

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
State Board of Education**
(DLS Control No. 15-043)

Overview and Legal and Fiscal Impact

These regulations (1) repeal the requirement to annually update the State Median Income amounts used to determine eligibility for an award under the Family Child Care Provider Direct Grant Fund; (2) repeal the fixed monthly award cycle for an award under the fund and instead allow awards to be made at any time during a 12-month period; and (3) repeal the requirement to assign an award priority to each applicant.

These regulations provide a legal issue of concern of which the State Board of Education has been notified. Please see the Legal Issue and Special Notes sections of the Legal Analysis below for additional comments.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

State Board of Education:

Child and Family Day Care: Family Day Care Provider Direct Grant Fund:
COMAR 13A.14.07.01, .02, .04 and .05

Legal Analysis

Summary of Regulations

These regulations amend the fund by:

- repealing the requirement that the Office of Child Care within the State Department of Education annually update the State Median Income levels used to determine an applicant's eligibility for an award under the fund;
- requiring that the office make fund awards to eligible applicants each month until the *annual* allocation is exhausted rather than dividing the annual fund allocation into 12 equal monthly funding allocations and making awards each month based on that *month's* allocation, as is currently required;
- repealing the requirement that the office assign an award priority to each applicant, with the higher priority being assigned to an applicant with a lower income; and

- making conforming changes.

Legal Issue

These regulations repeal the requirement in Regulation 13A.14.07.05B that the office assign each applicant an award priority, with a higher priority given to an applicant with a lower income. Section 5-559.3(c)(3) of the Family Law Article requires that, when making grants under the fund, the office consider family income, with priority being given to those families with the lowest income. It is the opinion of the Department of Legislative Services that this priority requirement cannot be changed by regulation to be inconsistent with existing State law.

Statutory Authority and Legislative Intent

The State Superintendent of Schools cites §§ 5-550 through 5-557 and 5-559.1 through 5-559.8 of the Family Law Article as statutory authority for these regulations. Sections 5-550 through 5-557 empower the State Department of Education to implement a registration system for family child care homes and, to the extent practicable, ensure that the regulations be uniform with the rules and regulations adopted by other State agencies as those rules and regulations relate to other types of child care. Sections 5-559.1 through 5-559.8 relate to the establishment and administration of the Family Child Care Provider Direct Grant Fund to make grants to eligible family child care providers.

This authority is correct and complete. Except as noted in the Legal Issue section above, these regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

These regulations change the name of the fund that provides grants to eligible family child care providers from “Family Day Care Provider Direct Grant Fund” to “Family Child Care Provider Grant Fund” (note the absence of the word “Direct”). However, the statutory name of the fund under § 5-559.1 of the Family Law Article is “Family Child Care Provider Direct Grant Fund” (note the presence of the word “Direct”). On notification by the Department of Legislative Services, the State Board has agreed to reconcile the difference in nomenclature so that the name of the fund in regulation is consistent with the name of the fund in statute.

Additionally, in response to the legal issue raised by the Department of Legislative Services, the State Board responded that assigning priority to families with the lowest income is not practical nor observed by the office because there is not a specific deadline to apply for assistance that would provide the office with an opportunity to rank all of the applicants for that year at the same time. Instead, applicants are evaluated and grants are provided throughout the year on an ongoing basis as applications are received. Moreover, the State Board noted that, since the fund’s inception, the fund has been sufficient in size to support all eligible applicants. Consequently, the State Board has determined that the regulation is consistent with State law and current practice.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The regulations alter the application and award allocation process for the Family Child Care Provider Direct Grant Fund in the department. The department advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

Contact Information

Legal Analysis: Theodore E. King, Jr. – (410) 946/(301) 970-5350

Fiscal Analysis: Jennifer K. Botts – (410) 946/(301) 970-5510