



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Human Services TITLE-SERIES: 78-28

RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No

RULE NAME: 78-28 Deemed Head Start Child Care Center Licenses

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: 49-2-115a

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/23/2022

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/22/2022

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: Yes

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

n/a

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This rule establishes standards and procedures for the Head Start classrooms overseen by a Head Start Agency to be deemed child care center licensed under the provisions of W. Va. Code 49-2-115a and related federal and state code.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This is a new rule pursuant to HB 4662 passed in the 2022 Regular Session.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

n/a

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

n/a

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

n/a

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2022 Increase/Decrease (use "-")	2023 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			0
Personal Services			0
Current Expenses			0
Repairs and Alterations			0
Assets			0
Other			0
2. Estimated Total Revenues			0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

n/a

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

April L Robertson -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 78
LEGISLATIVE RULE
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 28
DEEMED HEAD START CHILD CARE CENTER LICENSES

§78-28-1. General.

1.1. Scope. -- This rule establishes standards and procedures for the Head Start classrooms overseen by a Head Start Agency to be deemed child care center licensed under the provisions of W. Va. Code §49-2-115a and related to federal and state code.

1.2. Authority. -- W. Va. Code §49-2-115a.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision -- This rule shall terminate and have no further force or effect on August 1, 2028.

1.6. Purpose. -- This rule governs the regulation of Head Start agencies in West Virginia.

§78-28-2. Application and Enforcement.

2.1. Application. This rule applies to any Head Start agency with an active Notice of Award with the Unites States Department of Health and Human Services pursuant to 42 USC §9801, et seq., may request to be deemed child care center licensed to operate a child care program for the sole purpose of utilizing the West Virginia Clearance for Access: Registry and Employment Screenings program.

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

§78-28-3. Definitions.

3.1. Criminal History Background Check -- A review of information pursuant to the provisions of the West Virginia Clearance for Access: Registry and Employment Screening Act (WV CARES), W. Va. Code §§16-49-1 et seq. and 69CSR10 and an examination of protective service records to determine eligibility for employment or participation under this rule.

3.2. Head Start Agency -- An agency, as defined in 42 U.S.C. § 9801 et seq, part 1305 of the Head Start Program Performance Standards, must establish and maintain a formal structure for program governance that includes a governing body, a policy council at the agency level, a policy committee at the delegate level, and a parent committee. Governing bodies have a legal and fiscal responsibility to administer and oversee the agency's Head Start and Early Head Start programs. Policy councils are responsible for the direction of the agency's Head Start and Early Head Start programs.

3.3. Head Start Deemed License -- Head Start agencies in receipt of a Notice of Award with 42 USC § 9801, et seq., issued by the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Head Start.

3.4. Notice of Award -- Documentation provided to a Head Start agency that indicates the agency will be funded through the Head Start Program.

§78-28-4. Deemed Licensed Status Application and Provisions.

4.1. Application for a Head Start Deemed License status.

4.1.a. For a Head Start Agency to receive a deemed license, an applicant shall submit a completed application as prescribed by the Secretary. An application may be obtained by requesting one from the Division of Early Care and Education within the Department; contact information is located at <https://dhhr.wv.gov/bcf/ece>.

4.1.b. The Head Start Agency must have a current Notice of Award to apply.

4.1.c. An incomplete application shall be considered withdrawn if not completed within 60 days of submission.

4.1.d. The Secretary will issue a decision whether to grant a Head Start Deemed License within 60 days of receiving a completed application.

4.2. Requirements to maintain a Head Start Deemed License. A Head Start Deemed License is valid from the date of issuance, as determined by the Secretary, unless revoked or modified.

4.2.a. The Head Start Agency must submit the most current Notice of Award on an annual basis to the Child Care Regulation Unit.

4.2.b. A Head Start Deemed License is valid only for the Head Start agency and programs and the locations named in the application and is not transferable.

4.2.c. A Head Start agency shall keep on file the deemed license notification.

4.2.d. If Head Start agency and program locations change, the new Head Start agency shall submit an updated application within 60 days of the change.

4.2.e. Before the location of a Head Start agency or corresponding classrooms change, the licensee shall inform the Secretary of the planned change by submitting an updated application at least 60 days prior to the relocation.

§78-28-5. Investigation.

5.1. Nothing herein shall be construed to prevent the Department from investigating complaints regarding the health, safety, or welfare of children.

5.2. A center shall not hire, continue to employ, or allow to volunteer any individual who is determined by the Department to have abused or neglected a child or incapacitated adult.

5.3 Failure to comply with subsection 5.2. may result in the Department revoking the Head Start Agency's deemed license at the Secretary's sole discretion.

§78-28-6. Use of West Virginia CARES

6.1 All Head start programs licensed, whether deemed or under traditional licensure through the department, shall have use of the WV CARES background check program.

§78-28-7. Enforcement Actions.

7.1. The Secretary will revoke a Head Start Agency deemed license or revert a deemed license to a license under 78CSR1 upon evidence that the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Head Start, is no longer funding the agency.