

Title 13A STATE BOARD OF EDUCATION

Subtitle 14 CHILD AND FAMILY DAY CARE

Chapter 01 Family Day Care

Authority: Family Law Article §§5-550—5-557.1 and 5-560; State Government Article, §10-617; Article 88A, §6(b); Annotated Code of Maryland; Agency Note: Federal Statutory Reference—Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

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.01 Purpose.

The purpose of registration of family day care homes is to:

- A. Protect the health, safety, and welfare of children while they are in family day care; and
- B. Identify family day care homes.

.02 Definitions.

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

B. Terms Defined.

- (1) "Abuse" means:
 - (a) The physical or mental injury of a child, under circumstances that indicate that the child's health or welfare is significantly harmed or at risk of being significantly harmed, by:
 - (i) A parent;
 - (ii) An individual who has permanent or temporary care or custody or responsibility for supervision of a child; or
 - (iii) A household or family member; or
 - (b) Sexual abuse of a child, whether physical injuries are sustained or not.
- (2) "Acute illness" means an abnormal condition of the body with rapid onset that has a short course of duration, as opposed to a chronic illness of long duration.
- (3) "Additional adult" means an individual 18 years old or older who assists a family day care provider in caring for children who are younger than 24 months old.
- (4) "Agency" means the Office of Child Care, Division of Early Childhood Development, in the State Department of Education.
- (5) "Agency representative" means an individual designated by the Agency to determine compliance with these regulations.
- (6) "Applicant" means a person who has submitted to the Office all of the required forms and documentation to request approval for initial registration or for continuing registration.
- (7) "Approved training" means course work or a workshop provided by:
 - (a) A regionally accredited or approved college or university;
 - (b) A State-approved private career school;
 - (c) The Child Development Associate National Credentialing Program;
 - (d) A professional association providing training exclusively for its membership;
 - (e) Other organizations approved by the Office with concurrence from the Maryland Higher Education Commission; or
 - (f) The Agency.
- (8) "Child" means an individual who is younger than:

- (a) 13 years old; or
 - (b) 21 years old who has a developmental disability or other emotional, physical, educational, or medical need necessitating day care beyond 13 years old.
- (9) "Conditional registration" means a family child care registration that:
- (a) Is issued to a provider for a specified period of time during which the provider is required to remedy a specified violation of a regulation under this chapter; and
 - (b) Upon issuance, supersedes a continuing registration.
- (10) "Continuing registration" means a family day care registration that does not expire.
- (11) "Department" means the Maryland State Department of Education.
- (12) Employee.
- (a) "Employee" means a person who for compensation is employed to work in a family day care home and who cares for or supervises children in the facility, or has access to children who are cared for or supervised in the facility, including a paid substitute.
 - (b) "Employee" does not include an individual who is:
 - (i) An independent contractor; or
 - (ii) A licensed or certified health care professional who is compensated by the family day care provider or the parent of a child in care to provide a specified health care service to the child.
 - (c) For the purpose of applying the criminal background check requirements and the child and adult abuse and neglect record review requirements set forth in this chapter, "employee" includes an individual who:
 - (i) Is compensated by the provider or a resident to perform a service at the family day care home;
 - (ii) Has access to children in care; and
 - (iii) Does not clearly meet, or is not excluded from, the definition of independent contractor as set forth in §B(17) of this regulation.
- (13) "Family day care" means the care given to a child younger than 13 years old or to a developmentally disabled person younger than 21 years old in place of parental care for less than 24 hours a day, in a residence other than the child's residence, for which the provider is paid in cash or in kind.
- (14) "Family day care home" means the residence in which child care is given.
- (15) "Family day care coprovider" means an individual who shares responsibility with the family day care provider for the operation of the family day care home.
- (16) "Family day care provider" means the adult who has primary responsibility for the provision of child care in the family day care home and who meets the requirements of these regulations.
- (17) Independent Contractor.
- (a) "Independent contractor" means an individual or other entity:
 - (i) That is hired by the family day care provider, a resident, or the parent of a child in care, on the basis of a service contract or agreement, to perform a specialized service at the family day care home, including but not limited to home maintenance or repair, academic tutoring, or recreational programming, for a specified period of time or in order to achieve a specified result;
 - (ii) That determines how the specialized service shall be performed; and
 - (iii) Whose specialized service is not restricted to the family day care home, but is available for hire by other customers.
 - (b) "Independent contractor" does not include an individual who:
 - (i) Is a licensed or certified health care professional compensated by the family day care provider to provide a specified health care service to a child in care;
 - (ii) Under a private arrangement with the parent or guardian of a child or children in care, provides a health care, educational, or other service only to that child or those children; or
 - (iii) Is employed for compensation by a public school or by a private or nonpublic school required to report annually to the State Board of Education.
- (18) "Injurious treatment" means:
- (a) Deliberate infliction in any manner of any type of physical pain, including spanking, hitting, shaking, or any other means of physical discipline, or enforcement of acts which result in physical pain.
 - (b) Failure to attend to a child's physical needs and other physically damaging acts, excluding reasonable acts to protect the child from imminent danger;

(c) Subjecting a child to verbal abuse intended to cause mental distress, such as shouting, cursing, shaming, or ridiculing; and

(d) Utilizing discipline methods which are considered inappropriate by child care professionals and which create undue discomfort, such as, but not limited to, washing a child's mouth with soap, putting pepper or other spicy or distasteful items in a child's mouth, requiring a child to stand on one foot as punishment, or tying a child to a cot or other equipment.

(19) "Mental injury" means the observable, identifiable, and substantial impairment of a child's mental or psychological ability to function.

(20) "Neglect" means leaving a child unattended or otherwise failing to give proper care and attention to a child by the child's parents, guardian, or custodian under circumstances that indicate that the child's health or welfare is significantly harmed or placed at risk of significant harm.

(21) "Office" means the central office or a regional office of the Agency.

(22) "Parent" means the biological or adoptive parent, or the legal guardian or custodian of a child, who enrolls the child in care.

(23) "Provider" means the individual or individuals to whom a family day care certificate of registration is issued pursuant to this chapter.

(24) "Relative" means a person related to a child by blood, marriage, or adoption and includes parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, aunt, first or second cousin, great grandparent, great uncle, and great aunt.

(25) "Renewal registration" means a family day care registration that was issued, or for which application was made, pursuant to registration renewal requirements in effect under this chapter before January 1, 2005.

(26) "Resident" means a person who lives in the family day care home.

(27) "Sanction" means an enforcement action under these regulations.

(28) "Substitute" means an adult who is responsible for the operation of a family day care home when the provider is absent.

(29) "Superintendent" means the State Superintendent of Schools or the Superintendent's designee.

(30) "Successfully passed" means, when used in connection with a criminal background check or a review of records of abuse and neglect of children conducted on an individual, that the individual has not:

(a) Received a conviction, a probation before judgment disposition, a not criminally responsible disposition, or a pending charge for the commission or attempted commission of a crime listed in COMAR 12.15.02.07B; or

(b) Been identified as responsible for the abuse or neglect of a child.

(31) "Treatment foster care" means a 24-hour substitute care program, operated by a licensed child placement agency or local department of social services, for children with a serious emotional, behavioral, medical, or psychological condition.

.03 Requirement to be Registered.

A. Except as provided under §B of this regulation, an individual may not operate a family day care home unless:

(1) Both the individual and the home meet the requirements for registration set forth in this chapter; and

(2) The individual possesses a valid certificate of registration.

B. A family day care home is not required to be registered if the provider:

(1) Is a relative of each child;

(2) Is a friend of each child's parents or legal guardian and the care is provided on a nonregular basis less than 20 hours a month; or

(3) Has received the care of the child from a child placement agency licensed by the Department.

C. In this chapter, all requirements pertaining to a family day care provider shall apply equally to a family day care coprovider.

.04 Registration—General Requirements.

A. Types of Registration. Effective January 1, 2005, the Office may issue:

- (1) An initial registration pursuant to Regulation .05 of this chapter;
- (2) A continuing registration pursuant to Regulation .06 of this chapter;
- (3) A provisional registration pursuant to Regulation .08A of this chapter; or
- (4) A conditional registration pursuant to Regulation .08B of this chapter.

B. General Requirements.

- (1) A certificate of registration:
 - (a) May not be transferred to another individual or residence; and
 - (b) Remains the property of the Office.
- (2) The provider shall display conspicuously the certificate of registration in a location visible to parents whose children are in care or who are considering placing their children in the provider's care.
- (3) The provider shall surrender the certificate of registration to the Office immediately if any of the following occurs or becomes effective:
 - (a) The provider closes the family day care home permanently;
 - (b) The registration is revoked;
 - (c) The registration is suspended; or
 - (d) The registration expires, and:
 - (i) The application for a renewed registration or a continuing registration, as applicable, is denied; or
 - (ii) The provider has not applied for a renewed registration or a continuing registration, as applicable.

.05 Initial Registration and Resumption of Service.

A. Application for Initial Registration.

- (1) An application for initial registration shall be filed with the Office by an individual who wishes to operate a registered family day care home and who:
 - (a) Is not currently a registered family day care provider; and
 - (b) Has not been registered as a provider for at least 6 months before the date of application.
- (2) An applicant for initial registration shall:
 - (a) Complete the orientation process specified in §A(3) of this regulation;
 - (b) Apply for a federal and State criminal background check at a designated office in the State;
 - (c) Ensure that an application for a federal and State criminal background check is made at a designated office in the State by any:
 - (i) Paid employee of the family day care home who is 14 years old or older, and
 - (ii) Individual living in the family day care home who is 18 years old or older; and
 - (d) File with the Office a completed application form and all documentation required by law or regulation.
- (3) Orientation Process.
 - (a) As the first step in applying for a registration certificate, the individual shall attend a first orientation session, conducted by the Office having jurisdiction over the area where the family day care home will be located, to become acquainted with the registration requirements and receive a standard application form.
 - (b) As scheduled by the Office, the individual shall attend a second orientation session to receive detailed information about the regulations of this chapter.
- (4) The application form required under §A(2)(d) of this regulation shall include:
 - (a) A signed statement of truthfulness and commitment to comply with these regulations;
 - (b) A statement of any previous license or registration denials or revocations in Maryland or in any other jurisdiction; and
 - (c) A current list of the names and birth dates of all residents in the home.
- (5) The required documentation under §A(2)(d) of this regulation includes but is not limited to:

(a) Signed and, if required by the Office, notarized release forms giving the Office permission to examine records of abuse and neglect of children and adults for information about the applicant, residents, and each individual who has responsibility for the supervision of children in care;

(b) Completed information, on a form supplied by the Office, for each substitute designated on the application form;

(c) A completed emergency escape plan on a form supplied by the Office;

(d) A completed plan of operation on a form supplied by the Office; and

(e) A medical report on the provider and on all persons living in the home, on a form supplied or approved by the Office, based on a medical evaluation completed within the previous 12 months conducted by a practicing physician, certified nurse practitioner, or a registered physician's assistant and signed by the person who conducted the evaluation.

(6) If all required documentation has not been received by the Office within 6 months after a completed application form has been filed, the Office may consider the application void.

B. Unless administratively extended pursuant to Regulation .07B(4) of this chapter, an initial registration is valid only for 24 months after the date of issuance.

C. Resumption of Service.

(1) An application to resume service shall be filed by:

(a) A registered provider who wishes to provide family day care at an address different from that specified on the current certificate of registration; or

(b) An individual who was previously registered by the Office as a provider and who wishes to reregister, if the last effective date of the previous registration is within 6 months of the application.

(2) The application shall meet all initial registration application requirements, except that:

(a) An abbreviated application form supplied by the Office shall be used; and

(b) The Office may accept as applicable to the new application the:

(i) Results of the original criminal background checks conducted pursuant to §A(2)(b) and (c) of this regulation, if the new location is within the Office's same licensing jurisdiction;

(ii) Original medical reports submitted pursuant to §A(5)(e) of this regulation if the reports are based on medical evaluations completed within 12 months of the new application; and

(iii) Individual's original completion of the orientation process pursuant to §A(3) of this regulation.

(3) Upon approving an application to resume service, the Office shall issue a new continuing registration certificate if the applicant has operated under a continuing registration within 6 months of the application.

.06 Continuing Registration.

A. Application for Continuing Registration.

(1) If the provider is operating under an initial registration or a renewed registration, the Office shall transmit to the provider continuing registration application materials at least 120 calendar days before expiration of the current registration certificate.

(2) To apply for a continuing registration, the provider, before the initial registration or renewed registration expires, shall file with the Office:

(a) A request for continuing registration, on a form supplied by the Office, that contains a signed statement of:

(i) Intent to maintain a family day care registration; and

(ii) Truthfulness and commitment to comply with all applicable regulations in this chapter;

(b) Signed and, if required by the Office, notarized permission to examine records of abuse and neglect of children and adults for information about all individuals, as applicable, specified in Regulation .05A(5)(a) of this chapter;

(c) A medical report completed on the provider and on each individual living in the home who has responsibility for supervision of the children in care that meets the requirements set forth in Regulation .05A(5)(e) of this chapter; and

(d) Any other documentation required by law or regulation.

(3) The Office may not approve a continuing registration until:

- (a) The Office has received and approved all items specified in §A(2) of this regulation; and
- (b) The family day care home has passed a fire safety inspection conducted by the local fire authority having jurisdiction.

(4) A registered family day care provider who is also licensed to provide treatment foster care may be approved by the Office for a continuing registration.

B. Maintaining Continuing Registration.

- (1) The provider shall comply with all applicable requirements under this chapter.
- (2) Within each 24-month period after the date of issuance of a continuing registration certificate:
 - (a) The provider shall provide to the Office:
 - (i) Documentation of compliance with continued training requirements set forth in Regulation .14 of this chapter; and
 - (ii) The items specified in §A(2)(b)—(d) of this regulation; and
 - (b) The family day care home shall be required to pass a fire safety inspection conducted by the State or local fire authority having jurisdiction.

C. Once issued, a continuing registration remains valid until:

- (1) Surrendered, suspended, or revoked; or
- (2) Replaced by a conditional registration.

D. If a continuing registration is replaced by a conditional registration, the provider shall:

- (1) Immediately upon receipt of the conditional registration certificate:
 - (a) Remove the continuing registration certificate from display on the premises of the family day care home; and
 - (b) Display the conditional registration certificate conspicuously in a location that is visible to the parents of children in care; and
- (2) Redisplay the continuing registration certificate only upon permission of the Office.

.07 Response of the Office.

A. Upon receiving the completed application and all required documentation, whether for an initial registration or a continuing registration, the Office shall determine compliance with the requirements of these regulations by:

- (1) Evaluating the application and required documentation;
 - (2) Interviewing the applicant;
 - (3) Inspecting the home proposed for use as a family day care home;
 - (4) Evaluating the information provided by State and federal criminal background investigations;
- and
- (5) Evaluating the information provided from records of child and adult abuse and neglect.

B. Within 30 calendar days of completing the procedures in §A of this regulation, the Office shall:

- (1) Issue a certificate of registration to operate the family day care home in accordance with the provisions of this chapter if:
 - (a) The application is complete,
 - (b) All required documentation has been submitted, and
 - (c) The Office is satisfied that the applicant and the home meet the requirements of this chapter;
- (2) Deny the certificate of registration if the Office determines that the applicant or the home does not meet the requirements of this chapter;
- (3) Issue a provisional registration in accordance with Regulation .08A of this chapter; or
- (4) If the application is for a continuing registration, issue an administrative extension of the existing certificate of registration to allow the applicant to achieve compliance with continuing registration application requirements.

.08 Provisional and Conditional Registration.

A. Provisional Registration.

(1) To allow an applicant for registration additional time to meet all applicable registration requirements, the Office may issue a provisional registration for a period of up to 120 days after determining that the health and safety of the children in care are not in imminent danger.

(2) At the end of the provisional period, if all requirements for initial registration are not met due to:

(a) Failure by the applicant to take an action necessary to achieve compliance, the Office shall deny the application for initial registration; or

(b) Circumstances beyond the control of the applicant, the Office may reissue the provisional registration certificate for one or more additional periods of up to 120 days per period, except that provisional registration status may not be continued for more than 24 months after the start of the first provisional period.

(3) If the Office denies a certificate of registration at the end of the provisional period, the applicant or provider does not have a valid registration and shall cease operating.

B. Conditional Registration.

(1) If a provider who holds a continuing registration fails to remedy a violation as required, the Office may issue a conditional registration to the provider.

(2) A conditional registration:

(a) May be issued for up to 120 days;

(b) Replaces and invalidates the continuing registration during the period of time for which the conditional registration is issued;

(c) Sets forth the requirements for reinstatement of the continuing registration; and

(d) Upon approval of the Agency's central office, may be reissued for an additional period of up to 120 days.

(3) Within the period of time for which a conditional registration is issued or reissued, if a provider:

(a) Satisfies all the requirements under which a conditional registration is issued, the Office shall promptly:

(i) Discontinue the conditional registration; and

(ii) Reinstatement the continuing registration; or

(b) Fails to satisfy the requirements under which a conditional registration issued, the:

(i) Conditional registration shall lapse;

(ii) Continuing registration shall remain invalid; and

(iii) Office may suspend or revoke the continuing registration

.09 Denial of the Registration Certificate.

A. The Office may deny a certificate of registration if:

(1) The applicant, a resident, any substitute, or the home in which child care is to be provided fails to meet the requirements of these regulations;

(2) An evaluation of the application by the Office reveals that the applicant reported false information;

(3) The applicant has a documented history of serious or repeated regulatory violations of these or other regulations of any state concerning the care of children or adults which demonstrates an inability to provide for the health or safety of children;

(4) The applicant has had a certificate of registration denied or revoked before the date on the application being considered unless the Office is satisfied that the condition that was the basis for the denial or revocation has been corrected;

(5) The applicant prevents the Office from completing its responsibilities for registration;

(6) Upon evaluating the physical condition of the home and surrounding premises, the Office finds conditions that are unsafe or unhealthy;

(7) An evaluation of the medical report or other information about the applicant or a resident indicates that the physical or mental health of the applicant or resident may pose a risk to children;

(8) An evaluation of the criminal record of the applicant, a paid additional adult, a paid substitute, or a resident in the home reveals that the individual has a criminal conviction, probation before judgment, not criminally responsible disposition, or is awaiting a hearing for a criminal charge that indicates behavior harmful to children;

(9) An evaluation of the information provided in records of abuse and neglect of children and adults reveals that the applicant, an additional adult, a substitute, or a resident is identified as responsible for abuse or neglect of children or adults, or is currently under investigation for alleged acts of abuse or neglect of children or adults;

(10) Based on an interview with the applicant or an evaluation of other pertinent information, the Office finds evidence that raises reasonable doubt that the applicant can provide for the welfare of children in care; or

(11) The applicant is:

- (a) Providing treatment foster care to a child in other than a preadoptive capacity, and
- (b) Filing an application for initial registration as a family day care provider.

B. If the Office denies an application, the Office shall notify the applicant in writing of the denial stating:

- (1) The reason for denial;
- (2) The specific regulation with which the applicant has failed to comply that is the basis for the denial;
- (3) That the applicant is entitled to a fair hearing; and
- (4) The procedure to be used if the applicant wishes to request a hearing to appeal the decision of the Office.

C. If an evaluation of criminal records or records of abuse and neglect of children or adults reveals that a substitute or an additional adult designated by the applicant may pose a risk to children in care, the Office, instead of denying the registration certificate, may require the provider to designate another substitute or additional adult.

D. Denial Before Complete Application.

(1) The Office may deny an application for registration at any point during the application process if, following evaluation of information received to that point, the Office determines that a basis for denial exists as set forth in §A of this regulation.

(2) If the Office decides to deny the application before the application process is complete, the Office shall send written notice of that decision to the applicant within 30 calendar days after making the decision.

.10 Voluntary Surrender.

A. A provider may voluntarily surrender a family day care registration at any time by notifying the Office.

B. The Office shall note in the family day care provider's file that the registration has been voluntarily surrendered.

.11 Advertisement.

A. An individual may not advertise a family day care service unless the individual holds a current certificate of registration issued by the Office.

B. A family day care provider shall indicate in any advertisement that the home is registered. In an advertisement for the family day care service, the provider shall:

- (1) Specify that the family day care home is registered; and
- (2) Include the registration number issued to the home by the Office.

C. The Office shall verify upon request that the registration number is valid and correctly identifies the registered provider.

.12 Variances.

A. The Office may not:

- (1) Waive a regulation; or
- (2) Grant a variance that diminishes safeguards to a child's health, safety, or well-being.

B. The Office may grant a variance:

- (1) When the provider presents clear and convincing evidence that a regulation is met by an alternative which complies with the intent of the regulation for which the variance is sought; and
- (2) For a limited period of time as specified by the Office or for as long as the certificate remains in effect and the provider continues to comply with the terms of the variance.

C. In deciding whether to grant a variance to a regulation, the Office shall consider:

- (1) The provider's record of compliance with this chapter;
- (2) The ages, developmental maturity, individual needs, and other characteristics of the children in care at the home; and
- (3) Any other relevant factors concerning the environment in which child care is provided at the home.

D. Within 30 calendar days of receiving a completed request for a variance, the Office shall notify the provider that the variance has been granted or denied.

E. If a variance request is denied by a regional office of the Agency, the provider may appeal the denial to the Agency's central office.

.13 Age of the Provider.

A provider shall be 18 years old or older.

.14 Training Requirements for the Provider.

A. An individual who applies for an initial registration shall:

- (1) Hold a current certificate indicating successful completion of training in approved:
 - (a) Basic first-aid training through the American Red Cross, or a program with equivalent standards; and
 - (b) Cardiopulmonary resuscitation (CPR) training through the American Heart Association, or a program with equivalent standards, appropriate for each age group approved for care in the home; and
- (2) Present evidence of having successfully completed:
 - (a) Within 2 years before the date of application, and except for training in first aid, cardiopulmonary resuscitation (CPR), or sudden infant death syndrome (SIDS), 8 clock hours of approved training in any topic or combination of topics related to:
 - (i) Child development;
 - (ii) Program curriculum;
 - (iii) Child health, safety, or nutrition;
 - (iv) The care of children with disabilities; or
 - (v) Provider professionalism, which includes but is not limited to business practices and provider-parent relations; and
 - (b) If the individual is applying for approval to provide care for children younger than 24 months old, the requirements specified at §E(1) of this regulation.

B. A provider who applies for a continuing registration certificate shall present evidence, since the date the last registration certificate was issued, of having successfully completed 12 clock hours of approved training in a topic or combination of topics as set forth in §A(2)(a) of this regulation.

C. By the end of each 24-month period after the date of issuance of a continuing registration certificate, a provider shall present evidence to the Office of having completed an additional 12 clock hours of approved training in a topic or combination of topics as set forth in §A(2)(a) of this regulation.

D. A provider shall at all times, while registered to provide family day care, hold a current certificate indicating successful completion of approved basic first aid and CPR training as specified in §A(1) of this regulation.

E. Sudden Infant Death Syndrome (SIDS) Training.

(1) Effective July 1, 2004, the Office may not approve an initial request by an applicant or a provider to provide care for children younger than 24 months old unless the applicant or provider presents evidence of having completed approved SIDS training within 5 years before the date of the request.

(2) Effective January 1, 2005:

(a) A provider previously approved to care for children younger than 24 months old may not continue to provide that care unless the provider has presented evidence to the Office by that date of having completed approved SIDS training; and

(b) SIDS training may not be used to satisfy the continued training requirements set forth at §§B and C of this regulation.

.15 Absence of the Provider.

A. The provider shall designate at least one substitute who is available on short notice to care for the children.

B. Use of Substitutes.

(1) A provider may use a substitute to:

(a) Provide care for children during a temporary absence of the provider; and

(b) Assist in providing care while the provider is present.

(2) When the provider plans a temporary absence of more than 2 hours, the provider shall notify the parents of the children in care in advance that a substitute will be caring for the children during the provider's absence.

(3) Unless the Office approves an additional number of days in advance, the use of substitutes to provide care in the provider's absence is limited to a total of not more than 20 working days in any 12-month period, counting only days on which substitute care is provided for more than 2 hours.

C. A substitute shall:

(1) Be 18 years old or older;

(2) Be familiar with these regulations;

(3) Complete, sign, and submit to the Office the required form for substitutes which includes permission to examine records of abuse and neglect of children and adults;

(4) If paid, apply for a federal and State criminal background check at a designated law enforcement office in the State; and

(5) Present no risk to the health, safety, or welfare of children.

D. If information received by the Office indicates that a substitute selected by the provider may present a risk to the health, safety, or welfare of children in care, the Office may disapprove the use of that substitute.

E. Before allowing a substitute to provide or to assist in providing care, the provider shall inform the substitute about matters pertinent to the health and safety of the children in care, which shall include but not be limited to:

(1) The location of the:

(a) Telephone and emergency telephone numbers;

(b) First aid supplies; and

(c) Child emergency forms;

(2) Medication administration information for each child authorized to receive medication;

(3) Modified diet information for each child placed on a modified diet;

(4) Emergency evacuation procedures;

(5) Permissible and appropriate child discipline procedures;

(6) Authorized child release procedures; and

(7) Procedures for documenting and reporting child injuries and accidents.

F. During the provider's absence, a substitute is responsible for meeting the requirements of this chapter regarding the:

- (1) Supervision and protection of each child in care; and
- (2) Operation of the family day care home.

.16 Hours of Care.

The provider may not permit a child to remain in care for more than 14 hours in any 24-hour period on a regular basis without prior approval from the Office.

.17 Requirements for the Home.

A. The provider shall ensure that the home is:

- (1) Soundly constructed;
- (2) Maintained in good repair;
- (3) Free from health and safety hazards;
- (4) Protected from infestation of insects and rodents; and
- (5) In compliance with applicable State and local fire codes.

B. The provider shall ensure that the home has:

- (1) Hot and cold running water;
- (2) An inside toilet in good working condition;
- (3) A public sewage disposal system or a septic system that meets applicable codes;
- (4) A source of public drinking water or a private water supply system that meets applicable codes;
- (5) An operable refrigerator and stove;
- (6) An operable and safe heating system;
- (7) Utility services for cooking, lighting, and heating;
- (8) An operable telephone; and
- (9) An operable fire extinguisher.

C. Lead Paint.

- (1) A provider may not use paint with lead content on any:
 - (a) Exterior or interior surface of the home; or
 - (b) Material or equipment used for child care purposes.
- (2) If the home was constructed or renovated before 1978, the provider shall ensure that paint on any surface in an area used for child care is tested for lead content according to procedures established by the Office:
 - (a) If the paint is chipping, peeling, flaking, chalking, or deteriorated; or
 - (b) Before renovating the surface.
- (3) If testing completed pursuant to §C(2) of this regulation reveals a lead content level that exceeds the maximum allowable lead level set by applicable State or local law, the provider shall follow the:
 - (a) Guidelines developed by the Office for a lead paint management plan; or
 - (b) Lead paint abatement procedures set forth in COMAR 26.02.07.

.18 Repealed.

.19 Rooms Used for Child Care.

A. The provider may use an area of the home for child care only if it:

- (1) Has been approved for use by the Office;
- (2) Meets the requirements of all applicable fire codes;

- (3) Does not have a condition which may pose a risk to the health, safety, or welfare of the children in care;
- (4) Has windows or artificial lighting that provide sufficient illumination for a child's activities;
- (5) Has natural or mechanical ventilation to provide a healthy and comfortable environment;
- (6) Has sufficient floor area for the number and ages of the children approved for care in the home to allow the children to engage in active play without overcrowding; and
- (7) Has a room temperature of not less than 65°F.

B. In rooms where a child younger than 5 years old is in care, the provider shall arrange the home so that:

- (1) All electrical sockets within reach of a child are plugged or capped;
- (2) Suitable protective barriers are placed at locations accessible and potentially hazardous to children; and
- (3) Child-proof devices are placed on cabinets and drawers accessible to children that contain items potentially hazardous to children.

.20 Potentially Hazardous Items.

The provider shall properly store, and keep inaccessible to the children in care, all potentially harmful items, including but not limited to knives, sharp tools, firearms, nonprescription and prescription medicines, matches, alcoholic beverages, petroleum and flammable products, cleaning agents, and poisonous products.

.21 Outdoor Safety.

A. The provider shall have ample, accessible space for outdoor activity which is free from conditions that may be dangerous to the health or safety of children in care.

B. The provider or substitute may not allow a child to play on climbing equipment from which the child could fall 7 feet or more to the ground.

C. During an outdoor activity, the provider or substitute may not allow a child to:

- (1) Use unsafe activity equipment;
- (2) Use activity equipment in an unsafe manner; or
- (3) Wear a clothing item or accessory that may pose a hazard to the child while engaged in the activity.

D. The provider shall ensure that children use suitable protective gear when engaged in an activity for which protective gear is required by law.

E. The provider shall enclose the outdoor play area if required by the Office in order to protect children in care from accessible hazards such as a heavily trafficked area, a body of water, or environmental hazards.

F. When walking with children outdoors, the provider or substitute shall exercise reasonable care to protect children from potentially hazardous areas such as traffic intersections or railroad tracks.

G. Trampolines. The provider or substitute:

- (1) May not allow a child in care to use a trampoline located on the premises of the home; and
- (2) Shall make a trampoline located on the premises of the home inaccessible to children in care.

.22 Water Safety.

A. A provider may permit children in care to use only swimming facilities that:

- (1) Are subject to State or local standards of health, sanitation, and safety; and

(2) Meet those standards.

B. Before a provider or substitute takes children swimming or wading, the provider or substitute shall have written approval from each child's parent, on a form approved or supplied by the Office.

C. Children shall be supervised continuously in the water as follows:

(1) If the water does not exceed 4 feet in depth, the provider or substitute may supervise the children regardless of lifesaving training.

(2) If the water exceeds 4 feet in depth, the provider or substitute shall ensure that an individual 16 years old or older who has completed lifesaving certification approved by the Office is present and on duty at all times while children are in the water. A provider or substitute with the requisite certification may fulfill this requirement.

(3) When the water is over any child's chest and the child cannot swim, an additional adult shall be present in the water to supervise the nonswimming child or children. This means that at least two adults shall be present.

(4) If only one child is present, only one adult is required to supervise that child. However, if the water exceeds 4 feet in depth, that adult shall have completed approved lifesaving training.

(5) Even when a certified lifeguard is present, the provider or substitute shall retain responsibility for appropriate supervision of children during a swimming or wading activity.

D. The provider or substitute may not permit a child in care to use a pool, such as a fill and drain molded plastic or inflatable pool, which does not have an operable circulation system approved by the local health department.

.23 Capacity.

A. A provider may not care for more day care children than the number which appears on the certificate of registration.

B. At any one time, a provider shall:

(1) Care for not more than eight children, of whom not more than four may be younger than 24 months old;

(2) Maintain an adult-to-child ratio of at least one adult to every two children younger than 24 months old;

(3) Have present an additional adult, who has met the applicable requirements of §C of this regulation, whenever more than two children younger than 24 months old are present in care at the home; and

(4) Count as children served the provider's own children who are younger than 6 years old.

C. Additional Adult.

(1) If the provider has successfully completed at least 3 semester hours or 45 clock hours of training approved by the Office that is related exclusively to the care of children younger than 24 months old, an individual who wishes to serve as an additional adult, before assisting the provider to care for children younger than 24 months old, shall:

(a) Be 18 years old or older;

(b) Attend an information session offered by the Office concerning the requirements of this chapter for the care of children younger than 24 months old;

(c) File with the Office:

(i) A completed additional adult application form;

(ii) Signed and, if required by the Office, notarized release forms giving the Office permission to examine records of abuse and neglect of children and adults for information about the applicant;

(iii) Completed information, on a form supplied by the Office, for each of the applicant's substitutes; and

(iv) A medical report on the applicant based on a medical evaluation conducted within the previous 12 months by a practicing physician, certified nurse practitioner, or registered physician's assistant, and signed by the individual who conducted the evaluation;

(d) If the individual will be paid, apply for a federal and State criminal background check at a designated office in the State; and

(e) Receive the approval of the Office to serve as an additional adult.

(2) If the provider has not successfully completed at least 3 semester hours or 45 clock hours of training approved by the Office that is related exclusively to the care of children younger than 24 months old, an individual who wishes to serve as an additional adult, before assisting the provider to care for children younger than 24 months old, shall:

(a) Meet all of the requirements set forth in §C(1)(a)—(e) of this regulation; and

(b) Provide to the Office documentation of completion of the provider training requirements set forth at Regulation .14C—F of this chapter.

(3) The provider or the provider's substitute shall be physically present on site and remain within sight or sound of the additional adult or additional adult substitute at all times.

D. The Office may restrict the number and ages of children who may be in care at one time in a particular family day care home to less than the maximum group size of eight children if the Office determines that the maximum is unsuitable for that home, based on any of the following factors:

(1) Space available, indoor or outdoors;

(2) Equipment available;

(3) Number and ages of the provider's own children;

(4) Number of residents in the home;

(5) Responsibility of the provider to care for another individual who may require special attention or care, including but not limited to an elderly resident or a child with a serious physical, emotional, or behavioral condition;

(6) Applicable fire, zoning, health, environmental, or other codes; or

(7) Other factors the Office determines may cause a risk to a child's health, safety, or welfare.

E. The Office may count as children in care children visiting the home for whom payment is not received, only if all of the following conditions are met:

(1) The child is younger than 8 years old;

(2) The child is unaccompanied by an adult; and

(3) The child cannot be sent home immediately.

F. A provider may appeal the determination by the Office of the number of children who may be in care or a decision by the Office to reduce the number of children who may be in care at the family day care home by filing a request for hearing:

(1) Not later than 20 calendar days after the notification of the Office's action; or

(2) In the case of an emergency reduction in capacity, within 72 hours of notification by the Office of its decision to immediately reduce the number of children in care.

.24 Supervision.

A. An individual may not have responsibility for supervising a child in care unless the individual meets the requirements of this chapter pertaining to a provider, substitute, or additional adult, as applicable.

B. When a child is in care, the individual responsible for supervising the child shall:

(1) Except as provided in §D of this regulation, be physically present and within sight or sound of the child at all times at the family day care home; and

(2) Provide supervision appropriate to the age, activities, and individual needs of the child.

C. Supervision of Sleeping Children.

(1) Except as provided in §C(2) of this regulation, to determine if the child is safe, breathing normally, and in no physical distress, each sleeping child shall be observed at intervals appropriate to the child's age and individual needs.

(2) A child younger than 12 months old shall be observed at least every 15 minutes.

(3) Unless specified otherwise in writing by the child's physician, a child who:

(a) Cannot turn over from a supine (back) to a prone (front) position without assistance shall be placed for sleep on the child's back; or

(b) Is younger than 12 months old but can turn over from a supine (back) to a prone (front) position shall be placed for sleep on the child's back, but may be allowed to adopt whatever position the child prefers for sleep.

D. When the outdoor play space is not on the premises, the provider or substitute shall accompany and supervise a child of any age in transit to and from the space and while at the space.

E. The provider may permit a child to participate in supervised activities out of the home without the provider if:

- (1) The provider has prior written permission from the child's parent for the child's participation; and
- (2) Responsibility for the child's whereabouts and supervision is clearly assigned throughout the period of care.

F. The provider or substitute may permit a child in care who is younger than 6 years old to travel to or from school or a school transportation site without adult supervision only if:

- (1) The child is in the first or a higher grade;
- (2) The child will be 6 years old by the end of December of the same calendar year; and
- (3) The child's parent and the provider agree in writing that the child can travel safely without adult supervision.

.25 Activities.

A. The provider shall provide each child in care with indoor and outdoor activities that are appropriate to the age, needs, and capabilities of the individual child.

B. A provider may not permit a child in care to participate in a service or activity conducted on the premises of the family day care home by an independent contractor unless the:

- (1) Provider has prior written permission from the child's parent or guardian for the child's participation; or
- (2) Child's parent or guardian has requested the service or activity for the child.

.26 Materials and Equipment.

A. Activities. The provider shall make available to the children:

- (1) Only activity materials that are developmentally appropriate, in good repair, clean, nontoxic, and free from hazards including lead paint; and
- (2) A variety and quantity of materials and equipment for indoor and outdoor activities adequate to implement the requirements of Regulation .25 of this chapter.

B. Rest Furnishings.

(1) The home shall have clean linen and adequate furnishings for rest periods that are comfortable, durable, safe, and appropriate for the ages of the children in care.

(2) Each child shall have an individual place to rest that is not used by any other child or resident unless the linens are changed between users.

(3) For each child younger than 2 years old approved for care in the home, the provider shall provide a crib, portacrib, or playpen that meets the standards of the U.S. Consumer Product Safety Commission.

(4) Except as provided in §B(5) of this regulation, a crib, portacrib, or playpen shall be used as the resting place for each child younger than 2 years old.

(5) If the provider and the child's parent agree in writing that the child is developmentally ready, a cot, bed, or mat may be used as the resting place for a child who is younger than 2 years old.

(6) Unless the need for a positioning device that restricts a child's movement while the child is resting is specified in writing by the child's physician, an object or device, including but not limited to a

strap, wedge, or roll, that restricts movement, may not be used with a child in a crib, portable crib, playpen, cot, bed, mat, or other rest furnishing.

(7) The provider may not use soft bedding items, including but not limited to pillows, quilts, comforters, and crib bumpers, as rest furnishings for a child who is younger than 18 months old.

(8) If overnight care is approved by the Office, the provider shall ensure that:

(a) Each child in overnight care has safe, appropriate sleep furnishings; and

(b) All overnight sleeping arrangements are age-appropriate and gender-appropriate as determined by the provider and the parent.

.27 Child Comfort and Welfare.

A. The provider or substitute shall dress a child appropriately, both indoors and outdoors, for the temperature of the environment and the activity of the child.

B. The provider or substitute shall provide adequate time for meals and snacks.

C. The provider or substitute shall provide a child periods of rest appropriate to the age and activities of the child.

D. If children are transported in a vehicle while in care, the provider or substitute shall:

(1) Have prior written permission from each child's parent to transport the child; and

(2) Ensure that:

(a) Each child is separately secured in a child car seat or seat belt, and

(b) Each child car seat or seat belt is appropriate for the age and weight of the child using it, as specified by Maryland law.

.28 General Cleanliness.

A. The provider shall:

(1) Maintain all areas of the home, including food preparation, service, and storage areas in a state of cleanliness so as not to endanger the children's health; and

(2) Place paper towels, a trash receptacle, soap, and toilet paper available within reach of a child capable of using the toilet without assistance from the provider.

B. The provider or substitute shall dispose of trash, garbage, and wet or soiled diapers in a clean and sanitary manner.

C. After toileting and diapering, before food preparation and eating, after playing outdoors, after handling animals, and at other times when necessary to prevent the spread of disease, the provider or substitute shall:

(1) Wash the provider's or substitute's hands thoroughly with soap and warm running water; and

(2) Ensure that a child's hands are washed thoroughly, by the provider or by the child, with soap and warm running water.

D. To assist in preventing the spread of disease, the provider shall:

(1) Promptly change a child's diaper, clothing, and bedding when soiled or wet;

(2) Follow diapering procedures designed to prevent the transmission of disease, which are established and supplied by the Office; and

(3) Maintain the surface used for diapering in a clean and sanitary manner.

E. If used, portable toilets, also known as potty-chairs, shall be:

(1) Placed on a nonabsorbent surface or mat;

(2) Located away from food preparation, food service, and eating areas; and

(3) Cleaned and sanitized after each use in accordance with procedures established by the Office.

.29 Admission to Care.

A. The provider may not admit a child to the home for child care or allow a child to remain in care until the provider has received:

- (1) An emergency form for the child as required in Regulation .38 of this chapter;
- (2) A written report of a health inventory of the child on a form supplied or approved by the Office;

and

(3) Evidence, on a form supplied or approved by the Office, that the child has had immunizations appropriate for the child's age.

B. Unless otherwise provided by law, if a child younger than 6 years old was admitted to the home on or after May 8, 1997, the provider may not allow the child to remain in care at the home if the parent does not, within 30 days after the child's admission, submit evidence to the provider on a form supplied or approved by the Office that the child has received an appropriate lead screening in accordance with applicable State or local requirements.

C. Effective September 1, 1999, a family day care provider who also provides treatment foster care in the home may not admit a child for treatment foster care in the home unless the child is being placed in the home in a preadoptive capacity.

.30 Exclusion for Acute Illness.

A. The provider or substitute shall:

- (1) Monitor children for signs and symptoms of acute illness; and
- (2) Notify immediately a child's parent or other person designated on the child's emergency card upon observing a sign or symptom of acute illness.

B. The provider or substitute may not allow a child to enter or remain in care if the child is exhibiting symptoms of acute illness such as, but not limited to:

- (1) Vomiting;
- (2) Fever;
- (3) Seizures;
- (4) Severe pain; or
- (5) Diarrhea.

.31 Infectious and Communicable Diseases.

A provider or substitute may not knowingly care for a child who has a serious transmissible infection or communicable disease during the period of exclusion for that infection or disease shown on a list provided by the Office.

.32 Administering Medication.

A. When the provider agrees to administer prescription or nonprescription medication, the provider shall do so only with written authorization from the child's parent.

B. The provider or substitute may administer medication only if:

- (1) The parent's authorization was signed before administering the medication;
- (2) The parent's authorization includes the:
 - (a) Child's name,
 - (b) Parent's signature and date signed,
 - (c) Dosage for the child,
 - (d) Dates on which the medication is to be administered, and
 - (e) Time to administer the medication or the conditions for which the medication is to be administered;

- (3) Prescription medication is labeled by the pharmacy or physician with:
 - (a) The child's name, and
 - (b) An expiration date that indicates that the medication is still useable; and
- (4) At least one dose of a prescription medicine has been given to the child at home.

C. A provider may only administer prescription or nonprescription medication according to the instructions on the label of the medication container or the written instructions from a licensed health practitioner, whichever are more recently dated.

D. Except for acetaminophen and topical medications, a provider may administer only one dose of a nonprescription medication to a child per illness unless a licensed health practitioner approves the administration of the nonprescription medication and the dosage.

E. Unless the medication is a nonprescription diaper rash treatment or sunscreen supplied by the child's parent, a provider shall document and incorporate in the child's record the:

- (1) Amount, date, and time of each administration to the child; and
- (2) Name of the individual administering the medication.

F. A provider shall store all medications safely and properly, labeled with the child's name, the drug dosage, and expiration date.

.33 Smoking.

A. If a resident of the family day care home smokes cigarettes, cigars, or pipes, the provider shall make this known in advance to parents who are considering placing their children in the provider's care.

B. Smoking Restrictions.

(1) A provider and any other individual who has child care responsibilities may not smoke in the immediate presence of a child in care.

(2) During the family day care home's approved hours of operation, if an enrolled child is or will be on the premises, the provider may not smoke or permit smoking anywhere inside the home.

C. A provider shall ensure that all cigarettes, cigars, pipes, ashes, and butts are kept out of the reach of the children in care.

.34 Consumption of Alcohol.

A. A provider may not consume alcoholic beverages during the approved hours of operation of the family day care home.

B. A substitute may not consume alcoholic beverages while providing or assisting with the care of children.

.35 Nutrition and Food Served.

A. The provider or substitute shall prepare, or make arrangements with the child's parents to provide, an adequate amount of nutritious food and beverages for the number of meals and snacks the child will be served, appropriate for the child's age and appetite.

B. The provider or substitute shall serve meals and snacks at regular and age-appropriate intervals.

C. The provider may not:

- (1) Force a child to eat;
- (2) Punish a child for refusing to eat; or
- (3) Withhold food as punishment.

.36 Food Storage and Cleanliness.

The provider or substitute shall:

- A. Transport, store, prepare, display, and serve food in a safe, sanitary, and healthful manner;
- B. Refrigerate perishable foods such as meat, milk, and dairy products at or below 45°F; and
- C. As soon as a child has finished eating, discard any remaining food that has come into contact with:
 - (1) The child's mouth; or
 - (2) A utensil used by the child for eating.

.37 Child Protection.

- A. An individual who is responsible for providing care to a child:
 - (1) Shall monitor the child for signs and symptoms of child abuse or neglect;
 - (2) Shall use procedures for disciplining the child that:
 - (a) Are appropriate to the age and maturity of the child; and
 - (b) Do not include the deliberate infliction in any manner of any type of physical pain or emotional harm including spanking, hitting, shaking, any other means of physical discipline, shaming, or ridiculing;
 - (3) If having reason to believe that a child in care has been:
 - (a) Abused, shall report that belief directly to the protective services unit of the local department of social services or to a law enforcement agency, as required under Maryland law; or
 - (b) Neglected, shall report that belief directly to the protective services unit of the local department of social services as required under Maryland law; and
 - (4) May not subject a child in care to abuse, neglect, or injurious treatment as defined in Regulation .02B of this chapter.
- B. The requirements set forth in §A(3) and (4) of this regulation also apply to a resident of the family day care home.
- C. The provider or substitute shall permit the parent of a child in care to have access to the child at all times and to observe the areas of the home used for child care during the provider's hours of operation.
- D. The provider or substitute shall notify the Office within 24 hours of:
 - (1) The death of a child if the child died:
 - (a) While in the care of the provider or substitute; or
 - (b) Of a contagious disease; and
 - (2) Any injury to a child that occurs while the child is at the family day care home in the care of the provider or substitute which results in the child's:
 - (a) Being treated by a medical professional,
 - (b) Being admitted to a hospital, or
 - (c) Death.
- E. The provider or substitute shall:
 - (1) Report immediately to the child's parent any serious injury or accident;
 - (2) Report any nonserious injury or accident to the child's parent on the same day it occurs; and
 - (3) Record each injury and accident in the child's health inventory.
- F. Release of Child.
 - (1) Except as indicated in §F(2) of this regulation, the provider or substitute shall release a child only to the child's parent or to another individual if directed by the parent and if the identity of the other individual is verified by the provider or substitute.

(2) In case of the death, disappearance, incapacity, or sudden unavailability of the parent or individual designated to pick up the child, or when requested by Protective Services, the provider or substitute may release the child to a Protective Services worker.

G. Security of Children in Care.

(1) The provider shall ensure the safety and security of each child at all times.

(2) Whenever an area of the home is being used for a child care activity and children are present, the provider may not allow that area to be used at the same time for any other purpose without prior approval of the office.

(3) In addition to meeting all other child supervision requirements of this chapter, the provider shall ensure that an individual who meets the requirements of this chapter for supervising children in care:

(a) Accompanies a child whenever the child is in the presence of an individual at the home who is not:

(i) Another individual who meets the requirements of this chapter for supervising children in care;

(ii) The child's parent, guardian, or other individual to whom the child may be released pursuant to §F of this regulation;

(iii) An individual who is authorized by the child's parent or guardian, and whose identity is verified by the provider, to provide a health care, educational, or other service to the child;

(iv) Another child enrolled in care; or

(v) A child who resides at the home; and

(b) Unless documentation is on file at the family day care home that an independent contractor that is performing a service at the home has successfully passed federal and State criminal background checks and a review of child abuse and neglect records, remains within sight and sound of the independent contractor whenever the independent contractor is in an area where a child is present.

.38 Emergency Form for Each Child.

The provider shall:

A. Maintain an emergency form for each child on a form supplied or approved by the Office;

B. Keep the emergency forms for the children who currently are in the provider's care in a readily accessible location, including taking the forms when taking the children away from the home; and

C. Arrange to have the form for each child updated as needed, but at least annually, and signed and dated by the parent.

.39 Emergency Safety.

The provider shall:

A. Post next to each telephone in the home, located in or near space approved for use by children, a notice with the:

(1) 911 emergency telephone number to summon fire, police, and rescue services,

(2) Provider's name, address, location, and telephone number, and

(3) Telephone number of a poison control center;

B. Keep in a readily accessible location in the home the:

(1) Emergency substitute's name and telephone number, and

(2) Name of each child's parent and the home and work phone numbers where the parent can be reached during the child's hours of care;

C. Prepare a written emergency escape plan and shall post the plan in the home in a location in or near the area where the children play;

D. Regularly orient children, who are old enough to understand, in procedures to be used in the event of a fire or other emergency requiring escape from the home;

E. Conduct fire drills at least once per month;

F. Instruct children in the use of the 911 telephone number to summon help in an emergency; and

G. Meet the following requirements for first aid supplies:

(1) Maintain first aid supplies as the Office requires in a location that is readily accessible to the areas of the home approved for child care;

(2) Store first aid supplies in a manner that makes them inaccessible to children in care; and

(3) Bring the first aid supplies along on any activity away from the family day care home.

.40 Inspections.

A. The Office shall inspect each family day care home:

(1) On an announced basis:

(a) Before issuing a certificate of initial registration or continuing registration; and

(b) At least once within each 24-month period after issuing a certificate of initial registration, renewed registration, or continuing registration; and

(2) On an unannounced basis, at least once:

(a) Within each 12-month period after the date that a certificate of initial registration or continuing registration was issued to the provider; or

(b) If the provider is currently operating on a renewed registration, during the 12-month period following the calendar year in which the certificate of renewed registration was issued.

B. The provider shall permit inspection of the home by the agency representative during the provider's hours of operation.

C. The agency representative may make inspections, in addition to the announced and unannounced inspections specified in §A of this regulation, without prior notice to the provider.

D. Upon request, the provider shall make the records required by these regulations available to the agency representative for inspection and copying.

E. A provider may request satisfactory identification from the agency representative before admitting the person for an inspection.

F. A provider may appeal a finding of noncompliance with these regulations by requesting a review of findings by the regional office or the central office of the Agency.

.41 Administrative Responsibilities of Provider.

The provider shall:

A. Unless specified otherwise by this regulation, maintain the records required by these regulations for at least 2 years;

B. Give the parent of each child enrolled in the home a consumer education pamphlet on family day care supplied by the Office;

C. Negotiate and maintain a written agreement with the parent concerning the fees for and provision of care;

D. Obtain prior written permission from a child's parent to take the child on field trips away from the home;

E. During the period of a child's enrollment and for 2 years after the child's disenrollment, maintain a file for each child that includes records of:

- (1) The name, current address, and home and work telephone numbers of the parent;
- (2) The child's health inventory, immunizations, and allergies, if any;
- (3) Acute illnesses that required excluding the child from care as required in Regulation .30 of this chapter;
- (4) Injuries or accidents as required to be reported in Regulation .37F and G of this chapter;
- (5) Medication dispensed to the child during care;
- (6) A signed and dated acknowledgement that the parent has received the consumer education pamphlet on family day care supplied by the Office; and
- (7) Written information concerning the child's individual needs which is supplied by the child's parent at or before the child's admission to care and is:
 - (a) Used by the provider to meet the child's individual care needs, and
 - (b) Reviewed by the provider and the parent at least every 12 months after the child's admission to care;

F. Maintain a calendar or other written record indicating the names of the children who attend each day;

G. Maintain a calendar or other written record of the days on which a substitute provides care for more than 2 hours;

H. Notify the Office immediately of any change that might affect the status of the registration, such as:

- (1) A change in residents, operation, telephone number, or the provider's residence;
- (2) A pending criminal charge against:
 - (a) An individual who has responsibilities for supervising children in care; or
 - (b) A resident in the home; or
- (3) Any other situation involving the home that may present a risk to the health, safety, or welfare of children in care there; and

I. Within 15 working days after notifying the Office of a new resident in the home, submit to the Office:

- (1) One of the following:
 - (a) A medical report on the resident, on a form supplied or approved by the Office, that is based on a medical evaluation completed within the previous 12 months; or
 - (b) Evidence that a medical evaluation of the resident has been scheduled; and
- (2) If the resident is 18 years old or older:
 - (a) A signed and, if required by the Office, notarized release form giving the Office permission to examine records of abuse and neglect of children and adults for information about the resident; and
 - (b) Evidence that the resident has applied for a federal and State criminal background check.

.41 Administrative Responsibilities of Provider.

The provider shall:

A. Unless specified otherwise by this regulation, maintain the records required by these regulations for at least 2 years;

B. Give the parent of each child enrolled in the home a consumer education pamphlet on family day care supplied by the Office;

C. Negotiate and maintain a written agreement with the parent concerning the fees for and provision of care;

D. Obtain prior written permission from a child's parent to take the child on field trips away from the home;

E. During the period of a child's enrollment and for 2 years after the child's disenrollment, maintain a file for each child that includes records of:

- (1) The name, current address, and home and work telephone numbers of the parent;
- (2) The child's health inventory, immunizations, and allergies, if any;
- (3) Acute illnesses that required excluding the child from care as required in Regulation .30 of this chapter;
- (4) Injuries or accidents as required to be reported in Regulation .37F and G of this chapter;
- (5) Medication dispensed to the child during care;
- (6) A signed and dated acknowledgement that the parent has received the consumer education pamphlet on family day care supplied by the Office; and
- (7) Written information concerning the child's individual needs which is supplied by the child's parent at or before the child's admission to care and is:
 - (a) Used by the provider to meet the child's individual care needs, and
 - (b) Reviewed by the provider and the parent at least every 12 months after the child's admission to care;

F. Maintain a calendar or other written record indicating the names of the children who attend each day;

G. Maintain a calendar or other written record of the days on which a substitute provides care for more than 2 hours;

H. Notify the Office immediately of any change that might affect the status of the registration, such as:

- (1) A change in residents, operation, telephone number, or the provider's residence;
- (2) A pending criminal charge against:
 - (a) An individual who has responsibilities for supervising children in care; or
 - (b) A resident in the home; or
- (3) Any other situation involving the home that may present a risk to the health, safety, or welfare of children in care there; and

I. Within 15 working days after notifying the Office of a new resident in the home, submit to the Office:

- (1) One of the following:
 - (a) A medical report on the resident, on a form supplied or approved by the Office, that is based on a medical evaluation completed within the previous 12 months; or
 - (b) Evidence that a medical evaluation of the resident has been scheduled; and
- (2) If the resident is 18 years old or older:
 - (a) A signed and, if required by the Office, notarized release form giving the Office permission to examine records of abuse and neglect of children and adults for information about the resident; and
 - (b) Evidence that the resident has applied for a federal and State criminal background check.

.42 Complaints.

The Office shall investigate:

A. Both written and oral complaints that relate to a potential violation of a regulation, including anonymous complaints; and

B. Complaints of unregistered family day care.

.43 Warnings.

A. When an investigation of a complaint or an inspection of a family day care home indicates a violation of these regulations that does not present an immediate threat to the health, safety, and welfare of a child in care, the Office shall issue a warning in writing, on an inspection report or by separate letter, that states:

- (1) The violation found, citing the regulation;
- (2) The time period for correcting the violation; and
- (3) That failure to correct the violation may result in sanctions being imposed or in suspension or revocation of the registration.

B. If the Office determines that the violation has not been corrected within the time period allowed, the Office may follow the requirements of Regulations .44—.46 of this chapter to impose sanctions or to suspend or revoke the registration.

.44 Intermediate Sanctions.

A. Upon determining that a provider has violated or a home fails to meet any of the regulations of this chapter, the Office may:

- (1) Restrict the age or number of children accepted for care;
- (2) Reduce the number of children in care;
- (3) Require the provider to receive remedial instruction in a specified content area;
- (4) Increase the frequency of monitoring of the home during a specified period of time;
- (5) Enter into an agreement with the provider detailing requirements in addition to those above, including time limits for compliance; and
- (6) Notify, or require the provider to notify, a parent of a child who may be affected by the situation for which a sanction has been imposed.

B. If the Office determines that the provider has violated a condition or requirement of the intermediate sanction, the Office may suspend or revoke the registration.

.45 Non-Emergency Suspension.

A. The Office may suspend the certificate of registration for a period of not more than 60 calendar days.

B. The Office may suspend the certificate of registration upon determining that:

- (1) The provider or home is in violation of any of these regulations and that the health, safety, or welfare of a child in the home is threatened; or
- (2) If the registration is a continuing registration that was replaced by a conditional registration, the:
 - (a) Conditional registration has lapsed; and
 - (b) Provider has failed to meet the requirements for reinstatement of the continuing registration.

C. The Office shall notify the provider in writing of the suspension at least 20 calendar days before the effective date stating:

- (1) The effective date and period of the suspension;
- (2) The reason for suspension;
- (3) The regulation with which the provider has failed to comply that is the basis for the suspension;
- (4) Corrections required to ensure reinstatement of the certificate of registration;
- (5) That the provider shall stop providing child care on the effective date of the suspension unless the provider requests a hearing;
- (6) That the provider is entitled to a hearing if requested in writing within 20 calendar days of the delivery of the notice;
- (7) The procedure to be used if the provider wishes to request a hearing to appeal the decision of the Office;
- (8) That the suspension shall be stayed if a hearing is requested;

- (9) That, if the suspension is upheld following the hearing, the provider shall cease providing child care for the period of the suspension;
- (10) That the suspension may lead to revocation; and
- (11) That the provider is required to surrender the certificate of registration to the Office when the suspension becomes effective.

D. The Office shall notify the parents of the children in care of the suspension.

E. By the end of the suspension period, the Office shall:

- (1) Reinstate the certificate of registration and return it to the provider; or
- (2) Revoke the certificate of registration.

.46 Emergency Suspension.

A. The Office may immediately suspend the certificate of registration for a period of not more than 45 calendar days upon finding that a child's health, safety, or welfare imperatively requires emergency action.

B. The Office shall hand-deliver a written notice to the provider informing the provider of the emergency suspension, giving the reasons for the action, and notifying the provider of the right to request, within 30 days of the delivery of the notice, a hearing before the Superintendent's designee.

C. When the certificate of registration is to be suspended immediately:

- (1) The Office shall repossess the certificate of registration;
- (2) The provider shall stop providing child care immediately;
- (3) The Office shall notify the parents of the children in care of the suspension and make every reasonable effort to assist the parents of the children in making other child care arrangements.

D. If a hearing is requested by the provider, the Superintendent's designee shall hold a hearing within 7 calendar days of the date of the request.

E. Within 7 calendar days of the hearing, a decision concerning the emergency suspension shall be made by the Superintendent's designee.

F. If the decision does not uphold the emergency suspension, the provider may resume providing child care.

G. By the end of the suspension period, the Office shall:

- (1) Reinstate the certificate of registration and return it to the provider; or
- (2) Revoke the certificate of registration.

.47 Revocation.

A. The Office may revoke a certificate of registration if the:

- (1) Provider or home is in violation of one or more of these regulations and the health, safety, or welfare of a child in the home is threatened;
- (2) Provider misrepresented or offered false information on the application or on any form or report required by the Office;
- (3) Provider interferes with or obstructs the agency representative in the performance of the duties of the Office;
- (4) Provider or substitute refuses to permit access to a child or to the space in the home used for child care by a parent or an agency representative during operating hours of the child care home;
- (5) Terms or conditions of a sanction have been violated;
- (6) Registration is a continuing registration that was replaced by a conditional registration, and the:
 - (a) Conditional registration has lapsed; and

- (b) Provider has failed to meet the requirements for reinstatement of the continuing registration;
- (7) Provider, an additional adult, a substitute, or a resident is identified as responsible for abuse or neglect of children or adults;
- (8) Provider, an additional adult, a substitute, or a resident has a criminal conviction, probation before judgment, or not criminally responsible disposition for a crime which indicates a threat to the welfare of children in care;
- (9) Provider fails to comply with the child security requirements set forth in Regulation .37G of this chapter;
- (10) Provider permits an individual to have child supervision responsibilities after being notified by the Office that the individual has been disapproved for that purpose;
- (11) Evaluation of information provided to or acquired by the Office indicates that the provider is unable to care for the welfare of children; or
- (12) The provider who also provides treatment foster care in the home admits a child for treatment foster care in the home on or after September 1, 1999, unless the child is placed in the home in a preadoptive capacity.

B. If the Office decides to revoke a certificate of registration, the Office shall notify the provider in writing at least 20 calendar days in advance of the revocation, stating:

- (1) The effective date of the revocation;
- (2) The reason for revocation;
- (3) The regulation with which the provider has failed to comply that is the basis for the revocation;
- (4) That the provider shall stop providing child care on the effective date of the revocation;
- (5) That the provider is entitled to a hearing if requested in writing within 20 calendar days of the delivery of the notice;
- (6) The procedure to be used if the provider wishes to request a hearing to appeal the decision of the Office;
- (7) The revocation shall be stayed if the hearing is requested, unless the revocation immediately follows an emergency suspension period; and
- (8) That the provider is required to surrender the certificate of registration to the Office when the revocation becomes effective.

C. The Office shall notify the parents of the children in care of the revocation.

.48 Penalties.

The Office may institute legal proceedings to:

- A. Enjoin any person not registered who is providing family day care from continuing to operate; or
- B. Ask a court in the jurisdiction of the family day care home to impose a fine of up to the maximum amount permitted by law on a person found to be operating in violation of these regulations.

.49 Civil Citations.

A. The Office may issue a civil citation imposing a civil penalty to an individual who provides unregistered family day care in violation of the requirements of this chapter.

B. Assessment of Penalty.

- (1) Subject to §B(3) of this regulation, an individual to whom a civil citation is issued is subject to a civil penalty in the amount of:
 - (a) \$250 for the first violation;
 - (b) \$500 for the second violation; and
 - (c) \$1,000 for the third and each subsequent violation.
- (2) Each day that unregistered family day care occurs in violation of the requirements of this chapter is a separate violation under this regulation.

(3) The total amount of civil penalty imposed against an individual in an action under this regulation may not exceed \$5,000.

C. An individual against whom a civil penalty has been imposed under this regulation shall pay the full amount of the penalty promptly to the Department, as instructed by the civil citation or as otherwise directed by the Office.

D. Appeals.

(1) An individual may appeal the imposition of a civil penalty under this regulation by filing an appeal with the Office as instructed by the civil citation or as otherwise directed by the Office.

(2) Appeals are conducted in accordance with the provisions of COMAR 07.01.04.

.50 Inspection of Licensing Records for Compelling Public Purpose.

A. Definitions. In this regulation, the following terms have the meanings indicated:

(1) "Confirmed complaint" means a determination by the Department or Office after an investigation that the violation of a regulation of this chapter which was alleged in the complaint has occurred or is occurring.

(2) "Custodian of record" means an authorized individual employed by the Department or Office who has physical custody and control of licensing records.

(3) "Licensing records" means all papers, computerized records, correspondence, forms, books, cards, photographs, photostats, films, microfilms, sound recordings, charts, maps, drawings, or other written documents, regardless of physical form or characteristics, maintained or stored by the Department or the Office in connection with the registering of a person or a family day care home to provide child care.

(4) "Official custodian of record" means the Superintendent or the Superintendent's designee who is responsible for the maintenance, care, and storage of the Department's licensing records.

(5) "Requester" means an individual, business, corporation, partnership, association, organization, or governmental agency which requests an inspection of licensing records.

(6) "Sociological information" means any of the following information about a provider:

(a) Social Security number;

(b) Personal address;

(c) Personal phone number;

(d) Information regarding marital status, dependents, or relatives; and

(e) Information regarding employment status, including employment application.

B. A compelling public purpose shall exist for the custodian of record to permit inspection of licensing records other than the records specified under State Government Article, §10-617(h)(2), Annotated Code of Maryland.

C. Inspection Requests—General. The custodian of record shall permit inspection of licensing records which pertain to a family day care home subject to the requirements of this chapter, if a request for inspection is submitted by one of the following:

(1) A parent whose child is or has been enrolled in the family day care home which is the subject of the request;

(2) A parent who is considering enrolling a child in the family day care home which is the subject of the request;

(3) An authorized representative of a business who is considering securing or who is securing child care services for the benefit of its employees from the family day care home which is the subject of the request;

(4) An employer who has entered into a contract to employ the services of the family day care provider which is the subject of the request;

(5) A prospective employer who is considering a contract to employ the services of the family day care provider which is the subject of the request;

(6) A requester who has filed a complaint that has been confirmed by the Department or Office, if the:

- (a) Complaint is against the family day care home which is the subject of the request, and
- (b) Request is limited to licensing records relating to the complaint;
- (7) A federal, State, local, or other law enforcement agency that has requested the inspection to conduct the official business of the agency or for law enforcement or prosecutorial purposes; or
- (8) A requester for whom there is a compelling public purpose to obtain other information about the family day care home which is the subject of the request, as determined by the official custodian of record.

D. Licensing Records Permitted for Inspection. Except as otherwise prohibited by State or federal law or regulation, the custodian of record shall permit inspection of all of the following licensing records:

- (1) Copies of provisional and regular certificates of registration, including administrative extensions;
- (2) Variances;
- (3) Correspondence and documents requiring abatement of noncompliances with the regulations of this chapter, including compliance agreements;
- (4) Correspondence and documents pertaining to enforcement actions taken by the Department or Office against a family day care provider or a family day care home, including denial letters, sanctions, emergency suspensions, and revocations;
- (5) Noncompliance reports and inspection reports pertaining to the Department's or Office's reinspection of family day care home following a finding of noncompliance;
- (6) Record of complaint forms pertaining to confirmed complaints; and
- (7) Any correspondence regarding requests for inspection of licensing records under this regulation.

E. Provider's Inspection Request. Except as provided by other law, the custodian of record shall permit a family day care provider to inspect the provider's own licensing record.

F. All requests for inspection of licensing records under this regulation shall be in writing pursuant to COMAR 07.01.02.

G. The custodian of record may not disclose sociological information to a requester, except that this information may be disclosed:

- (1) To public employees in the performance of their public duties;
- (2) To parties litigating claims for unemployment insurance to the extent the sociological information would be available to private parties in litigation; or
- (3) When required by a duly issued subpoena.

Administrative History

Effective date:

Regulations .01—.13 of COMAR 07.02.18 repealed and Regulations .01—.47 adopted under a new chapter, COMAR 07.04.01, as an emergency provision effective August 10, 1990 (17:17 Md. R. 2074); regulations recodified as .01—.48 and adopted permanently effective January 21, 1991 (18:1 Md. R. 27)

Regulation .02B amended effective August 23, 1999 (26:17 Md. R. 1321)

Regulation .03A amended effective July 31, 1995 (22:15 Md. R. 1118)

Regulation .04 amended effective November 1, 1998 (25:21 Md. R. 1572)

Regulation .04C amended effective June 3, 1996 (23:11 Md. R. 808)

Regulation .05 amended effective November 1, 1998 (25:21 Md. R. 1572)

Regulation .05B amended effective December 1, 1997 (24:24 Md. R. 1669)

Regulation .05D adopted effective August 23, 1999 (26:17 Md. R. 1321)

Regulation .06B amended effective December 1, 1997 (24:24 Md. R. 1669)

Regulation .08A amended effective November 1, 1998 (25:21 Md. R. 1572); August 23, 1999 (26:17 Md. R. 1321)

Regulation .14 repealed and new Regulation .14 adopted as an emergency provision effective January 1, 1992 (19:1 Md. R. 20); adopted permanently effective April 27, 1992 (19:8 Md. R. 804)

Regulation .14 amended effective April 17, 2000 (27:7 Md. R. 705)

Regulation .15C amended effective November 1, 1998 (25:21 Md. R. 1572)

Regulation .21E adopted effective April 17, 2000 (27:7 Md. R. 705)

Regulation .22C adopted effective April 17, 2000 (27:7 Md. R. 705)
Regulation .23B, D amended effective June 3, 1996 (23:11 Md. R. 808)
Regulation .23C amended effective August 23, 1999 (26:17 Md. R. 1321)
Regulation .24A amended effective December 1, 1997 (24:24 Md. R. 1669)
Regulation .27D amended effective April 17, 2000 (27:7 Md. R. 705)
Regulation .29 amended effective December 1, 1997 (24:24 Md. R. 1669)
Regulation .29A amended effective April 17, 2000 (27:7 Md. R. 705)
Regulation .29C adopted effective August 23, 1999 (26:17 Md. R. 1321)
Regulation .31 amended effective December 1, 1997 (24:24 Md. R. 1669)
Regulation .32 amended effective April 17, 2000 (27:7 Md. R. 705)
Regulation .34 repealed effective December 1, 1997 (24:24 Md. R. 1669)
Regulation .40 amended effective April 17, 2000 (27:7 Md. R. 705)
Regulation .41E amended effective December 1, 1997 (24:24 Md. R. 1669)
Regulation .47A amended effective November 1, 1998 (25:21 Md. R. 1572); August 23, 1999 (26:17 Md. R. 1321)
Regulation .48 amended effective July 31, 1995 (22:15 Md. R. 1118)
Regulation .49 adopted effective July 31, 1995 (22:15 Md. R. 1118)
Regulation .50 adopted effective June 3, 1996 (23:11 Md. R. 808)
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Regulation .33A, B amended effective April 1, 2004 (31:6 Md. R. 507)
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Chapter revised effective January 6, 2005 (31:26 Md. R. 1860)

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Regulation .02B amended effective January 2, 2006 (32:26 Md. R. 1996)
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Regulation .37G adopted effective January 2, 2006 (32:26 Md. R. 1996)
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