

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	03/04/2014	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 3/21/2014

2. COMAR Codification

Title Subtitle Chapter Regulation

14 31 05 .08, .09

3. Name of Promulgating Authority

Governor's Office for Children

4. Name of Regulations Coordinator

Steven J Schreiber

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5. Name of Person to Call About this Document

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6. Check applicable items:

New Regulations

X- Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: 3/4/2014.

- Repeal of Existing Regulations
- Recodification
- Incorporation by Reference of Documents Requiring DSD Approval
- Reproposal of Substantively Different Text:

: Md. R
(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

Yes **X-** No

8. Incorporation by Reference

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Deborah Donohue, Assistant Attorney General, (telephone #410-767-5060) on 3/4/2014. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Anne Sheridan

Title

Executive Director, Governor's Office for Children

Telephone No.

410-767-6211

Date

3/4/2014

Title 14

INDEPENDENT AGENCIES

Subtitle 31 OFFICE FOR CHILDREN

14.31.05 Licensing and Monitoring of Residential Child Care Programs

Authority: Human Services Article, §§2-209, 2-212, 9-203, 9-204, 9-221, 9-231, 9-234, and 9-235; Health-Occupations Article, §20-302; Education Article, §§8-301 - 8-303 and 8-401 - 8-417; Family Law Article, §§5-506, 5-508, 5-509, and 5-510; Health-General Article, §§2-104, 7-904, 8-404, 10-922, and 10-924; Annotated Code of Maryland

Notice of Proposed Action

□

The Sec. of DHMH, Sec. of DHR, Sec. of DJS, and Superintendent of Schools, with the Exec. Dir. of GOC proposes to amend Regulations .08 and .09 under COMAR 14.31.05 Licensing and Monitoring of Residential Child Care Programs. For administrative convenience, because these proposed regulations are being jointly proposed, the amended regulations would appear in the title for the existing regulations for the Governor's Office for Children.

Statement of Purpose

The purpose of this action is to clarify the circumstances in which the licensing agency may choose to issue either corrective actions or sanctions on a program that is deficient in meeting the requirements of the regulations under this subtitle.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Anne Sheridan, Executive Director, Governor's Office for Children, 301 West Preston Street, Baltimore, MD 21201, or call 410-767-6211, or email to anne.sheridan@maryland.gov, or fax to 410-333-5248. Comments will be accepted

through April 21, 2014. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2014

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

No

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

No funds are necessary to implement these regulations.

E. If these regulations have no economic impact under Part A, indicate reason briefly:

These regulations concern the procedures for issuing corrective actions and sanctions that are part of the licensing and monitoring process, which do not have an effect on jobs or the economy.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

These regulations will have a minimal impact on small businesses as they allow residential child care providers to be sanctioned without first requiring corrective actions, but they do not change the standards to which providers are held.

G. Small Business Worksheet:

1a. Intended Beneficiaries. Who are the intended beneficiaries of the proposed regulation?

Residential child care programs.

Are these intended beneficiaries primarily households or businesses?

The intended beneficiaries are primarily businesses.

1b. Intended Beneficiaries: Households. If households are the primary intended beneficiaries, will the proposal affect their income or purchasing power such that the volume or patterns of their consumer spending will change? If so, what directions of change would you anticipate? Will these expected spending changes have a disproportionate impact on small businesses? Can you descriptively identify the industries or types of business activities that are impacted?

N/A

1c. Intended Beneficiaries: Businesses. If businesses are the intended beneficiaries, identify the businesses by industry or by types of business activities.

Residential child care programs where children are placed.

How will businesses be impacted?

Residential child care programs may be sanctioned without first requiring corrective actions, which may result in more sanctions that prohibit children being placed in certain programs due to safety concerns. This occurrence is rare and is based on the standards to which the programs are currently held.

Are these Maryland establishments' disproportionately small businesses?

Yes.

If so, how will these Maryland small businesses be affected?

N/A

Can you identify or estimate the present number of small businesses affected?

No.

Can you estimate the present total payroll or total employment of small businesses affected?

No.

2a. Other Direct or Indirect Impacts: Adverse. Businesses may not be the intended beneficiaries of the proposal. Instead, the proposal may direct or otherwise cause businesses to incur additional expenses of doing business in Maryland. Does this proposal require Maryland businesses to respond in such a fashion that they will incur additional work-time costs or monetary costs in order to comply?

The proposal will not affect any other establishments besides the intended beneficiaries.

Will Maryland small businesses bear a disproportionate financial burden or suffer consequences that affect their ability to compete?

No.

Can you estimate the possible number of Maryland small businesses adversely affected? (Note that small business compliance costs in the area of regulation are the sum of out-of-pocket (cash) costs plus time costs — usually expressed as payroll, akin to calculations for legislative fiscal notes. Precise compliance costs may be difficult to estimate, but the general nature of procedures that businesses must accomplish to comply can be described.)

No.

2b. Other Direct or Indirect Impacts: Positive. Maryland businesses may positively benefit by means other than or in addition to changed consumer spending patterns. How may Maryland businesses be positively impacted by this initiative?

There is no estimated positive impact.

Will Maryland small businesses share proportionately or disproportionately in these gains?

N/A

Can you estimate the possible number of Maryland small businesses positively affected?

No.

3. Long-Term Impacts. There are instances where the longer run economic impact effects from regulations differ significantly from immediate impact. For example, regulations may impose immediate burdens on Maryland small businesses to comply, but the overall restructuring of the industry as a consequence of monitoring and compliance may provide offsetting benefits to the affected small businesses in subsequent years. Can you identify any long run economic impact effects on Maryland small businesses that over time (a) may compound or further aggravate the initial economic impact described above, or (b)

may mitigate or offset the initial economic impact described above?

No.

4. Estimates of Economic Impact. State Government Article, §2-1505.2 requires that an agency include estimates, as appropriate, directly relating to: (1) cost of providing goods and services; (2) effect on the work force; (3) effect on the cost of housing; (4) efficiency in production and marketing; (5) capital investment, taxation, competition, and economic development; and (6) consumer choice.

N/A

Attached Document:

Title 14 INDEPENDENT AGENCIES

Subtitle 31 – Office for Children

Chapter 05 – Licensing and Monitoring of Residential Child Care Programs

Authority: Human Services Article, §§2-209, 2-212, 9-203, 9-204, 9-221, 9-231, 9-234, and 9-235; Health-Occupations Article, §20-302; Education Article, §§8-301 - 8-303 and 8-401 - 8-417; Family Law Article, §§5-506, 5-508, 5-509, and 5-510; Health-General Article, §§2-104, 7-904, 8-404, 10-922, and 10-924; Annotated Code of Maryland

Notice of Proposed Action

The Secretary of Health and Mental Hygiene, the Secretary of Human Resources, the Secretary of Juvenile Services, and the State Superintendent of Schools, in conjunction with the Executive Director of the Governor's Office for Children, propose to amend Regulations .08 and .09 under **COMAR 14.31.05 Licensing and Monitoring of Residential Child Care Programs**. For administrative convenience, because these proposed regulations are being jointly proposed, the amended regulations would appear in the title for the existing regulations for the Governor's Office for Children.

Statement of Purpose

The purpose of this action is to clarify the circumstances in which the licensing agency may choose to issue either corrective actions or sanctions on a program that is deficient in meeting the requirements of the regulations under this subtitle.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed regulation.

Estimate of Economic Impact

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The proposed action has minimal or no economic impact on small businesses.

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Opportunity for Public Comment

Comments may be sent to Anne Sheridan, Executive Director, Governor's Office for Children, 301 W. Preston Street, Suite 1502, Baltimore, MD 21201, or fax to 410-333-5248, or call 410-767-6211, or email to anne.sheridan@maryland.gov. Comments will be accepted through April 21, 2014. A public hearing has not been scheduled.

.08 Corrective Actions.

A. If the licensing agency determines through its monitoring and evaluation activities that a program is deficient in meeting the licensing requirements of this chapter, COMAR 14.31.06, or COMAR 14.31.07, *and* the licensing agency chooses to require a corrective action plan, it shall:

- [(1) Assess the seriousness of the deficiencies;
- (2) Require the program to develop a corrective action plan;]
- [(3)] (1) Determine whether it is necessary during the pendency of the corrective action process to:
 - (a) Remove children currently placed in the facility; or
 - (b) Place a moratorium on future placements to the program;
- [(4)] (2) Evaluate and, if acceptable, approve the corrective action plan;
- [(5)] (3) Determine appropriate timelines for the completion of corrective actions;
- [(6)] (4) Conduct periodic monitoring of any program for which it required a corrective action plan:
 - (a) To assess the program's progress toward remedying the deficiencies; and
 - (b) To evaluate the program's viability as it is affected by the licensing agency's action.[]; and
- [(7) Impose sanctions under Regulation .09 of this chapter, as appropriate, if the deficiencies are not remedied through implementation of corrective actions.]

B. Upon determining that corrective actions are required to remedy deficiencies, the licensing agency shall give written notice to the program including:

- (1) A description of the regulation violated or other program violation;
- (2) A description of [the sanction] *any sanctions to be imposed*; and
- (3) The requirements for the licensee's submission of a plan of correction to the licensing agency.

C. Corrective Action Plans.

(1) Within 10 days of receipt of a deficiency notice under §B of this regulation, the licensee shall submit a corrective action plan to the licensing agency for approval.

(2) The licensing agency shall review the corrective action plan by the effective date of the sanction indicated in the deficiency notice and inform the licensee whether the plan of correction has been accepted.

(3) If the licensee fails to submit an acceptable corrective action plan within the agency's timelines, the licensing agency may:

- (a) Impose additional corrective action measures under this regulation;
- (b) Provide additional time for the licensee to submit a revised corrective action plan; or
- (c) Impose sanctions under Regulation .09 of this chapter.

D. Corrective Action Outcomes.

(1) If the licensing agency, at any time during the corrective action period, determines that the licensee has failed to fulfill the corrective action plan requirements or makes insufficient progress towards remedying deficiencies, the licensing agency may:

- (a) Require the removal of currently placed children from the program;
- (b) Place a moratorium on future placements at the program; or
- (c) For good cause, grant an extension of time for completion of a corrective action plan.

(2) If the licensing agency determines, at the end of the prescribed corrective action period, that the licensee has failed to remedy deficiencies adequately, the agency shall impose sanctions under Regulation .09 of this chapter.

E. Services to Children at Programs with Corrective Action Plans.

(1) The placing agency shall identify an expedited, interim placement for a child who must be removed from a program due to deficiencies.

(2) If the licensing agency determines that children may no longer be placed in a program with uncorrected deficiencies, the licensing agency may grant a waiver for the placement of an individual child, or group of children, in the program based on the following considerations:

- (a) The seriousness of the deficiency and its implications for the child's health, safety, and welfare;
- (b) Applicable legal requirements including:
 - (i) The child's individualized education program, if the child is a student with disabilities;
 - (ii) Any court order *regarding* the child's placement; and
 - (iii) Any other legal requirements that may govern in the child's placement;
- (c) The medical recommendations of the child's treating physician;
- (d) The availability of alternative placements; and

(e) The ability of the program to ensure safe and appropriate services for each child for whom the waiver is sought.

.09 Sanctions.

A. Causes for Sanctions. [The licensing agency may impose sanctions upon a program for:]

(1) *The licensing agency may impose sanctions upon a program, regardless of whether a corrective action plan is required in accordance with regulation .08A of this chapter, for [Violations] violations of the regulations of this chapter, COMAR 14.31.06, 14.31.07, or any combination of these.*

(2) *Sanctions may also be imposed for:*

(a) Misrepresentations of fact to the licensing agency, a placing agency, the Office for Children, or the Interagency Rates Committee;

[(3)] (b) Submission of false financial information to the licensing agency, the Office for Children, or the Interagency Rates Committee;

[(4)] (c) Failure to cooperate with the monitoring activities of the licensing agency or placing agencies under Regulation .06 of this chapter;

[(5)] (d) Failure to prepare or implement an adequate corrective plan under Regulation .08 of this chapter when found to be in noncompliance with the licensing standards of COMAR 14.31.06; or

[(6)] (e) Violations of other federal or State laws or regulations that jeopardize the safety or welfare of the program's residents.