



Mohammed Choudhury
State Superintendent of Schools

TO: Members of the State Board of Education

FROM: Mohammed Choudhury

DATE: September 28, 2021

SUBJECT: Code of Maryland Regulations (COMAR) 13A.14
Child and Family Day Care
COMAR 13A.15
Family Child Care
COMAR 13A.16
Child Care Centers
COMAR 13A.17
Child Care – Letters of Compliance
COMAR 13A.18
Large Family Child Care Homes
PERMISSION TO PUBLISH

PURPOSE:

The purpose of these amendments is to revise the regulatory language to better align with the criminal background check requirements of the Federal Child Care Development Block Grant (CCDBG). The purpose of this action is to request that the State Board grant permission to publish amendments to the following regulations: COMAR 13A.14.06.02 *Definitions*, COMAR 13A.14.06.06 *Provider Requirements*, COMAR 13A.15.01.02 *Definitions*, COMAR 13A.15.02.07 *Denial of a Registration Application*, COMAR 13A.16.01.02 *Definitions*, COMAR 13A.16.06.03 *Suitability for Employment*, COMAR 13A.17.01.02 *Definitions*, COMAR 13A.17.06.03 *Suitability for Employment*, COMAR 13A.18.01.02 *Definitions*, COMAR 13A.18.02.07 *Denial of a Registration Application*, and COMAR 13A.18.06.03 *Suitability for Employment*.

REGULATION PROMULGATION PROCESS:

Under Maryland law, a state agency, such as the State Board, may propose a new regulation whenever the circumstances arise to do so. After the State Board votes to propose such a regulation, the proposed regulation is sent to the Administrative, Executive, and Legislative Review (AELR) Committee for a 15-day review period. If the AELR Committee does not hold up the proposed regulation for further review, it is published in the Maryland Register for a 30-day public comment period. At the end of the comment period, the Maryland State Department of Education (MSDE staff) reviews and summarizes the public comments. Thereafter, MSDE staff will present a recommendation to the State Board of Education to either: (1) adopt the regulation in the form it was

proposed; or (2) revise the regulation and adopt it as final because suggested revision is not a substantive change; or (3) revise the regulation and re-propose it because the suggested revision is a substantive change. At any time during this process, the AELR Committee may stop the promulgation process and hold a hearing. Thereafter, it may recommend to the Governor that the regulation not be adopted as a final regulation or the AELR Committee may release the regulation for final adoption.

BACKGROUND/HISTORICAL PERSPECTIVE:

Child care regulations have been established to ensure the health, safety, and welfare of children when in an out of home setting. Regulations are established based on legislation, federal law, and best practices as outlined in Caring for Our Children (American Academy of Pediatrics in collaboration with the National Resource Center for Health and Safety in Child Care (U.S.), the American Public Health Association, and the Maternal and Child Health Bureau of the U.S. Department of Health and Human Services.) In 2014, the Federal Child Care Development Block Grant (CCDBG) was reauthorized. The CCDBG establishes the requirements and processes for states and territories to receive Federal funding through the Child Care Development Fund (CCDF). The funding available through CCDF supports child care subsidies for low income families, measures to protect the health, safety, and welfare of children when in child care settings and improves the quality of child care services. The Federal regulations for CCDF were finalized in the fall 2016.

In 2017 and 2019, Maryland's regulations were revised to meet two major aspects of the CCDBG reauthorization including the implementation of comprehensive basic health and safety training for all child care staff and expanded criminal background clearances. The expanded background clearances addressed the CCDBG's mandate requiring all licensed, regulated, or registered child care providers to have a comprehensive background check to ensure that those individuals who have access to children do not have prior criminal records that could endanger children. The expanded background clearances were extended to all adults residing in family child care homes. With the exception of certain drug-related offenses committed during the preceding five years, all convictions listed by the CCDBG are lifetime bans against employment by a child care provider. The CCDBG does not allow any flexibility to grandfather in current child care staff members who have been convicted of one of the disqualifying crimes listed in the CCDBG. Maryland regulations are stricter for the disqualifying crimes listed in the CCDBG in two categories. The first category includes drug-related crimes committed longer than 5 years ago. Maryland's regulations include for consideration of employment the drug-related crimes committed longer than 5 years ago. The second category pertains to domestic violence crimes. The CCDBG lists spousal abuse as a disqualifying crime and Maryland's regulations uses the broader term domestic violence, which includes not only abuse between spouses but also abuse between family members such as siblings.

During the process of updating the regulations to incorporate the CCDBG requirements, corrections and clarifications were identified. The following changes have been identified.

- Clarify the regulations to create a lifetime ban for the mandatory exclusion crimes. The language "has received a conviction" has been expanded upon to include "at any time" to read "has received a conviction at any time" to make it clear the regulations are intended to

apply retroactively to any disqualifying crimes committed prior to the promulgation of the regulations consistent with the Office of Child Care's past and current interpretation.

- Permit individuals convicted of older drug-related crimes to be eligible for consideration for possible employment under the discretionary employment provisions. The language "if committed during the preceding 5 years" has been added to the disqualifying drug-related crimes to exclude older drug-related crimes from the mandatory employment exclusions.
- Permit individuals convicted of domestic violence crimes unrelated to spousal or intimate partner domestic violence to be eligible for consideration for possible employment under the discretionary employment provisions. The term "intimate partner" is defined and "means a person eligible to seek relief from domestic violence as specified in Family Law Article, §4-501(m)(1), (2), (6), or (7), Annotated Code of Maryland." The language "of an intimate partner or spouse" has been added after the term "domestic violence" to exclude certain crimes of domestic violence from the mandatory employment exclusions.

The regulations have been reviewed by the OCC Advisory Council and reviewed by the Office of the Attorney General.

EXECUTIVE SUMMARY:

The purpose of the proposed amendments is to align the regulations more closely with the requirements of the CCDBG Act, as amended (42 U.S.C. 9858 et seq.). The proposed amendments are consistent throughout all five subtitles of regulations.

ACTION:

Request permission to publish the proposed amendments to: COMAR 13A.14.06.02 *Definitions*, COMAR 13A.14.06.06 *Provider Requirements*, COMAR 13A.15.01.02 *Definitions*, COMAR 13A.15.02.07 *Denial of a Registration Application*, COMAR 13A.16.01.02 *Definitions*, COMAR 13A.16.06.03 *Suitability for Employment*, COMAR 13A.17.01.02 *Definitions*, COMAR 13A.17.06.03 *Suitability for Employment*, COMAR 13A.18.01.02 *Definitions*, COMAR 13A.18.02.07 *Denial of a Registration Application*, and COMAR 13A.18.06.03 *Suitability for Employment*.

ATTACHMENTS

Applicable sections of:

COMAR 13A.14 *Child and Family Day Care*

COMAR 13A.15 *Family Child Care*

COMAR 13A.16 *Child Care Centers*

COMAR 13A.17 *Letters of Compliance*

COMAR 13A.18 *Large Family Child Care Homes*

Title 13A

STATE BOARD OF EDUCATION

Subtitle 14 CHILD AND FAMILY DAY CARE

Chapter 06 Child Care Subsidy Program

Authority: Education Article, §2-303 and Title 9.5, and Family Law Article, §§5-550—5-558, Annotated Code of Maryland

Agency Note: Federal Regulatory Reference – Child Care and Development [Fund 45 CFR 98.50] Block Grant (45 CFR Parts 98 and 99 and 42 U.S.C. 9858 et seq.)

.02 Definitions.

A. (text unchanged)

B. Terms Defined. (1) – (33) (text unchanged)

(33-1) Intimate Partner means a person eligible to seek relief from domestic violence as specified in Family Law Article, §4- 501(m)(1), (2), (6), or (7), Annotated Code of Maryland.

(34) – (62) (text unchanged)

.06 Provider Requirements.

A. – C. (text unchanged)

D. Informal Child Care. (1) – (5) text unchanged.

(6) Criminal Background Check Review.

(a) An individual who wishes to serve as an informal child care provider and each individual 18 years old or older who is a resident in the home shall apply for a fingerprint-supported State and federal criminal background check.

(b) The CCS Branch may not approve an individual to serve as an informal child care provider if the individual or a resident in the home who is 18 years old or older has received *at any time* a conviction, a probation before judgment disposition, a not criminally responsible disposition, or a pending charge for the commission or attempted commission of:

(i) A crime involving a child, cruelty to animals, domestic violence *of an intimate partner or spouse*, or a weapons or firearms violation of federal or State law;

(ii) A sex offense;

(iii) A violent crime classified as a felony;

(iv) Abduction or kidnapping;

(v) Abuse of a child or an adult;

(vi) Confinement of an unattended child;

(vii) Manufacturing, distributing, or dispensing a controlled dangerous substance **if committed during the preceding 5 years;**

(viii) Perjury;

(ix) Pornography;

(x) Possession with intent to manufacture, distribute, or dispense a controlled dangerous substance **if committed during the preceding 5 years;** or

(xi) Reckless endangerment.

(7) – (14) (text unchanged)

Title 13A

STATE BOARD OF EDUCATION

Subtitle 15 FAMILY CHILD CARE

Chapter 01 Scope and Definitions

Authority: Education Article, §§9.5-301—9.5-308, 9.5-310—9.5-312, 9.5-320, [and] 9.5-321, and 9.5-414; Family Law Article, §§5-550—5-558; General Provisions Article, §4-333; Human Services Article, §1-202; 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.); Child Care Development Block Grant (45 CFR Parts 98 and 99 and 42 U.S.C. 9858 et seq.); Social Security Act, §418 (42 U.S.C. 618)

.02 Definitions.

A. (text unchanged)

B. Terms Defined. (1) – (20) (text unchanged)

(20-1) Intimate Partner means a person eligible to seek relief from domestic violence as specified in Family Law Article, §4- 501(m)(1), (2), (6), or (7), Annotated Code of Maryland.

(21) – (36) (text unchanged)

Chapter 02 Registration Application and Maintenance

Authority: Education Article, §§9.5-301—9.5-308, 9.5-310—9.5-312, 9.5-320, [and] 9.5-321, and 9.5-414; Family Law Article, §§5-550—5-558; General Provisions Article, §4-333; Human Services Article, §1-202; 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.); Child Care Development Block Grant (45 CFR Parts 98 and 99 and 42 U.S.C. 9858 et seq.); Social Security Act, §418 (42 U.S.C. 618)

.07 Denial of a Registration Application.

A. (text unchanged)

B. The office shall deny a certificate of registration if an applicant or resident has received **at any time** 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 **of an intimate partner or spouse**; or

(d) A weapons or firearms violation of federal or state laws;

(2) A sex offense;

(3) A violent crime classified as a felony, including physical assault or battery;

(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 **if committed during the preceding 5 years**;

(8) Perjury;

(9) Pornography;

(10) Possession with intent to manufacture, distribute, or dispense a controlled dangerous substance **if committed during the preceding 5 years**; or

(11) Reckless endangerment.

C. The office shall deny a certificate of registration if an applicant or resident has received **at any time** a felony conviction for:

(1) Murder;

(2) Spousal abuse; or

(3) Arson.

D – G (text unchanged)

Title 13A

STATE BOARD OF EDUCATION

Subtitle 16 CHILD CARE CENTERS

Chapter 01 Scope and Definitions

Authority: Education Article, §§9.5-401, 9.5-404—9.5-411, and 9.5-413—9.5-418; Family Law Article, §§5-550—5-558; General Provisions Article, §4-333; Human Services Article, §1-202; 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.); Child Care Development Block Grant (45 CFR Parts 98 and 99 and 42 U.S.C. 9858 et seq.); Social Security Act, §418 (42 U.S.C. 618)

.02 Definitions.

A. (text unchanged)

B. Terms Defined. (1) – (33) (text unchanged)

(33-1) *Intimate Partner means a person eligible to seek relief from domestic violence as specified in Family Law Article, §4- 501(m)(1), (2), (6), or (7), Annotated Code of Maryland.*

(34) – (60) (text unchanged)

Chapter 06 Staff Requirements

Authority: Education Article, §§9.5-401, 9.5-404—9.5-411, and 9.5-413—9.5-418; Family Law Article, §§5-550—5-558; General Provisions Article, §4-333; Human Services Article, §1-202; 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.); Child Care Development Block Grant (45 CFR Parts 98 and 99 and 42 U.S.C. 9858 et seq.); Social Security Act, §418 (42 U.S.C. 618)

.03 Suitability for Employment.

A. A child care center operator may not employ an individual who has received **at any time** 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 **of an intimate partner or spouse**; or

(d) A weapons or firearms violation of federal or state laws;

(2) A sex offense;

- (3) A violent crime classified as a felony, including physical assault or battery;
- (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 *if committed during the preceding 5 years*;
- (8) Perjury;
- (9) Pornography;
- (10) Possession with intent to manufacture, distribute, or dispense a controlled dangerous substance *if committed during the preceding 5 years*;
- (11) Reckless endangerment; or
- (12) The felony of:
 - (a) Murder;
 - (b) Spousal abuse; or
 - (c) Arson.

B. If an individual has been identified *at any time* as responsible for child abuse or neglect or received *at any time* 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 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. – F. (text unchanged)

Title 13A

STATE BOARD OF EDUCATION

Subtitle 17 CHILD CARE – LETTERS OF COMPLIANCE

Chapter 01 Scope and Definitions

Authority: Education Article, §§9.5-401, 9.5-404, 9.5-405, 9.5-409, 9.5-411, and 9.5-413—9.5-418; Family Law Article, §§5-550—5-558; General Provisions Article, §4-333; Human Services Article, §1-202; 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.); Child Care Development Block Grant (45 CFR Parts 98 and 99 and 42 U.S.C. 9858 et seq.); Social Security Act, §418 (42 U.S.C. 618)

.02 Definitions.

A. (text unchanged)

B. Terms Defined. (1) – (22) (text unchanged)

(22-1) Intimate Partner means a person eligible to seek relief from domestic violence as specified in Family Law Article, §4- 501(m)(1), (2), (6), or (7), Annotated Code of Maryland.

(23) – (46) (text unchanged)

Chapter 06 Staff Requirements

Authority: Education Article, §§9.5-401, 9.5-404, 9.5-405, 9.5-409, 9.5-411, and 9.5-413—9.5-418; Family Law Article, §§5-550—5-558; General Provisions Article, §4-333; Human Services Article, §1-202; 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.); Child Care Development Block Grant (45 CFR Parts 98 and 99 and 42 U.S.C. 9858 et seq.); Social Security Act, §418 (42 U.S.C. 618)

.03 Suitability for Employment.

A. A child care facility operator may not employ an individual who has received **at any time** 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 **of an intimate partner or spouse**; or

(d) A weapons or firearms violation of federal or state laws;

(2) A sex offense;

- (3) A violent crime classified as a felony, including physical assault or battery;
- (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 *if committed during the preceding 5 years*;
- (8) Perjury;
- (9) Pornography;
- (10) Possession with intent to manufacture, distribute, or dispense a controlled dangerous substance *if committed during the preceding 5 years*;
- (11) Reckless endangerment; or
- (12) The felony of:
 - (a) Murder;
 - (b) Spousal abuse; or
 - (c) Arson.

B. If an individual has been identified *at any time* as responsible for child abuse or neglect or received *at any time* 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 that is not included in the list set forth at §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 child care facility 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. – E. (text unchanged)

Title 13A

STATE BOARD OF EDUCATION

Subtitle 18 Large Family Child Care Homes

Chapter 01 Scope and Definitions

Authority: Education Article, §§9.5-301—9.5-308, 9.5-310—9.5-312, 9.5-320, [and] 9.5-321, and 9.5-414; Family Law Article, §§5-550—5-558; General Provisions Article, §4-333; Human Services Article, §1-202; 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.); Child Care Development Block Grant (45 CFR Parts 98 and 99 and 42 U.S.C. 9858 et seq.); Social Security Act, §418 (42 U.S.C. 618)

.02 Definitions.

A. (text unchanged)

B. Terms Defined. (1) – (23) (text unchanged)

(23-1) Intimate Partner means a person eligible to seek relief from domestic violence as specified in Family Law Article, §4- 501(m)(1), (2), (6), or (7), Annotated Code of Maryland.

(24) – (49) (text unchanged)

Chapter 02 Registration Application and Maintenance

Authority: Education Article, §§9.5-301—9.5-308, 9.5-310—9.5-312, 9.5-320, [and] 9.5-321, and 9.5-414; Family Law Article, §§5-550—5-558; General Provisions Article, §4-333; Human Services Article, §1-202; 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.); Child Care Development Block Grant (45 CFR Parts 98 and 99 and 42 U.S.C. 9858 et seq.); Social Security Act, §418 (42 U.S.C. 618)

.07 Denial of a Registration Application.

A. (text unchanged)

B. The office shall deny a certificate of registration if an applicant or resident has received **at any time** 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 **of an intimate partner or spouse**; or

(d) A weapons or firearms violation of federal or state laws;

- (2) A sex offense;
 - (3) A violent crime classified as a felony, including physical assault or battery;
 - (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 **if committed during the preceding 5 years**;
 - (8) Perjury;
 - (9) A crime involving pornography;
 - (10) Possession with intent to manufacture, distribute, or dispense a controlled dangerous substance **if committed during the preceding 5 years**; or
 - (11) Reckless endangerment.
- C. The office shall deny a certificate of registration if an applicant or resident has received **at any time** a felony conviction for:

- (1) Murder;
- (2) Spousal abuse; or
- (3) Arson.

Chapter 06 Provider and Staff Requirements

Authority: Education Article, §§9.5-301—9.5-308, 9.5-310—9.5-312, 9.5-320, [and] 9.5-321, and 9.5-414; Family Law Article, §§5-550—5-558; General Provisions Article, §4-333; Human Services Article, §1-202; 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.); Child Care Development Block Grant (45 CFR Parts 98 and 99 and 42 U.S.C. 9858 et seq.); Social Security Act, §418 (42 U.S.C. 618)

.03 Suitability for Employment.

A. A provider may not employ an individual who has received **at any time** 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 **of an intimate partner or spouse**; or

- (d) A weapons or firearms violation of federal or state laws;
- (2) A sex offense;
- (3) A violent crime classified as a felony, including physical assault or battery;
- (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 *if committed during the preceding 5 years*;
- (8) Perjury;
- (9) Pornography;
- (10) Possession with intent to manufacture, distribute, or dispense a controlled dangerous substance *if committed during the preceding 5 years*;
- (11) Reckless endangerment; or
- (12) The felony of:
 - (a) Murder;
 - (b) Spousal abuse; or
 - (c) Arson.

B. If an individual has been identified *at any time* as responsible for child abuse or neglect or received *at any time* 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 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 child care home 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. – F. (text unchanged)