

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 498**

(SENATORS PLYMALE, PREZIOSO, KESSLER, WELLS, FOSTER, JENKINS, STOLLINGS AND  
UNGER, *original sponsors*)

---

[Passed April 11, 2009; in effect from passage.]

---

AN ACT to amend and reenact §18-5-44 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §49-2E-1, §49-2E-2, §49-2E-3 and §49-2E-4, all relating to early childhood; requiring county boards to report certain information to the Secretary of the Department of Health and Human Resources and the state superintendent relating to the use of community-based programs to provide early childhood education services; quality rating and improvement system applicable to certain child care providers; findings and intent; Secretary of Department of Health and Human Resources rules; Quality Rating and

Improvement System Advisory Council; statewide quality rating system rules; statewide implementation; system components; review, reduction, suspension or disqualification; statewide quality improvement system; financial plan for implementation and quality improvement; plan components; pilot projects; third-party evaluator; reports to Legislature; gradual implementation; conditioning requirements on legislative appropriation; prioritization of components for funding; and PIECES advisory council.

*Be it enacted by the Legislature of West Virginia:*

That §18-5-44 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §49-2E-1, §49-2E-2, §49-2E-3 and §49-2E-4, all to read as follows:

**CHAPTER 18. EDUCATION.**

**ARTICLE 5. COUNTY BOARD OF EDUCATION.**

**§18-5-44. Early childhood education programs.**

(a) For the purposes of this section, "early childhood education" means programs for children who have attained the age of four prior to September 1 of the school year in which the pupil enters the program created in this section.

(b) *Findings.* --

(1) Among other positive outcomes, early childhood education programs have been determined to:

(A) Improve overall readiness when children enter school;  
(B) Decrease behavioral problems;  
(C) Improve student attendance;  
(D) Increase scores on achievement tests;  
(E) Decrease the percentage of students repeating a grade; and  
(F) Decrease the number of students placed in special education programs;

(2) Quality early childhood education programs improve school performance and low-quality early childhood education programs may have negative effects, especially for at-risk children;

(3) West Virginia has the lowest percentage of its adult population twenty-five years of age or older with a bachelor's degree and the education level of parents is a strong indicator of how their children will perform in school;

(4) During the 2006-2007 school year, West Virginia ranked thirty-ninth among the fifty states in the percentage of school children eligible for free and reduced lunches and this percentage is a strong indicator of how the children will perform in school;

(5) For the school year 2008-2009, thirteen thousand one hundred thirty-five students were enrolled in prekindergarten, a number equal to approximately sixty-three percent of the number of students enrolled in kindergarten;

(6) Excluding projected increases due to increases in enrollment in the early childhood education program, projections

indicate that total student enrollment in West Virginia will decline by one percent, or by approximately two thousand seven hundred four students, by the school year 2012-2013;

(7) In part, because of the dynamics of the state aid formula, county boards will continue to enroll four-year old students to offset the declining enrollments;

(8) West Virginia has a comprehensive kindergarten program for five-year olds, but the program was established in a manner that resulted in unequal implementation among the counties which helped create deficit financial situations for several county boards;

(9) Expansion of current efforts to implement a comprehensive early childhood education program should avoid the problems encountered in kindergarten implementation;

(10) Because of the dynamics of the state aid formula, counties experiencing growth are at a disadvantage in implementing comprehensive early childhood education programs; and

(11) West Virginia citizens will benefit from the establishment of quality comprehensive early childhood education programs.

(c) Beginning no later than the school year 2012-2013, and continuing thereafter, county boards shall provide early childhood education programs for all children who have attained the age of four prior to September 1 of the school year in which the pupil enters the early childhood education program.

(d) The program shall meet the following criteria:

(1) It shall be voluntary, except, upon enrollment, the provisions of section one, article eight of this chapter apply to an enrolled student; and

(2) It may be for fewer than five days per week and may be less than full day.

(e) Enrollment of students in Head Start, in any other program approved by the state superintendent as provided in subsection (k) of this section shall be counted toward satisfying the requirement of subsection (c) of this section.

(f) For the purposes of implementation financing, all counties are encouraged to make use of funds from existing sources, including:

(1) Federal funds provided under the Elementary and Secondary Education Act pursuant to 20 U. S. C. §6301, *et seq.*;

(2) Federal funds provided for Head Start pursuant to 42 U. S. C. §9831, *et seq.*;

(3) Federal funds for temporary assistance to needy families pursuant to 42 U. S. C. §601, *et seq.*;

(4) Funds provided by the School Building Authority pursuant to article nine-d of this chapter;

(5) In the case of counties with declining enrollments, funds from the state aid formula above the amount indicated for the number of students actually enrolled in any school year; and

(6) Any other public or private funds.

(g) Each county board shall develop a plan for implementing the program required by this section. The plan shall include the following elements:

(1) An analysis of the demographics of the county related to early childhood education program implementation;

(2) An analysis of facility and personnel needs;

(3) Financial requirements for implementation and potential sources of funding to assist implementation;

(4) Details of how the county board will cooperate and collaborate with other early childhood education programs including, but not limited to, Head Start, to maximize federal and other sources of revenue;

(5) Specific time lines for implementation; and

(6) Any other items the state board may require by policy.

(h) A county board shall submit its plan to the Secretary of the Department of Health and Human Resources. The secretary shall approve the plan if the following conditions are met:

(1) The county board has maximized the use of federal and other available funds for early childhood programs;

(2) The county board has provided for the maximum implementation of Head Start programs and other public and private programs approved by the state superintendent pursuant to the terms of subsection (k) of this section; and

(3) If the Secretary of the Department of Health and Human Resources finds that the county board has not met one or more of the requirements of this subsection, but that the county board has acted in good faith and the failure to comply was not the primary fault of the county board, then the secretary shall approve the plan. Any denial by the secretary may be appealed to the circuit court of the county in which the county board is located.

(i) The county board shall submit its plan for approval to the state board. The state board shall approve the plan if the county board has complied substantially with the requirements of subsection (g) of this section and has obtained the approval required in subsection (h) of this section.

(j) Every county board shall submit its plan for reapproval by the Secretary of the Department of Health and Human Resources and by the state board at least every two years after the initial approval of the plan and until full implementation of the early childhood education program in the county. As part of the submission, the county board shall provide a detailed statement of the progress made in implementing its plan. The standards and procedures provided for the original approval of the plan apply to any reapproval.

(k) A county board may not increase the total number of students enrolled in the county in an early childhood program until its program is approved by the Secretary of the Department of

Health and Human Resources and the state board.

(1) The state board annually may grant a county board a waiver for total or partial implementation if the state board finds that all of the following conditions exist:

(1) The county board is unable to comply either because:

(A) It does not have sufficient facilities available; or

(B) It does not and has not had available funds sufficient to implement the program;

(2) The county has not experienced a decline in enrollment at least equal to the total number of students to be enrolled; and

(3) Other agencies of government have not made sufficient funds or facilities available to assist in implementation.

Any county board seeking a waiver shall apply with the supporting data to meet the criteria for which they are eligible on or before March 25 for the following school year. The state superintendent shall grant or deny the requested waiver on or before April 15 of that same year.

(m) The provisions of subsections (b), (c) and (d), section eighteen of this article relating to kindergarten apply to early childhood education programs in the same manner in which they apply to kindergarten programs.

(n) Annually, the state board shall report to the Legislative Oversight Commission on Education Accountability on the progress of implementation of this section.

(o) Except as required by federal law or regulation, no county board may enroll students who will be less than four years of age prior to September 1 for the year they enter school.

(p) Neither the state board nor the state department may provide any funds to any county board for the purpose of implementing this section unless the county board has a plan approved pursuant to subsections (h), (i) and (j) of this section.

(q) The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for the purposes of implementing the provisions of this section. The state board shall consult with the Secretary of the Department of Health and Human Resources in the preparation of the rule. The rule shall contain the following:

- (1) Standards for curriculum;
- (2) Standards for preparing students;
- (3) Attendance requirements;
- (4) Standards for personnel; and
- (5) Any other terms necessary to implement the provisions of this section.

(r) The rule shall include the following elements relating to curriculum standards:

- (1) A requirement that the curriculum be designed to address the developmental needs of four-year old children, consistent with prevailing research on how children learn;

(2) A requirement that the curriculum be designed to achieve long-range goals for the social, emotional, physical and academic development of young children;

(3) A method for including a broad range of content that is relevant, engaging and meaningful to young children;

(4) A requirement that the curriculum incorporate a wide variety of learning experiences, materials and equipment, and instructional strategies to respond to differences in prior experience, maturation rates and learning styles that young children bring to the classroom;

(5) A requirement that the curriculum be designed to build on what children already know in order to consolidate their learning and foster their acquisition of new concepts and skills;

(6) A requirement that the curriculum meet the recognized standards of the relevant subject matter disciplines;

(7) A requirement that the curriculum engage children actively in the learning process and provide them with opportunities to make meaningful choices;

(8) A requirement that the curriculum emphasize the development of thinking, reasoning, decisionmaking and problem-solving skills;

(9) A set of clear guidelines for communicating with parents and involving them in decisions about the instructional needs of their children; and

(10) A systematic plan for evaluating program success in meeting the needs of young children and for helping them to be ready to succeed in school.

(s) The secretary and the state superintendent shall submit a report to the Legislative Oversight Commission on Education Accountability and the Joint Committee on Government and Finance which addresses, at a minimum, the following issues:

(1) A summary of the approved county plans for providing the early childhood education programs pursuant to this section;

(2) An analysis of the total cost to the state and county boards of implementing the plans;

(3) A separate analysis of the impact of the plans on counties with increasing enrollment; and

(4) An analysis of the effect of the programs on the maximization of the use of federal funds for early childhood programs.

The intent of this subsection is to enable the Legislature to proceed in a fiscally responsible manner, make any necessary program improvements based on reported information prior to implementation of the early childhood education programs.

(t) After the school year 2012-2013, on or before July 1 of each year, each county board shall report the following information to the Secretary of the Department of Health and Human Resources and the state superintendent:

(1) Documentation indicating the extent to which county boards are maximizing resources by using the existing capacity of community-based programs, including, but not limited to Head Start and child care; and

(2) For those county boards that are including eligible children attending approved, contracted community-based programs in their net enrollment for the purposes of calculating state aid pursuant to article nine-a of this chapter, documentation that the county board is equitably distributing funding for all children regardless of setting.

#### **CHAPTER 49. CHILD WELFARE.**

##### **ARTICLE 2E. QUALITY RATING AND IMPROVEMENT SYSTEM.**

###### **§49-2E-1. Findings and intent; advisory council.**

(a) The Legislature finds that:

(1) High quality early childhood development substantially improves the intellectual and social potential of children and reduces societal costs;

(2) A child care program quality rating and improvement system provides incentives and resources to improve the quality child care programs; and

(3) A child care program quality rating and improvement system provides information about the quality of child care programs to parents so they may make more informed decisions about the placement of their children.

(b) It is the intent of the Legislature to require the Secretary of the Department of Health and Human Resources promulgate a legislative rule and establish a plan for the phased implementation of a child care program quality rating and improvement system not inconsistent with the provisions of this article.

(c) The Secretary of the Department of Health and Human Resources shall create a Quality Rating and Improvement System Advisory Council to provide advice on the development of the rule and plan for the phased implementation of a child care program quality rating and improvement system and the ongoing program review and policies for quality improvement. The secretary shall facilitate meetings of the advisory council. The advisory council shall include representatives from the provider community, advocacy groups, the Legislature, providers of professional development services for the early childhood community, regulatory agencies and others who may be impacted by the creation of a quality rating and improvement system.

(d) Nothing in this article requires an appropriation, or any specific level of appropriation, by the Legislature.

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

(a) 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. The rules shall include, but are not limited to, the following:

(1) A four-star rating system for registered family child care homes and a four-star rating system for all licensed programs, including family child care facilities and child care centers, to easily communicate to consumers four progressively higher levels of quality child care. One star indicating meeting the minimum acceptable standard and four stars indicating meeting or exceeding the highest standard. The system shall reflect the cumulative attainment of the standards at each level and all lesser levels: *Provided*, That any program accredited by the National Association for the Education of Young Children or the National Association for Family Child Care, as applicable, shall automatically be awarded four-star status;

(2) Program standards for registered family child care homes

and program standards for all licensed programs, including family child care facilities and child care centers, that are each divided into four levels of attributes that progressively improve the quality of child care beginning with basic state registration and licensing requirements at level one, through achievement of a national accreditation by the appropriate organization at level four. Participation beyond the first level is voluntary. The program standards shall be categorized using the West Virginia State Training and Registry System Core Knowledge Areas or its equivalent;

(3) Accountability measures that provide for a fair, valid, accurate and reliable assessment of compliance with quality standards, including, but not limited to:

(A) Evaluations conducted by trained evaluators with appropriate early childhood education and training on the selected assessment tool and with a demonstrated inter-rater reliability of eighty-five percent or higher. The evaluations shall include an on-site inspection conducted at least annually to determine whether programs are rated correctly and continue to meet the appropriate standards. The evaluations and observations shall be conducted on at least a statistically valid percentage of center classrooms, with a minimum of one class per age group;

(B) The use of valid and reliable observation and assessment tools, such as environmental rating scales for early childhood,

infant and toddler, school-age care and family child care as appropriate for the particular setting and age group;

(C) An annual self-assessment using the proper observation and assessment tool for programs rated at two stars; and

(D) Model program improvement planning shall be designed to help programs improve their evaluation results and level of program quality.

(b) The rules required pursuant to this section shall include policies relating to the review, reduction, suspension or disqualification of child care programs from the quality rating and improvement system.

(c) The rules shall provide for implementation of the statewide quality rating system effective July 1, 2011, subject to section four of this article.

**§49-2E-3. Creation of statewide quality improvement system; financial plan to support implementation and quality improvement required as part of rules.**

Attached to the proposed rules required in section two of this article, the Secretary of the Department of Health and Human Resources shall submit a financial plan to support the implementation of a statewide quality rating and improvement system and help promote quality improvement. The financial plan shall be considered a part of the rule and shall include specific proposals

for implementation of the provisions of this section as determined by the Secretary. The plan shall address, but is not limited to, the following:

(1) State agency staffing requirements, including, but not limited to:

(A) Highly trained evaluators to monitor the assessment process and ensure inter-rater reliability of eighty-five percent or higher;

(B) Technical assistance staff responsible for career advising, accreditation support services, improvement planning, portfolio development and evaluations for improvement planning only. The goal for technical assistance staffing is to ensure that individualized technical assistance is available to participating programs;

(C) A person within the department to collaborate with other professional development providers to maximize funding for training, scholarships and professional development. The person filling this position also shall encourage community and technical colleges to provide courses through nontraditional means such as online training, evening classes and off-campus training;

(D) Additional infant and toddler specialists to provide high level professional development for staff caring for infants and to provide on-site assistance with infant and toddler issues;

(E) At least one additional training specialist at each of the

child care resource and referral agencies to support new training topics and to provide training for school-age child care programs.

Training providers such as the child care resource and referral agencies shall purchase new training programs on topics such as business management, the Devereux Resiliency Training and Mind in the Making; and

(F) Additional staff necessary for program administration;

(2) Implementation of a broad public awareness campaign and communication strategies that may include, but are not limited to:

(A) Brochures, internet sites, posters, banners, certificates, decals and pins to educate parents; and

(B) Strategies such as earned media campaigns, paid advertising campaigns, e-mail and internet-based outreach, face-to-face communication with key civic groups and grassroots organizing techniques; and

(3) Implementation of an internet-based management information system that meets the following requirements:

(A) The system shall allow for multiple agencies to access and input data;

(B) The system shall provide the data necessary to determine if the quality enhancements result in improved care and better outcomes for children;

(C) The system shall allow access by Department of Health and Human Resources subsidy and licensing staff, child care resource

and referral agencies, the agencies that provide training and scholarships, evaluators and the child care programs;

(D) The system shall include different security levels in order to comply with the numerous confidentiality requirements;

(E) The system shall assist in informing practice; determining training needs; and tracking changes in availability of care, cost of care, changes in wages and education levels; and

(F) The system shall provide accountability for child care programs and recipients and assure funds are being used effectively;

(4) Financial assistance for child care programs needed to improve learning environments, attain high ratings and sustain long-term quality without passing additional costs on to families that may include, but are not limited to:

(A) Assistance to programs in assessment and individual program improvement planning and providing the necessary information, coaching and resources to assist programs to increase their level of quality;

(B) Subsidizing participating programs for providing child care services to children of low-income families in accordance with the following:

(i) Base payment rates shall be established at the seventy-fifth percentile of market rate; and

(ii) A system of tiered reimbursement shall be established

which increases the payment rates by a certain amount above the base payment rates in accordance with the rating tier of the child care program;

(C) Two types of grants shall be awarded to child care programs in accordance with the following:

(i) An incentive grant shall be awarded based on the type of child care program and the level at which the child care program is rated with the types of child care programs having more children and child care programs rated at higher tiers being awarded a larger grant than the types of child care programs having less children and child care programs rated at lower tiers; and

(ii) Grants for helping with the cost of national accreditation shall be awarded on an equitable basis.

(5) Support for increased salaries and benefits for program staff to increase educational levels essential to improving the quality of care that may include, but are not limited to:

(A) Wage supports and benefits provided as an incentive to increase child care programs ratings and as an incentive to increase staff qualifications in accordance with the following:

(i) The cost of salary supplements shall be phased in over a five-year period;

(ii) The Secretary of the Department of Health and Human Resources shall establish a salary scale for each of the top three rating tiers that varies the salary support based on the education

of the care giver and the rating tier of the program; and

(iii) Any center with at least a tier two rating that employs at least one staff person participating in the scholarship program required pursuant to paragraph (B) of this subsection or employs degree staff may apply to the Secretary of the Department of Health and Human Resources for funding to provide health care benefits based on the Teacher Education and Compensation Helps model in which insurance costs are shared among the employees, the employer and the state; and

(B) The provision of scholarships and establishment of professional development plans for center staff that would promote increasing the credentials of center staff over a five-year period; and

(6) Financial assistance to the child care consumers whose income is at two hundred percent of the federal poverty level or under to help them afford the increased market price of child care resulting from increased quality.

**§49-2E-4. Quality rating and improvement system pilot projects; independent third-party evaluation; modification of proposed rule and financial plan; report to Legislature; limitations on implementation.**

(a) The Secretary of the Department of Health and Human Resources may promulgate emergency rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to

implement a quality rating and improvement system in up to five counties as pilot projects beginning July 1, 2009. The pilot quality rating and improvement systems shall be in accordance with the provisions of this article for the statewide system. The purpose of the pilot projects is to test the rating system, assess the quality of existing child care providers, provide a basis for estimating the financial requirements of the various elements of a statewide system as set forth in this article and to inform future policy decisions. Notwithstanding any provision of this article to the contrary, the rating or potential rating of a child care provider participating in the study may not be individually disclosed. The secretary may modify and develop additional policies consistent with this article as appropriate.

(b) 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 pilot project quality rating and improvement system and conducting research on statewide implementation. The secretary also may contract with the evaluator for ongoing evaluation and research for quality improvement. The evaluator shall have access to all project data including data in the management information system provided for in section two of this article.

(c) The secretary shall report annually to the Legislature on the progress on development and implementation of a child care

quality rating and improvement system and its impact on improving the quality of child care in the state. The secretary may propose amendments to the rules and financial plan necessary to promote implementation of the quality rating and improvement system and improve the quality of child care and may recommend needed legislation. Nothing in this article requires the implementation of a quality rating and improvement system unless funds are appropriated therefore. The secretary may prioritize the components of the financial plan for implementation and quality improvement for funding purposes. If insufficient funds are appropriated for full implementation of the quality rating and improvement system beginning on July 1, 2011, the rules shall provide for gradual implementation over a period of several years.

(d) The Legislature recognizes that expenditures, especially one-time types of expenditures or expenditures of a limited duration, may be funded with moneys derived through the American Recovery and Reinvestment Act of 2009. A study of the cost of implementing a quality rating and improvement system statewide is expected to be conducted over the next two years.