

WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION

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SECRETARY OF STATE
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Form #6

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

AGENCY: Family Protection Services Board TITLE NUMBER: 191

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 HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 329 2014

SECTION 264-9-5(a), PASSED ON 03-08-03 6/13/03

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: 04-01-03 Aug. 11, 2003

Judy Lawenson
Authorized Signature

**TITLE 191
LEGISLATIVE RULE
FAMILY PROTECTION SERVICES BOARD**

FILED

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**SERIES 1
OPERATION OF THE FAMILY PROTECTION SERVICES BOARD**

OFFICE WEST VIRGINIA
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 §48-26-401(4), 48-26-404, 48-26-1003(a).

1.3. Filing Date

1.4. Effective Date

§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 establish and enforce a system of standards for the annual certification monitored parenting and exchange centers; 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 §48-26-401(12).

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 §48-26-101 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 – For purposes of these rules, the following definitions shall apply:

3.1. "Board" means the Family Protection Services Board created pursuant to West Virginia Code §48-26-301.

3.2. "Custodial parent" means a biological parent, adoptive parent, legal guardian, state agency and its representatives who has temporary or permanent legal custody of a child.

3.3 "Custodial responsibility" refers to physical custodianship and supervision of a child. It may include residential or overnight responsibility.

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

3.5. "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 and outreach services, to victims of domestic violence or abuse and their children.

3.6 "Monitored exchange" means the supervision of movement of a child from the custodial to the noncustodial parent at the start of the visit and back to the custodial parent at the end of the visit. This type of monitored contact is for those cases in which contact causes conflict between the adults but the contact between the parent and child could be expected to proceed without incident.

3.7 "Monitored parenting" means the contact between a non-custodial parent and one or more children in the presence of a third person responsible for observing and ensuring the safety of those involved.

3.8 "Noncustodial parent" means a biological parent or other adult authorized by a court to have supervised contact with a child

3.9 "Outreach Service" means a service formally associated with a licensed family protection program and established for the purposes of providing direct services, community education and prevention activities, information, referral, safety planning and crisis counseling to victims of domestic violence.

3.10. "Participant" means the custodial parent, the noncustodial parent, or the child receiving monitored contact.

3.11 "Partner Agencies" means state and community organizations whose mission and purpose require their response to the needs of victims of domestic violence and their children.

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

3.13 "Secretary" means the Secretary of the Department of Health and Human Resources.

3.14 "Shelter" means a locally controlled non-profit organization created primarily for the

purpose of receiving, on a temporary basis, individuals who are victims of domestic violence, abuse or rape and their children and for providing services to these individuals as specified in Series 2 of the Board's rules.

3.15 "Supervised visitation" means the provision of therapeutic evaluation and/or intervention to help improve the parent-child interactions. Supervised visitation may only be provided by order of a court and only by trained certified or licensed mental health professionals or social workers.

§191-1-4. Board Reports

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 of Family Protection Programs, Perpetrator Intervention Programs, and Shelters

All family protection, perpetrator intervention programs and shelters must be licensed by the Board in order to provide services to victims and/or perpetrators. The Board shall enforce standards and a process for the annual licensure for all family protection and perpetrator intervention programs and shelters in the state.

5.1. License Application

5.1.a. The Board shall provide a standard license application to any organization that wishes to establish a family protection or perpetrator intervention programs and/or shelter upon request. The organization must complete an application when it initially requests licensure or when it wishes to reopen after closure. After initial licensure, family protection and perpetrator intervention programs and shelters shall be evaluated by the Board on an annual basis, and an on-site review will be conducted every two years.

5.1.b. The Board shall consider all applications submitted for licensure in light of the need for services, the ability of the applicant to successfully operate a family protection, perpetrator intervention program, or a shelter, the applicant's ability to obtain adequate funding for the delivery of services, the capacity of the program to comply with the Board's standards, and the applicant's interest and ability to provide quality services.

5.1.c. 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 thirty (30) days to resubmit a revised application.

5.1.d. The Board shall renew, on an annual basis, the licenses of all family protection and perpetrator intervention programs and shelters that are in compliance with this rule and with Series 2 or 3 of the Board's rules. Forms for license renewal shall be distributed by the Board to

licensed family protection, and perpetrator intervention programs, and shelters in a timely manner no later than the fifteenth day of March each year.

5.1.e. The Board shall, by certified letter, notify any organization operating without a license as a family protection, perpetrator intervention program or a shelter of its right to apply for licensure. The Board shall petition the circuit court for an order preventing the operation of any organization which refuses to obtain a license as required under this rule and West Virginia Code §48-26-101 et seq.

5.2. Issuance of A License

5.2.a. The Board shall issue a license to any organization which has applied for a license and been approved by the Board as having complied with all established standards set forth in this rule and in Series 2 or 3 of the Board's rules. Compliance with the standards shall be evaluated by peer reviewers, by Board members, by Board staff, or by any a combination thereof as determined by the Board.

5.2.b. All licenses shall be valid for one (1) year commencing on the first day of July and terminating on the thirtieth day of June of the next year. The Board shall grant or deny license within forty-five (45) days of receiving the license application. Every licensed family protection, perpetrator intervention program and shelter shall conspicuously display the license.

5.3. Evaluation for Licensure

5.3.a. The Board shall annually evaluate all family protection, perpetrator intervention programs, and shelters operating in the state and will review all programs and shelters on-site a minimum of once every two years. The evaluation will be conducted using the licensing standards found in Series 2 and 3 of the Board's rules.

5.3.b. The Board shall annually assure an on-site review of the established standards found in this rule for at least one-half of all licensed programs. Review of the remaining programs shall be determined by the Board. The standards compliance review will be completed utilizing the most current revision of the standards' checklist authorized by the Board. The annual evaluation will be scheduled in a timely manner by the Board to allow the Board to consider the results prior to the expiration of the current year's license.

5.3.c. Any areas of non-compliance shall be reported on the licensing checklist by the person(s) authorized by the Board to conduct the review. 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, perpetrator intervention program or shelter and staff employed by the program or shelter.

5.3.d. The Board may contact the program's or shelter's partner agencies to determine program effectiveness in relationship to community needs.

5.4. Waiver of Licensure.

The Board may grant a waiver of licensure if the Board finds it necessary for the good of victims or perpetrators who would be served by the family protection, perpetrator intervention program or shelter in question. The Board shall review all waivers semi-annually.

5.5. Issuance of a Provisional License.

5.5.a The Board may grant provisional licensure if the Board finds it necessary for the good of participants who will be served by the family protection, perpetrator intervention program, or shelter in question. All provisional certifications shall be reviewed semi-annually.

5.5.b. Upon a finding by the Board that a family protection, perpetrator intervention program, or shelter is not in compliance with this rule, the Board may issue a provisional license and shall give the family protection, perpetrator intervention program or shelter written notice of deficiency that shall include, but not be limited to the following:

5.5.b.1. A statement of program deficiencies.

5.5.b.2. A requirement to submit a plan of correction regarding the deficiencies.

5.5.b.3. A timeline for the Board's review of the plan of correction.

5.5.b.4. A requirement that the plan be modified and resubmitted to the Board within twenty (20) days to the Board should the original plan not address the identified deficiencies.

5.5.b.5. A requirement that compliance occur within a time period set by the Board.

5.5.b.6. 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.

5.6. Revocation or Suspension of a License.

The Board may suspend or revoke a license and, in connection therewith close any family protection, perpetrator intervention program or shelter that violates the standards established under Series 2 and 3 of the Board's rules, subject to the requirements in this rule regarding public hearings under subdivision d of this subsection.

5.6.a. Four members of the Board must vote in the affirmative before a license may be revoked or suspended.

5.6.b. When there is an immediate threat to the health, well-being and safety of

shelter residents, or an unplanned closure by the family protection program's or shelter's governing board, the Board shall place the residents and/or participants in other family protection programs or shelters, or some other appropriate safe and secure place.

5.6.c. The Board shall send written notice of the license revocation or suspension by certified mail to the president of the family protection, perpetrator intervention program's or shelter's governing board. The notice shall include a statement of the program's or shelter's alleged violations of this rule. The program's or shelter's board of directors will have fifteen (15) days after receipt of the notice, to respond to the allegations. This response shall be in writing. If there is no written response, the Board will proceed with the revocation or suspension of the program's or shelter's license. The Board will not provide funds to a family protection, perpetrator intervention program or shelter whose license has been revoked or suspended.

5.6.d. If the Board is provided with a response to the violations, a public hearing will be held within thirty (30) days in the municipality or county in which the program is located.

5.7. Receivership of Program.

The Board may place a family protection, perpetrator intervention program or shelter under receivership when the health, well being and/or safety of its clients are threatened. The Board shall oversee the operation of the program to preserve the services for clients. The Board shall have access to and may use all assets of the program. After placing a family protection, perpetrator intervention program or shelter into receivership and prior to the closing of a program, the Board shall send written notice of the intent to place a family protection program into receivership by certified mail to the president of the family protection, perpetrator intervention program's or shelter's board of directors.

5.7.a. The Board shall provide for and hold a public hearing in the municipality or county in which the program is located prior to the closure of a program by a program into receivership, subject to the requirements of section 5.6.d of this rule.

5.7.b. The Board shall provide the governing body and/or legal counsel of the program or shelter notice of hearing time, date and location at least ten (10) days prior to the hearing date. The Board shall also provide notice of the hearing to the Secretary of State in compliance with West Virginia Code §6-9A et seq. The Board shall provide notice of the hearing through a local newspaper's legal notice section at least ten (10) days prior to the hearing date. The hearing will be held in accordance with West Virginia Code §29A-5 et seq.

5.7.c. The Board chair shall conduct the hearing, and s/he shall have full authority to call recesses, to remove individuals exhibiting inappropriate behavior from the hearing, and to call for an executive session of the Board, if necessary, in accordance with the provisions of W.Va. Code 6-9A-1 et seq. Four (4) members must be present to hear the violations and the program's response.

§ 191-1-6. Certification of Monitored Parenting and Exchange Programs.

6.1. The Board shall oversee a process for the certification of all monitored parenting and exchange programs in the state. The purpose of certification is to assure the safety and welfare of the children, adults and program staff during supervised contact. Once safety is assured, the welfare of the child(ren) is the paramount consideration at all stages. Nothing in these rules shall preclude a monitored parenting and exchange program from offering both monitored parenting and exchange services and supervised services.

6.2. Application for Certification

6.2.a. All monitored parenting and exchange programs that represent themselves as certified for monitored contact shall be certified by the Board.

6.2.b. The Board will provide a standard application form for certification of monitored parenting and exchange programs upon request. An organization shall complete an application when it initially requests certification or when it wishes to reopen after closure. After initial certification, monitored parenting and exchange programs will be evaluated by the Board on an annual basis.

6.2.c. The Board shall consider all applications submitted for certification of a monitored parenting and exchange program in light of the need for services, the ability of the applicant to successfully operate a program, the applicant's ability to obtain adequate funding for the delivery of services, and the applicant's interest and ability to provide quality services.

6.2.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 thirty (30) days to resubmit a revised application.

6.2.e. The Board shall, on an annual basis, renew the certification of all monitored parenting and exchange programs that are in compliance with this rule and with Series 4 of the Board's rules. The Board shall distribute forms for certification renewal to certified monitored parenting and exchange programs no later than the fifteenth day of March each year. All certifications will be valid for one (1) year commencing on the first day of July and terminating on the thirtieth day of June of the next year. The Board shall grant or deny any certification application within forty-five (45) days of receiving the application. Every certified monitored parenting and exchange programs shall conspicuously display the certification.

6.2.f. The Board shall notify, by certified letter, any organization operating a program without certification as a monitored parenting and exchange program of its right to apply for certification.

6.3. Evaluation for Certification

6.3.a. The Board shall annually evaluate all certified monitored parenting and exchange programs operating in the state. The evaluation shall be conducted using the certification

standards found in Series 4 of the Board's rule.

6.3.b. 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 monitored parenting and exchange program and of staff employed by that program.

6.3.c. The Board shall determine whether trained staff from a certified monitored parenting and exchange program, a member of the Board, or staff of the Board shall conduct the evaluation.

6.4. Award of Certification.

The Board shall award certification annually to any organization which has applied for certification and been approved by the Board as having complied with all established standards set forth in this rule and in Series 4 of the Board's rules. Compliance with the standards will be evaluated by peer reviewers, by Board members, by Board staff, or any combination thereof as determined by the Board.

6.5 Waiver of Licensure. The Board may grant a waiver of certification if the Board finds it necessary for the good of participants who would be served by the monitored parenting and exchange program in question. The Board shall review all such waivers semi-annually.

6.6. Provisional Certification.

6.6.a The Board may grant provisional certification if the Board finds it necessary for the good of participants who will be served by the monitored parenting and exchange program in question. All provisional certifications shall be reviewed semi-annually.

6.6.b. Upon a finding by the Board that a monitored parenting and exchange program is not in compliance with Series 4 of the Board's rules, the Board may issue a provisional certification and shall give the program written notice of deficiency that shall include, but not be limited to, the following:

- 6.5.b.1. A statement of program deficiencies.
- 6.5.b.2. A requirement to submit a plan of correction regarding the deficiencies.
- 6.5.b.3. A timeline for the Board's review of the plan of correction.
- 6.5.b.4. A requirement that compliance occur within a time period set by the Board.
- 6.5.b.5. Verification of the issuance of provisional certification until compliance is achieved or until the Board takes action deemed necessary for the safety of

participants.

6.6. Revocation or Suspension of Certification.

6.6.a. The Board may revoke or suspend certification of any monitored parenting and exchange program that violates the provisions of this rule or Series 4 of the Board's rules, subject to paragraph 3 of this subdivision regarding public hearings. Four (4) members of the Board must vote in the affirmative before certification may be revoked or suspended.

6.6.a.1. The Board shall send written notice of the revocation or suspension by certified mail to the president of the monitored parenting and exchange program's governing board. The notice shall contain a statement of the alleged violations of the Board's rules.

6.6.a.2. The Board shall permit the program's board of directors fifteen (15) days from date of receipt of the notice to respond in writing to the alleged violations. If there is no written response, the Board will proceed with the revocation or suspension of the monitored parenting and exchange program's certification.

6.6.a.3. If the Board is provided with a response to the violations, a public hearing will be held in the municipality or county in which the program is located within thirty (30) days of receipt of the response.

6.6.b. The Board shall provide for and hold a public hearing in the municipality or county in which the program is located prior to the closure of a program through the revocation or suspension of the certification.

6.6.b.1. The Board shall provide notice of hearing time, date and location to the governing body or legal counsel of the program at least ten (10) days prior to the hearing date. The Board shall provide notice of the hearing to the Secretary of State in compliance with West Virginia Code §6-9A et seq. The Board shall also give local public notice by advertisement in a local newspaper's legal notice section at least ten (10) days prior to the hearing date.

6.6.b.2. The hearing shall be conducted by the Board chair, and s/he or she shall have full authority to call recesses, to remove persons exhibiting inappropriate behavior from the hearing, and to call for an executive session of the Board if necessary. Four (4) members shall be present to hear the violations and the program's response.