

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

Form #2

Do Not Mark In This Box

2011 JUN 24 AM 11:17

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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

AGENCY: Human Services WV Department of Health and Human Resources TITLE NUMBER: 78

RULE TYPE: Legislative CITE AUTHORITY: 49-2E

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: 22

TITLE OF RULE BEING PROPOSED: Child Care Quality Rating and Improvement System

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 27, 2011 AT 12 NOON ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

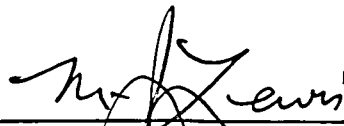
WV Department of Health & Human Resources

350 Capitol Street, Room B-18

Charleston, WV 25301

or Jessica.L.Dianellos@wv.gov or at www.wvdhhr.org

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

  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

## FISCAL NOTE FOR PROPOSED RULES

Rule Title: Child Care Quality Rating and Improvement System

Type of Rule:                      X   Legislative                           Interpretive                           Procedural

Agency: Health and Human Resources

Address: One Davis Square  
Suite 303  
Charleston, WV 25301

Phone Number: 304-356-4605                    Email: jessica.l.dianellos@wv.gov

### Fiscal Note Summary

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

In order to meet the deadline for filing this rule, we are filing it without a completed fiscal note. This is a complex fiscal note that requires cross-agency and cross-department computation and agreement. The rule as filed will be amended with an extant financial plan prior to the end of the comment period.

### 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.

Effect of Proposal	Fiscal Year		
	2011 Increase/Decrease (use "-" )	2012 Increase/Decrease (use "-" )	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0	0	0
Personal Services			
Current Expenses			
Repairs and Alterations			
Equipment			
Other	to be determined	to be determined	to be determined
<b>2. Estimated Total Revenues</b>			

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

**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.

Date

6-24-2011

Agency

Department of Health and Human Resources

Authorized Representative



Michael J. Lewis, M.D., Ph.D.  
Cabinet Secretary

**Title 78**  
**Legislative Rules**  
**Department of Health and Human Resources**

**Series 22**

**Statement of Circumstance**

Child Care Quality Rating and Improvement System

**§49-2E-2. Creation of statewide quality rating system; legislative rule required; minimum provisions.**

The Secretary of the Department of Health and Human Resources shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement a quality rating and improvement system. The quality rating and improvement system shall be applicable to licensed child care centers and facilities and registered family child care homes. If other types of child care settings such as school-age child care programs become licensed after the implementation of a statewide quality rating and improvement system, the secretary may develop quality criteria and incentives that will allow the other types of child care settings to participate in the quality rating and improvement system.

**Title 78**  
**Legislative Rules**  
**Department of Health and Human Resources**

**Series 22**

**Brief Summary of New Rule**

Child Care Quality Rating and Improvement System

This legislative rule establishes the requirements for implementation of a Child Care Quality Rating and Improvement System consistent with Chapter 49, Article 2E. This rule was developed in response to S.B. 498, which was passed in April 2009 and requires the Department of Health and Human Resources to implement a quality rating and improvement system for child care programs in West Virginia. The system will establish quality standards and accountability measures for early childhood programs and will provide financial and program supports that enable programs to achieve and maintain quality services. The system will also communicate information about the quality of care to parents, enabling them to make more informed decisions about placing their children in these programs.

TITLE 78  
LEGISLATIVE RULES  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
DIVISION OF HUMAN SERVICES

2011 JUN 24 AM 11:17

SERIES 22  
Child Care Quality Rating and Improvement System

WEST VIRGINIA  
SECRETARY OF STATE

**§78-22-1. General.**

1.1. Scope. -- This legislative rule establishes the requirements for implementation of a Child Care Quality Rating and Improvement System consistent with Chapter 49, Article 2E

1.2. Authority. -- W. Va. Code §49-2E

1.3. Filing Date. --

1.4. Effective Date. -- July 1, 2012

**§78-22-2. Applicability and Enforcement.**

2.1 This rule applies to any child care program that participates in the Quality Rating and Improvement System as operated by the Department of Health and Human Resources in accordance with Chapter §49-2E.

2.2 This rule is enforced by the Secretary of the Department of Health and Human Resources.

2.3 Pursuant to Chapter §49-2E-4, nothing in this rule requires implementation of a quality rating and improvement system unless funds are appropriated therefore. The attached financial plan prioritizes the components of the system for implementation and provides for gradual implementation over a period of several years in the event that funding is not sufficient to implement all requirements in code.

**§78-22-3. Definitions.**

3.1 Accreditation -- The process by which a credentialing authority endorses or approves the childcare methods and programs of a child care agency. The Department does not approve or endorse a credentialing authority's standards and/or methods of evaluation.

3.2 Apprenticeship for Child Development Specialist Credential-- The West Virginia registered Apprenticeship for Child Development Specialist (ACDS) program is based on a professional partnership between child care providers and their employers. It is a teaching program where apprentices "learn by doing." A blending of classroom work and on-the-job training provides professional growth for providers. It also enhances the quality of care that their employers offer to the community.

3.3 Approved professional development-- A comprehensive, sustained, and intensive approach to improving effectiveness in a specific area of study delivered by and/or sponsored

by an approved trainer or training conference as defined by the Secretary.

3.4 Assessment Process-- The process by which a reliable evaluator conducts an on-site observation of activities in a classroom resulting in the assignment of a score utilizing the appropriate Environment Rating Scale or other tool(s) selected by the Secretary.

3.5 Certificate of Registration-- Voluntary registration of a program that is exempt from childcare licensing issued by the Department of Health and Human Resources.

3.6 Child Care Center -- A facility maintained by the state or any county or municipality thereof, or any agency or facility operated by an individual, firm, corporation, association or organization, public or private, for the care of thirteen (13) or more children for child care services in any setting, if the facility is open for more than 30 days per year per child.

3.7 Child Care Resource and Referral Agency (CCR&R) -- A resource & referral agency is a local nonprofit organization involved in supporting child care services. In West Virginia, at a minimum, the resource & referral agencies manage the subsidy program, link parents with child care options, provide consumer information, offer technical assistance and training to providers, and inform parents of other resources in their community.

3.8 Conference-- A meeting of individuals or representatives of various bodies for the purpose of discussing and/or acting on topics of childcare interest.

3.9 Core Knowledge Area-- The set of observable skills and knowledge that represent common standards of satisfactory practice in the early childhood field in the state of West Virginia.

3.10 COA-- Council on Accreditation for Family and Children's Services is an independent, not-for-profit child and family service accrediting organization. It was founded in 1977 by the Child Welfare League of America and Family Service America. COA currently accredits 38 different services areas and over 60 types of programs, including childcare.

3.11 Evaluation Criteria-- Child care settings that voluntarily apply for a higher star rating shall be evaluated to determine if the setting meets the additional quality standards established for each type of care at each of three additional levels of quality.

3.12 Environmental Rating Scales-- A series of childcare program assessment instruments (scales). A measurement tool utilized by an assessor during an on-site observation of a childcare classroom to evaluate and provide a score to a childcare program.

3.13 Family Child Care Facility-- Any facility which is used to provide nonresidential child care services for compensation for seven to twelve children, including children who are living in the household, who are under six years of age. No more than four of the total number of children may be under twenty-four months of age. A facility may be in a provider's residence or a separate building.

3.14 Family Child Care Home -- A facility which is used to provide nonresidential child care services for compensation in a provider's residence. The provider may care for four to six children, at one time including children who are living in the household, who are under six years

of age. No more than two of the total number of children may be under twenty-four months of age.

3.15 License -- The grant of official permission to a facility to engage in an activity which would otherwise be prohibited.

3.16 National Association for the Education of Young Children (NAEYC) -- A nonprofit organization of early childhood professionals and others who are dedicated to improving the quality of early childhood education. More than 100,000 members strong, the association comprises a network of more than 400 affiliated local, state, and regional organizations, which share the belief that children's high-quality experiences at home and in child care, schools, and after-school programs lay the foundation for school readiness, academic success, and adult achievement.

3.17 National Association for Family Child Care (NAFCC) -- An organization that sponsors the only nationally recognized accreditation system, designed specifically for family child care providers. This system was designed by hundreds of providers, parents, and early care and education experts in an effort to create a quality indicator for family child care programs across the country.

3.18 Observation and Assessment Tools-- The Secretary shall, with advice from the QRIS Advisory Council, designate a valid and reliable tool to assess program quality from an assortment of observation tools that have been tested and determined to assess various components of quality.

3.19 Out-Of-School-Time Program -- A child care service which offers activities to children before and after school, on school holidays, when school is closed due to emergencies, and on school calendar days set aside for teacher activities.

3.20 Substitute Staff -- An individual who is present at the center to maintain the staff: child ratio when a qualified staff member is absent.

3.21 Third Party Evaluator-- A formal evaluation conducted by a party with no vested interest in the outcome of the research.

3.22 Tiered Reimbursement-- A system of increased payment rates for children in the subsidy program for child care programs that demonstrate they provide higher quality care.

3.23 Wage Incentives-- Financial incentives to be provided to programs and staff within the programs.

3.24 West Virginia State Training and Registry System (WV STARS)-- A statewide program that tracks education and training information for the early care and education workforce in West Virginia.

#### **§78-22-4. Application and Renewal.**

4.1 A child care program shall submit a completed QRIS application as prescribed by the Secretary for advancement to a 2 Star or a 3 Star level.

4.2 A child care program that qualifies for a 4 Star level must submit verification of the accreditation to the Secretary in a process prescribed by the Secretary.

4.3 A child care program that submits an incomplete application or submits an application not prescribed by the Secretary shall be notified that the application is not acceptable.

4.4 A child care program shall submit a QRIS application for renewal of the advanced Star rating on an annual basis or as prescribed by the Secretary. The application for renewal must be submitted at least 60 days prior to the anniversary date of the advanced Star rating in order to avoid a lapse in or ability to participate in incentives.

4.5 The advanced Star rating is non-transferable if the ownership of the program changes. The program must be under the control of the new ownership for 6 months before eligible to apply for an advanced Star rating with the following exception:

4.5.a. A Four Star rated program under the control of new ownership whose national accreditation extends to the new ownership may retain its 4 Star rating. However, eligibility for new incentives will be at the discretion of the Secretary during the initial six months of ownership.

4.6 Any decision regarding a Star rating issued by the Department may be made effective from the date of issuance.

#### **§78-22-5. Program Standards.**

5.1 One Star program standards shall be equivalent to current licensing or registration regulations.

5.2 Two and Three Star program standards shall be established by the Secretary with advice from the Quality Rating and Improvement System Advisory Council and will be organized by core knowledge areas or their equivalent.

5.3 Four Star program standards shall be equivalent to national accreditation by the National Association for the Education of Young Children or the National Association for Family Child Care. For licensed out-of-school time programs, Four Star program standards shall be equivalent to accreditation standards set forth by the Council on Accreditation.

5.4 Each Star level shall be progressive and cumulative, provided that any program accredited by the National Association for the Education of Young Children or the National Association for Family Child Care shall automatically be awarded a Four Star status.

5.5 Program standards shall be developed by the Secretary with advice from the Quality Rating and Improvement System Advisory Council and shall go through a public comment process before criteria are finalized.

5.6 Program standards shall be re-evaluated at a minimum of every five (5) years or when there is evidence or data indicating a need for review.

5.7 New standards shall be advertised in advance of implementation and programs given sufficient time to implement additional requirements.

#### **§78-22-6. Accountability Measures.**

##### **6.1 Evaluation**

6.1.a Child care settings that voluntarily apply for a higher star rating shall be evaluated to determine if the setting meets the additional quality standards established for each type of care at each of three additional levels of quality.

6.1.b Applicants for a two-star rating shall be evaluated through a combination of on-site inspection for compliance with program standards and/or written documentation, and a self-assessment with a valid and reliable observation instrument designated by the Secretary, such as the nationally recognized set of Environmental Rating Scales for different age groups and types of care.

6.1.c Three-star program applicants shall be evaluated on an annual basis, as funding allows, through a combination of on-site inspection for compliance with program standards, written documentation and an on-site evaluation with the designated observation tool by a trained and reliable evaluator.

6.1.d Four- star program applicants must submit documentation that the program has been evaluated by a national accrediting body designated by the Secretary and the QRIS Advisory Council and is nationally accredited and may be evaluated on an annual basis with the designated observation tool by a trained and reliable evaluator.

##### **6.2 Assessment Tools**

6.2.a The Secretary shall, with advice from the QRIS Advisory Council, designate valid and reliable tool(s) to assess program quality from an assortment of observation tools that have been tested and determined to assess various components of quality.

6.2.b The QRIS Advisory Council shall conduct periodic surveys of available observation tools to determine continuing effectiveness of the tool(s) being used for observation and self-assessment.

##### **6.3 Evaluators**

6.3.a The secretary, with advice from the QRIS Advisory Council, shall establish criteria and a process for approval of evaluators to ensure consistency of program assessments. Evaluators shall have adequate early childhood education, training on the evaluation tool and an inter-rater reliability of 85% on the selected tool.

6.3.b Evaluators shall have their reliability on the designated assessment tool re-assessed every two years using the process established by the Secretary with advice from the QRIS Advisory Council.

## 6.4 Program Improvement Planning

6.4.a Programs with a two-star rating or higher shall use the results of either an internal self-assessment or an external on-site assessment, as applicable, using the selected evaluation tool to develop a program improvement plan.

6.4.b. Program improvement plans shall be an ongoing tool used by child care programs to continuously improve quality.

### **§78-22-7. Review, Suspension and Revocation.**

#### 7.1 Review

7.1.a An applicant that is not satisfied with a proposed action that affects the quality rating may submit in writing a request for review within 30 days of the date of the appealed action.

7.1.b The QRIS Advisory Council shall develop a subcommittee to review applications in which the program has filed a request for review.

7.1.c The subcommittee shall provide a recommendation to the Director of the Division of Early Care and Education, who shall make the final decision on the outcome of the review.

7.1.d If a review is requested within 15 days of the appealed action, services may be continued or reinstated pending a decision by the Director of the Division of Early Care and Education.

#### 7.2 Suspension and Revocation

7.2.a The star rating of a program may be suspended or revoked for any of the following reasons:

7.2.a.1 The program is ineligible due to licensing status.

7.2.a.2 Accreditation status is revoked by the accrediting body.

7.2.a.3 The program is out of compliance with quality standards.

7.2.a.4 The Secretary deems suspension or revocation is appropriate based on previously established criteria.

### **§78-22-8. Quality Assurance.**

#### 8.1 Evaluating the QRIS

8.1.a. The secretary shall contract with an independent third-party evaluator to assist the Department and the Quality Rating and Improvement System Advisory Council with establishing and evaluating the QRIS and conducting research for quality improvement.

## 8.2 Access to Data for Evaluation

8.2.a. The independent third party evaluator shall have access to all project data including data in the management information system provided for in section.....of these rules.