

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

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WEST VIRGINIA
SECRETARY OF STATE

Form #2

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Family Protection Services Board TITLE NUMBER: 191

RULE TYPE: _____ CITE AUTHORITY: 48-26-10

AMENDMENT TO AN EXISTING RULE: YES _____ NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 4

TITLE OF RULE BEING PROPOSED: Monitored Visitation and Exchange
Program Certification

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 15, 2002 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Division of Criminal Justice Services

1204 Kanawha Blvd., East

Charleston, WV 25301

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Trudy Lawrenson
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

SCANNED

**Brief Summary of Proposed
Legislative Rule Title 191, Series 4
Monitored Visitation and Exchange Program Certification**

The rule will bring the Family Protection Services Board into compliance with changes in the State Code, which require the Board to develop and implement certification procedures and standards for monitored visitation and exchange programs.

Statement of Circumstances Which Require the Rule

§48-26-10 of the West Virginia Code requires the Family Protection Services Board to develop and implement procedures and standards for certification of monitored visitation and exchange programs/centers. This rule addresses the procedures of the Board and licensing standards for the programs.

■
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Monitored Visitation and Exchange Program Certification

Type of Rule: Legislative Interpretive Procedural

Agency: Family Protection Services Board

Address: 1209 Kanawha Blvd., East
Charleston, WV 25301

Contact: Beth Morrison
304-727-1900

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	0	0	0	0	0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

No cost necessary to implement this rule.

3. Objectives of These Rules:

To establish procedures and standards to certify monitored visitation and exchange programs.

Rule Title: Monitored Visitation and Exchange Program
Certification

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

N/A

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

N/A

C. Economic Impact on Citizens/Public at Large.

N/A

Date: June 21, 2002

Signature of Agency Head or Authorized Representative:

Judy Laursen

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

SERIES 4

MONITORED VISITATION AND EXCHANGE PROGRAM CERTIFICATION

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OFFICE OF THE CLERK
SECRETARY OF STATE

§ 191-4-1. General

1.1. Scope - This rule implements the provisions of W.Va. Code §48-26-10, relating to the standards and procedures for the certification of monitored visitation and exchange programs.

1.2. Authority - W.Va. Code §48-26-1003.

1.3. Filing Date -

1.4. Effective Date -

§ 191-4-2. Definitions

2.1. "Board" means the Family Protection Services Board created pursuant to W.Va. Code §48-26-301.

2.2. "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.

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

2.4. "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.

2.5. "Monitored visitation" 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.

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

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

2.8. "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.

§ 191-4-3. Certification Procedures.

3.1. The Board shall oversee a process for the certification of all monitored visitation 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. While these rules apply only to, nothing in these rules shall preclude a monitored visitation and exchange program from offering both monitored visitation and exchange services and supervised visitation services.

3.2. Application for Certification

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

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

3.2.c. The Board shall receive and consider all applications submitted for the development and certification of a monitored visitation 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.

3.2.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.

3.2.e. The Board shall, on an annual basis, renew the certification of all monitored visitation and exchange programs that are in compliance with this rule. The Board shall distribute forms for certification renewal to certified monitored visitation and exchange programs in a timely manner 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 on the next year. The Board shall grant or deny any certification application within forty-five (45) days of receiving the application. The Board shall require all certified monitored visitation and exchange programs to conspicuously display the certification.

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

3.3. Evaluation for Certification

3.3.a. The Board shall annually evaluate all certified monitored visitation and exchange programs operating in the state. The evaluation shall be conducted using the certification standards found in Section 4 of this rule.

3.3.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 visitation and exchange program and of staff employed by that program.

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

3.4. 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. Compliance with the standards will be evaluated by peer reviewers, by Board members, by Board staff, or a combination of these parties as determined by the Board.

3.5. Provisional Certification.

3.5.a. The Board may grant provisional certification if the Board deems such provisional certification is necessary for the good of participants who will be served by the monitored visitation and exchange program in question. All provisional certifications shall be reviewed semi-annually.

3.5.b. Upon a finding by the Board that a monitored visitation and exchange program is not in compliance with Series 4 of this rule, the Board shall give the program written notice that shall include, but not be limited to, the following:

- 3.5.b.1. Program deficiencies.
- 3.5.b.2. A requirement to submit a plan of correction regarding the deficiencies.
- 3.5.b.3. The timeline when the Board will review the plan of correction.
- 3.5.b.4. A requirement that compliance occur within a time period set by the Board.

3.5.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.

3.6. Revocation or Suspension of Certification.

3.6.a. The Board may revoke or suspend certification of any monitored visitation and exchange program that violates the provisions of this rule, subject to the requirements in this rule regarding public hearings. Four (4) members of the Board shall vote in the affirmative before certification is revoked or suspended.

3.6.a.1. The Board shall send written notice of the revocation or suspension by certified mail to the to the president of the monitored visitation and exchange program's governing board of directors. The notice shall state the monitored visitation and exchange program violations of this rule.

3.6.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 visitation and exchange program's certification.

3.6.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.

3.6.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.

3.6.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. Local public notice shall also be given through a local newspaper's legal notice section at least ten (10) days prior to the hearing date.

3.6.b.2. The hearing shall be conducted by the Board chair and 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.

§ 191-1-4. Certification Standards for monitored visitation and exchange programs

4.1. A monitored visitation and exchange program may be provided by a free-standing organization, or by a sub-division or program of a larger organization. When monitored visitation services are provided by an agency whose primary mission is not monitored visitation, the agency shall be responsible for ensuring that staff or persons providing monitored visitation are trained

and qualified according to Section 4.6 of these rules and shall encourage the provision of services in conformity with all sections of these rules. Monitored visitation and exchange programs shall avoid dual roles, such as providing visitation/exchange services and mediating custody disputes or providing divorce counseling.

4.2. A monitored visitation and exchange program shall establish written policies and procedures in place identifying the types of services provided and the persons to be served by the program. The policies and procedures shall include:

- 4.2.a. services provided;
- 4.2.b. confidentiality and release of information;
- 4.2.c. participant acceptance and termination criteria;
- 4.2.d. responsibilities of the participants;
- 4.2.e. information to be gathered during the intake assessments;
- 4.2.f. protocols for accepting and responding to concerns and complaints;
- 4.2.g. documentation and record-keeping;
reporting of criminal behavior and suspected abuse or neglect;
- 4.2.h. hours of operation;
- 4.2.i. fees;
- 4.2.j. safety and security measures;
- 4.2.k. program staff and volunteers.

4.3. A monitored visitation and exchange program shall establish and/or report to a board of directors.

4.4. A monitored visitation and exchange program shall provide general and liability insurance for staff and participants utilizing the program.

4.5. A monitored visitation and exchange program shall maintain the following records:

4.5.a. A written personnel record for each employee or volunteer that includes documents obtained or created by the program pertaining to the employee or volunteer.

4.5.b. Appropriate and accurate financial records. The records shall follow generally accepted accounting principles. Accounting and auditing procedures shall comply with the guidelines of the funding source(s).

4.5.c. An evaluation plan to determine the effectiveness of the program or service activities. Evaluation shall include participant input.

4.5.d. Statistics for evaluation and monitoring. Statistics shall not compromise client confidentiality.

4.5.e. A monitored visitation and exchange program shall maintain participant files according to the following:

4.5.e.1. There will be a file for each participant which includes all intake information, written and signed releases of information and other agreements, and a record of each contact. Files are to be kept inaccessible to participants.

4.5.e.2. Files shall include results of in-person intake interviews with each participant, including the children, conducted prior to the first visit

4.5.e.3. Files shall be updated after each visitation/exchange, and shall include:

4.5.e.3.a. identifying client information;

4.5.e.3.b. monitor name;

4.5.e.3.c. the date, time and duration of contact;

4.5.e.3.d. who attended;

4.5.e.3.e. account of critical incidents (violations of program guidelines);

4.5.e.3.f. interventions made during the contact for the safety and well-being of participants, including early termination of the visit with the reason for the intervention.

4.5.f. Files shall include the reason for termination of service, if applicable.

4.6 A monitored visitation and exchange program shall assure that the facility:

4.6.a. meets all local health and safety ordinances.

4.6.b. complies with Americans with Disabilities Act (ADA) requirements

4.7. A monitored visitation and exchange program shall assure the staff quality by the following:

4.7.a. A monitored visitation and exchange program shall have written job descriptions and successful background/criminal record checks for staff and volunteers.

4.7.b. Monitored visitation and exchange program staff who supervise visits and exchanges shall have a minimum of thirty (30) hours of training that includes the following topics.

- 4.7.b.1. Confidentiality
- 4.7.b.2. Recording observations
- 4.7.b.3. General security issues and procedures
- 4.7.b.4. Legal context, court procedures
- 4.7.b.5. Cultural sensitivity
- 4.7.b.6. Family violence, including spousal
- 4.7.b.7. abuse and child abuse and neglect;
- 4.7.b.8. Substance abuse detection and education;
- 4.7.b.9. Dynamics of separation and divorce;
- 4.7.b.10. Sexual assault.

4.7.c. Volunteers shall have a minimum of eight (8) hours of training that includes the following topics.

- 4.7.c.1. Confidentiality
- 4.7.c.2. Recording observations
- 4.7.c.3. General security issues and procedures
- 4.7.c.4. Legal context, court procedures
- 4.7.c.5. Cultural sensitivity
- 4.7.c.6. Family violence, including spousal abuse and child abuse and neglect;
- 4.7.c.7. Substance abuse detection and education;
- 4.7.c.8. Dynamics of separation and divorce;

4.7.c.9. Sexual assault.

4.7.d. Monitored visitation and exchange program staff shall complete training in first aid, CPR and/or emergency response methods.

4.7.e. Monitored visitation and exchange program staff who supervise visits and exchanges shall complete a minimum of ten (10) hours annually in continuing education or in-service training relevant to the exchange and visitation services being provided.

4.7.f. Monitored visitation and exchange program volunteers shall complete a minimum of five (5) hours annually in continuing education or in-service training relevant to the exchange and visitation services being provided.

4.9. A monitored visitation and exchange program shall have a written security policy that includes, but is not limited to:

4.9.a. Evacuation procedures in case of fire or other emergency;

4.9.b. Handling of critical incidents such as violent, dangerous or inappropriate behavior by an adult or child;

4.9.c. Handling of medical emergencies;

4.9.d. Procedures for arrival and departure of participants so that contact between them does not occur without the explicit agreement of the parties and the monitored visitation and exchange program;

4.10. A monitored visitation and exchange program shall have a written policy about referrals, including, but not limited to:

4.10.a. Information to be obtained from the referring agency;

4.10.b. Criteria for accepting and refusing referrals;

4.10.c. Procedure for responding to referring agencies;

4.10.d. Procedure for referring participants to other services/agencies.

4.11. A monitored visitation and exchange program shall have a written confidentiality policy that preserves the participants' rights of confidentiality and complies with all state and federal privacy laws.