

# **Small Entity Compliance Guide**

## **Family Child Care Regulations COMAR 13A.15**

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## ***Introduction***

The Maryland State Department of Education, Office of Child Care (hereinafter “the Agency”), has prepared this document as the “Small Entity Compliance Guide” required by Chapter 212 of the Maryland Laws of 2019. This Guide summarizes and explains regulations adopted by the Agency, including amendments to existing regulations, but is not a substitute for any regulation itself. Only the regulation itself can provide complete and definitive information regarding its requirements.

## ***Purpose of This Regulatory Action***

On April 23, 2019, the Agency’s proposed amendments were considered by the Maryland State Board of Education. The purpose of the amendments to the family child care regulations found at the Code of Maryland Regulations (COMAR) 13A.15 is to clarify certain requirements pertaining to the registration and operation of family child care homes and establish requirements for criminal background checks, swimming pool security, and the length of time for taking the basic health and safety training.

The proposed amendments will further implement the requirements of the Child Care and Development Block Grant Act (hereinafter “CCDBG Act”), as amended (42 U.S.C. § 9858 et seq.), along with Section 418 of the Social Security Act (42 U.S.C. § 618). Consistent throughout all subtitles of the regulations, the proposed amendments include statutory requirements of the Child Care and Development Fund reauthorization, modifications to provide clarity and more consistency between all subtitles, and corrections to the previous publication.

## ***Definitions***

“Successfully passed” as referenced in the COMAR 13A.15 regulations “means, when used in connection with a criminal background check or a review of records of abuse and neglect of children or adults conducted on an individual, that the individual:

- (a) Has not received a conviction, a probation before judgment disposition, or a not criminally responsible disposition, or does not have a pending charge for the commission or attempted commission of a crime that:
  - (i) Is listed at COMAR 13A.15.02.07B(1)—(11); or
  - (ii) Indicates other behavior harmful to children; or
- (b) Has not been identified as responsible for the abuse or neglect of a child or an adult.”

See COMAR 13A.15.01.02B(32).

## ***Summary of the Major Provisions***

As stated in the Maryland Register, the regulations:

- Require that all employees of a family child care home, whether paid or unpaid, and volunteers who are 18 years of age and older, in addition to applicants for family child

care, residents of family child care homes who are 18 years of age and older, and co-providers, will also be required to apply for federal and State criminal background checks. (COMAR 13A.15.02.02B(5)(c); COMAR 13A.15.06.03D(4),(5); COMAR 13A.15.06.05A(3),(4).).

- Require that at the time of initial application for a family child care certificate of registration and every 2 years afterwards as part of the process for a continuing family child care certificate of registration, a family child care home applicant and/or family child care provider that plans to operate a family child care home in an apartment or on property that is leased or rented, must submit written authorization from the lessor, owner, or landlord stating that child care is authorized in the family child care home. (COMAR 13A.15.02.02B(10); COMAR 13A.15.02.03A(6).).
- Require that family child care applicants, substitutes, employees, or volunteers of a family child care home, who reside or has resided in another state other than Maryland within 5 years of the family child care applicant's application for registration, must apply for state criminal background checks in the other state(s) where the individual has resided and further request that the other state(s) performing the criminal background check submit the result directly to the Agency. (COMAR 13A.15.02.02C.).
- Require that within 5 days after an existing family child care home resident becomes 18 years old and/or within 5 days after a new resident, who is 18 years or older, moves into the family child care home, that individual is required to apply for federal and State criminal background checks. An individual who has resided in another state other than Maryland within the prior 5 years must apply for state criminal background checks in the other state(s) where the individual has resided and further request that the other state(s) performing the criminal background check submit the result directly to the Agency. (COMAR 13.15.03.05D.).
- Provide that the Agency may deny an application for a family child care certificate of registration if an applicant submits application materials that contain false or altered information, regardless of the applicant's intent to submit such false or altered documents, to the Agency. (COMAR 13A.15.02.07A(2),(7)(c).).
- Provide that the Agency shall deny an application for a family child care certificate of registration if, in addition to the applicant, a resident of the applicant's home has received a conviction, a probation before judgment disposition, a not criminally responsible disposition, or has a pending charge for the commission or attempted commission of designated crimes or crimes that indicate behavior harmful to children. (COMAR 13A.15.02.07B, C.).

- Provide that the Agency shall deny an application for a family child care certificate of registration and/or suspend an existing family child care provider's certificate of registration if the family child care applicant and/or the registered family child care provider is in violation of Child Support Enforcement requirements pursuant to Family Law Article §10-119.3, Annotated Code of Maryland. (COMAR 13A.15.02.07D; COMAR 13A.15.13.05B.).
- Require that a volunteer present in the family child care home more than once a week must have a medical evaluation completed within 12 months prior to the volunteer's start date at the family child care home. (COMAR 13A.15.03.03D(2)(b)).
- Require that a family child care home maintain complete child care children's files that include evidence that each child younger than six (6) years old and born before January 1, 2015 have evidence of an appropriate lead screening. However, for those children born on or after January 1, 2015, that child's file shall include evidence of a lead test when the child is 12 months old and again at 24 months old, regardless of where the child resides or has resided in Maryland pursuant to Health General Article §18-106, Annotated Code of Maryland, and COMAR 10.11.04. (COMAR 13A.15.03.04C(2)).
- Require that a family child care provider who has a family child care home located in a residential rental property that was constructed before 1978, rather than 1950 as previously required in prior family child care regulations, submits a copy of the current lead risk reduction or lead-free certificate to the Agency. (COMAR 13A.15.05.02B.).
- Require that a family child care provider who has a pool on the family child care home premises must make the pool inaccessible to children in care. To meet this requirement, a family child care provider is also now required to have security features in place, including, but not limited to, the following: a fence at least 4 feet in height; a latch that includes both a self-closing and self-latching mechanism on the gate, door, or access to the pool; an operable and secured lock; and sensor or alarm in the pool and on the access floor. (COMAR 13A.15.05.05C.).
- Amend the water safety regulations to reflect that not only must above ground swimming pools may not be used for swimming activities but the family child care provider must also make the above ground pool inaccessible to children in care. Additionally, the water safety regulations further prohibit the use of fill and drain molded plastic or inflatable pools. (COMAR 13A.15.10.04B, C.).

- Require that effective January 1, 2020, family child care provider applicants must successfully complete as part of preservice training, approved and basic health and safety training within 90 days of initial registration. (COMAR 13A.15.06.02A(4)).
- Require family child care providers who have been issued family child care certificates of registration prior to January 1, 2020, must successfully complete basic health and safety training by the end of each 12 month period, measured from the date of the family child care provider's initial registration and further document successful completion of this training. (COMAR 13A.15.03.03G; COMAR 13A.15.06.02B(1)).
- Provide that family child care applicants and existing family child providers that seek approval to provide care for children less than 2 years of age will not be approved to provide care to this age group until the family child care applicant or family child care provider provides documentation to the Agency reflecting successful completion of Sudden Infant Death Syndrome (SIDS) training. The SIDS training must have been completed within the prior 5 years of the request to provide care for children less than 2 years of age. The SIDS training, however, cannot be used to satisfy continuing training requirements. (COMAR 13A.15.06.02E.).
- Provide that family child care applicants submit documentation reflecting successful completion of approved training in Supporting Breastfeeding Practices; Medication Training; and 3 clock hours in complying with the Americans with Disabilities Act (ADA) as part of the initial application process. Family child care providers, who are applying for a continuing family child care certificate of registration and who have not yet completed these trainings, must complete these trainings before being issued a continuing family child care certificate of registration. Finally, family child care providers who have already been issued a continuing family child care certificate of registration and who have not yet completed these trainings, are also required to complete these training requirements. (COMAR 13A.15.06.02F.).
- Provide that the Agency shall notify a family child care provider, within 30 days of receiving a request to have an individual approved as a substitute in the family child care home, as to whether the Agency has approved or disapproved the use of the individual as a substitute. The regulations further require that all substitutes, regardless of whether they are paid or not, in addition to having submitted a signed and notarized Release of Information form, will also have to apply for federal and State criminal background checks. If the substitute has resided in a state other than Maryland in the prior 5 years, the substitute must apply for a state criminal background check in that state and request that the state transmit the result of the criminal background check to the Agency. Additionally, the substitute must also submit a medical evaluation form completed within

the prior 12 months of being named a substitute. (COMAR 13A.15.06.03B(3), D(3),(5).).

- Provide that all additional adults, regardless of whether they are paid or not, apply for federal and State criminal background checks. Additionally, if the additional adult also resided in a state other than Maryland in the prior 5 years, the additional adult must apply for a state criminal background check in that state and request that the state transmit the result of the criminal background check to the Agency. (COMAR 13A.15.06.04A(4),(5).).
- Amend the general supervision regulations regarding awake children to further require that in family child care homes that have more than one floor approved for family child care use, whenever a child less than 6 years old is awake, active and indoors, the family provider or substitute must remain on the same level of the family child care home. Children who are six (6) years or older may be on a separate level of the family child care home that has been approved for child care use and meets applicable fire code requirements; however, the family child care provider or substitute must check on the children often enough to verify that children are safe, which at a minimum would be at least every 15 minutes. Additionally, the family child care provider is required to inform the parents of children in care who are six (6) years and older that they are permitted to be on separate levels of the family child care home. (COMAR 13A.15.08.01D.).
- Amend the general supervision regulations regarding resting or napping children to further require that a family child care provider or substitute must remain on the same level as resting children less than two (2) years of age. Resting children who are two (2) years of age or older may be on a separate level of the family child care home; however, the family child care provider or substitute must check on the children often enough to verify that children are safe, which at a minimum would be at least every 15 minutes. (COMAR 13A.15.08.01E.).
- Provide that the Agency may revoke a family child care certificate of registration if, in addition to the child care provider and other identified individuals associated with the family child care home, a volunteer of the family child care home has been identified as responsible for abuse or neglect of children or adults or has received a conviction, a probation before judgment disposition, a not criminally responsible disposition or has a pending charge for the commission or attempted commission of designated crimes or crimes that indicate behavior harmful to children. (COMAR 13A.15.13.07A(8),(9).).
- Provide that the Agency may revoke a provider's family child care certificate of registration if the provider misrepresented or offered any forms or reports to the Agency

contain false or altered information, regardless of the provider's intent to submit such false or altered documents, to the Agency. (COMAR 13A.15.13.07A(2)).

- Amend the issuance of civil penalties regulations pertaining to unregistered care to further reflect that the Agency may also issue civil citations to individuals who advertise unregistered family child care. Additionally, the administrative hearing regulations further grants appeal rights to individuals who have been issued civil citations for providing or advertising family child care without having been issued a valid family child care certificate of registration. (COMAR 13A.15.13.09A; COMAR 13A.15.14.01A; COMAR 13A.15.14.03A(2),B(1)).

### ***Compliance Date for Entities Subject to These Regulations***

The tentative implementation date of these regulations is December 30, 2019.

### ***Entities Subject to These Regulations***

The Agency is responsible for the registration and oversight of child care facilities, including, but not limited to, family child care homes. The regulations pertaining to the registration of family child care homes can be found at COMAR 13A.15. For Fiscal Year 2019, there were 5234 existing family child care homes throughout Maryland.

### ***Estimate of Economic Impact On Small Entities***

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

Background Clearances/Fingerprinting: To comply with the CCDBG Act, the Agency provided reimbursement to family child care homes for the cost of fingerprinting. While these family child care providers incurred the up-front cost for fingerprinting, the Agency reimbursed that cost, thereby alleviating the economic impact to family child care homes that requested reimbursement.

Health and Safety Training: To comply with the CCDBG Act, the Agency utilized the Maryland State Department of Education's Learning Management System to develop and deliver the online Health and Safety training at no cost to family child care providers. The Agency did not incur any direct costs for the development of the training. For those family child care providers who choose not to take the free online training, or who fail both online attempts, the training can be obtained in a face-to-face setting for an average cost of \$35. This cost is reimbursable to family child care providers who hold a Maryland Child Care Credential at Level 2 or higher. Family child care providers can obtain the training in Spanish from Penn State Better Kid Care for \$5. This training is also eligible for reimbursement through the Maryland Credentialing Program. The Agency is currently having a new online Health & Safety training developed that will be asynchronous and allow family child care providers to take the training anytime. The new training is built on a better platform, that is easy to maneuver and will test family child care

providers as they proceed through the training. This will also be available at no cost to family child care providers or their staff.

Swimming Pool Security: An estimated 244 pool owners who are registered family child care home programs would spend an average of \$4,000 per facility, as a one-time cost, to come into compliance with swimming pool security requirements. New applicants for family child care home registration would need to meet this requirement prior to becoming licensed. An adverse impact could be that family child care providers have to raise their fees to help cover the cost.

### ***Resources***

The final regulations published for the Maryland State Department of Education, Office of Child Care, can be found on the Agency's website found at [www.marylandpublicschools.org](http://www.marylandpublicschools.org).

### ***Technical Assistance/Contacting the Maryland State Department of Education, Office of Child Care***

The Maryland State Department of Education, Office of Child Care, is happy to assist small entities with questions regarding the family child care regulations. Please direct questions by telephone to (410) 767- 0120.