance with §29A-5-4 et seq.

6. Funding of Family Protection Programs

6.1. Amount Awarded - The Board shall award to programs, for each state fiscal year, ninety-five percent (95%) of the total funds collected and paid over during the fiscal year to the special revenue account established pursuant to West Virginia Code § 48-1-24. Any administrative funds not expended the previous year shall be carried over and allocated to programs the following fiscal year.

6.2. Application for Funds - The Board shall accept applications for grant funds from any licensed family protection program. The application shall include, but not be limited to the following:

6.2.a. A copy of the Articles of Incorporation Certificate and a copy of the 501(c)(3) Internal Revenue Service Determination Letter.

6.2.b. A list of the incorporators of the corporation and a list of the officers and the Board of directors.

6.2.c. The proposed budget of the family protection program for the following fiscal year.

6.2.d. A summary of the services proposed to be offered in the following fiscal year by the family protection program.

6.2.e. An evaluation of the local need for a family protection program.

6.2.f. An estimate of the number of people to be served by the family protection program during the following fiscal year; and

6.2.g. Any other information the Board may feel is necessary.

6.3. Criteria - In order for a family protection program to qualify to receive grant funds from the Board, it must meet the following criteria:

6.3.a. Be incorporated in the state of West Virginia as a nonprofit corporation.

6.3.b. Have a Board of directors which represents a broad spectrum of the community to be served, including at least one person who is or has been a victim of domestic violence or abuse.

6.3.c. Receive at least fifty-five (55) percent of its funds from sources other than funds distributed under this rule. These sources may be public or private and may include contributions of goods or services.

6.3.d. Require persons employed by or volunteering services to the program to maintain the confidentiality of any information, which may identify individuals served by it.

6.3.e. Provide or propose to provide a facility which will serve as a temporary shelter to receive, care and provide services for persons who are victims of domestic violence or abuse and their children.

6.4. Program Restrictions.

6.4.a. The Board shall not fund a family protection program if it is shown to discriminate in its services on the basis of race, religion, age, sex, marital status, national origin or ancestry. If such discrimination occurs after initial funding, the program will not be refunded until the discrimination ceases.

6.4.b. The Board shall not refund a family protection program or ~~perpetrator-intervention program~~ if services were not provided in the first two months

following the initial disbursement of funds by the Board. Provided that upon a subsequent showing that the funds were used in the manner proposed in the original application, the program is not barred from subsequent funding. A revision of the original application may be filed with the Board when the program starts providing services.

6.5. Grant Award Criterion - The Board shall make grant awards on the basis of the following criteria. The Board must grant or deny an application within forty-five days of the receipt of the application.

6.5.a. Demonstration of local need for proposed services.

6.5.b. Proposed goals and objectives.

6.5.c. Demonstration of local control of the program.

6.5.d. Administrative design and efficiency of the project.

6.5.e. Merit of the project as proposed to include at minimum: adequate funding to support the program, geographic area(s) to be served, record of effective services and coordination with other programs.

6.6. Distribution of Funds - The Board shall deliver funds to each family protection program within forty-five (45) days of the approval of a grant application. Within any fiscal year the Board shall distribute fifty percent (50%) of the grant funds in equal portions to all licensed programs within the forty-five (45) day limit. The Board shall also develop a formula for a second distribution of the remaining fifty percent (50%) of the funds it awards. Distribution of the second half of the funds shall occur by the fifteenth day of January of each fiscal year. The amount awarded to each family protection program shall be based on an effort to distribute funds in a fair and equitable manner, by acknowledging the size and associated costs of the family protection programs, rewarding programs for active and successful grant writing and fund raising work, and by implementing West Virginia Code §§48-2C-7 and 8. To determine the individual program award amounts of the second-half of the grant funds, the Board shall award funds according to a formula determined periodically by the Board ~~which takes into account a combination of various factors~~ which may include but not limited to: populations, the number of shelter beds, shelter nights, persons served, diversification of funding and operational budgets. The Board shall identify and provide funding formula factors to family protection programs on or before January 15 each year. The Board shall require and review monthly financial reports from each program to assure the proper expenditure of grant funds.

6.7. Funding shall not apply to the following agencies and practitioners which shall not be funded by the Board:

6.7.a. Agencies which provide counseling, therapy and other social services to victims of domestic violence, but were not created or organized for the expressed purpose of serving such domestic violence victims.

6.7.b. Agencies which were created or organized for the expressed purpose of providing services to homeless individuals and families.

6.7.c. Local private practitioners who are providing services to victims of domestic violence within the scope of their professional license or by other professions including but not limited to: 1) Social Workers certified under the West Virginia Social Work Licensure Law or by the National Academy of Social Workers; 2) marriage counselors or family therapists certified by the American Association of Marriage and Family Therapy; 3) addiction counselors certified by the West Virginia Association of Alcohol and Drug Abuse Counselors, or 4) physicians and other health care practitioners.

Comment Response

Comments received from Sue Julian, WV Coalition Against Domestic Violence

2.1. and 4.1.

Comment: Does the Board "research and study issues pertinent to programs for victims of domestic violence?"

Action: No amendments made in response to this comment.

Reason: According to the WV Code, this is a function of the Board. With the hiring of Board staff, this function will be carried out.

2.2.a.

Comment: The Board should meet at least quarterly.

Action: No amendments made in response to this comment.

Reason: Due to increased responsibilities, the Board meets on the average eight times during the year. However, future responsibilities may be less, which will require that the Board meet at least three times per year.

2.2.h.

Comment: Include contracted staff.

Action: Amended 2.2.h. to include contracted staff.

Reason: This amendment will broaden the hiring options for the Board.

2.2.i.

Comment: What are the Board's expenses?

Action: No amendments made in response to this comment.

Reason: Board member expenses include: mileage, lodging and meals.

5.3.c.

Comment: Include the wording "capacity of the program to comply with standards".

Action: Amended the rule to include "capacity of the program to comply with standards".

Reason: The above wording will assist the Board in making licensing decisions.

6.7.d.

Comment: Include perpetrator intervention programs in the funding section.

Action: No amendments made in response to this comment.

Reason: Perpetrator intervention programs do not receive state funding.