

Small Entity Compliance Guide

Letter of Compliance Regulations COMAR 13A.17

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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 letter of compliance regulations found at the Code of Maryland Regulations (COMAR) 13A.17 is to clarify certain requirements pertaining to the issuance and operation of child care facilities and establish requirements for criminal background checks, swimming pool security, length of time for taking the basic health and safety training, and medical information being required.

The proposed amendments will further implement the requirements of the Child Care and Development Block Grant Act (hereinafter “CCDGB 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.17 regulations “means, when used in connection with:

- (a) A criminal background check, that an individual:
 - (i) Has not 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 13A.17.06.03A; or
 - (ii) If having 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 not listed at COMAR 13A.17.06.03A, has been assessed by the office as suitable for employment pursuant to COMAR 13A.17.06.03B; or
- (b) A review of records of abuse and neglect of children or adults, that if an individual is:
 - (i) An employee of, or applying for employment by, a child care facility, the individual has been assessed by the office as being suitable for employment, pursuant to COMAR 13A.17.06.03B; or
 - (ii) An independent contractor, the individual has not been identified as responsible for the abuse or neglect of a child.”

See COMAR 13A.17.01.02B(44).

Summary of the Major Provisions

As stated in the Maryland Register, the regulations:

- Change the definition of “employee” to include all individuals employed to work at the child care facility whether they are paid or unpaid, unless they meet the definition of an independent contractor. (COMAR 13A.17.01.02B(17)).
- Revise the definition of “operated by a tax-exempt religious organization” to reflect that a letter of compliance holder is a church or bona fide house of worship or has submitted a determination letter from the Internal Revenue Service that recognizes that the organization is exempt from taxation from the Internal Revenue Code of 1954, 26 U.S.C. §501(c)(3) or (COMAR 13A.17.01.02B(31)).
- Prohibit a child care facility operator from allowing an employee, staff member, substitute, or employee to be assigned to a group of children or have access to a child in care until the individual has “successfully passed” the Agency’s review of child and adult abuse and neglect records and a federal or State criminal background check. Additionally, these individuals cannot be left alone with a child or group of children unless they have “successfully passed” the Agency’s review of the individual’s abuse and neglect records and both federal and State criminal background checks. (COMAR 13A.17.02.01C.).
- Amend the requirements regarding criminal background checks to further require that volunteers and substitutes, whether paid or not paid, apply for federal and State criminal background checks. Additionally, the regulation provides that individuals who are 18 years of age and older, who live on the child care premises (no longer limited to only residents), are required to apply for federal and State criminal background checks. (COMAR 13A.17.02.02A(3)).
- Require that individuals, including, but not limited to, the operator, the director, staff members, substitutes, volunteers, and individuals who are 18 years of age and older, who live on the child care facility premises (no longer limited to only residents) of the proposed child care facility who reside or have resided in another state other than Maryland within 5 years prior to the child care facility’s date of application, apply for a state criminal background check in the other state(s) and further request that the other state(s) performing the criminal background check submit the result directly to the Agency. (COMAR 13A.17.02.02C.).
- Amend the requirements for individuals associated with child care facilities to further require that all employees, including substitutes and volunteers, submit signed and

notarized Release of Information forms to allow the Agency to review records of abuse and neglect of children or adults. (COMAR 13A.17.02.02B(1)(b).).

- Provide that the Agency may further deny an application for a letter of compliance or continuing letter of compliance if an applicant/child care facility operator submits application materials that contain false or altered information, regardless of the applicant/child care facility operator's intent to submit such false or altered documents, to the Agency. (COMAR 13A.17.02.06A(2).).
- Require that a child care facility 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 §18-106, Annotated Code of Maryland, and COMAR 10.11.04. (COMAR 13A.17.03.04E.).
- Revise the time period for when a child care facility operator is required to provide the Agency with proof of compliance relating to a new employee or staff member's completion of federal and State criminal background checks and Non-Maryland criminal background checks (if applicable) from 15 working days to 5 working days of the new employee or staff member's date of hire. (COMAR 13A.17.03.06A(1)(c).).
- Amend a child care facility operator's responsibility to not only immediately notify the Agency if an employee is under investigation for a criminal charge or an allegation of abuse or neglect but to further notify the Agency of the same information for an individual living on the facility's premises (no longer limited to only residents). Additionally, within 5 days of an individual, who is 18 years old or older, moving onto the child care facility's premises, the child care facility operator is required to submit to the Agency a signed and notarized Release of Information Form to enable the Agency to review records of abuse and neglect of children and adults. Additionally, within this same 5 day time frame, the child care facility operator is also required to further direct the individual living on the child care premises to apply for a federal and State criminal background check and Non Maryland State Criminal Background Check, if applicable. (COMAR 13A.17.03.06F,G.).
- Prohibit an operator from advertising a child care facility unless the Agency has issued the child care facility a letter of compliance. A child care facility's advertisement must specify that the child care facility has a letter of compliance and include the child care

facility's letter of compliance number issued to the child care facility by the Agency. (COMAR 13A.17.03.09.).

- Require a child care facility that is located in a residential rental property constructed before 1978, rather than 1950 as required in previous regulations, submit a copy of the current lead risk reduction or lead-free certificate to the Agency. (COMAR 13A.17.05.05B.).
- Require that a child care facility that has a pool on the child care facility's premises must make the pool inaccessible to children. To meet this requirement, a child care facility operator 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.17.05.12F.).
- Require that a child care facility that has an above ground pool on the child care facility premises not allow children in care to use this pool. A child care facility operator must further make the above ground pool inaccessible to children. Additionally, a child care facility may not use a pool such as a fill and drain molded plastic or inflatable pool. (COMAR 13A.17.05.13B,C.).
- Amend staff orientation and training requirements to reflect that the child care facility have documentation on file reflecting that effective January 1, 2020, each employee and staff member complete health and safety training within 90 days of employment. Individuals hired prior to January 1, 2020, must complete health and safety training by the end of each 12-month period, measured each calendar year. (COMAR 13A.17.06.02L, M.).
- Require that employees and staff members have medical evaluations completed every 5 years which would be measured from the date of the individual's prior medical evaluation date. (COMAR 13A.17.06.04A(4).).
- Prohibit a child care facility from using an individual as a substitute until it has received notification from the Agency that the Agency has approved the facility's use of that substitute. The Agency will notify the child care facility of its decision whether to approve or disapprove the substitute upon its evaluation of the substitute's federal and State criminal background checks and review of records of abuse and neglect of children or adults. (COMAR 13A.17.06.05C.).

- Amend the supervision during transportation regulations to reflect that when a child care facility provides transportation to children in care and is required to have an adult other than the driver present, that adult must have “successfully passed” the Agency’s review of the adult’s child and adult abuse and neglect records and federal and State criminal background checks. (COMAR 13A.17.08.06A.).
- Require that during rest periods, prior to the child care facility’s children resting quietly, the child care facility must ensure that the required staff/child ratio is maintained. Once children are resting quietly, at least one staff member must remain in the room; however, the other staff members, if assigned to the room, can leave the room but must remain on the child care facility’s premises and be within hearing range of the room where the children are resting. (COMAR 13A.17.08.08.).
- Amend general requirements regarding educational programs in nonpublic nursery schools to reflect that although a bona fide church organization may be approved to operate an educational program without obtaining a child care center license or letter of compliance, this is applicable only to programs if child care is not a component of the program. (COMAR 13A.17.14.03B.).
- Provide that the Agency may issue warnings to a child care facility if, following an investigation of a complaint or an inspection, the child care facility is found to be in violation of COMAR 13A.17 regulations that do not pose an immediate threat to the health, safety, and welfare of a child in the child care facility. The warning will include the COMAR 13A.17 regulatory violation; the time period for correcting the COMAR 13A.17 regulatory violation; and notice that the facility’s failure to correct the regulatory violation may result in further action against the child care facility’s letter of compliance, including the imposition of sanctions; suspension of the child care facility’s letter of compliance; or revocation of the facility’s letter of compliance. (COMAR 13A.17.15.03.).
- Provide that the Agency may revoke a child care facility’s letter of compliance if the child care facility operator misrepresented or offered any forms or reports to the Agency which contain false or altered information, regardless of the child care facility operator’s intent to submit such false or altered documents, to the Agency. (COMAR 13A.17.15.07A(2).).
- Provide that the Agency may revoke a child care facility’s letter of compliance if the Agency determines that the child care facility’s operator is unable to provide for the welfare of children. (COMAR 13A.17.15.07A(8).)

- Amend the issuance of civil penalties regulations pertaining to unlicensed care to further reflect that the Agency may issue civil citations to individuals who advertise a child care facility that does not have a letter of compliance. Additionally, the administrative hearing regulations further grants appeal rights to individuals who have been issued civil citations for providing or advertising a child care facility without a valid letter of compliance. (COMAR 13A.17.15.08C, COMAR 13A.17.16.01A, COMAR 13A.17.16.03A.).

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 regulation and oversight of child care facilities, including but not limited to, tax exempt religious organizations that operate a nursery school or a child care program in a school building used exclusively for children enrolled in the school. The regulations pertaining to the licensure of these child care facilities can be found at COMAR 13A.17. For Fiscal Year 2019, there were presently 212 existing letter of compliance facilities 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: In order to comply with the CCDBG Act, the Agency provided reimbursement to child care facilities for the cost of staff fingerprinting. While these child care facilities/staff incurred the up-front cost for fingerprinting, the Agency did reimburse that cost, thereby alleviating the economic impact to child care facilities who request reimbursement.

Health and Safety Training: In order to comply with the CCDBG Act, the Agency utilized MSDE's Learning Management System to develop and deliver the online Health and Safety training at no cost to child care facilities. The Agency did not incur any direct costs for the development of the training. For employees and/or staff members of child care facilities 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 child care facilities that hold a Maryland Child Care Credential at Level 2 or higher. Child care facilities 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 providers to take the training anytime. The new training is built on a better platform that is easy to maneuver and will test employees and staff as they proceed through the training. This

will also be available for no cost to child care operators or their staff.

Medical Evaluations: Individuals working in child care facilities will incur the cost of medicals every 5 years. The estimated cost of each medical is between \$75 and \$125, depending on health insurance, co-pays, and other variables.

Swimming Pool Security: An estimated 11 pool owners who are letter of compliance child care facilities 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 child care licensure would need to meet this requirement prior to becoming licensed. This additional cost may encourage some child care facilities to raise the fees they charge to families.

Resources

The final regulations published for the Maryland State Department of Education, Office of Child Care, can be found on the Department of Education's website found at 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 letter of compliance regulations. Please direct questions by telephone to (410) 767- 0120.