

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	11/13/2014	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 12/26/2014

2. COMAR Codification

Title Subtitle Chapter Regulation

13A 14 14 01—.07

3. Name of Promulgating Authority

Maryland State Department of Education

4. Name of Regulations Coordinator

Charlene L Necessary

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5. Name of Person to Call About this Document

Linda Budd

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410-332-4623

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6. Check applicable items:

- New Regulations

Amendments to Existing Regulations

 Date when existing text was downloaded from COMAR online: .

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 - 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 Christle Sheppard-Southall, Assistant Attorney General, (telephone #410-767-7829) on September 30, 2014. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Charlene L. Necessary

Title

Regulations Coordinator

Telephone No.

410-767-0467

Date

November 13, 2014

Title 13A
A STATE BOARD OF EDUCATION
Subtitle 14 CHILD AND FAMILY DAY CARE

13A.14.14 Maryland EXCELS

Authority: Family Law Article, §5-502, Annotated Code of Maryland Agency Note:
 Federal Statutory Reference—Child Care and Development Fund, 45 CFR 98.51

Notice of Proposed Action

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The State Superintendent of Schools proposes to establish new chapter COMAR 13A.14.14 Maryland EXCELS.

Statement of Purpose

The purpose of this action is to establish a regulatory basis for Maryland's tiered quality rating and improvement system for center-based child care programs and family child care providers.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact.

The Maryland EXCELS Tiered Quality Rating and Improvement System awards bonuses to child care programs upon initial publication of a quality rating and upon publication thereafter of each successively higher quality rating. The estimated State cost of these bonuses for FY 2015 is \$455,252.

II. Types of Economic Impact.	Revenue (R+/R-) Expenditure (E+/E-)	Magnitude
<hr/>		
A. On issuing agency:	NONE	
(1) Cost of program bonuses	(E+)	\$455,252
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude

D. On regulated industries or trade groups:	NONE	
(1) Recipients of Program Bonuses	(+)	\$455,252
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A(1). In FY 2014, Maryland EXCELS awarded program bonuses to 748 child care providers for a total cost of \$395,874 and an average per-provider bonus cost of \$529.24. For FY 2015, the average per-provider bonus cost is expected to remain the same, but the number of providers receiving bonuses is expected to increase 15%. The estimated State cost for FY 2015 is therefore estimated at \$455,252 ($\$529.24 \times [748 \times 1.15]$).

D(1). See A(1) above.

Economic Impact on Small Businesses

The proposed action has a meaningful economic impact on small business. An analysis of this economic impact follows.

Intended Beneficiaries

Since the average child capacity of Maryland's child care centers is approximately 58 children, the average bonus amount of \$529 per program may not result in a meaningful impact for child care centers. However, for family child care providers, each of which has a maximum child capacity of only 8 children, that same amount may have a meaningful positive impact. Child care centers and family child care providers can choose to use the bonus funds to improve their programs, purchase supplies and materials, and enhance their services to families and children thereby improving Maryland's child care and early education system.

Intended Beneficiaries: Households

Families with children enrolled in a facility participating in Maryland EXCELS will benefit because their children will receive higher quality services.

Intended Beneficiaries: Businesses

The proposals are not expected to have an impact on any businesses beyond the child care businesses that receive Maryland EXCELS program bonuses.

Other Direct or Indirect Impacts: Adverse

Operating higher quality programs may encourage some child care providers to raise the fees they charge to families.

Other Direct or Indirect Impacts: Positive

Improving the quality of child care and early education in Maryland is expected to enhance the overall reputation of Maryland's early care and education industry, and this

may help attract businesses to Maryland. Higher-quality child care and early education services for children may result in those children more effectively developing the skills they will need to succeed in school and in life and may positively affect the State workforce in the years to come.

Long-Term Impacts

No long-term effects on Maryland small businesses are anticipated which may differ from, compound, mitigate, or offset the initial effects described above.

Estimates of Economic Impact

(1) Cost of providing goods and services:

Some child care providers who move to higher levels of program quality may charge higher fees for their services. Because child care fees are determined independently by each provider, the overall change, if any, in those expenses cannot be determined.

(2) Effect on the work force:

Families in Maryland's work force with young children and school-age children using child care services will have an online rating system that communicates the level of quality a child care or early education program has achieved. Access to this information may enable families to make informed decisions when choosing a program for their children; and may be seen as a benefit for business growth in Maryland.

(3) Capital investment, taxation, competition, and economic development:

These proposals are not expected to have any direct effect on capital investment, taxation, competition, or economic development. However, as noted above, they may help provide a more attractive environment for business growth.

(4) Consumer choice:

Consumer choice is expected to be affected positively by making higher quality child care services available to families seeking those services.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Linda Budd, Program Manager, Maryland EXCELS, Maryland State Department of Education, Division of Early Childhood Development, 200 W. Baltimore Street, Baltimore, Maryland 21201, or call 410-332-4623(TTY:410-333-6442), or email to linda.budd@maryland.gov, or fax to 410-333-6226. Comments will be accepted through January 26, 2015. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2015

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

Yes

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

Federal funds

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

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

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

G. Small Business Worksheet:

Attached Document:

(BEGIN ALL NEW TEXT)

Title 13A STATE BOARD OF EDUCATION

Subtitle 14 CHILD AND FAMILY DAY CARE

Chapter 14 Maryland EXCELS

Authority: Family Law Article, §5-502, Annotated Code of Maryland

Agency Note: Federal Statutory Reference—Child Care and Development Fund, 45 CFR 98.51

.01 Scope.

This chapter governs the operation of the Maryland EXCELS program and sets forth the:

A. Requirements for participation in the program;

B. Process for application into the program;

C. Basis and procedure for making determinations and awards; and

D. Penalties for providing false information in connection with applying for program participation or obtaining an award under the program.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Acceptance" means the date on which a child care provider's application for participation in Maryland EXCELS has been accepted.

(2) "Annual update" means the information required to renew a Maryland EXCELS quality rating.

(3) "Child care center" means a child care program that is operated pursuant to COMAR 13A.16 or by any branch of the military under applicable military child care regulations.

(4) "Early care and education (ECE) program" means a:

(a) Family child care home;

(b) Large family child care home;

(c) Child care center, including a center approved to serve only school-aged children; or

(d) Public prekindergarten program operated by a local education agency.

- (5) "EXCELS public portal" means the Internet site, located at www.marylandexcels.org, established to help manage the operations of Maryland EXCELS.
- (6) "Family child care home" means a child care program that is operated pursuant to COMAR 13A.15 or by any branch of the military under applicable military child care regulations.
- (7) "Large family child care home" means a child care program that is operated pursuant to COMAR 13A.18 or by any branch of the military under applicable military child care regulations.
- (8) "Letter of compliance facility" means a child care program that is operated pursuant to COMAR 13A.17.
- (9) "License enforcement action" means a suspension, emergency suspension, or revocation action taken by the Office against the registration or license of an ECE program that operates pursuant to COMAR 13A.15, COMAR 13A.16, COMAR 13A.17, or COMAR 13A.18.
- (10) "Local education agency (LEA)" means the governing school board of one of Maryland's 24 local jurisdictions.
- (11) "Maryland EXCELS" means the State's tiered quality rating and improvement system for early care and education programs.
- (12) "Maryland EXCELS Advisory Committee" means the group of individuals designated by the Office to conduct a review of decisions made by the Office regarding ECE program quality ratings.
- (13) "Office" means the Office of Child Care, which is housed within the Maryland State Department of Education and is responsible for administering Maryland EXCELS.
- (14) "Participation" means a status indicating that an ECE program's application to participate in Maryland EXCELS has been accepted and access to the Maryland EXCELS public portal has been granted.
- (15) "Published" means a Maryland EXCELS status indicating that the ECE program has:
- Met the Maryland EXCELS requirements for a specified quality rating; and
 - Requested the Office to publish the program's quality rating has been published on the Maryland EXCELS public portal for public viewing.
- (16) "Quality rating" means a determination, represented by a number from 1 through 5, that a participating program has met the criteria applicable to particular set of Maryland EXCELS standards.
- (17) "Rating cycle" means the 12-month time period when a published quality rating is valid.
- (18) "Standards" means the quality rating criteria published on the EXCELS public portal that comprise the five quality rating content areas of Maryland EXCELS, which are:
- Licensing and Compliance;
 - Staff Qualifications and Professional Development;
 - Accreditation and Rating Scales;
 - Developmentally Appropriate Learning and Practice; and
 - Administrative Policies and Practices.
- (19) "Substantial compliance" means that a licensed child care provider has no more than one licensing inspection in the previous 12 months with a finding of noncompliance with applicable child care regulations governing:
- Injurious treatment;
 - Child protection;
 - Child supervision; or
 - Child capacity.
- (20) "Tiered quality rating and improvement system (TQRIS)" means a system that awards ratings based on meeting increasingly higher criteria of program quality and performance.
- (21) "Tiered reimbursement" means a differential child care subsidy payment that is made to a licensed child care program according to the program's quality rating and the ages of the children served by the program.

.03 Eligibility Requirements.

A. Eligibility to participate in Maryland EXCELS is limited to a currently operating ECE program, as defined at Regulation .02B(4) of this chapter.

B. The Office shall accept an application to participate in Maryland EXCELS only from an eligible program.

.04 Application Process.

A. An ECE program shall apply to participate in Maryland EXCELS through the EXCELS public portal.

B. To apply for participation in Maryland EXCELS, an ECE program shall:

- Create a user name and password in the EXCELS public portal; and
- Submit a complete application that includes:
 - Verification of the program's license, registration, or approval to operate;
 - Documentation of the program's:
 - Name;
 - Full street address and, if different, full mailing address;
 - Days and hours of operation;
 - Child care staffing level;
 - Current child enrollment;

- (vi) Primary contact name and email address; and
- (vii) Other information that may be required by the Office; and

C. The Office shall inform the applicant by email of acceptance into Maryland EXCELS within 30 calendar days from the date that a complete application was received by the Office through the EXCELS public portal.

D. Rejected Application.

(1) If the Office rejects an application, the Office shall notify the applicant by email within 30 calendar days from the date the application was received by the Office through the EXCELS public portal.

(2) Notification of rejection shall include the:

- (a) Reason for the rejection; and
- (b) Action that the applicant may take in order for the application to be accepted.

.05 Publication.

A. Based upon the information provided by the ECE program, the Office shall determine the program's quality rating level.

B. A quality rating is achieved by meeting all criteria that apply to one of five levels established by the set of standards applicable to the type of ECE program.

C. Standards.

(1) Family child care standards apply to family child care homes and large family child care homes.

(2) Child care center standards apply to:

- (a) Child care centers, except as set forth at §C(3) of this regulation;
- (b) Head Start programs, whether licensed by the Office or operated by local education agencies;
- (c) Nonpublic nursery schools; and
- (d) Letter of compliance facilities.

(3) School-age only standards apply to child care centers operating pursuant to COMAR 13A.16 that are approved by the Office to provide child care services only to school-age children.

(4) Public prekindergarten standards apply to public prekindergarten programs operated by local education agencies.

D. Quality Rating Review.

(1) An ECE program may request a review of a decision by the Office to remove, reduce, or deny the program's quality rating.

(2) A request for a review shall be submitted to the Office in writing within 30 calendar days after the date of the removal, reduction, or denial of a quality rating.

(3) The Maryland EXCELS Advisory Committee shall:

- (a) Have authority to hear each request for review;
- (b) Submit its recommendation to the Office within 30 calendar days of receipt of the request for review; and

(c) Within 5 business days after receiving the recommendation, the Office shall notify the requestor of the review decision.

E. Request to Publish. Within 12 months from the date of acceptance into Maryland EXCELS, a participating ECE program shall request the Office to publish its quality rating online through the EXCELS public portal.

F. To publish its quality rating, a participating program shall:

(1) Upload documentation to the EXCELS public portal showing that the applicable standards have been met;

(2) Affirm that each item of documentation submitted to show that the program meets quality standards is:

- (a) The original creation of the program; or
- (b) Submitted with permission of the documentation's original author; and

(3) Send a request through the EXCELS public portal to publish the program's quality rating.

G. The Office may reduce, remove, or deny a published quality rating or a request to publish a quality rating if:

- (1) The ECE program fails to maintain substantial compliance;
- (2) The Office enters an enforcement action against the program's license, letter of compliance, or registration;

or

(3) A complaint against the program is substantiated for noncompliance with the requirements of this chapter pertaining to:

- (a) Injurious treatment;
- (b) Child protection;
- (c) Child supervision; or
- (d) Child capacity.

H. Unless determined otherwise by the Office pursuant to §G of this regulation, a published Maryland EXCELS quality rating is valid for 12 months from the date of publication unless determined otherwise by the Office, or:

(1) The expiration date of the current rating has passed and an annual update has not yet been submitted;

(2) Substantial compliance is no longer maintained by the program; or

(3) The Office enters a license enforcement action against the program.

I. To continue as a published program, the ECE program shall:

- (1) Prior to the expiration of the current rating cycle, submit documentation through the Maryland EXCELS public portal showing that the program continues to meet the requirements applicable to the rating level; and
- (2) Be available to receive site visits as required by the Office.

.06 Incentives.

A. Program Bonus. Depending on funding availability, a participating program shall receive a program bonus:

- (1) One time only upon initial publication of a quality rating of 1, 2, 3, or 4;
- (2) Upon publishing each successively higher quality rating after the initial publication of a quality rating; and
- (3) Upon initial publication of a quality rating of 5, and thereafter annually upon renewal and re-publication of a quality rating of 5.

B. Upon verification by the Office that the participant has met the requirements for a program bonus, the Office shall award a bonus up to the amount set forth in the following schedule, as applicable:

(1) Child Care Center Program Bonus:

Quality Rating Level	Licensed Capacity 1-50	Licensed Capacity 51-100	Licensed Capacity 101+
1	\$50	\$100	\$150
2	\$250	\$500	\$750
3	\$400	\$800	\$1,200
4	\$1,000	\$2,000	\$3,000
5	\$1,500	\$3,000	\$4,500

(2) Family Child Care Program Bonus:

Quality Rating Level	Bonus Amount
1	\$50
2	\$150
3	\$300
4	\$500
5	\$800

(3) Large Family Child Care Program Bonus:

Quality Rating Level	Bonus Amount
1	\$50
2	\$200
3	\$400
4	\$800
5	\$1,000

C. Tiered Reimbursement.

(1) A participating program shall receive a differential payment for Child Care Subsidy reimbursement upon publication of a quality rating level of 3, 4, or 5.

(2) Upon verification by the Office that the participant has met the requirements for a quality rating level of 3, 4, or 5, the Office shall award the differential payment of at least the amount set forth in the following schedule:

	Check Level 3	Check Level 4	Check Level 5
FAMILY CHILD CARE			
Under 2 years of age	11%	22%	29%
2 years of age and over	10%	21%	28%
CHILD CARE CENTER			
Under 2 years of age	22%	37%	44%
2 years of age and over	10%	19%	26%

.07 Penalties.

- A. An applicant, participant, or grantee may not knowingly make or cause to be made any false statement or report:*
- (1) In an application or documentation furnished to the Office or furnished to the Maryland EXCELS online system under the requirements of this chapter; or*
 - (2) For the purpose of influencing the action of the Office on any matter related to an award, either before or after an award has been made.*
- B. Failure to comply with §A of this regulation shall result in:*
- (1) Forfeiture of any claim to a:*
 - (a) Program Bonus; or*
 - (b) Tiered reimbursement payment; and*
 - (2) Denial of initial or continued participation in the Maryland EXCELS program.*

(END ALL NEW TEXT)

Lillian M. Lowery, Ed.D.
State Superintendent of Schools