

**WEST VIRGINIA  
SECRETARY OF STATE**

**JOE MANCHIN III**

**ADMINISTRATIVE LAW DIVISION**

Form #2

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: Department of Health and Human Resources TITLE NUMBER: 69

RULE TYPE: Legislative; CITE AUTHORITY WV Code §§ 49-2B-4, 27-9-1, 27-17-3, 27-1A-6(6), and 16-1-4 in conjunction with 16-1-1 and 16-1-3(b).

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

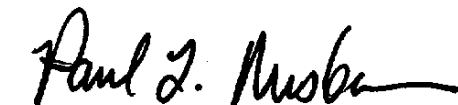
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 5

TITLE OF RULE BEING PROPOSED: Survey of Facilities for Determinations Regarding  
Licensure as Residential Child Care Facilities and Behavioral Health Centers

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 April 10, 2001 AT 4:30 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Beth Marquart, Director, Regulatory Support  
Department of Health & Human Resources  
Capitol Complex - Building 3, Room 201  
Charleston, WV 25305

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



Paul L. Nusbaum, Secretary

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

\$4.60

**69CSR5**

**SURVEY OF FACILITIES FOR  
DETERMINATIONS REGARDING LICENSURE AS  
RESIDENTIAL CHILD CARE FACILITIES AND  
BEHAVIORAL HEALTH CENTERS**

**SUMMARY**

This rule requires the Secretary of the Department of Health and Human Resources to conduct a survey of unlicensed facilities to determine if they are subject to licensure as residential child care facilities, behavioral health centers, or both, because they are providing residential child care or behavioral health care services to children. The facilities are required to complete and return a survey questionnaire to the Secretary.

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**TITLE 69  
LEGISLATIVE RULE  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**SERIES 5**

**SURVEY OF FACILITIES FOR  
DETERMINATIONS REGARDING LICENSURE AS  
RESIDENTIAL CHILD CARE FACILITIES AND  
BEHAVIORAL HEALTH CENTERS**

**STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE PROPOSED  
LEGISLATIVE RULE**

The West Virginia Department of Health and Human Resources (hereinafter, Department) is statutorily charged with the responsibility of ensuring the health, safety and well-being of children. A portion of this responsibility is devoted to the prevention of intentional or accidental harm to children in an out of home setting for an extended period of time. In these out of the home settings, the Department is duty bound to license all programs that provide either residential child care or behavioral health services, or both. Through licensing, the Department is able to ensure that a particular program is safe, reliable and geared to the ages and needs of the children it serves, meets the basic health and safety standards, and employs staff who have the training and experience needed to interact with children.

Due to the recent death of a child, and harm to another, in an unlicensed facility, the Department has become aware that there are numerous other facilities that may be similarly situated. The Department needs to determine which facilities are subject to licensure and which are not.

The rule would require known facilities to provide answers as to their residential child care and behavioral health services. From the responses, the Department will be able to make determinations as to which facilities need inspections. The rule will start the process that will result in some of these facilities being required to raise their standards so they can be licensed by the Department for residential child care and/or behavioral health services. Undoubtedly, licensure of some of these facilities will result in the preservation of the health, safety and welfare of children, and the prevention of harm to children.

**FISCAL NOTE FOR PROPOSED RULES**

**Rule Title:** Survey of Facilities for Determinations Regarding Licensure As Residential Child Care Facilities and Behavioral Health Centers, 69CSR5

**Type of Rule:**  Legislative                       Interpretive                       Procedural

**Agency:** Department of Health and Human Resources

**Address:** Building 3, Capitol Complex  
Charleston, W. Va. 25305

1. Effect of the Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
<b>Estimated Total Cost</b>	\$	\$	\$ 0	\$ 0	\$ 0
<b>Personal Services</b>					
<b>Current Expense</b>					
<b>Repairs &amp; Alterations</b>					
<b>Equipment</b>					
<b>Other</b>					
<b>Revenue</b>			0	0	0

**2. Explanation of above estimates.**

It is suspected that there may be several facilities illegally operating as residential child care facilities and also possibly as behavioral health centers. This rule would compel numerous facilities that are operating without a license to provide the Department of Health and Human Resources with information from which the Department could determine if inspections may be needed. The cost of this rule to state government will be minimal for postage. However, if the rule results in the discovery of additional facilities that are subject to licensure, there will be expenses incurred for such inspections and licensing, as would be the case for any increase in the number of facilities in a licensure program. Such expenses may be reflected in future budget requests.

**3. Objectives of this rule:**

This rule provides for the survey of selected facilities to help determine if any of them are subject to licensure as residential child care facilities, behavioral health centers, or both.

**4. Explanation of Overall Economic Impact of Proposed Rule.**

**A. Economic Impact on State Government.**

See the explanation for item number 2.

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

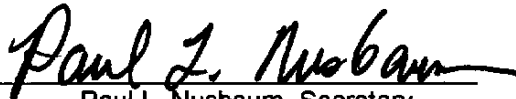
There may be an increase in the cost of operations to facilities identified for licensure to the extent services would need to be improved to meet licensure standards.

**C. Economic Impact on Citizens/Public at Large.**

Costs to consumers of services at facilities identified for licensure may increase to the extent the facilities pass costs on to the consumers.

Date: 3/9/01

**Signature of Agency Head or Authorized Representative:**

  
\_\_\_\_\_  
Paul L. Nusbaum, Secretary  
Department of Health and Human Resources

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: March 9, 2001

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency name, Address & Phone No.) Department of Health and Human Resources

State Capitol Complex, Building, Room 265, Charleston, WV 25305

Telephone: (304) 558-5598

LEGISLATIVE RULE TITLE: Survey of Facilities for Determinations Regarding

Licensure as Residential Child Care Facilities and Behavioral Health Centers

1. Authorizing statute(s) citation: WV Code Sections 49-2B-4, 27-9-1, 27-17-3,  
27-1A-6(6) and 16-1-4 in conjunction with 16-1-1 and 16-1-3(b).

2. a. Date filed in State Register with Notice of Hearing or Public Comment  
Period:  
March 9, 2001

b. What other notice, including advertising, did you give of the hearing?  
Notice of the proposed rule was provided to: known facilities that may be  
subject to the rule, licensed residential child care facilities, comprehensive  
behavioral health centers, the Behavioral Health Center Association, the  
Department of Education, County superintendents of schools and child  
advocates

c. Date of Public Hearing(s) or Public Comment Period ended:

April 10, 2001

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached N/A No comments received N/A

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing (be exact):

N/A

f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule (please type):

Beth Marquart, Director

Regulatory Support/Department of Health and Human Resources

Room 201, Capitol Complex

Charleston, West Virginia 25305

g. IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule (please type):

Ann Burds, Director of Social Services

Bureau for Children and Families - DHHR

300 Capitol Street, Room 730

Charleston, West Virginia 25305

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

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- b. Date of hearing or comment period:

N/A

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- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefore?

N/A

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- d. Attach findings and determinations and reasons:

Attached  N/A

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FILED

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MAR 9 10 57 AM '01

TITLE 69  
LEGISLATIVE RULE  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SERIES 5  
SURVEY OF FACILITIES FOR  
DETERMINATIONS REGARDING LICENSURE AS  
RESIDENTIAL CHILD CARE FACILITIES AND  
BEHAVIORAL HEALTH CENTERS

**§69-5-1. General.**

1.1. Scope. -- In order to help protect the health and safety of children, this rule provides for a survey of facilities to help determine if they are subject to licensure as residential child care facilities, behavioral health centers, or both.

1.2. Authority. -- W. Va. Code §§ 49-2B-4, 27-9-1, 27-17-3, 27-1A-6(6) and 16-1-4 in conjunction with 16-1-1 and 16-1-3(b).

1.3. Filing Date. --

1.4. Effective Date. -- Upon approval by the Secretary of State.

**§69-5-2. Definitions.**

2.1. "Behavioral Health Services" means an inpatient, residential or outpatient service for the care and treatment of persons with mental illness, developmental disabilities or substance abuse, or for the prevention of such conditions.

2.2. "Child" means any person under eighteen years of age.

2.3. "Child care" means responsibilities assumed and services performed in relation to a child's physical, emotional, psychological, social and personal needs and the consideration of the child's rights and entitlements.

2.4. "Facility" means a person, institution, program, center, school, corporation, partnership or other entity that may be providing residential child care or behavioral health services, or both, without an applicable license.

2.5. "Residential child care" or "child care on a residential basis" means child care which includes the provision of nighttime shelter and the personal discipline and supervision of a child by guardians, custodians or other persons or entities on a continuing or temporary basis.

2.6. "Secretary" means the Secretary of the Department of Health and Human Resources and his or her representatives.

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### **§69-5-3. Survey.**

3.1. In order to protect the health and safety of children, the Secretary shall conduct a survey of facilities to determine if they are subject to licensure as residential child care facilities, behavioral health centers, or both, because they are providing residential child care or behavioral health services to children.

3.2. To help identify facilities, the Secretary may solicit the cooperation of social service agencies, child care and behavioral health care providers, the State Superintendent of Schools, county Superintendents of Schools and others.

3.3. The survey instrument is the Questionnaire appearing as Appendix 69-5 A of this rule.

3.4. Recipients of the Questionnaire shall complete and return it to the Secretary at the designated address on the Questionnaire.

3.4.1. Recipients shall return the Questionnaire no later than thirty (30) days after receipt. If a request for extension of the thirty (30) days is received by the Secretary before the thirty (30) days have expired, the Secretary may grant an extension of time for returning the survey.

3.4.2. A Questionnaire returned incomplete or unsigned shall be considered as non-responsive to this rule.

3.5. For any responses on the Questionnaire that are unclear to the Secretary or for which the Secretary needs further information:

3.5.1. The Secretary may make further inquiries to the person submitting the Questionnaire, and the inquiries shall be answered by that person or another authorized representative of the facility; and

3.5.2. The Secretary may make an inspection and investigation of the facility to determine if the information the Secretary has regarding the facility is correct and to gather further information.

3.6. Nothing in this rule shall be interpreted as limiting the authority of the Secretary to conduct inspections and investigations as authorized before this rule existed.

### **§69-5-4. Enforcement.**

The Secretary may enforce this rule with the enforcement provisions of the child facility licensure law and rule, the behavioral health center licensure law and rule, and other applicable laws and rules.

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APPENDIX 69-5 A

FACILITY QUESTIONNAIRE

Answer the following questions:

1. Name of the facility? \_\_\_\_\_
2. The facility is known by what other names? \_\_\_\_\_  
\_\_\_\_\_
3. Facility Address? \_\_\_\_\_  
\_\_\_\_\_
4. Name and address of the legal entity operating the facility?  
\_\_\_\_\_  
\_\_\_\_\_
5. Is the facility a public school? \_\_\_\_ Yes \_\_\_\_ No
6. Is the facility a private school? \_\_\_\_ Yes \_\_\_\_ No
  - 6A. Are the school's students exempt from the compulsory attendance requirement of Code §18-8-1 under that section's "Exemption A. Instruction in a private, parochial or other approved school"?  
\_\_\_\_ Yes \_\_\_\_ No
  - 6B. Are the school's students exempt from the compulsory attendance requirement of Code §18-8-1 under that section's "Exemption K. Alternative private, parochial, church or religious school instruction."?  
\_\_\_\_ Yes \_\_\_\_ No
7. If the facility is a school, is it accredited by the State Department of Education?  
\_\_\_\_ Yes \_\_\_\_ No. If yes, attach a copy of a document that verifies accreditation status.

Attach separate sheets as directed with answers to the following questions.

8. Since January 1, 2000, what written or oral communications have come from the facility, its board, staff or the legal entity operating the facility that describe anything

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that goes on at the facility using the words "treatment" or "therapy?" Describe the recipients, when the communications occurred, and what was meant by "treatment" and "therapy." Include copies of such written communications (names and addresses may be blackened out), including e-mails, advertisements, copies of internet web pages, brochures, pamphlets, etc. If communications are in a form letter, one copy is sufficient.

Answer: \_\_\_\_\_ none, or \_\_\_\_\_ See attached sheets.

9. What is the range of behavioral problems of the persons served by the facility?
10. For what behaviors or problems is therapeutic intervention provided?
11. Who provides therapeutic intervention?
12. What are the professional qualifications of the persons who provide therapeutic intervention?
13. Since January 1, 2000, what written or oral communications have come from the facility, its board, staff or the legal entity operating the facility that describe anything that goes on at the facility regarding overnight accommodations and services associated therewith? Describe the recipients, when the communications occurred, and any special meaning of the words. Include copies of such written communications (names and addresses may be blackened out) including e-mails, advertisements, copies of internet web pages, brochures, pamphlets, etc. If communications are in a form letter, one copy is sufficient.

Answer: \_\_\_\_\_ none, or \_\_\_\_\_ See attached sheets.

The above answers and any attached statements are true.

\_\_\_\_\_  
Signature of the facility's representative.

\_\_\_\_\_  
Typed or printed name of the facility's representative.

\_\_\_\_\_  
Title of the facility's representative.

Return this Questionnaire and accompanying materials to:

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Jim Boggs, Director  
Division of Performance and Regulatory Management  
Office of Social Services, Bureau for Children and Families  
WV Department of Health and Human Resources  
350 Capitol Street  
Charleston, WV 25301-3704