

# Title 13A STATE BOARD OF EDUCATION

## Subtitle 14 CHILD AND FAMILY DAY CARE

### Chapter 02 Child Care Center Licensing

Authority: Family Law Article, §§5-560, 5-564, and 5-570—5-585; 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 Scope.**

A. These regulations govern nonparental care of children for part of a 24-hour day not in the child's own home, in a group setting such as a child care center, preschool, child development center, nursery school, before-school and after-school program, school age child care, or early learning center, by whatever name known, under private nonprofit, proprietary, public, and religious auspices.

B. These regulations do not apply to:

- (1) A family day care home registered under COMAR 13A.14.01;
- (2) A facility that offers or provides a residential placement for a child under Family Law Article, Title 5, Subtitle 5, or Health-General Article, Title 6 or 10, Annotated Code of Maryland;
- (3) A youth camp, as defined by Health-General Article, §14-401(j), Annotated Code of Maryland;
- (4) A child care service operated by the federal government or on federal property;
- (5) A public school during the hours in which an instructional program is offered;
- (6) A nonpublic kindergarten for children at least 5 years old during the hours in which an instructional program is offered;
- (7) A nonpublic elementary school during the hours in which an instructional program is offered;
- (8) Child care services provided in connection with a shelter housing individuals temporarily without residences, exclusively for the children of those individuals;
- (9) The approved hours of instruction of a nonpublic nursery school operated by a tax-exempt religious organization that holds a certificate of approval to operate from the State Board of Education under Education Article, §2-206, Annotated Code of Maryland;
- (10) The physical plant, including sanitary facilities, of a child care center exclusively for school age children, located in a currently operating public or nonpublic school building, if the application of the regulation would require modification of the physical plant;
- (11) The instructional program, curriculum, and teacher, principal, and administrator qualifications of a:
  - (a) Nursery school operated by a tax-exempt religious organization which does not have a certificate of approval from the State Board of Education, or
  - (b) Child care program operated by a tax-exempt religious organization in a school building exclusively for children who are enrolled in that school; and
- (12) Programs that operate for 6 weeks or less in any calendar year.

C. Previously Unregulated Facilities.

- (1) The process of issuing licenses for facilities not licensed under COMAR 10.05.01 shall be initiated between 1991 and 1994, inclusive.
- (2) Previously unregulated facilities include nonpublic nursery schools, child care centers operated by tax-exempt religious organizations, child care centers operated by departments of recreation and parks, and before-school and after-school child care centers operated by public and nonpublic schools.
- (3) The date and order of licensing is at the discretion of the Department.

## **.02 Definitions.**

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

B. Terms Defined.

- (1) Abuse.
  - (a) "Abuse" means 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.
  - (b) "Abuse" includes 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 accompanied by abnormal symptoms and signs, that has a short course of duration, as opposed to a chronic illness of long duration.
- (3) "Acute illness center" means a child care center which is exclusively for the temporary care of children who are ill and cannot attend their usual child care or school.
- (4) "Adolescent center" means a child care center which offers programs exclusively to children in middle school and junior high school.
- (5) "Agency" means the Office of Child Care, Division of Early Childhood Development, in the State Department of Education.

(6) "Agency representative" means an individual designated by the Agency to determine compliance with these regulations.

(7) "Applicant" means a person who has submitted to the office all of the required forms and documentation to request approval for licensure either for an initial license or for a continuing license.

(8) "Approved continued training" means training including, but not limited to, workshops, seminars, and conferences which is:

(a) Approved by the office; and

(b) Used by child care center staff members to maintain the employment qualifications required by this chapter.

(9) "Approved pre-employment training" means training which is:

(a) Approved by the office; and

(b) Used to meet initial employment qualifications required by this chapter for child care center staff members.

(10) "Capacity" means the total number of children specified by the license of the center who may be in care at any one time.

(11) "Child" means an individual older than 6 weeks and younger than 16 years old or an individual younger than 21 years old who has a disabling condition or other emotional, developmental, physical, educational, or medical need necessitating child care beyond 16 years old.

(12) Child Care.

(a) "Child care" means the care or supervision of a child when the child's parent has given the child's care over to another for some portion of a 24-hour day as a supplement to the parent's primary care of the child.

(b) "Child care" does not mean:

(i) Group lessons or classes providing specialized training in a specific subject, unless provided in a pattern indicating that a child care center is being operated;

(ii) Scouting, sports, or youth club activities;

(iii) School-age recreational or supplementary education programs operated by a local department of recreation and parks, law enforcement agency, or a public or nonpublic school, if custodial supervision is not the primary purpose of the program;

(iv) Supervisory services to children provided by a church, health club, health provider, or similar sponsor in support of an occasional or intermittent parental activity or service offered by the sponsor while parents are on the same premises as the services to children and are immediately available to the children; or

(v) Programs primarily designed for the religious training of children, provided on a weekly basis or for a short period in the summer, commonly known as Sunday schools or Bible schools.

(13) Child Care Center.

(a) "Child care center" means an agency, institution, or establishment that, for part or all of the day, or on a 24-hour basis on a regular schedule, and at least twice a week, offers or provides child care to children who do not have the same parentage, except as otherwise provided for in law or regulation.

(b) "Child care center" includes:

(i) A nonpublic nursery school approved under Education Article, §2-206, Annotated Code of Maryland, in which an instructional program is offered or provided for children who are at least 2 but less than 5 years old; and

(ii) Child care operated by a State or local government agency.

(c) A child care center may offer more than one type of program or care.

(14) "Combined preschool and school age center" means a child care center which serves both preschool children and school age children, whether in separate groups or mixed age groups.

(15) "Conditional license" means a child care center license that:

(a) Is issued to a center operator for a specified period of time during which the operator is required to remedy a specified violation of a regulation under this chapter; and

(b) Upon issuance, supersedes a continuing license.

(16) "Continuing license" means a child care center license that does not expire.

(17) Custodial Supervision.

(a) "Custodial supervision" means parentally authorized oversight of a child by an individual other than the child's parent or guardian.

(b) "Custodial supervision" includes responsibility for:

- (i) The well-being and the whereabouts of the child for a given period of time; and
  - (ii) Direct transfer of the custody of the child from and to an authorized person.
- (c) "Custodial supervision" does not include the oversight of a child who is participating in a specific activity, such as scouting, sports, or youth clubs.
- (18) "Department" means the Maryland State Department of Education.
- (19) "Drop-in center" means a child care center which only provides care to children on an intermittent and occasional basis for less than 4 hours a day.
- (20) Employee.
- (a) "Employee" means an individual:
    - (i) Who for compensation is employed by the center operator to work at or for the center; or
    - (ii) Whose work assignment involves the care or supervision of children in the facility or access to children who are cared for or supervised in the facility.
  - (b) "Employee" does not include an individual who:
    - (i) Is an independent contractor; or
    - (ii) Provides a consultative health service pursuant to Regulation .29C of this chapter.
  - (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 any individual who:
    - (i) Is compensated by the operator to perform a service at the center;
    - (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(25) of this regulation.
- (21) "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 and for which the provider is paid, in accordance with Family Law Article, §§5-550—5-557, Annotated Code of Maryland.
- (22) "Group" means a unit of children together with the staff assigned to them.
- (23) "Health officer" means the health officer in each of the 23 counties and the Commissioner of Health in Baltimore City, or the duly designated representative of the health officer, or both, and refers to the health officer in the jurisdiction where the center is or will be located.
- (24) "Identified as responsible for child abuse or neglect" means being determined by a local department of social services or the Montgomery County Department of Health and Human Services to be responsible for indicated child abuse or neglect under circumstances specified in Family Law Article, §5-714, Annotated Code of Maryland.
- (25) Independent Contractor.
- (a) "Independent contractor" means an individual or entity:
    - (i) That is hired by the center operator or by another party, on the basis of a service contract or agreement, to perform a specialized service at the center, including but not limited to food catering, child transportation, facility maintenance or repair, or supplemental 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 center, but is available for hire by other customers.
  - (b) "Independent contractor" does not include an individual who:
    - (i) Provides a consultative health service pursuant to Regulation .29C of this chapter;
    - (ii) Under a private arrangement with the parent or guardian of a child or children in care, provides a health care, academic, 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.
- (26) "Infant" means a child 6 weeks old or older but younger than 18 months old.
- (27) "Infant-toddler center" means a child care center which offers programs only for children younger than 2 years old.
- (28) "Injurious treatment" means:
- (a) Deliberate infliction in any manner of any type of physical pain, including but not limited to 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) Using discipline methods which create undue discomfort, such as 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.

(29) "Instructional program" means an educational program as defined by the State Board of Education.

(30) "Kindergarten" means a program of instruction to children who are 5 years old or who will be 5 by December 31 of the year they enter the program provided in a:

(a) Public school or a nonpublic school approved by the State Department of Education; or

(b) Nonpublic school operated by a tax-exempt religious organization which holds a letter of exemption from approval by the State Board of Education under Education Article, §2-206, Annotated Code of Maryland.

(31) "License" means the document issued to a licensee by the Department, which gives permission to operate a child care center in accordance with these regulations.

(32) "Licensee" means an individual or a partnership, group, association, cooperative, or corporation which has the legal authority and responsibility for the governing and operating of the center and for compliance with these regulations.

(33) "Local department" means the department of social services in the 23 counties or in Baltimore City.

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

(35) Neglect.

(a) "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.

(b) "Neglect" does not include, for that reason alone, providing a child with nonmedical religious remedial care and treatment recognized by State law in place of medical treatment for a child's injuries or illnesses.

(36) "Nursery school" means an instructional program approved or exempted by the State Department of Education for children who are 2 years through 4 years old which does not exceed 6 hours in length pursuant to COMAR 13A.09.09.10B.

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

(38) "Operated by a tax-exempt religious organization" means that the operator has submitted a copy of the determination letter from the Internal Revenue Service which recognizes the organization as a bona fide church organization exempt from taxation under the Internal Revenue Code of 1954, Article 501(c)(3).

(39) "Operator" means a licensee or an agent of a licensee.

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

(41) Potentially Hazardous Food.

(a) "Potentially hazardous food" means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients including synthetic ingredients capable of supporting rapid and progressive growth of infectious, toxigenic microorganisms.

(b) "Potentially hazardous food" does not include clean, whole, uncracked, odor-free shell eggs.

(42) "Preschool center" means a child care center which offers programs for children younger than 6 years old, including infants, toddlers, and children who are enrolled in kindergarten.

(43) "Preschooler" means a child who is 2 years old or older and who does not attend kindergarten or a higher grade.

(44) "Renewed license" means a child care center license that was issued, or for which application was made, pursuant to license renewal requirements in effect under this chapter before January 1, 2005.

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

(46) "Sanitization" means effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals for a sufficient period of time to destroy vegetative cells of pathogenic bacteria and to reduce substantially the number of other microorganisms.

(47) "School age center" means a child care center which offers programs to children who attend a public or nonpublic school in kindergarten or grades 1—12.

(48) "School age child" means a child younger than 16 years old who attends a public or nonpublic school in grades kindergarten or above.

(49) School Building.

(a) "School building" means a facility which houses an instructional program for kindergarten, a higher grade or grades, or any combination of grades.

(b) "School building" may include a facility which houses a nursery school as well as higher grades.

(c) "School building" does not include a church or other facility which houses only a program for preschoolers.

(50) "Small center" means a child care center which is licensed for 12 or fewer children.

(51) "Staff member" means an individual 16 years old or older, whether paid or not, who is assigned responsibility for child care in a child care center and whose assignment helps to maintain the staff/child ratios required by this chapter.

(52) "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 at COMAR 12.15.02.07B; or

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

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

(54) "Toddler" means a child 18 months old or older but younger than 2 years old.

(55) "Volunteer" means an individual who:

(a) Is 13 years old or older;

(b) Works in or for a center but is not a compensated employee of the center;

(c) Is not counted by the center toward maintenance of the staff/child ratios required by this chapter; and

(d) Is not enrolled as a child in care at the center.

### **.03 Requirement to be Licensed.**

A person, organization, agency, corporation, or other entity which operates a child care center, as defined in this chapter, is required to be licensed or to hold a letter of compliance in accordance with the regulations of this chapter or the regulations of COMAR 13A.14.05.

### **.04 Exemption for Nursery School and Child Care Programs Operated by Tax-Exempt Religious Organizations.**

A. In a nursery school operated by a tax-exempt religious organization, or in a child care center operated by a tax-exempt religious organization in a school building exclusively for children who are enrolled in that school, the following regulations of this chapter do not apply:

(1) Regulations .25, .26, and .27B of this chapter concerning the qualifications of the senior staff, group leaders, and aides;

(2) Regulations .21—.24 of this chapter concerning the principal or administrator in the program;

(3) Regulations .35 and .42C and D concerning the program; and

(4) Regulation .69I(1) and (2) concerning staff records.

B. Nursery schools and child care centers exempted in Regulation .04A of this chapter may apply for and be granted a letter of compliance under COMAR 13A.14.05, instead of a license.

## **.05 License—General Requirements.**

A. Types of License. Effective January 1, 2005, the office may issue:

- (1) An initial license pursuant to Regulation .06 of this chapter;
- (2) A continuing license pursuant to Regulation .07 of this chapter;
- (3) A provisional license pursuant to Regulation .09A of this chapter; or
- (4) A conditional license pursuant to Regulation .09B of this chapter.

B. General Requirements.

- (1) A license:
  - (a) Is nontransferable; and
  - (b) Remains the property of the office.
- (2) The operator shall post the license at a location in the center where it may be seen routinely by parents whose children are in care and by others who visit the center.
- (3) The operator shall surrender the license to the office immediately if any of the following occurs or becomes effective:
  - (a) The operator closes the center permanently;
  - (b) The license is revoked;
  - (c) The license is suspended; or
  - (d) The license expires, and the:
    - (i) Application for a renewed license or a continuing license, as applicable, is denied; or
    - (ii) Operator has not applied for a renewed license or a continuing license.

## **.06 Initial License.**

A. Application for Initial License. An individual or organization, not currently licensed and wanting to operate a child care center shall:

- (1) Attend an orientation offered by the office;
- (2) File a notice of intent with the office before applying for permits in connection with construction or operation of a center;
- (3) File a full written application with the office at least 60 days before the proposed opening date, which shall include but not be limited to:
  - (a) Information requested on the application form, including a signed statement of truthfulness and commitment to comply with these regulations;
  - (b) Documentation of application for criminal background checks for:
    - (i) The applicant, if the applicant is an individual who will have frequent contact with children who are cared for in the facility;
    - (ii) The director, if known at the time the application is filed;
    - (iii) If known at the time the application is filed, each employee, including paid substitutes;and
  - (iv) Each individual 14 years old or older living on the same premises as the child care center;
- (c) Signed and, if required by the office, notarized permission to examine records of abuse and neglect of children and adults for information about:
  - (i) The director, if known at the time the application is filed,
  - (ii) If known at the time the application is filed, each employee and staff member,
  - (iii) Each individual 18 years old or older living on the same premises as the child care center,
  - (iv) The applicant, if the applicant is an individual, or
  - (v) Trustees, managers, or board members who may have frequent contact with children in care, if the applicant is a corporation, agency, association, or other organizational entity; and
- (d) The following documentation:
  - (i) Evidence of compliance with all applicable zoning and building codes,
  - (ii) Site plans,
  - (iii) Floor plans with architectural details,

- (iv) A written plan of operation,
  - (v) Workers' compensation insurance information,
  - (vi) Fire evacuation plan,
  - (vii) Proposed staffing pattern,
  - (viii) Menu for 4 weeks,
  - (ix) Written child discipline procedures, and
  - (x) Any other information required by the office; and
- (4) Before the proposed opening date, submit the following items to the office, if not submitted at the time the application was filed:
- (a) Documentation of application for a criminal background check of:
    - (i) The director, and
    - (ii) Each employee, including paid substitutes;
  - (b) Signed and, if required by the office, notarized permission to examine records of abuse and neglect of children and adults for information about:
    - (i) The director; and
    - (ii) Each employee and staff member;
  - (c) A complete staffing pattern, on a form supplied or approved by the office, which specifies by staff name all child care assignments;
  - (d) A complete personnel list, on a form supplied or approved by the office, and all related supporting documentation required by the office; and
  - (e) All other documentation required by law or regulation, including but not limited to:
    - (i) Proof of an on-site inspection and approval by the local fire authority having jurisdiction;
- and
- (ii) Building use and occupancy permits.

B. Unless administratively extended pursuant to Regulation .08B(2)(b) of this chapter, an initial license is valid only for:

- (1) 12 months after the date of issuance if issued before January 1, 2005; or
- (2) 24 months after the date of issuance if issued on or after January 1, 2005.

## **.07 Continuing License.**

A. Application for a Continuing License.

(1) If the operator currently holds an initial license or a renewed license, the office shall provide the operator with application materials for a continuing license at least 120 calendar days before the current license expires.

(2) To apply for a continuing license, the operator, before the current initial license or renewed license expires, shall file with the office:

(a) A request for a continuing license, on a form supplied by the office, that contains a signed and dated statement of:

- (i) Intent to continue operating the center; and
  - (ii) Truthfulness and commitment to comply with all applicable regulations in this chapter;
- (b) A 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 .06A(3)(c) of this chapter; and

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

(3) The office may not approve a continuing license until:

- (a) All items specified in §A(2) of this regulation have been received and approved by the office;
- and
- (b) The center has passed a fire safety inspection conducted by the local fire authority having jurisdiction.

B. Maintaining a Continuing License.

(1) The operator shall comply with all applicable requirements under this chapter.

(2) Within each 24-month period after the date of issuance of a continuing license, the operator shall provide to the office:

- (a) Documentation of compliance with continued training requirements set forth in Regulations .21, .25, and .26, as applicable, of 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 .06A(3)(c) of this chapter; and
  - (c) Any other documentation required by law or regulation.
- (3) Each year after the date of issuance of a continuing license, the child care center shall pass a fire safety inspection conducted by the local fire authority having jurisdiction.

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

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

D. If a continuing license is replaced by a conditional license, the operator shall:

- (1) Immediately upon receipt of the conditional license:
  - (a) Remove the continuing license from display on the premises of the child care center; and
  - (b) Display the conditional license conspicuously in a location that is visible to the parents of children in care; and
- (2) Redisplay the continuing license only upon permission of the office.

## **.08 Response of the Office to Application.**

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

- (1) Evaluating the application and required documentation; and
- (2) Inspecting the:
  - (a) Facility proposed for use as a child care center, if the application is for an initial license; or
  - (b) Child care center, if the application is for a continuing license.

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

- (1) For an initial license application:
  - (a) Issue an initial license or a provisional license; or
  - (b) Deny an initial license; or
- (2) For a continuing license application:
  - (a) Issue or deny a continuing license; or
  - (b) To allow the applicant additional time to meet continuing license application requirements, issue:
    - (i) An administrative extension of the existing license; or
    - (ii) A provisional license in accordance with Regulation .09A of this chapter.

## **.09 Provisional and Conditional Licenses.**

A. Provisional License.

- (1) An office may grant a provisional license on application for up to 120 days to operate a center after an on-site inspection of the facility, if the:
  - (a) Office, in conjunction with the local fire authority, the Department of the Environment, or any other applicable agency, if appropriate, is satisfied that the provisions of these regulations can be met within 120 days; and
  - (b) Children's health, safety, or welfare will not be endangered.
- (2) If an applicant fails to achieve compliance with these regulations and other conditions for licensure within time frames specified by the office on the provisional license due to:
  - (a) Failure by the applicant to take an action necessary to achieve compliance, the center may not be issued a full license and shall cease operating; or

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

**B. Conditional License.**

(1) If an operator who holds a continuing license fails to remedy a violation as required, the office may issue a conditional license to the operator.

(2) A conditional license:

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

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

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

(d) Upon approval by 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 license is issued or reissued, if an operator:

(a) Satisfies the requirements for reinstatement of the continuing license, the office shall promptly:

(i) Discontinue the conditional license; and

(ii) Reinstatement the continuing license; or

(b) Fails to satisfy the requirements for reinstatement of the continuing license, the:

(i) Conditional license shall lapse;

(ii) Continuing license shall remain invalid; and

(iii) Office may suspend or revoke the continuing license.

**.10 Denial of License Application.**

A. An office may deny an application for an initial license or a continuing license if:

(1) The applicant or the building in which child care is provided fails to meet the requirements of this chapter;

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

(3) The applicant has a history of regulatory violations which demonstrates an inability to provide for the health or safety of children;

(4) The applicant has previously had a license or letter of compliance denied or revoked by the office, 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 licensing;

(6) An evaluation of criminal records or records of abuse or neglect of children and adults indicates, for those identified in Regulation .06A(3)(b) and (c) of this chapter, behavior harmful to children; or

(7) The office concludes that the applicant cannot provide for the health, safety, or welfare of the children in care on the basis of:

(a) Substantial, credible evidence of the applicant's abuse of alcohol or controlled dangerous substances, mental instability, or other condition, or

(b) Other pertinent information received by the office which creates reasonable doubt as to the applicant's ability to provide child care in accordance with this chapter.

B. If the office denies an application, the office shall notify the applicant in writing by certified mail of the denial, stating the:

(1) Reason for denial;

(2) Specific regulation with which the applicant has failed to comply that is the basis for the denial;

(3) Applicant's right to request a hearing; and

(4) Procedure to be used if the applicant wishes to request a hearing to appeal the decision of the office.

C. Denial Before Complete Application.

(1) The office may deny an application for an initial or a continuing license 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.

## **.11 Variances.**

A. An office may grant a variance to a regulation:

- (1) If the safeguards to a child's health, safety, or well-being are not diminished;
- (2) When the operator 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
- (3) For a limited period of time as specified by the office, or for as long as the license remains in effect and the operator continues to comply with the terms of the variance.

B. In deciding whether to grant a variance to a regulation, the office shall consider:

- (1) The operator's record of compliance with this chapter;
- (2) The ages, experience, training, and education of the staff members employed at the child care center;
- (3) The ages, developmental maturity, individual needs, and other characteristics of the children in care at the child care center; and
- (4) Any other relevant factors concerning the environment in which child care is provided at the child care center.

C. Within 30 calendar days of receiving a completed request for a variance, the office shall notify the operator that the variance has been granted or denied.

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

## **.12 Change of Operation.**

A. Except when converting the child care center to a summer youth camp, if an operator wishes to make any changes from the current license, such as use of rooms not previously approved for child care, capacity, hours of operation, age groups served, or the introduction of food service, the operator shall request and receive written approval of the change from the office before implementing the change.

B. After determining whether the proposed change meets the requirements of these regulations, the office shall approve or disapprove the proposed change. If the change is approved, the office shall issue a revised license indicating the change.

C. If an operator wishes to convert to a summer youth camp, the operator shall:

- (1) Notify the office before implementing the change to a summer youth camp;
- (2) Upon request by the office, provide proof to the office of the center's certification as a summer youth camp under Health-General Article, Title 14, Subtitle 4, Annotated Code of Maryland;
- (3) Remove the child care center license from display on the premises used for operating a summer youth camp during the period of summer youth camp operation; and
- (4) Notify parents of children in care and those applying for care that:
  - (a) A child care center is not being operated during summer months, and
  - (b) State regulations for camps differ from those for child care centers.

## **.13 Multi-Site Centers.**

A child care center may have more than one location and may be treated as one center for purposes of these regulations only if:

- A. The buildings:
  - (1) Function as one integrated center, are in close proximity such as across the street or on the same campus, and are connected by an intercom system, and
  - (2) Are under the supervision of one director; and
- B. Two or more locations:
  - (1) Are administered by one central administration with one ownership, and
  - (2) Share common administrative policies and procedures and contracts.

#### **.14 Repealed.**

#### **.15 Capacity.**

- A. An office shall determine the capacity of the center according to criteria established in:
  - (1) These regulations affecting floor space, outdoor play space, staffing, equipment, ages of the children to be enrolled, and sanitary facilities; and
  - (2) Applicable codes, including zoning, building, and fire codes.
- B. An operator shall limit the total number of children in care at one time to the capacity approved by the office.

#### **.16 Enrollment and Attendance.**

- A. All children in care at any one time are counted as being in attendance for purposes of complying with the regulations governing capacity, group size, and staff/child ratios.
- B. An operator may not enroll a child for more than 14 hours in a 24-hour period unless approved in advance by the office.
- C. An operator shall maintain written records of:
  - (1) Enrollment by the child's name, address, telephone number, date of birth, and dates and time periods for which enrolled; and
  - (2) Attendance by groups of children which indicate the dates of attendance of each child in the center.
- D. An operator may not admit an infant who is younger than 6 weeks old.
- E. An operator may only enroll a child when the office has given written approval for the center to care for children of that child's age.

#### **.17 Indoor Space Requirements.**

- A. In a center licensed before December 1, 1971, a minimum of 30 square feet of floor space shall be provided for each child.
- B. In a nursery school which holds a certificate of approval to operate issued by the State Board of Education, or which holds a letter of exemption from approval issued by the State Board of Education under Education Article, §2-206, Annotated Code of Maryland, before December 1, 1971, which is still in effect, a minimum of 30 square feet of floor space shall be provided for each child.
- C. In a center licensed after December 1, 1971, a minimum of 35 square feet of floor space shall be provided for each child.

D. In calculating the square footage of floor space provided for each child, the following may not be included:

(1) Any floor space, rooms, or areas that are not available for the daily program activities of the children, such as columns, vestibules and corridors, food preparation areas, kitchens, bathrooms, adult work areas, permanently equipped isolation areas or sleeping rooms, storage units, and storage space; and

(2) Furniture, except for:

- (a) Children's chairs and tables which are nonfixed and multipurpose,
- (b) Moveable equipment used for infant care, such as high chairs and swings,
- (c) Moveable play equipment,
- (d) An adult-size rocking chair or other adult-size comfortable chair,
- (e) An adult-size couch, and
- (f) Open shelves for children's daily activities.

E. In a small center, the space for children may include space within the family living area.

F. In centers caring for infants, diapering stations shall be included in calculating the square footage of floor space provided for each child.

G. Square Footage for Programs Operating Before July 1, 1990, but Not Licensed as a Child Care Center.

(1) An applicant for a child care center license, who cannot meet the square footage requirements of this regulation, may receive approval for less square footage if the applicant documents to the satisfaction of the office that before July 1, 1990, the center was:

(a) Operating as a:

- (i) Nursery school program holding a certificate of approval from the State Department of Education,
- (ii) Nursery school program holding a letter of exemption from approval from the State Department of Education,
- (iii) Preschool program connected to a parks and recreation department,
- (iv) Before-school and after-school child care program, or
- (v) School-age child care program; and

(b) Not licensed under the regulations then in effect in COMAR 10.05.01 for group day care centers.

(2) An office may grant the request for approval of required square footage if the:

(a) Applicant demonstrates to the satisfaction of the office the impossibility of complying with the minimum square footage of floor space per child, required by §§A—F of this regulation, while maintaining economic viability; and

(b) Office determines that the reduced square footage for each child does not threaten the child's health, safety, or welfare.

H. If additions or enlargements are made to a center operating under reduced square footage, capacity may not be increased until the square footage requirements of §§A—F of this regulation are met.

## **.18 Supervision.**

A. An operator shall ensure that each child receives:

- (1) Attention to the child's individual needs; and
- (2) Adequate supervision and care at all times which is:

(a) Provided only by individuals who are designated by the operator to provide supervision and care; and

(b) Appropriate to the individual age, needs, and capabilities of the child.

B. Staff Member in Charge of a Group.

(1) An operator shall provide a senior staff person to be in charge of each group of preschool children and infants and toddlers as needed to meet the requirements for group size and staffing in Regulations .31—.33 and .68 of this chapter.

(2) A senior staff person shall be in charge of a full day, 5-year-old program in a preschool setting.

(3) The operator shall provide a group leader to be in charge of each group of school-age children as needed to meet the requirements for group size and staffing in Regulations .31—.33 of this chapter.

(4) If no senior staff member or group leader is available, a director may be in charge of a group of children as needed to meet the requirements for group size and staffing in Regulations .31—.33 and .68 of this chapter.

#### C. Staff Availability.

(1) An operator shall designate a teacher, a group leader, or a senior staff member to be present and in charge of the center in case of the director's temporary absence from the center.

(2) When only children under 2 years old are present in the center and only one staff member is required to meet the staff/child ratio, the operator shall ensure that an additional staff member or another adult is available in the center in case of an emergency.

(3) During periods when only children 2 years old or older are present in the center and only one staff member is required to be present to meet the staff/child ratio, the operator shall obtain a written, signed, and dated agreement from an adult who is willing and able to be at the center within 15 minutes of notification in case of an emergency.

D. The operator 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 become 6 years old by the end of December of the same calendar year; and

(3) The child's parent and the operator agree in writing that the child can travel safely without adult supervision.

## **.19 Staffing.**

A. A staff member in any center may not be younger than 16 years old.

B. Notification of New Staff. An operator shall:

(1) Within 5 working days of adding a new employee or staff member, provide to the office:

(a) Written notification of the individual's addition to the center staff;

(b) Information about the individual's work assignment; and

(c) If the individual is added on or after October 1, 2005, signed and, if required by the office, notarized permission to examine records of abuse and neglect of children and adults for information about the individual; and

(2) Within 15 working days of adding the new employee or staff member, provide to the office:

(a) If applicable, documentation that the individual meets the requirements of this chapter for the assignment, unless documentation already is on file in the office, and

(b) If the individual is paid by the center operator, proof of compliance with the laws and regulations pertaining to criminal background checks.

C. On or before assignment, an operator shall ensure and document that each employee and staff member has been informed in writing about all areas pertinent to the health and safety of the children, including:

(1) The location of the telephone and emergency telephone numbers;

(2) The location of each child's emergency form;

(3) Emergency evacuation procedures;

(4) Identity of the staff members who have first aid and CPR training;

(5) Identity of the staff members and the adults who are required to be designated under Regulation .18C of this chapter;

(6) Handwashing procedures;

(7) The center's discipline procedures;

- (8) The requirements and procedures for reporting suspected child abuse and neglect, according to Family Law Article, §§5-704—5-705, Annotated Code of Maryland;
- (9) Signs and symptoms of abuse and neglect in children; and
- (10) The content of the most current regulations in this chapter.

D. Volunteers.

- (1) A child care center volunteer shall be under the close supervision of a staff member whenever the volunteer is in contact with an unrelated child in care at the center.
- (2) The operator may not use as a volunteer an individual who has been prohibited, or automatically would be prohibited, from employment at the center pursuant to Regulation .19-1 of this chapter.

**.19-1 Suitability for Employment.**

A. A child care center operator may not employ an individual who, as reported on or after October 1, 2005, has received a conviction, a probation before judgment disposition, a not criminally responsible disposition, or a pending charge for the commission or attempted commission of:

- (1) A crime involving:
  - (a) A child;
  - (b) Cruelty to animals;
  - (c) Domestic violence; or
  - (d) A weapons or firearms violation of federal or state laws;
- (2) A sex offense;
- (3) A violent crime classified as a felony;
- (4) Abduction or kidnapping;
- (5) Abuse of a child or an adult;
- (6) Confinement of an unattended child;
- (7) Manufacturing, distributing, or dispensing a controlled dangerous substance;
- (8) Perjury;
- (9) Pornography;
- (10) Possession with intent to manufacture, distribute, or dispense a controlled dangerous substance; or
- (11) Reckless endangerment.

B. If, as reported on or after October 1, 2005, an individual has been identified as responsible for child abuse or neglect or 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 or offense listed under COMAR 12.15.02.07B that is not included in §A of this regulation, the office:

- (1) Shall assess, on the basis of the following factors, the individual's suitability for employment:
  - (a) The job position at the center for which the individual is applying or in which the individual is currently employed;
  - (b) The nature and seriousness of the incident, crime, or offense;
  - (c) How long ago the incident, crime, or offense occurred;
  - (d) The age of the individual at the time the incident, crime, or offense occurred;
  - (e) The individual's probation or parole status, if applicable; and
  - (f) Any other information the office considers pertinent; and
- (2) Depending on the results of the assessment, shall permit or prohibit employment of the individual.

C. Request for Reassessment.

- (1) An individual who is prohibited from employment by the office pursuant to §B(2) of this regulation may request the office to conduct a reassessment with respect to the incident, crime, or offense.
- (2) For a reassessment request to be eligible for consideration:
  - (a) The request shall be in writing and shall include documentation, such as but not limited to letters of support or evaluation reports, pertinent to the incident, crime, or offense; and

(b) The individual may not have submitted a reassessment request, whether for the same or a different job position, within the previous 12 months.

(3) In order to reach a decision on the request, the office may request additional information from the individual, the center operator, or any agency or entity cited by the individual or the operator in connection with the reassessment request.

(4) Upon reaching a decision on the request, the office shall promptly notify the center operator of that decision.

(5) The center operator may not permit the individual to begin or to resume employment until the office has notified the operator that the individual may be employed.

#### D. Notification of Employment Prohibition.

(1) If the office, pursuant to this regulation, determines that an individual may not be employed at a center, the office shall notify the individual and the center operator in writing of that decision and its basis.

(2) The written notification to the individual shall also:

(a) State that the individual may appeal the decision to the Office of Administrative Hearings (OAH); and

(b) Specify the requirements for submitting an appeal to the OAH.

#### E. Upon notification that an individual may not be employed, the center operator:

(1) Shall promptly terminate the individual from employment or from consideration for employment, as applicable; and

(2) Unless the individual appeals the decision to the OAH and the appeal is concluded in favor of the individual, may not:

(a) Reconsider the individual for employment; or

(b) Allow the individual to:

(i) Have any contact with an unrelated child in care; or

(ii) Be on the premises of the facility except to exercise parental responsibilities with respect to a related child in care.

### ***.20 Repealed.***

### **.21 General Requirements for Directors of All Child Care Centers.**

A. Except when engaged in occasional center-related activities or away on leave, a director shall be present in a center during at least 1/2 of the operating hours of the center each week to:

(1) Plan and supervise all aspects of the program for children;

(2) Supervise the staff; and

(3) Be available to staff, parents, and children.

B. To be a director of a center, an individual shall:

(1) Be at least 21 years old;

(2) Hold a high school diploma or a certificate of high school equivalence, or have successfully completed courses for credit from an accredited college or university;

(3) Have successfully completed 6 semester hours or 90 clock hours or their equivalent of approved pre-employment training or hold the Child Development Associate Credential issued by the Child Development Associate National Credentialing Program; and

(4) Provide evidence of having completed approved continued training at the rate of at least 6 clock hours per full year of employment as a director.

### **.22 Specific Requirements for Directors in Preschool Centers.**

A. For preschool centers with 20 or fewer children, a director shall have completed:

(1) 1 year of experience working under supervision primarily with preschoolers in a licensed child care center, nursery school, church-operated school, recreation and parks program, or similar setting; or

(2) 2 years of experience caring for preschoolers as a registered family day care provider.

B. For preschool centers with 21 to 40 children, a director shall have:

- (1) Earned 60 semester hours from an accredited institution of higher learning; and
- (2) Completed 2 years of experience working under supervision primarily with preschoolers in a licensed child care center, nursery school, church-operated school, recreation and parks program, or similar setting, or 4 years of experience caring for preschoolers as a registered family day care provider.

C. For preschool centers with more than 40 children, a director shall have:

- (1) Attained an associate degree with approved courses in early childhood education or a bachelor's degree in any field; and
- (2) Completed 2 years of experience working under supervision primarily with preschoolers in a licensed child care center, nursery school, church-operated school, recreation and parks program, or similar setting, or 4 years of experience caring for preschoolers as a registered family day care provider.

D. An individual is considered qualified as a director of any size preschool center when that individual:

- (1) Has completed:
  - (a) 1 year of experience working under supervision primarily with preschoolers in a licensed child care center, nursery school, church-operated school, recreation and parks program, or similar setting; or
  - (b) 2 years of experience caring for preschoolers as a registered family day care provider; and
- (2) Has received either:
  - (a) Approval by the State Department of Education as a teacher under COMAR 13A.09.09 for early childhood education, including grades nursery through the third grade, and has 6 semester hours in early childhood education, or
  - (b) Certification by the State Department of Education or by any other state for early childhood education, including grades nursery through the third grade.

E. An individual qualified and employed as a director of a preschool center for 20 or fewer, 21 to 40, or more than 40 children before December 31, 1991, is considered qualified to be a director of a preschool center under this regulation if continuously employed at the same or another center with the same or greater capacity limitations.

### **.23 Specific Requirements for Directors in School Age Centers.**

A. In a school age center with a capacity of 60 or fewer children, the director shall have completed at least 400 hours of experience working under supervision primarily with school age children in a licensed child care center, public or private school, or in a recreation and parks program or similar setting, or 1 year of experience caring for school age children as a registered family day care provider.

B. In a school age center with a capacity of 61 or more children, the director shall have completed at least 800 hours of experience working under supervision primarily with school age children in a licensed child care center, public or private school, or in a recreation and parks program or similar setting, or 2 years of experience caring for school age children as a registered family day care provider.

C. An individual is considered qualified as a director of a school age center when the individual:

- (1) Has been approved as a teacher or educational director under COMAR 13A.09.09 for kindergarten or grades 1—8; or
- (2) Is certified by the State Department of Education or by the state board of any other state for kindergarten or grades 1—8.

D. If, before December 31, 1991, an individual qualified for and was employed as a director of a center serving only school age children, the individual is considered qualified to be a director of a school age center under this regulation and continues to be considered qualified if continuously employed at the same or at another school age center.

## **.24 Specific Requirements for Directors in Combined Preschool and School Age Centers.**

A. A preschool center director may have responsibility for the entire center when the center enrolls both preschoolers and school age children.

B. A school age center director may have responsibility for the entire center when the center does not enroll any infants or toddlers and enrolls five or fewer children younger than kindergarten age.

C. When a school age center enrolls any infants or toddlers or more than five children younger than kindergarten age, the operator shall provide a director who meets the requirements, based on the total capacity of the center, for both a preschool center director and a school age center director.

## **.25 Requirements for Senior Staff in Preschool Centers.**

A. To qualify as senior staff in a preschool center, an individual shall be at least 19 years old and either:

(1) Satisfy all the following requirements:

(a) Hold a high school diploma or a certificate of high school equivalence, or have successfully completed courses for credit from an accredited college or university;

(b) Have successfully completed 6 semester hours or 90 clock hours or their equivalent of approved pre-employment training, or hold the Child Development Associate Credential issued by the Child Development Associate National Credentialing Program; and

(c) Have completed at least one of the following:

(i) 1 year of experience working under supervision primarily with preschoolers in a licensed child care center, nursery school, church-operated school, recreation and parks program, or similar setting, or 1 year of experience as a registered family day care provider caring for preschoolers,

(ii) 1 year of college, or a combination of experience and college that together are equivalent to 1 year; or

(2) Hold an associate's or higher degree with approved courses in early childhood education.

B. Senior staff shall provide evidence of having completed approved continued training at the rate of at least 3 clock hours per full year of employment as senior staff.

C. An individual is considered qualified as a senior staff member for a preschool center when the individual:

(1) Has been approved as a teacher by the State Department of Education under COMAR 13A.09.09 for early childhood in grades nursery through third grade; or

(2) Is certified by the State Department of Education or by any other state for early childhood in grades nursery through third grade.

D. If, before December 31, 1991, an individual qualified as a senior staff in a preschool center, the individual is considered qualified to be a senior staff if continuously employed at the same or another preschool center.

## **.26 Requirements for Group Leaders in School Age Centers.**

A. A group leader in a school age center shall:

(1) Be at least 19 years old;

(2) Hold a high school diploma or a certificate of high school equivalence or have successfully completed courses for credit from an accredited college or university; and

(3) Have successfully completed:

(a) 3 semester hours or 45 clock hours or their equivalent of approved pre-employment training; and

(b) One of the following:

- (i) 400 hours of experience working under supervision primarily with school age children in a licensed child care center, public or private school, or in a recreation and parks program or similar setting, or 400 hours of experience caring for school age children as a registered family day care provider,
  - (ii) 1 year of college, or
  - (iii) A combination of experience and college that together are equivalent to 1 year; and
- (4) Provide evidence of completing approved continued training at the rate of at least 3 clock hours per full year of employment as a group leader.

- B. An individual is considered qualified as a group leader of a school age center when the individual:
- (1) Has been approved as a teacher by the State Department of Education under COMAR 13A.09.09 for kindergarten or grades 1—8; or
  - (2) Is certified by the State Department of Education or by the state board of any other state for kindergarten or grades 1—8.

C. If, before December 31, 1991, an individual qualified as a group leader in a school age center, the individual is considered qualified to be a group leader under this regulation and continues to be considered qualified if continuously employed at the same or another school age center.

### **.26-1 Assistant Group Leader.**

- A. To qualify as an assistant group leader, an individual shall:
- (1) Be 18 years old or older;
  - (2) Hold a high school diploma or a certificate of high school equivalance, or have successfully completed courses for credit from an accredited college or university; and
  - (3) Have at least one of the following:
    - (a) 800 hours of recent paid or documented volunteer experience supervising groups of school-age children in educational, recreational, social, or guidance contexts,
    - (b) 600 hours of approved experience and 15 clock hours of approved college coursework, or
    - (c) 400 hours of approved experience and 3 semester hours or 45 clock hours, or their equivalent, of approved college coursework.

B. An individual may substitute completion of 1 full year of undergraduate education at an accredited college or university for up to 400 hours of approved experience.

- C. An assistant group leader may lead the activities of a group of school-age children if:
- (1) The director, a group leader, or an approved director or group leader substitute is available to render immediate assistance to the assistant group leader; and
  - (2) The staff/child ratio required by this chapter is maintained at all times.

### **.27 Aides.**

An aide shall:

- A. Be at least 16 years old; and
- B. Work under the direct supervision of the staff person in charge of the group of children to whom the aide is assigned.

### **.28 Substitutes.**

- A. A substitute aide shall be at least 16 years old.
- B. Other substitutes shall be at least 18 years old.

C. When a staff member is absent, the operator shall provide a substitute as needed to maintain the staff/child ratios required by this chapter.

D. If a substitute is needed for longer than a continuous 2-week period, the operator shall provide a substitute who meets the qualifications required in this chapter for the absent staff member, or demonstrate that reasonable efforts have been made, with no success, to obtain a qualified substitute.

E. When a staff member is absent for more than a continuous 2-week period due to family or medical leave, the operator may receive permission from the office to employ a substitute for that absent staff member who does not meet the education, training, and experience qualifications for the absent staff member's position.

### **.29 Support Personnel.**

A. The operator or the director shall provide additional personnel for all duties not involving direct supervision of children, such as personnel for food preparation and service, housekeeping, transportation, clerical, and other duties, if necessary to maintain the correct staff/child ratios at all times.

B. In a small center, the operator need not provide additional staff if children are involved in appropriate activities and supervised at all times while necessary duties, such as food preparation, are performed.

C. The operator of a center that provides a regular service involving the use of specialized health care procedures or equipment shall use as a consultant to the center in providing the service a registered nurse, nurse practitioner, physician's assistant, physician, or other licensed or certified service professional as appropriate.

### **.30 Age of a Child.**

For purposes of determining group size and staff required under this chapter, a child:

A. Is not considered to be 2 years old until the child has reached the child's second birthday;

B. Is not considered to be 3 years old until the child has reached the child's third birthday, except that the child may be considered in September, or in August if that is the beginning of the school year, to be 3 years old if the child reaches this age on or before December 31 of the same calendar year; and

C. Is considered to be 4 or 5 years old when the child is not more than 4 months away from reaching the child's fourth or fifth birthday, respectively.

### **.31 Group Size and Staffing.**

A. In groups of children of the same age, the following requirements apply:

For children who are:	There must be a staff/child ratio of:	The maximum number of children allowed in a group is:
2 years old	1 to 6	12
3 or 4 years old	1 to 10	20
5 years or older	1 to 15	30

B. A mixed age group with preschool children may not exceed 20 children.

C. In a mixed age group with preschool children 3 years old or older, the staff to child ratio is one to ten.

D. A maximum of six 2-year-olds may be in a mixed age group of 13 to 20 children.

E. In mixed age groups which include 2-year-old children, the following staff/child ratios apply:

- (1) If the total group is up to six children, one staff member is required;
- (2) If the total group is seven to ten children, and includes one to three 2-year-old children, one staff member is required;
- (3) If the total group is seven to ten children, and includes four or more 2-year-old children, two staff members are required;
- (4) If the total group is 11 to 12 children, two staff members are required;
- (5) If the total group is 13 to 20 children and includes one to three 2-year-old children, two staff members are required;
- (6) If the total group is 13 to 20 children and includes four to six 2-year-old children, three staff members are required.

### **.32 Group Size and Staffing in State Department of Education Approved Educational Programs.**

A. During a school day approved by the State Department of Education, a teacher shall be assigned to each class and the following requirements apply:

For children who are:	There shall be a staff/child ratio of:	The maximum number of children allowed in a class is:
2 years old	1 to 6	12
3 or 4 years old	1 to 12	24
5 years old	1 to 15	30

B. A nursery school may not exceed the number of students per staff specified above except if the:

- (1) School is an approved Montessori school according to COMAR 13A.09.09; and
- (2) Staff/child ratio and group size requirements in §A of this regulation are not exceeded by more than 1/3.

C. When 2, 3, 4, and 5 year old children are grouped together in mixed groups, the average age as of December 31 of that school year is used for determining group size and staff/child ratios as specified in §A of this regulation.

### **.33 Variations in Group Size.**

A. Group sizes for all ages may vary during outdoor play and special activities such as field trips and assemblies, only if the operator maintains the staff/child ratios required by this chapter.

B. Groups containing only school age children may be of any size, pursuant to a plan approved by the office, if the staff/child ratios required by this chapter are maintained.

### **.34 Repealed.**

### **.35 Schedule of Daily Activities for All Children.**

A. The operator shall prepare, post, and follow a written schedule of daily activities and offer activities that:

- (1) Promote the sound emotional, social, intellectual, and physical growth of each child;
- (2) Are appropriate to the age, needs, and capabilities of the individual child;

(3) Include opportunities for individual and group participation;  
(4) Include a balance between self-selected and staff-directed activities;  
(5) Include a balance between active and quiet periods;  
(6) Include periods of rest appropriate to the age and activities of the child; and  
(7) Include outdoor play in the morning and afternoon except that outdoor play need not be included:

- (a) When the weather is inclement, or
- (b) In a before-school program.

B. During an educational program approved by the State Board of Education, the operator shall demonstrate compliance with the requirements of this regulation by evidence of a certificate of approval or tentative approval issued by the State Board of Education in accordance with Education Article, §2-206, Annotated Code of Maryland.

C. A before-school and after-school program schedule of activities shall take into consideration that the child has attended an instructional program during regular school hours.

### **.36 Transportation.**

The operator shall ensure that:

A. Unless being transported in a licensed school bus or contract motor coach, each child who is transported in a vehicle while in care is separately secured in a child car seat or seat belt which is appropriate for the child's age and weight, as specified by Maryland law;

B. In addition to the driver, there is at least one adult present in the vehicle when more than eight preschoolers are being transported as a group to or from the center; and

C. Whenever more than one adult is required to be present in a vehicle pursuant to §B of this regulation, at least one adult is currently certified in approved CPR and first aid.

### **.37 Repealed.**

### **.38 Emergency Form for Each Child.**

A. An operator shall maintain emergency information for each child, including a source of emergency health services acceptable to the parent of the child, on a form supplied or approved by the office and signed and dated by the child's parent.

B. An operator shall require that a staff member keep the emergency forms for the children who currently are enrolled in the group in a location which is readily accessible to staff. Staff shall take the emergency forms or copies of the forms with them on any group outing when the children are away from the center.

C. An operator shall arrange for the form for each child to be updated as needed, but at least annually.

### **.39 Emergency Safety Requirements.**

A. An operator shall post, immediately accessible to each telephone in the center, a notice stating the:  
(1) 911 emergency telephone number to summon fire, police, and rescue services;  
(2) Center's name, address, and telephone number;  
(3) Number of the protective services unit of the local department of social services;  
(4) Number of a poison control center;  
(5) Name and telephone number of the available adult as required in Regulation .18C(3) of this chapter; and

(6) Number of the office.

B. An operator shall:

(1) Prepare an emergency evacuation plan which is approved by the local fire authority having jurisdiction, including a:

(a) Diagram of safe routes by which the staff and children may exit each area of the center used by a child in care in the event of a fire or other emergency requiring evacuation of the center, and

(b) Location with a telephone, such as another center, a school, or a public building, that can be used by the staff and children in the event of a fire or other emergency until the operator or director can contact the parents of the children in care;

(2) Post a copy of the plan in each area and room in the center;

(3) Require that, at least once a month, the staff and the children practice the procedures to be used in the event of a fire or other emergency requiring escape from the center; and

(4) Maintain a written record of the dates and times at which the practices were conducted.

C. An operator shall ensure that, during an emergency evacuation or practice, a staff member takes attendance records out of the center and determines the presence of each child currently attending.

#### **.40 Requirements for Outdoor Play.**

A center shall have an outdoor playground adjacent to or safely accessible to the center providing ample play space that is free from hazards to children such as a fence in disrepair, broken equipment, unfenced bodies of water, holes in the ground, glass, or poison ivy.

#### **.41 Water Safety Requirements.**

A. An operator shall have prior written approval from a child's parent to take the child wading or swimming.

B. When a wading area 4 feet or less in depth is available to children, there shall be continuous supervision by staff.

C. When the depth of water in pools, lakes, or any body of water available to children for swimming exceeds 4 feet, there shall be present a lifeguard holding a current certificate of approval for lifeguarding from the American Red Cross or the YMCA. During the swimming activity, this qualified lifeguard shall be at waterside and may not be included in the required staff/child ratio.

D. When water is over a child's chest and the child cannot swim, a one-to-one staff/child ratio for each child who cannot swim shall be maintained in the water. This standard does not apply to swimming lessons approved by the American Red Cross.

E. Only swimming facilities meeting applicable local standards of health, sanitation, and safety may be used.

#### **.42 Materials and Equipment.**

A. An operator shall make accessible to a child only materials and equipment that are:

(1) Age-appropriate;

(2) Safe;

(3) In good repair;

(4) Clean;

(5) Nontoxic; and

(6) Free from hazards including lead paint.

B. An operator shall provide to each group of children a sufficient quantity and variety of materials and equipment for indoor and outdoor activities according to the numbers and ages of the children in the group.

C. Materials shall be provided for:

- (1) Vigorous play;
- (2) Creative and dramatic play;
- (3) Socialization;
- (4) Manipulation, including construction materials;
- (5) Exploration of art, music, language arts, and science; and
- (6) Individual pursuits.

D. In reviewing materials and equipment in before-school and after-school programs, the office shall take into consideration that the child has attended an instructional program during regular school hours.

E. An operator shall store materials so that materials are easily accessible to the child.

F. During an educational program approved by the State Board of Education, an operator shall demonstrate compliance with the requirements of this regulation by evidence of a certificate of approval or tentative approval by the State Board of Education in accordance with Education Article, §2-206, Annotated Code of Maryland.

### **.43 Furnishings and Storage.**

A. Furnishings. An operator shall:

- (1) Provide furnishings which are scaled in proportion to a child's size;
- (2) Provide at least the following furnishings:
  - (a) Multipurpose tables and chairs,
  - (b) A suitable bed, cot, or mat for each child 2 to 5 years old present in the center for more than 4 hours, and for children 5 years old or older who regularly take rest periods in the center, and
  - (c) A suitable cot or bed for each child who is not an infant and who is present in the center during those hours which are usual nighttime sleep hours for that child;
- (3) Ensure that an adequate supply of clean bedding is provided for each child who takes rest periods at the center; and
- (4) Ensure that the beds, cots, or mats are appropriately spaced to facilitate safe movement and evacuation of staff and children.

B. Storage. An operator shall provide appropriate storage for:

- (1) Materials and equipment;
- (2) Mats, cots, beds, and bedding;
- (3) Portable equipment intended for outdoor use;
- (4) Each child's clothing and possessions in an individual space; and
- (5) Materials, equipment, furnishings, and supplies being held in reserve.

### **.44 Admission to Care.**

A. An operator may not admit a child to a center for child care or allow a child to remain in care unless the operator has:

- (1) Received a completed emergency form for the child as required in Regulation .38 of this chapter;
- (2) Received a written report of a health inventory on the child, including a statement of allergies, on a form supplied or approved by the office that includes a parental statement on the health status of the child and is:
  - (a) Unless a parent objects to a child's medical examination because of bona fide religious beliefs and practices, based on an examination completed within the last:

- (i) 2 months before admission for a child under 9 months,
- (ii) 3 months before admission for a child between 9 and 24 months, or
- (iii) 12 months before admission for a child over 2 years old; or
- (b) Transferred directly, without a gap in time longer than 3 months, from a family day care home, another licensed child care center, or a public or nonpublic school in Maryland;
- (3) Received evidence, on a form supplied or approved by the office, that:
  - (a) The child has had immunizations appropriate for the child's age;
  - (b) The child has had at least one dose of each vaccine appropriate for age before entry and is scheduled to complete the required immunizations;
  - (c) A licensed physician or a health officer has determined that immunization is medically contraindicated according to accepted medical standards; or
  - (d) The parent objects to the child's immunization because it conflicts with the parent's bona fide religious beliefs and practices;
- (4) A source of emergency health services acceptable to parents with written parental agreement for its use; and
- (5) Received parental permission for the school to give the school age child's health information to the center.

**B. Lead Screening.**

- (1) This section applies to a child who was:
  - (a) Admitted to the facility on or after May 8, 1997; and
  - (b) Younger than 6 years old at the time of admission.
- (2) An operator may not admit a child to a facility or allow a child to remain in care unless the operator has received evidence that the child has received an appropriate lead screening as required by State or local law.
- (3) The evidence required by §C(2) of this regulation shall be:
  - (a) On a form supplied or approved by the office; and
  - (b) Submitted within 30 days after the child's admission to the facility.

C. In a case when a parent objects to a child's immunization or medical examination, or both, because of the parent's bona fide religious beliefs and practices, an operator shall require the parent to provide a health history of the child and sign a statement indicating that to the best of the parent's knowledge and belief, the child is in satisfactory health and free from any communicable disease.

**.45 Exclusion for Acute Illness.**

- A. An operator shall require that staff:
  - (1) Monitor a child for signs and symptoms of acute illness;
  - (2) Notify a child's parent or other designated person upon observing a sign or symptom of acute illness; and
  - (3) Provide temporary isolation for the affected child in a suitably equipped separate area within sight and hearing of an adult.

B. Except in centers for children with acute illness, an operator may not admit a child to care or allow a child to remain in care when the child is exhibiting symptoms of acute illness.

C. An operator may not readmit a child to the center after an absence due to illness for 3 days or more without first receiving a written statement from the parent or physician that the child may return to a regular schedule.

**.46 Infectious and Communicable Diseases.**

A. An operator shall immediately transmit to the health officer a report of the name and address of a child or a staff member who appears to be infected with a reportable communicable disease or who has been exposed to a reportable communicable disease as indicated in COMAR 10.06.01.03.

B. Except in centers for children with acute illness, an operator may not knowingly admit to care or retain in care a child with a communicable disease during the period of exclusion from child care recommended for that disease according to a chart provided by the office, unless the health officer grants approval for the child to attend child care during that period.

C. An operator shall arrange for consultation regarding health and illness issues with the local health department or with a licensed physician, and shall keep the name and telephone number of the health consultant posted by each telephone.

#### **.47 First Aid and CPR.**

A. An operator shall arrange the staffing pattern so that the center has in attendance at all times at least one individual who is responsible for supervision of children, including children engaged in an activity away from the premises of the center, who holds a current certificate indicating successful completion of approved:

(1) Basic first aid training through the American Red Cross, or a program with equivalent standards; and

(2) Cardiopulmonary resuscitation (CPR) training through the American Heart Association, or a program with equivalent standards, which is appropriate to all child age groups for which the center is approved.

B. Effective July 1, 2000, an operator of a center with an approved capacity of more than 20 children shall have in attendance, in a ratio of at least one staff member for every 20 children present, staff members who are currently certified in approved first aid and CPR as specified in §A of this regulation.

C. An operator shall maintain first aid supplies, as required by the office, conveniently accessible for each group of children at the center and on field trips.

#### **.48 Staff Health.**

A. Medical Evaluation.

(1) An operator shall obtain a medical evaluation, including a tuberculosis screen, if indicated, on a form supplied or approved by the office, that has been completed within 6 months before the individual begins work in the center, from each prospective:

(a) Staff member; and

(b) Except for a health care professional serving as a consultant pursuant to Regulation .29C of this chapter, support staff who will be present at the center while children are in care.

(2) The medical evaluation may transfer directly from one center to another when there has been no gap in employment longer than 3 months.

B. Infectious and Communicable Diseases. Except with the approval of the office and the health officer, an operator may not permit an individual with a communicable disease listed on a chart supplied by the office to work at a center during the period of exclusion from child care recommended on the chart for that disease.

#### **.49 Administering Medication.**

A. When an operator allows a staff member to administer prescription or nonprescription medication to a child, the staff member may do so only with prior written authorization from the child's parent.

B. The staff member 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) Identity of the medication and 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 usable; and

(4) At least one dose of a prescription medicine has been given to the child at home.

C. Prescription and nonprescription medication may only be administered according to the instructions on the label of the medication container or a licensed health practitioner's written instructions, whichever are more recently dated.

D. Except for acetaminophen and topical medications, only one dose of a nonprescription medication may be administered 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, the operator shall document and incorporate in the child's record the:

(1) Amount, date, and time of each administration to the child of a prescription or nonprescription medication; and

(2) Name of the individual administering the medication.

F. An operator shall store all medications safely and properly in a manner that ensures that they will be inaccessible to children, labeled with the child's name, the drug dosage, and expiration date.

G. An operator shall discard medication or return it to the child's parent upon the expiration date or when it no longer is to be administered.

## **.50 Smoking.**

A. Except as specified in §B of this regulation, smoking is prohibited:

(1) At all times in any indoor area of a child care center; and

(2) During the center's hours of operation, in any outdoor area of the center which is approved for child care use.

B. In a small center located in a private residence, smoking is prohibited during the center's hours of operation in any indoor or outdoor area approved for child care use.

## **.51 Alcohol and Drugs.**

An operator may not allow the consumption of alcoholic or controlled dangerous substances in the center during the center's hours of operation.

## **.52 Preventing Spread of Disease.**

A. After toileting and diapering, before food preparation and eating, after outdoor activities, after handling animals, and at other times when necessary to prevent the spread of disease, an operator shall:

(1) Require that a staff member who has contact with a child in care washes his or her hands according to a procedure approved by the office; and

(2) Ensure that a child's hands are washed thoroughly, by a staff member or by the child.

B. An individual engaged in food preparation and service activities shall wash his or her hands according to the procedure approved by the office, to prevent the spread of disease.

C. An operator shall require that a staff member who diapers a child uses procedures which are designed to prevent the spread of disease and which are approved by the office.

D. At each sink where hands are washed, the operator shall post the handwashing procedure approved by the office.

### **.53 Building Requirements.**

A. An operator shall provide a building for a center that:

- (1) Is soundly constructed;
- (2) Is maintained in good repair;
- (3) Is free from health and safety hazards as identified by the office;
- (4) Is clean and free from infestation of insects and rodents; and
- (5) Conforms to all applicable State and local codes, including but not limited to zoning, building, plumbing, gas, electrical, sewage disposal, drinking water, and fire.

B. An operator shall ensure that an access road on center property permits passage by emergency vehicles during times when children are in care.

C. Lead Paint.

(1) An operator may not use any paint with lead content on the exterior or interior surfaces of a center, or on a center's equipment or furnishings.

(2) An operator shall ensure that chipping, peeling, flaking, chalking, or deteriorating paint on any surface in an area used for child care is tested according to procedures established by the office. If there is a lead content in the dried paint film of more than 0.5 percent lead by weight or an equivalent standard recognized by the office, the operator shall follow the management plan for lead paint established by the office, in consultation with the Department of the Environment, or the lead paint abatement procedures in COMAR 26.02.07.

(3) Before any renovation, an operator shall ensure that a lead test is conducted on surfaces to be renovated. If there is a lead content of more than 0.5 percent lead by weight in the dried paint film or an equivalent standard recognized by the office, the operator shall follow the management plan for lead paint established by the office, in consultation with the Department of the Environment, or the lead paint abatement procedures in COMAR 26.02.07.

D. An operator shall use a room for child care only if it:

- (1) Has natural or mechanical ventilation that provides adequate exchange of air to protect a child's health and comfort;
- (2) Is free of moisture and dampness; and
- (3) Has a temperature at floor level of not lower than 65°F.

E. A child care center for school age children which is located in a school building and operates before and after school hours is not required to comply with any regulations relative to the physical plant beyond those imposed by the county or the local board of education with respect to that building.

F. The operator may not permit any building maintenance, repair, or renovation activity to occur at the center while a child in care is on the premises if the activity may pose a significant risk to the child's health or safety.

### **.54 Sanitary Facilities.**

A. Water Supply. An operator shall provide:

- (1) Hot and cold running water, with hot water temperature adjusted not to exceed 120°F or to fall below 100°F.
- (2) For each 40 children or any fraction of that number, one drinking water source that is:

- (a) Safely accessible to children 2 years old or older without assistance from an adult;
- (b) Not located in a toilet room or in a sink used for handwashing; and
- (c) Supplied by:
  - (i) An angle-jet drinking fountain with mouthguard,
  - (ii) Licensed bottled water in the original container,
  - (iii) Running water supply with individual single service drinking cups, or
  - (iv) Other methods or sources approved by the office.

**B. Toilets and Sinks.**

(1) For every 15 children who are 2 years old or older, an operator shall provide one toilet and one sink that are:

- (a) Easily accessible to the children; and
- (b) Equipped with water-resistant, nonabsorbent platforms which are safely constructed at a height that allows children to use the toilet and sink unassisted.

(2) A center licensed for the first time shall provide at least one toilet facility restricted to use by adults that is equipped with a toilet, sink, and toilet supplies. This section does not apply to:

- (a) Small centers; or
- (b) Programs that operate 2 1/2 hours or less per session per day.

(3) An operator which held a certificate of approval from the State Board of Education under Education Article, §2-206, Annotated Code of Maryland, or was determined to be exempt from that Article before July 1, 1991, may receive a variance from the requirements of §B(1) of this regulation if the office determines that the requirements can be met only with substantial physical modifications to the center and that sanitary facilities are accessible to every child in the center. A variance does not apply to any additions or enlargements to the center.

(4) An operator shall maintain each toilet and sink in good operating condition and in a sanitary manner.

(5) In a small center approved for mixed age groups, only one toilet and sink are required.

(6) In each toilet facility accessible to a school age child, the operator shall provide at least one toilet in an enclosed stall or in space affording privacy to the child.

(7) In each toilet room, the operator shall provide floors with water-resistant, nonabsorbent finishes and smoothly finished walls with a hard surface.

(8) Each toilet room shall be equipped with approved natural or mechanical ventilation.

(9) Portable toilets, also known as potty-chairs, may not be used in a child care center.

**C. Supplies.** An operator shall ensure that:

(1) Individual paper towels, a trash receptacle, soap, and toilet paper are available within reach of a child capable of using the toilet without assistance from the staff; and

(2) Toiletry and grooming articles, drinking cups, towels, face cloths, brushes, and combs are not shared.

**.55 Lighting.**

A. An operator shall ensure sufficient natural and artificial lighting to allow supervision of the children and to provide illumination of at least:

- (1) 20 footcandles at floor level in areas where children's activities occur;
- (2) 10 footcandles on stairways and in corridors; and
- (3) 5 footcandles in rooms when children are resting.

B. An operator shall use light fixtures with bulbs, lamps, and tubes that are shatter-proof or protected by shields to prevent shattering.

C. In a room approved for child care that does not have windows, an operator shall provide an approved source of lighting that will operate in case of a power failure.

D. An operator shall provide adequate outdoor lighting to ensure the safety of persons entering and leaving the center when it is dark outside.

## **.56 Telephone.**

An operator shall provide:

A. At least one operable telephone that is:

- (1) In the center space,
- (2) Not battery-operated or rechargeable,
- (3) Not a pay station or locked telephone, and
- (4) Available during the hours of operation of the center;

B. A telephone or intercom connected to a telephone in each room in which care is provided to infants or toddlers; and

C. Additional telephones or extensions in the facility as may be required to;

- (1) Summon emergency fire and rescue services promptly, and
- (2) Transmit and receive other emergency communications.

## **.57 General Cleanliness.**

A. An operator shall ensure that:

- (1) The entire center, including floors, walls, ceilings, materials, furnishings, and equipment is kept clean; and
- (2) Cleaning is not conducted while rooms are occupied by the children, except for clean-up activities which are part of the daily program or in emergencies.

B. In a center for fewer than 12 children located in a residence, inspections for general cleanliness shall be confined to space used by children.

## **.58 Disposal of Refuse.**

A. When an operator stores refuse outdoors to await collection, the operator shall use refuse receptacles that are:

- (1) Made of tight, nonabsorbent, easily washable materials;
- (2) Covered with tightly fitting lids; and
- (3) Washed and treated with disinfectant when necessary to combat odors and prevent accumulation of materials that attract flies, bees, other pest insects, or rodents.

B. An operator shall provide:

- (1) Refuse containers in rooms where children are in care that:
  - (a) Are made of noncombustible or fire resistant material,
  - (b) Have disposable liners which are discarded with the contents of the container each time it is emptied, and
  - (c) Are covered with tightly fitting lids if the receptacle contains discarded food articles; and
- (2) Separate containers with disposable liners and a lid for soiled diapers which make the contents of the container inaccessible to children.

## **.59 Potentially Hazardous Items.**

A. An operator shall store all potentially harmful items, including knives, sharp tools, poisonous and toxic materials, prescription and nonprescription medicines, controlled dangerous substances, alcoholic beverages, tobacco products, matches, and lighters in locations which are inaccessible to the children in care.

B. An operator shall store medicines properly and keep medicines not requiring refrigeration and alcoholic beverages in a locked container.

C. An operator may allow potentially harmful items, such as knives, sharp tools, and scissors, to be used by the children only under careful supervision.

D. Except in a small center located in a residence, the operator may not keep firearms on the premises of the center.

E. In a small center located in a residence, an operator shall keep any firearms:  
(1) In a location not used by the children in the center; and  
(2) Unloaded and partially disassembled in a locked container with ammunition stored in its own separate locked container.

F. An operator shall store petroleum and flammable products in an approved manner and in locations inaccessible to children.

G. An operator shall store cleaning and sanitizing agents and poisonous products apart from food and not accessible to children.

H. An operator may not have containers of poisonous products on the premises unless they are labeled clearly as to nature, content, and approved purposes.

I. An operator shall:  
(1) Use only pesticides which are approved by the United States Environmental Protection Agency, according to the instructions for use;  
(2) Use pesticides only when children are not in care; and  
(3) Store pesticides apart from food, apart from cleaning agents, and in locations inaccessible to children.

J. An operator shall plug or cap each electrical socket that is accessible to children in care as required by the applicable fire code.

## **.60 Food Service.**

A. Food and beverages which are furnished by an operator for meals or snacks, or both, shall comply with the guidelines of the Child and Adult Care Food Program of the U.S. Department of Agriculture, as indicated on a chart supplied by the office.

B. Hours of Operation. If a center operates:  
(1) 4 or more consecutive hours a day, the operator shall furnish either:  
(a) All meals and snacks; or  
(b) Snacks; or  
(2) Less than 4 consecutive hours a day, the operator shall either:  
(a) Furnish food and beverages for meals or snacks, or both; or  
(b) Make arrangements with the parent of a child to provide food and beverages for meals or snacks, or both.

C. The operator shall furnish and serve milk with all meals.

D. Except during approved hours of overnight care, an operator shall serve meals and snacks at intervals of not more than 3 hours according to the following schedule:

<i>If a child is at a center for:</i>	<i>The child shall receive at least:</i>
Less than 4 consecutive hours	1 snack

4 to 7 consecutive hours	1 meal and 1 snack
7 to 11 consecutive hours	1 meal and 2 snacks or 2 meals and 1 snack
11 to 14 consecutive hours	2 meals and 2 snacks or 3 meals and 1 snack

E. If an operator chooses not to provide meals, the operator shall make arrangements with the parent of each child to provide food for meals.

F. An operator shall keep a supply of nutritious food on hand in order to provide food to a child whose parent has not supplied food or beverages for meals or snacks.

G. An operator and any staff member may not force a child to eat, subject a child to discipline for refusing to eat, or withhold food as a punishment.

H. Menus. An operator shall:

- (1) Post in a conspicuous place a weekly planned menu of foods and beverages furnished by the center for meals and snacks; and
- (2) Keep a dated record of food actually served in the center, and to each child on a modified diet, on file for at least 4 weeks, correcting the planned menu if necessary.

## **.61 Modified Diet.**

When an operator agrees to accept a child who requires a modified diet for:

A. Medical reasons, the operator shall obtain from the child's parent a written prescription for the diet signed and dated by the child's licensed health practitioner within the previous 6 months;

B. Cultural or religious reasons, the operator shall obtain written, dated instructions for the diet signed by the child's parent.

## **.62 Food Sources.**

A. An operator shall furnish food at the center only if it is wholesome and free from spoilage, filth, or other contamination and obtained from sources that comply with all laws relating to food, food processing, food handling, and food labeling.

B. When an operator contracts to have food furnished from an outside source, such as a catering service, the operator shall ensure that the food:

- (1) Has been prepared and processed in a licensed food service facility or in a licensed food processing plant; or
- (2) Consists of a snack or party food which is not potentially hazardous and does not present a significant risk of transmitting food-borne disease.

C. An operator may not provide to the children home-canned goods or any other hermetically sealed food prepared in a place other than a licensed food processing establishment.

D. An operator shall:

- (1) Provide only pasteurized Grade A fluid milk and fluid milk products which are:
  - (a) Served from the original container; and
  - (b) Not more than 4 days older than the expiration date marked on the original container; and
- (2) Use dry milk, dry milk products, or reconstituted dry milk only for cooking purposes.

E. An operator shall discard promptly the following:

- (1) All spoiled fruits, vegetables, or other food;
- (2) Refrozen food;
- (3) Potentially hazardous frozen food that has been thawed and not immediately cooked and served;
- (4) Swelled, rusty, or leaky canned foods; and
- (5) Foods exposed to fire, smoke, or water damage.

### **.63 Food Storage and Preparation.**

- A. An operator shall:
  - (1) Protect all food from contamination while it is being stored, transported, or displayed; and
  - (2) Prepare and serve food in a safe, sanitary, and healthful manner.
  
- B. An operator shall provide sufficient storage areas for all food brought from home and all food held in reserve for service by the operator.
  
- C. An operator shall store food:
  - (1) In an area that is dry, cool, well-ventilated, well-lighted, and equipped with easily cleanable shelving; and
  - (2) At least 6 inches off the floor to facilitate cleaning.
  
- D. In a small center, the operator may store food:
  - (1) Separately from family food; or
  - (2) With family food if the operator chooses to have the entire family food storage area inspected.
  
- E. When food is transferred from its original container, the operator shall provide a secondary storage container that is:
  - (1) Easily cleanable;
  - (2) Nontoxic;
  - (3) Nonabsorbent;
  - (4) Tightly closed; and
  - (5) Clearly labeled as to its contents.
  
- F. An operator may not store food below overhead waste lines.
  
- G. An operator shall maintain cooked, potentially hazardous hot food at a temperature of 140° F or above.
  
- H. An operator shall refrigerate potentially hazardous food at or below a temperature of 45° F.
  
- I. Frozen food shall be kept at 0° F or below.
  
- J. An operator shall restrict the movement of pets and other animals so that food and food contact surfaces are not contaminated.
  
- K. An operator shall use single service articles only once. They should be stored, handled, and dispensed to protect them from contamination. Single service articles are items intended to be disposed of after use, such as paper and plastic cups, containers, lids, plates, knives, forks, spoons, and placemats.
  
- L. When an operator offers the children activities in which the children prepare food, the operator shall plan and carry out the activities consistent with the safety and health practices required in this chapter.
  
- M. After a child finishes eating, the operator shall discard any remaining food that has come into contact with:
  - (1) The child's mouth; or

(2) An eating utensil that has been used by the child.

N. The operator shall send home or discard at the end of each day all opened containers of food brought from home for a child.

## **.64 Food Preparation Area and Equipment.**

A. Appliances and equipment in the food preparation area shall be:

- (1) Cleaned and sanitized;
- (2) In good repair;
- (3) Capable of normal operation; and
- (4) Not conducive to the harboring of insects and rodents.

B. Food contact surfaces shall be nontoxic, smooth, in good repair, and free of breaks, open seams, cracks, pits, and similar imperfections.

C. Refrigeration shall be:

- (1) Of sufficient capacity to store all food and beverages that require refrigeration;
- (2) Operated at or below 45° F or 7° C; and
- (3) Equipped with an indicating thermometer graduated at 2° F intervals or 1° C.

D. All frozen food units shall be operated at 0° F or minus 18° C or less, and shall be provided with an indicating thermometer.

E. Centers operating more than 4 consecutive hours shall provide refrigeration.

F. Except in a small center or when only snacks are provided by the operator, a separate handwashing sink which is equipped with soap and paper towels shall be provided in or adjacent to each food preparation area. Food preparation and utensil washing sinks may not be used for handwashing.

G. A cooking exhaust hood shall be provided when routine cleaning does not eliminate condensation or greasy film.

H. A minimum of 20 footcandles shall be provided in all food preparation, utensil washing, and food storage areas.

I. Utensils and equipment used for the preparation and service of food and beverages shall be cleaned, sanitized, air dried, and stored in a manner approved by the office.

J. Floors and walls in a food preparation area shall be easily cleanable and maintained in a clean condition.

## **.65 Centers for Children with Acute Illness.**

A. An office may issue a license for a room in a child care center or for an entire center offering care to children with acute illness.

B. An applicant for a center offering care under this regulation shall:

- (1) Meet the requirements of this chapter with the exception of:
  - (a) Regulation .35 of this chapter concerning schedule of daily activities for all children,
  - (b) Regulation .39B(3) of this chapter concerning emergency evacuation drills for children,
  - (c) Regulation .40 of this chapter concerning outdoor playgrounds,
  - (d) Regulation .42C of this chapter concerning materials, and
  - (e) Regulation .45 of this chapter concerning exclusion for acute illness;

- (2) Submit to and receive prior approval from the office, in consultation with the Department of Health and Mental Hygiene and the health officer, of a written plan of operation for the center, including provision for health assessment of ill children; and
- (3) Operate according to the approved plan.

C. An applicant shall include in the plan:

- (1) Procedures to prevent the spread of disease, including general infection control procedures and methods of preventing the spread of airborne diseases, such as chicken pox and measles;
- (2) Staff training requirements in the areas of prevention and control of communicable diseases and care of ill children;
- (3) Staff education and experience in the health care field;
- (4) Staff orientation in pediatric first aid, infection control, and facility policies;
- (5) Staff/child ratios;
- (6) The identity of an on-call health consultant;
- (7) A definition of the population to be served and the criteria for admission, including exclusion policies;
- (8) Procedures for preparing a written plan of care for each child upon admission to include instructions for care in emergencies, medications, and special medical and nonmedical treatments;
- (9) Procedures for periodic reassessment of the child;
- (10) Methods for establishing an individualized program of daily activities for each child;
- (11) Staff information, including a staffing pattern;
- (12) A list of materials, equipment, and furnishings; and
- (13) Identification of buildings and rooms to be used for the program.

D. The director in a center for children with acute illness shall meet the requirements of Regulation .21, .22, .23, or .24 of this chapter, as applicable, and shall have completed at least 40 hours of training in a college level course in prevention and control of communicable diseases and care of ill children.

E. An operator shall use a health consultant who is a registered nurse, a pediatric or family nurse practitioner, or a pediatrician to develop written policies and procedures and to supervise and instruct staff on performing procedures.

## **.66 Adolescent Centers.**

A. An applicant for a center offering care to children attending a middle school or a junior high school shall:

- (1) Meet the requirements of this chapter; or
- (2) Meet both of the following:
  - (a) Submit to and receive prior approval from the office of a written plan of operation for the center that meets the intent of the requirements of this chapter; and
  - (b) Operate according to the approved plan.

B. An applicant shall include in the plan:

- (1) A definition of the population to be served and the criteria for admission;
- (2) Center staffing information and a staffing pattern for the program at the center;
- (3) The space, materials, equipment, and furnishings to be used at the center;
- (4) The days and hours of operation;
- (5) Locations other than the center which will be used for activities;
- (6) Activities to be held at locations other than the center;
- (7) A method of accounting for children's whereabouts;
- (8) A method for assuring parental approval for activities held at locations other than the center;
- (9) A method for having a consistent staff member available to each child;
- (10) A transportation plan, if necessary; and
- (11) A nutritional plan as required.

## **.67 Drop-In Centers.**

A. An office may issue a license to a drop-in center.

B. A drop-in center shall provide care exclusively to children on an intermittent and occasional basis for less than 4 hours a day while parents are not on the same premises or not immediately available, or both. Drop-in centers include child care centers located in shopping malls or shopping centers for the occasional use of customers, child care centers located in resorts for vacationers, and similar settings.

C. An applicant for a drop-in center shall:

- (1) Meet the requirements of these regulations with the exception of:
    - (a) Regulation .35A(6) of this chapter concerning outdoor play,
    - (b) Regulation .39B(3) of this chapter concerning emergency evacuation drills for children,
    - (c) Regulation .40 of this chapter concerning outdoor playgrounds,
    - (d) Regulation .42C of this chapter concerning materials,
    - (e) Regulation .44 of this chapter concerning admission to care, and
    - (f) Regulation .60 of this chapter concerning food service;
  - (2) Submit to and receive prior approval from the office of a written plan of operation for the center;
- and
- (3) Operate according to the approved plan.

D. An operator shall include in the plan:

- (1) The ages, numbers, and groupings of children to be served;
- (2) The space, materials, equipment, and furnishings to be used at the center;
- (3) The hours, days, and months of operation;
- (4) The activity program of the center; and
- (5) A method for ensuring that children are released only to their parents or other persons authorized by parents to pick up children who are properly identified to the center.

E. An applicant may request variances for Regulation .17 of this chapter concerning indoor space requirements, and Regulation .31 of this chapter concerning group size and staffing.

F. A child under 2 years old may not be admitted to a drop-in center.

G. An operator shall require the parent of each child to complete and sign an emergency card and health history form on the child before the child's admission to the center. The operator shall ensure that the emergency card and health history form are signed and updated, if necessary, by the parent each time the child is dropped off at the center.

## **.68 Infant-Toddler Requirements.**

A. The requirements of this chapter apply to the care of infants and toddlers in child care centers, whether cared for in a separate center, group, or with mixed age groups of children, except when there is a conflict with requirements contained in §§B—E of this regulation.

B. Individualized Activity Plan.

- (1) An operator shall assign one staff member primary responsibility for each infant or toddler in care during each staff shift.
- (2) Upon enrollment of an infant or toddler, the operator shall arrange for the director or senior staff, in consultation with the parent of the child, to prepare a written individualized activity plan for the child that:
  - (a) Addresses the child's normal pattern of activities, sleeping, and eating;
  - (b) Is consistent with the child's needs and capabilities;
  - (c) Identifies the staff member who is assigned primary responsibility for the care of the child during each staff shift;

- (d) Ensures that the child is:
  - (i) Held, played with, and talked to,
  - (ii) Except when sleeping, given opportunities to sit, crawl, toddle, or walk outside the infant's crib or playpen,
  - (iii) Except in inclement weather, taken outdoors daily, and
  - (iv) Diapered as needed and in accordance with the approved diapering procedure.
- (3) Upon admission to care of an infant or toddler, the operator shall ensure that the child's activity plan is:
  - (a) Posted for reference in the space used by the child's group;
  - (b) Implemented by each staff member having responsibility for care of the child;
  - (c) Modified in consultation with the child's parent as necessitated by the child's developmental needs; and
  - (d) Re-evaluated at least every 2 months.

C. Staffing Requirements.

(1) To direct a preschool center with infants and toddlers in care, a director, in addition to meeting the requirements for a director of a preschool center, shall have 1 year of approved experience working with infants and toddlers or 3 semester hours of approved training or the equivalent related exclusively to the care of infants and toddlers by December 31, 1991, unless there is a senior staff person with the equivalent training or experience in charge of each group of infants and toddlers.

(2) In groups of just infants and toddlers, the following apply:

For children who are:	There shall be a staff/child ratio of:	The maximum number of children allowed in a group is:
Infants (6 weeks to 18 months)	1 to 3	6
Toddlers (18 months to 2 years)	1 to 3	9
Infants and toddlers, with 1 or 2 infants in the group	1 to 3	9
Infants and toddlers, with 3 or more infants in the group	1 to 3	6

(3) When infants or toddlers are in mixed age groups with preschoolers, the following apply:

If the mixed age group includes:	The maximum number of children allowed in a group is:
1 or 2 infants	9
3 or more infants	6
1 or 2 toddlers	12
3 or more toddlers	9

(4) The staff/child ratio for mixed age groups which include infants or toddlers with older preschoolers is as follows:

- (a) If the total group is up to six children, any number of infants or toddlers may be included with two staff;
- (b) If the total group is seven to nine children, the group may include not more than two infants or not more than three toddlers, and two staff are required;
- (c) If the total group is 10—12 children, the group may include not more than one or two toddlers and no infants, and shall have two staff present. If six or more 2-year olds are present in the same group, then three staff are required.

D. Rest Furnishings and Sleep Requirements.

- (1) Except as provided in §D(2) of this regulation, for each child younger than 2 years old in the center, an operator shall provide a crib with a snugly fitting mattress and moisture-proof covering.
- (2) The operator may substitute a cot or bed if the operator and the child's parent agree in writing that the child is ready developmentally for a cot or bed.
- (3) Each crib shall meet the standards of the U.S. Consumer Product Safety Commission.
- (4) Stackable cribs may not be used.
- (5) Each crib in use shall be placed so that:
  - (a) It presents at least one long side without a wall, plexiglass panel, or other solid barrier;
  - (b) Unless separated from an adjacent crib by a solid barrier, it does not rest against the other crib; and
  - (c) There is a space of at least 3 feet if placed side to side and 18 inches if placed end to end between two adjacent cribs that are not separated by a solid barrier.
- (6) Soft bedding items, including but not limited to pillows, quilts, comforters, and crib bumpers, may not be used as rest furnishings for a child who is younger than 18 months old.
- (7) 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, no restricting device of any type may be used with a child in a crib, portable crib, playpen, cot, bed, mat, or other rest furnishing.
- (8) Unless specified otherwise 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.

E. Equipment and Facilities. The operator shall:

- (1) Make sufficient strollers or carriages with appropriate restraints available to nonwalking infants;
- (2) Prohibit the use of walkers;
- (3) If caring for infants and toddlers, provide:
  - (a) One approved diapering area with a sink for each group of children younger than 2 years old in the room; and
  - (b) One toilet for every 15 children between the ages of 18 months and 2 years within the room or immediately adjacent to the room;
- (4) Provide separate containers with disposable liners and a lid for soiled diapers, the contents of which are inaccessible to children;
- (5) Provide a telephone or an intercom connected to a telephone in each room in which care is provided; and
- (6) If high chairs are used, ensure that:
  - (a) Each high chair is equipped with age-appropriate restraints; and
  - (b) Restraints are used appropriately whenever a child is using the high chair.

F. Feeding Requirements.

- (1) Upon admission of an infant or toddler, an operator shall:
  - (a) Arrange with the parent the schedule for feeding the infant or toddler, including the amounts and kinds of food consumed daily, the sequence for introducing solid food when appropriate, and any recommendations about feeding from the infant's physician;
  - (b) Assure that the written schedule is followed; and
  - (c) Obtain an updated schedule as necessary or at least every 3 months.
- (2) An operator shall ensure that an infant is held for each bottle feeding, except when the infant or toddler is developmentally able and insistent upon self-feeding. When an infant or toddler holds the bottle, the infant or toddler may do so only when seated or in a crib or playpen, and from a bottle made of unbreakable material.
- (3) An operator shall maintain daily records of the amounts and kinds of liquids and solid food consumed by each infant and toddler. These records shall be:
  - (a) Dated and kept on file for at least 4 weeks; and
  - (b) Available in the infant or toddler feeding area and to the infant's or toddler's parent.
- (4) An operator may serve an infant or toddler only developmentally appropriate:

- (a) Commercially prebottled formula;
  - (b) Breast milk, formula, juice, or water which has been prebottled for the child and provided by the child's parent;
  - (c) Commercially processed baby food that is opened and used the same day; and
  - (d) Other foods supplied by the operator or the parent and consumed the same day.
- (5) An operator shall:
- (a) Ensure that all infant foods are labeled with the infant's name, dated, and refrigerated at 45°F or below if potentially hazardous;
  - (b) Ensure that all nipples on bottles are protected;
  - (c) Ensure that breast milk or formula which has been bottled for the child is placed immediately in a refrigerator when brought to the center and warmed to the desired temperature immediately before feeding;
  - (d) Ensure that foods that present a high risk of choking for infants and toddlers not be served;
- and
- (e) Rinse reusable bottles and nipples and return them daily to the child's parent.

G. Each infant or toddler may be handled or fed only by individuals designated to do so by the center operator.

### **.69 Administrative Responsibilities of Operator.**

An operator shall:

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

B. Document that the parent of each child enrolled in the center has been given a consumer education pamphlet on child care supplied by the office, and display a copy so that it is freely available to parents for reference;

C. Notify a child's parent in advance of each field trip and obtain written permission from a child's parent to take the child on field trips;

D. Maintain enrollment and attendance records as required in Regulation .16C of this chapter;

E. Maintain procedures to ensure that the whereabouts of each child in care is known at all times;

F. Maintain a written statement of discipline procedures as required in Regulation .70C of this chapter;

G. Maintain a record of injuries and accidents involving children enrolled in the center as required to be reported in Regulation .70D of this chapter;

H. 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) Health inventory, immunizations, and allergies, if any;
- (3) Acute illnesses that required excluding the child from care as required in Regulation .45 of this chapter;
- (4) 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 operator to meet the child's individual care needs, and
  - (b) Reviewed by the operator and the parent at least every 12 months after the child's admission to care;
- (5) If the child requires a modified diet, the signed prescription or instructions from the parent; and
- (6) Medication administered to the child during care;

I. During an individual's employment at the center and for 2 years after the date of the individual's last employment there, maintain a record for each individual that includes:

- (1) The individual's:
  - (a) Training, if required under this chapter;
  - (b) Experience, if required under this chapter; and
  - (c) Function or position;
- (2) Verification that the staff member's age complies with the minimum required for the position held;
- (3) Employment medical evaluation;
- (4) Criminal background check; and
- (5) Date on which the staff member received the information required by Regulation .19C of this chapter;

J. Maintain the required forms regarding substitutes and available adults;

K. Maintain a calendar or other written record of the days a substitute provides care and the staff member in whose place the substitute worked;

L. Maintain records of food actually served by the center for the most recent 4 weeks as required by Regulation .60H of this chapter;

M. Notify the office immediately of any change at the center which may affect the status of the license, including but not limited to a change in:

- (1) Individuals living on the premises;
- (2) Operation of the center; or
- (3) Telephone number;

N. Ensure that each:

- (1) Child's file is accessible to all staff members providing care to the child; and
- (2) Staff member providing care to a child is:
  - (a) Oriented to the child's individual care needs, and
  - (b) Prepared to provide the appropriate individual care;

O. Maintain and, upon request by the office, submit a current and complete list of personnel, on a form supplied or approved by the office, that includes each individual, whether paid or unpaid, who works at the center on a routine basis;

P. For review by the office and by parents who have enrolled their children or are considering enrolling their children, post in a conspicuous location a current and complete staffing pattern, on a form supplied or approved by the office, that specifies:

- (1) The number and ages of children enrolled;
- (2) The staff/child ratio in relation to the daily schedule; and
- (3) By staff name, all child care assignments; and

Q. Maintain a current copy of this chapter at the center so that it is displayed and freely available for reference by parents and center staff.

R. Immediately notify the office of an employee's criminal background check result received on or after October 1, 2005, that reports 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.

## **.70 Child Protection.**

A. Prohibition of Abuse, Neglect, and Injurious Treatment. An operator, staff member, substitute, volunteer, individual residing on the premises of the center, or anyone connected with the center may not subject a child to child abuse, neglect, or injurious treatment.

B. Reporting.

- (1) An operator or staff member who has reason to believe that a child has been:
  - (a) Abused in the center or outside of the center shall report that belief directly to the protective services unit of the local department or to a law enforcement agency, as required under Maryland law;
  - (b) Neglected in the center or outside of the center shall report that belief directly to the protective services unit of the local department as required under Maryland law.
- (2) When a child has been subjected to injurious treatment, it shall be reported to the office.
- (3) An operator shall:
  - (a) Instruct the staff to monitor all children daily for signs and symptoms of child abuse and neglect;
  - (b) Instruct staff about their legal obligations to report suspected child abuse or neglect directly to the local department or the appropriate law enforcement agency; and
  - (c) Post, near each telephone in the center, the telephone numbers of the protective services unit of the local department and the appropriate law enforcement agency.
- (4) An operator may not require a staff member to report through the operator or director, rather than directly to the local department or a law enforcement agency, when the staff member has reason to believe that a child has been abused or neglected.

C. Written Discipline Procedures. An operator shall:

- (1) Prepare a written statement that establishes procedures for disciplining a child at the center which agree with these regulations;
- (2) Make the written statement of discipline procedures available to parents of children in care, parents who are considering whether to enroll their children, and the office;
- (3) Establish procedures that:
  - (a) Are appropriate to the age and maturity of the child, and
  - (b) Comply with §A of this regulation; and
- (4) Require that the procedures in this section are followed by each staff member, volunteer, and anyone else connected with the center.

D. Notice of Injury or Death.

- (1) An operator shall notify or require that a staff member notify the office within 24 hours of:
  - (a) The death of a child if the child died while at the center;
  - (b) The death of a child enrolled at the center if the child died of a contagious disease; and
  - (c) An injury to a child that occurs while the child is at the center or on a field trip which results in the child's being:
    - (i) Treated by a medical professional, or
    - (ii) Admitted to a hospital.
- (2) An operator shall require that a staff member document and report immediately to the child's parent any serious injury. All other injuries and each accident which may result in injury which happens to the child at the center shall be reported to the parent on the same day that the injury or accident occurs.

E. Authorized Release. An operator shall ensure that a staff member release a child only to the child's parent or to another individual, if directed by the parent, whose identify is verified. If the parent or identified individual is not available due to death, illness, emergency, or any other cause, or if requested by a Protective Services worker, the child may be released to Protective Services.

F. Parental Access. An operator shall permit the parent of a child in care to:

- (1) Freely observe all areas of the center used for child care during operating hours; and
- (2) Have access to the parent's child at any time during the center's hours of operation, without appointment.

G. Security of Children in Care.

- (1) The operator shall ensure the safety and security of each child at all times.
- (2) Whenever an area of the center is being used for a child care activity and children are present, the operator may not permit the area to be used at the same time for any other purpose without prior approval of the office.
- (3) Unless an employee or staff member has successfully passed federal and State criminal background checks and, if hired on or after October 1, 2005, a review of child and adult abuse and neglect records, the individual may not be alone with an unrelated child in care.
- (4) An employee or staff member who has successfully passed federal and State criminal background checks and, if hired on or after October 1, 2005, a review of child and adult abuse and neglect records shall:
  - (a) Accompany a child whenever the child is in the presence of an individual who is not:
    - (i) Another child in care;
    - (ii) A health service consultant used by the facility operator pursuant to Regulation .21C of this chapter;
    - (iii) An independent contractor hired to provide a transportation service to the center who has successfully passed federal and State criminal background checks and a review of child abuse and neglect records;
    - (iv) The child's parent, guardian, or other individual to whom the child may be released pursuant to §E of this regulation;
    - (v) An individual who is authorized by the child's parent or guardian, and whose identity is verified, to provide a health care, academic, or other service to the child;
    - (vi) During a field trip activity, another child's parent or guardian, who is designated by the facility operator to assist in transporting children to or from the center; or
    - (vii) If the center is located at a school, an individual who for compensation is employed to work at the school; and
  - (b) Unless documentation is on file at the center that an independent contractor performing a service at the center has successfully passed federal and State criminal background checks and a review of child abuse and neglect records, remain within sight and sound of the contractor whenever the contractor is in an area where children are present.
- (5) Activity Not Conducted by a Staff Member.
  - (a) An activity involving the participation of children that is not conducted or led by a staff member is not permitted unless:
    - (i) An appropriately qualified staff member is present throughout the activity to supervise the children; or
    - (ii) The center is located on the premises of a school and the activity is conducted under school auspices by an individual who for compensation is employed to work at the school.
  - (b) A child may not participate in the activity unless the center has received prior written permission from the child's parent or guardian for the child's participation.

## **.71 Complaints.**

The office shall investigate both written and oral complaints that relate to a violation of a regulation, including anonymous complaints, and prepare a written report of the findings.

## **.72 Inspections.**

A. An operator shall permit inspection of all areas of the center by an agency representative during the center's hours of operation.

B. An agency representative may make inspections without prior notice to an operator.

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

D. An operator may request satisfactory identification from an agency representative before admitting the agency representative for an inspection.

E. An agency representative shall inspect each center:

- (1) On an announced basis:
  - (a) Before the office issues an initial license or a continuing license; and
  - (b) At least once within each 24-month period after the office issues an initial license, a renewal license, or a continuing license; and
- (2) On an unannounced basis, at least once:
  - (a) Within each 12-month period after the date that an initial license or a continuing license was issued; or
  - (b) If the center is currently operating on a renewed license, during the 12-month period following the calendar year in which the renewed license was issued.

F. An operator 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.

### **.73 Intermediate Sanctions.**

A. Upon a determination that an operator has violated the regulations in this chapter, placing the health, safety, or welfare of children in care at risk, the office may:

- (1) Restrict the ages or number of new children enrolled;
- (2) Reduce the number of children in care;
- (3) Require the operator or center staff to participate in training in a specified content area;
- (4) Increase the frequency of monitoring of the center during a specified period of time;
- (5) Enter into an agreement with the operator detailing requirements for remedying violations and achieving compliance; and
- (6) Notify, or require the operator to notify, a parent of a child who may be affected by the situation for which an intermediate sanction has been imposed.

B. If the office determines that an operator has violated a condition or requirement of the sanction, the office may suspend or revoke the operator's license.

### **.74 Suspension.**

A. The office may suspend an operator's license for a period of not more than 60 calendar days:

- (1) Upon determining that the:
  - (a) Regulations in this chapter have been violated, and
  - (b) Health, safety, or welfare of children in the center is threatened; or
- (2) If the license is a continuing license that was replaced by a conditional license, and the:
  - (a) Conditional license has lapsed; and
  - (b) Operator has failed to meet the requirements for reinstatement of the continuing license.

B. The office shall notify the operator in writing of the license suspension by certified mail 20 calendar days in advance, and the notice shall specify:

- (1) The effective date and period of the suspension;
- (2) The reason for suspension;
- (3) The regulatory violation which is the basis for the suspension;
- (4) That the operator shall stop providing child care on the effective date of the suspension unless the operator requests a hearing in writing within 20 days of the date of the suspension notice;
- (5) That the operator may request a hearing;
- (6) That the suspension shall be stayed if a hearing is requested within 20 days of the date of the suspension notice;

(7) That, if the suspension is upheld by the Superintendent's designee following the hearing, the operator shall cease providing child care until the office determines that the health, safety, or welfare of a child in the center no longer is threatened;

(8) That the suspension may lead to revocation; and

(9) That the operator is required to surrender the license to the office when the suspension becomes effective.

C. The office shall notify the parents of the children in care of the suspension.

D. By the end of the suspension period, the office shall:

(1) Reinstate the license and return it to the operator; or

(2) Revoke the license.

### **.75 Emergency Suspension.**

A. The office may suspend an operator's license on an emergency basis when it is determined that this action is required to protect the health, safety, or welfare of a child in the center.

B. The office shall hand deliver written notice of the suspension to the operator stating:

(1) The regulatory basis for the suspension;

(2) That the operator shall stop providing child care within 72 hours of delivery of the notice of the emergency suspension unless the operator requests a hearing in writing within 72 hours of delivery of the notice;

(3) That the operator is entitled to a hearing within 7 calendar days of the request for a hearing;

(4) That the Superintendent's designee shall issue a decision concerning the emergency suspension within 7 calendar days of the hearing;

(5) That if the emergency suspension order is upheld, the operator shall cease operations until it is determined that the health, safety, or welfare of a child in the center is no longer threatened;

(6) That the suspension may lead to revocation; and

(7) That the operator is required to surrender the license to the office when the suspension becomes effective.

C. The office shall notify the parents of the children in care of the emergency suspension.

### **.76 Revocation.**

A. The office may revoke a license if:

(1) An operator or center is in violation of these regulations and the health, safety, or welfare of children in the center is threatened;

(2) An operator misrepresented or offered false information on the application or on any form or report required by the office;

(3) An operator interferes with the agency representative in the performance of the duties of the office;

(4) The operator fails to comply with the:

(a) Prohibitions on the use of an individual as a volunteer or as an employee set forth at Regulations .19D and .19-1A, C(5), and E, of this chapter; or

(b) Child security requirements set forth at Regulation .70G of this chapter;

(5) The terms or conditions of an intermediate sanction have been violated;

(6) Violations required to be corrected during a period of suspension have not been corrected and the period has ended; or

(7) The license is a continuing license that was replaced by a conditional license, and the:

(a) Conditional license has lapsed; and

(b) Operator has failed to meet the requirements for reinstatement of the continuing license.

B. If the office decides to revoke a license, the office shall notify the operator in writing 20 calendar days before the effective date of the revocation, stating:

- (1) The effective date of the revocation;
- (2) The reason for revocation;
- (3) The regulatory violation which is the basis for the revocation;
- (4) That the operator shall stop providing child care unless a hearing is requested in writing within 20 days of the date of the revocation notice;
- (5) That the operator may request a hearing;
- (6) That the revocation shall be stayed if a hearing is requested within 20 days of the date of the revocation notice;
- (7) That, if the revocation is upheld by the Superintendent following the hearing, the operator shall cease providing child care; and
- (8) That the operator is required to surrender the license to the office when the revocation becomes effective.

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

### **.77 Penalties.**

A. A person who maintains and operates a child care center without a license, if convicted, is guilty of a misdemeanor and liable to a fine of not more than \$1,000.

B. A person who maintains and operates a child care center without a license, or who violates any regulation in this chapter, is subject to a civil penalty imposed in a civil action of not more than \$1,000 for each violation, and each day a violation occurs or the child care center operates illegally is considered a separate violation. The total amount of the civil penalties imposed in a civil action may not exceed \$5,000.

### **.78 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 licensing of a child care center 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 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 licensee:

- (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 child care center 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 child care center which is the subject of the request;
- (2) A parent who is considering enrolling a child in the child care center which is the subject of the request;
- (3) An authorized representative of a business which is considering securing or is securing child care services for the benefit of its employees from the center which is the subject of the request;
- (4) An employer who has entered into a contract to employ the services of the child care center which is the subject of the request;
- (5) A prospective employer who is considering a contract to employ the services of the child care center 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 child care center which is the subject of the request, and
  - (b) Request is limited to documents relating to the complaint;
- (7) A federal, State, local, or other law enforcement agency that has requested an 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 child care center 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 the following licensing records:

- (1) Copies of provisional and regular licenses, 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 licensee or a child care center, including denial letters, sanctions, emergency suspensions, and revocations;
- (5) Noncompliance reports and inspection reports pertaining to the Department's or office's reinspection of a child care center 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. Licensee's Inspection Request. Except as provided by other law, the custodian of record shall permit the licensee, or an authorized representative of the licensee, to inspect the licensee's own 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—.81 of COMAR 10.05.01 repealed and Regulations .01—.75 adopted under a new chapter, COMAR 07.04.02, as an emergency provision effective April 8, 1991 (18:9 Md. R. 986); emergency status extended at 18:21 Md. R. 2300 (October 18, 1991), 19:10 Md. R. 926 (May 15, 1992), and 20:2 Md. R. 108 (January 22, 1993)

Regulations .01—.81 of COMAR 10.05.01 repealed and Regulations .01—.77 adopted under a new chapter, COMAR 07.04.02, effective July 5, 1993 (20:13 Md. R. 1044)  
Regulation .02B amended effective December 1, 1997 (24:24 Md. R. 1669)  
Regulation .05C amended effective November 1, 1998 (25:21 Md. R. 1572)  
Regulation .08 amended effective November 1, 1998 (25:21 Md. R. 1572)  
Regulation .08A, C amended effective December 1, 1997 (24:24 Md. R. 1669)  
Regulation .09A amended effective November 1, 1998 (25:21 Md. R. 1572)  
Regulation .14B amended effective December 1, 1997 (24:24 Md. R. 1669)  
Regulation .18A, C amended effective December 1, 1997 (24:24 Md. R. 1669)  
Regulation .20B amended effective June 3, 1996 (23:11 Md. R. 808)  
Regulation .29C adopted effective December 1, 1997 (24:24 Md. R. 1669)  
Regulation .37 repealed effective December 1, 1997 (24:24 Md. R. 1669)  
Regulation .44A amended effective December 1, 1997 (24:24 Md. R. 1669)  
Regulation .46 amended effective December 1, 1997 (24:24 Md. R. 1669)  
Regulation .48 amended effective December 1, 1997 (24:24 Md. R. 1669)  
Regulation .50 amended effective October 19, 1998 (25:21 Md. R. 1572)  
Regulation .65B amended effective December 1, 1997 (24:24 Md. R. 1669)  
Regulation .69 amended effective December 1, 1997 (24:24 Md. R. 1669)  
Regulation .78 adopted effective June 3, 1996 (23:11 Md. R. 808)

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Regulation .20 repealed effective July 1, 2001 (28:12 Md. R. 1104)

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Chapter revised effective January 6, 2005 (31:26 Md. R. 1860)  
Regulation .44A amended effective February 14, 2005 (32:3 Md. R. 288)

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Transferred from COMAR 07.04.02 to 13A.14.02 effective January 1, 2006  
Regulation .02B amended effective January 2, 2006 (32:26 Md. R. 1996)  
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Regulation .10A amended effective January 2, 2006 (32:26 Md. R. 1996)  
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Regulation .19-1B amended effective May 21, 2007 (34:10 Md. R. 891)  
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Regulation .69R adopted effective January 2, 2006 (32:26 Md. R. 1996)  
Regulation .70G adopted effective January 2, 2006 (32:26 Md. R. 1996)  
Regulation .76A amended effective January 2, 2006 (32:26 Md. R. 1996)