

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #7

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2010 MAR 17 PM 3:12

WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: WVDHHR - Family Protection Services Board TITLE NUMBER: 191

CITE AUTHORITY: West Virginia Code 48-26-404(a)

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3 WVCSR 191-3-3.3.a.3

TITLE OF RULE BEING AMENDED: Perpetrator Intervention Program Licensure

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Patsy A. Hardy
Authorized Signature

Use additional sheets if necessary

EMERGENCY RULE QUESTIONNAIRE

DATE: _____

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* West Virginia Department of Health and Human Resources,
Bureau for Children and Families, 350 Capitol St., Charleston, WV 25301; Kathie King

(304) 558-8839 or William Jones (304) 558-3227

EMERGENCY RULE TITLE: Family Protection Programs, Outreach Service & Shelter Licensure

1. Date of filing _____

2. Statutory authority for promulgating emergency rule:

W. Va. Code 48-26-401(4)

3. Date of filing of proposed legislative rule: _____

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? It amends current legislative rules

5. Has the same or similar emergency rule previously been filed and expired?

No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.

~~Circuit Court Judge James C. Stucky issued a judicial order holding that current~~
provisions of certain rules exceeded the expressed intent of the Legislature and that their

effect violated the First Amendment Rights of the Plaintiff and its members.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

~~N/A~~

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

~~Kanawha County Circuit Court Judge James C. Stucky issued a judicial order holding that the current provisions of certain rules exceeded the expressed intent of the~~

Legislature and that their effect violated the First Amendment Rights of the Plaintiff

and its members.

Brief Summary of the Proposed Emergency Rules

Legislative Rule §191-03, Perpetrator Intervention Programs Licensure, is promulgated pursuant to §48-26-404(a) of the W. Va. Code of West Virginia. This rule establishes standards and procedures for the licensure of perpetrator intervention programs in the state of West Virginia.

Statement of Circumstances Constituting an Emergency

Men and Women Against Discrimination (hereafter, MAWAD) filed an a civil action against the Family Protection Service Board (hereafter, FPSB) in Kanawha County Circuit Court seeking injunctive relief. MAWAD asserted that the FPSB exceeded its authority by promulgating certain legislative rules that exceeded and conflicted with the intent of the Legislature and that the application of the rules violated the First Amendment rights of MAWAD and its constituent members in their ability to advocate for gender-neutral domestic violence programs in the state of West Virginia.

On October 2, 2009, Judge James C. Stucky issued an order that held current provisions of certain rules exceeded the expressed intent of the Legislature and that the continued application of these rules had a real chilling effect on MAWAD and its constituent members' exercise of their First Amendment rights to advocate the gender-neutral nature of domestic violence programs. Hence, the Court held the rules to be null and void.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Family Protection Programs, Outreach Service and Shelter Licensure

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Department of Health and Human Resources

Address: Bureau for Children and Families
350 Capitol Street, Room 730, Charleston, WV 25301

Phone Number: (304)558-3227 william.p.iones@wv.gov
(304)558-8839 Email: kathie.d.king@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The Department estimates there is to be no costs or revenues associated with these amendments.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rule Title: Family Protection Programs, Outreach Service and Shelter Licensure

Rule Title: Family Protection Programs, Outreach Service and Shelter Licensure

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

The Department estimates there to be no costs or revenues associated with these amendments.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not have a fiscal impact**, and/or any special issues **not captured elsewhere** on this form.

The amended language is gender neutral and does not affect delivery of services.

Date: 3-17-10

Signature of Agency Head or Authorized Representative

Patsy A. Hardy

TITLE 191
LEGISLATIVE RULE
FAMILY PROTECTION SERVICES BOARD

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SERIES 3
PERPETRATOR INTERVENTION PROGRAMS LICENSURE

OFFICE OF THE SECRETARY OF STATE

§191-3-1. General.

1.1. Scope -- This rule establishes general standards and procedures for the licensure of perpetrator intervention programs as specified in W. Va. Code §§48-26-401 (a) and 48-26-404. 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 §§48-26-401 and 48-26-404.

1.3. Filing Date -- June 23, 2003.

1.3. Effective Date -- August 11, 2003.

§191-3-2. Definitions.

2 . 1 .
"Educator/Facilitator" means an individual who meets the minimum requirements outlined in Section 3.3. of this rule and who directly facilitates regularly scheduled classes for perpetrators of domestic violence.

2.2. "Power and Control" means the primary cause that gives rise to the occurrence of

domestic violence and family violence. Factors such as alcohol, poverty, unemployment, stress, and substance abuse are conditions that contribute to the incidents of domestic violence and family violence but are not themselves the cause of domestic and family violence.

§191-3-3. Licensing Standards for Perpetrator Intervention Programs.

3.1. Perpetrator intervention program requirements

3.1.a. A perpetrator intervention program shall have a written statement of purpose specifying program orientation. The statement should identify the types of services provided and the individuals to be served. The statement of purpose shall be available to the public on request.

3.1.b. A perpetrator intervention 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.c. A perpetrator intervention program shall maintain copies of all leases into which it has entered. These leases shall state the location of the property involved, the monthly or annual rent, and the ownership of the property, the useable square footage and the term of the lease.

3.1.d. A perpetrator intervention program shall have a written description of its referral process, admission policies, exit interview process, and follow-up procedures.

3.1.e. A perpetrator intervention program shall employ staff or utilize volunteers to cover the following areas: administration and supervision of the program; program direction to provide overall development; coordination of personnel; volunteer activities; case supervision; direct services; record keeping; and community education activities.

3.1.f. A perpetrator intervention program shall make available and display the address and telephone number of the Domestic Violence Services Complaint Toll Free Number at all locations.

3.2. Board of Directors.

3.2.a. A perpetrator

intervention program shall be governed by a board of directors which shall be responsible for and have authority over the policies and activities of the program, and which is broadly representative of the community served.

3.2.b. The board of directors shall adopt, and review on a bi-annual basis, written by-laws and policies that define the powers and duties of the governing body, its committees, the executive director(s), and 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 is responsible for ensuring the program's continual compliance and conformity with:

3.2.c.1. Provisions of the program's charter;

3.2.c.2. All federal, state and local laws, rules and regulations governing the operation of the program; and

3.2.c.3. Terms of all leases, contracts, or other legal agreements to which the program is a party.

3.2.d. The board of directors will 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 in which any member of the board or her or his immediate family is involved. The board of directors must 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 necessary authority to such individual(s) 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 establish internal operating procedures, including by-laws and meeting dates.

3.2.j. The board of

directors shall ensure that the program is adequately funded and fiscally sound. To this end, the board of directors is responsible for the following:

3 . 2 . j . 1 .
Assessing the adequacy of operating funds for at least six 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 . j . 2 .
Reviewing and approving the program's annual budget;

3 . 2 . j . 3 .
Providing for an annual audit 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 . j . 4 .
Monitoring disbursement of all funds on 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 . j . 5 .
Assuring that the program maintains liability insurance and bond for volunteers and members of the board of directors;

3 . 2 . j . 6 .
Providing, at its own expense, a financial bond for all individuals delegated the authority to sign checks or

manage funds. The bond shall assure the full operation of the perpetrator intervention program for a period of thirty (30) days should those individuals misappropriate or mismanage the program's funds or assets or engage in any illegal act which results in the loss of funds or assets.

3.2.k. The program's board of directors shall adopt and monitor implementation of written personnel policies that shall, at a minimum:

3 . 2 . k . 1 .
Pertain to all paid staff;

3 . 2 . k . 2 .
Include requirements for recruitment efforts, equal employment opportunity, selection procedures, orientation, on-going staff development and training, and termination of employment;

3.2.k.3. List, in definitive terms, all benefits that are available to staff and volunteers, including specifics of any insurance program;

3 . 2 . k . 4 .
Specify eligibility for vacation, personal leave and adjusted work week, yearly carry-over and accumulation, approval procedures, and payment upon termination;

3 . 2 . k . 5 .
Specify actions that will be taken by the agency if an employee fails to comply with

employee policies, including written notification of the nature of misconduct or poor performance, the discipline being taken, the effective date of the discipline, future consequences for reoccurrence, and appeal rights. The policy shall allow the employee the opportunity to respond to the charges of misconduct or poor performance before a disciplinary decision is made;

3 . 2 . k . 6 .
Specify grievance procedures for the employees, including grievable issues, steps of appeal, required time frames and who has the authority for resolution;

3 . 2 . k . 7 .
Delineate the lines of authority within the agency, and outline the authority of the supervisor(s) regarding personnel activities such as promotion, discipline, leave approval, performance evaluations, grievances, assignment of work and training;

3 . 2 . k . 8 .
Include job descriptions and position qualifications for each position within the program;

3 . 2 . k . 9 .
Require that all staff, including administrative and supervisory staff, receive performance evaluations at least on an annual basis. The evaluations must be signed by both the employee and the

supervisor;

3.2.k.10. Set forth, in written form, rules of conduct which include such topics as appropriate attire, work hours, confidentiality, insubordination, misuse of authority or equipment, absences without leave and falsification of records;

3.2.k.11. Require that individuals providing professional or therapeutic counseling, and/or professional social work have appropriate credentials and are licensed when applicable.

3.3. Staff Qualifications

3.3.a. Educators/facilitators shall have a minimum of 30 hours of training approved by the Board, including, but not be limited to, the following:

3.3.a.1. The dynamics of domestic violence within the context of power and control;

3.3.a.2. The effects of domestic violence on victims and their children and the critical nature of victim contacts and safety planning;

3.3.a.3. The understanding that domestic violence is deeply rooted in historical attitudes toward women and is intergenerational;

3.3.a.4. Lethality assessment for risks

of homicide, suicide, further domestic violence, or other violent aggressive behaviors, and the access to or use of weapons.

3.3.a.5. Information on state and federal laws pertaining to domestic violence, including the policies affecting treatment of court-ordered program participants, child abuse, divorce and custody matters;

3.3.a.6. The role of the facilitator within the group and in the context of a coordinated community response to domestic violence;

3.3.a.7. Teaching non-controlling alternatives to violent and controlling behaviors, and understanding and preventing collusion.

3.3.a.8. Dynamics involved in interpersonal relationships and knowledge of human behavior and development.

3.3.b. Educators/facilitators shall have at a minimum a high school diploma or G.E.D.

3.3.c. Educators/facilitators shall receive on an annual basis a minimum of 3 hours of continuing education or training approved by the Board. The training shall include, but not be limited to, the

following:

3 . 3 . c . 1 .
Domestic violence and substance
abuse.

3 . 3 . c . 2 .
Domestic violence and the law;

3.3.c.3. Other
issues which pertain to
domestic violence.

3 . 3 . c . 3 .
Cultural sensitivity;

3.3.c.5. Group
process and facilitation skills
training.

3.4. Staff Evaluation -
A perpetrator intervention
program's personnel policies
shall require all staff,
including administrative and
supervisory staff, to receive
performance evaluations on an
annual basis. The evaluation
shall be conducted by the
program. The evaluation must
be discussed with the staff
person and become a part of the
staff person's permanent
personnel record. Perpetrator
intervention program policies
shall require the staff person
to receive a written copy of
the evaluation and to sign the
evaluation to demonstrate
agreement or disagreement with
the results of the evaluation.
Policies shall assure that any
written response from the staff
person is included in the
permanent personnel file.

3.5. Intake - Criteria
concerning a perpetrator's

appropriateness for the
program.

3.5.a. A perpetrator
shall be admitted to a
perpetrator intervention
program if ordered by a court
or voluntarily enrolled in the
program, and is assessed by the
program to be eligible for
participation in the program.
An assessment shall be
performed to:

3 . 5 . a . 1 .
Identify individuals who would
benefit from concurrent mental
health or substance abuse
treatment programs.

3.5.a.2. Screen
out those individuals from the
program who have substance
abuse problems or other
impairments which make them
unable to participate in the
group intervention even with
concurrent or preliminary
treatment of those problems;

3.5.a.3. Screen
out those individuals from the
program who may be dangerous or
have severe mental illness and
would not benefit from the
program.

3.5.b. Upon
admittance to a perpetrator
intervention program, the
program educator/facilitator
shall complete a perpetrator
intake form. The information
shall be collected from the
perpetrator and from
independent sources such as,
but not limited to, police
reports and court records.

3.5.c. A perpetrator intervention program shall have a contract outlining the responsibilities of the perpetrator and the educator/facilitator. The terms of the contract will be agreed to and signed by the perpetrator and the authorized program representative.

3.6. Contact with Victims

3.6.a. Contact with victims shall come from a licensed family protection program and all information for contacting the victim shall remain with a licensed family protection program, unless expressly provided otherwise by written agreement between the licensed perpetrator intervention program and the licensed family protection program.

3 . 6 . b .
Educator/facilitators of a licensed perpetrator intervention program will consult with local licensed family protection programs to determine the appropriateness and logistics of contacting the victim and/or partner of the perpetrator. Victims and/or partners will be contacted by e i t h e r t h e educator/facilitator, a designated perpetrator intervention program staff member, or staff from a local licensed family protection program. Victims and/or partners should be contacted at a time and in a fashion that gives primary emphasis to their

safety.

3.6.c. In the event the contact of the victim and/or partner is done by the perpetrator intervention program staff, they shall provide written information to the family protection program, including the date and contact information.

3.6.d. Victim and/or partner contact procedures must also include informing the perpetrator's victim and/or partner of class commencement and termination dates, and a duty to warn the victim and/or partner of any imminent danger from the perpetrator. Victims and/or partners will also receive written materials about the perpetrator's class, detailing the limitations of the class's effectiveness, the fact that the class is not intended to salvage relationships, and the necessity for victims to maintain a safety plan.

3.7. Client Records and Service Plans

3.7.a. A perpetrator intervention program shall maintain a written record for each individual who receives services from the program. The service plan or contract shall be developed by program staff with the active participation of the client and must be completed prior to the provision of services.

3.7.b. Individual

client records shall include service data from the time of initial contact until the time services are concluded.

3.7.c. Individual client case records maintained by a perpetrator intervention program shall contain an application form, which includes identifying data, eligibility factors pursuant to section 3.5., rights and responsibilities, participant/client signature and authorized staff signature.

3.7.d. A perpetrator intervention program shall maintain, if possible, a copy of protective orders issued against a perpetrator enrolled in the perpetrator intervention program.

3.8. Confidentiality

Every perpetrator intervention programs shall have a written policy regarding disclosure of information to the individual or individuals named in any protective order which ordered the perpetrator to the program. There shall be a written agreement between the perpetrator and the program providing for disclosure of information to the victim and a waiver of confidentiality. The disclosure agreement shall be signed by the perpetrator.

3.9. Reports

The perpetrator intervention program shall provide a monthly report to a

licensed family protection program. This report shall contain the perpetrator's attendance record and compliance with program rules. If the perpetrator's participation is court ordered, this report shall also be forwarded to the perpetrator's probation officer, parole officer, the courts and/or state and local law enforcement agencies.

3.10. Perpetrator Intervention Classes

3.10.a. A perpetrator intervention class shall last for a period of at least thirty-two weeks and will include, but not be limited to, the following topics:

3.10.a.1. A model that depicts an overall system of physical and sexual abuse where the perpetrator uses methods and tactics of power and control over a victim.

3.10.a.2. The nature and effects of domestic violence;

3.10.a.3. The work that is necessary to bring about changes in the attitudes and beliefs that promote domestic and family violence.

3.10.a.4. The necessity for the maintenance of non-abusive behavior which includes learning non-violent conflict resolution, non-aggressive communication, and

maintaining positive, healthy partnerships;

3.10.a.5. The importance of community services which allows perpetrators to give something of themselves back to the community and contribute to changing the climate that condones domestic and family violence;

3.10.a.6. Information about state and federal law and practice regarding domestic violence and legal/social consequences for perpetrators of domestic violence.

3.10.b. After the completion of a perpetrator intervention program, a report shall be made to the referral source to be used in determining whether or not to release the perpetrator from the intervention class. This process may be repeated as necessary.

3.10.c. Perpetrators shall pay a fee for the perpetrator intervention classes, unless waived by the program. The fee scale shall be determined by the perpetrator intervention program.

3.10.d. Educator/facilitators of perpetrator intervention programs shall utilize a group education format with a staff ratio at a minimum of one (1) educator/facilitator per twelve

(12) perpetrators.

3.11. Interagency Cooperation.

A perpetrator intervention program shall initiate a written memorandum of understanding with a licensed family protection program on an annual basis. The memorandum of understanding shall be agreed upon and signed by both parties and a copy shall be sent to the Board. The memorandum of understanding shall include, but not be limited to the following:

3.11.a. Identification of liaison persons involved in the meeting to develop the memorandum of understanding;

3.11.b. Description of the formal process for exchanging information between agencies including safeguards for protecting victim safety;

3.11.c. Description of the perpetrator intervention program's formal process of sending of monthly reports to the licensed family protection program;

3.11.d. Description of coordination, if any, of service plans;

3.11.e. Description of the process and timetables for the annual perpetrator intervention program evaluation, required under subsection 12 of this rule, to

include: who will be involved, where will it be held, who will coordinate the evaluation, who will write the evaluation report and who will sign the evaluation report.

3.11.f. Procedures for amending or evaluating the memorandum of understanding.

3.12. Perpetrator Intervention Program Evaluation

By October 31 of each year, a perpetrator intervention program shall complete and submit to the Board an annual evaluation. The evaluation will include but not be limited to the following:

3.12.a. Attendance records of perpetrator(s) including reason(s) for repeated absences;

3.12.b. Number of individuals served;

3.12.c. Number of perpetrator intervention classes provided.