




Mohammed Choudhury
State Superintendent of Schools

To: Members of the State Board of Education

From: Mohammed Choudhury, State Superintendent of Schools 

Date: April 25, 2023

Subject: COMAR 13A.15.02.02
Family Child Care - Registration Application and Maintenance
COMAR 13A.16.02.02
Child Care Centers - License Application and Maintenance
COMAR 13A.17.02.02
Child Care—Letters of Compliance - Letters of Compliance Application and Maintenance
COMAR 13A.18.02.02
Large Family Child Care Homes - Registration Application and Maintenance
PERMISSION TO PUBLISH

Purpose

The purpose of this item is to request permission to publish amendments to COMAR 13A.15.02.02 *Family Child Care - Registration Application and Maintenance*, COMAR 13A.16.02.02 *Child Care Centers - License Application and Maintenance*, COMAR 13A.17.02.02 *Child Care—Letters of Compliance - Letters of Compliance Application and Maintenance*, and COMAR 13A.18.02.02 *Large Family Child Care Homes - Registration Application and Maintenance*.

Regulation Promulgation Process

Under Maryland law, a state agency, such as the State Board, may propose a new or amended 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, 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 the 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 be recommended 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

MSDE is committed to ensuring that all early care and education programs in the State have clear, rigorous, and multiple pathways toward becoming licensed or registered, especially those representing and serving historically underserved communities. Regulated and licensed programs ensure that children are safe and in high-quality early care and learning environments.

Previous MSDE Guidance

In February 2022, the MSDE Division of Early Childhood, Office of Child Care released additional written guidance to early care and education programs to clarify the laws and regulations around social security numbers (SSN) in child care. This guidance stated that applicants for child care registration or a center license, including co-providers, are required to provide their SSN. Additionally, individuals 18 years and older who work in child care facilities or reside in family child care homes may need to undergo federal and state criminal background checks, which may require providing an SSN. The Office of Child Care relies on other agencies to perform these background checks and defers to them to inform individuals if an SSN is needed. However, it became evident that further guidance was needed around this requirement.

Licensing and Registering Early Care and Education Programs Using Social Security Number and Individual Taxpayer Identification Number and Overview of Stakeholder Engagement

MSDE met with early care and education stakeholder groups to discuss this requirement. Stakeholders shared examples of the difficulty prospective providers face in obtaining an SSN to operate a licensed and regulated child care facility in Maryland. MSDE recognizes that licensure and regulation are vital in ensuring the provision of safe and quality child care and sought to identify multiple, rigorous pathways for expanding child care services.

- Information Sessions (January 26, 2023, February 23, 2023, and March 23, 2023): The inability of people without an SSN to become a licensed and/or registered program was raised as a concern.
- Office of Child Care Advisory Council Meeting (February 16, 2023, and April 13, 2023): The proposed legislation was discussed in the meeting. Stakeholders explained why this proposed legislation was important to the field and would increase the number of licensed and/or registered programs. The ITIN was discussed, and it was stated that people who had an ITIN paid taxes and should be able to apply for a child care license. Finally, it was shared that newcomers or refugees who come to our State bring with them a wealth of expertise, skills, and knowledge from their home countries. There should be clear pathways for them to obtain their license or registration to own an early care and education program.
- State Early Childhood Advisory Council (March 1, 2023): The inability of people without an SSN to become a licensed and/or registered program was raised as an equity issue.

To this end, MSDE, in consultation with its legal counsel, is proposing revisions to COMAR to eliminate the barrier posed by SSN requirements. The regulation revisions are expected to bring more providers into licensed and regulated early care and education programs. MSDE will work to ensure the language, as drafted, matches any system requirements of MSDE's child care database system, the Child Care Automated Tracking System (CCATS).

Beyond changes to COMAR, it is also important to note that additional barriers to licensure may still exist outside the Department's control. Although SSNs are not required for criminal history background checks, certain local requirements for leasing or obtaining facilities may still be a challenge for some individuals. MSDE is committed to continuing to partner with stakeholders and doing what it can to address challenges.

Executive Summary

MSDE reviewed the regulations and made the proposed amendments and additions with two goals in mind. First, the proposed regulations are amended to be more inclusive of those who do not have an SSN but do have an ITIN. This proposed regulation amendment (that is, using the SSN and if the applicant does not have an SSN would use the ITIN) is in alignment with how the Child Support Enforcement Administration has interpreted § 10-119.3 of the Family Law Article, which is the primary basis for MSDE's Division of Early Childhood collecting the SSN in the first place.

Where appropriate, MSDE added clarifying language to ensure that the implementation of the licensing process includes obtaining either the SSN or ITIN from applicants. Second, MSDE considered the feedback from its fact-finding conversations with stakeholders to draft language that supports the goal of increasing the number of licensed or registered early care and education programs. MSDE is recommending amendments to the following regulations:

COMAR 13A.15.02.02 Family Child Care - Registration Application and Maintenance

- Clarifies that a family child care applicant shall provide the SSN, or if the applicant does not have an SSN, the applicant would provide the ITIN.

COMAR 13A.16.02.02 Child Care Centers - License Application and Maintenance

- Clarifies that a child care center applicant shall provide the SSN, or if the applicant does not have an SSN, the applicant would provide the ITIN.

COMAR 13A.17.02.02 Child Care—Letters of Compliance - Letters of Compliance Application and Maintenance

- Clarifies that a letter of compliance applicant shall provide the SSN, or if the applicant does not have an SSN, the applicant would provide the ITIN.

COMAR 13A.18.02.02 Large Family Child Care Homes - Registration Application and Maintenance

- Clarifies that a large family child care home applicant shall provide the SSN, or if the applicant does not have an SSN, the applicant would provide the ITIN.

MSDE incorporated as much feedback from stakeholders as possible into the proposed regulations.

Action

Request permission to publish amendments to COMAR 13A.15.02.02 *Family Child Care - Registration Application and Maintenance*, COMAR 13A.16.02.02 *Child Care Centers - License Application and Maintenance*, COMAR 13A.17.02.02 *Child Care—Letters of Compliance - Letters of Compliance Application and Maintenance*, and COMAR 13A.18.02.02 *Large Family Child Care Homes - Registration Application and Maintenance*.

Attachments

COMAR 13A.15.02.02

Family Child Care - Registration Application and Maintenance

COMAR 13A.16.02.02

Child Care Centers - License Application and Maintenance

COMAR 13A.17.02.02

Child Care—Letters of Compliance - Letters of Compliance Application and Maintenance

COMAR 13A.18.02.02

Large Family Child Care Homes - Registration Application and Maintenance

Title 13A STATE BOARD OF EDUCATION

Subtitle 15 FAMILY CHILD CARE

Chapter 02 Registration Application and Maintenance

Authority: Education Article, §§9.5-301—9.5-308, 9.5-310—9.5-312, 9.5-320, 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 Initial Registration.

A. (text unchanged)

B. Except as set forth at § C of this regulation, an applicant for an initial registration shall:

- (1) Complete an orientation to family child care regulations that is offered or approved by the office;
- (2) Submit a completed application form, supplied by the office, for initial registration;
- (3) Submit a medical evaluation for the applicant and each resident in the home that:
 - (a) Was completed within 12 months before the date of application for registration;
 - (b) Was conducted by a practicing physician, certified nurse practitioner, or registered physician's assistant;
 - (c) Includes verification that the individual:
 - (i) Is free of communicable tuberculosis, if indicated; and
 - (ii) If the applicant is capable of performing the duties of the position; and
 - (d) Is signed or verified by the individual who conducted the evaluation;

(4) Provide the Social Security Number of the applicant or, if the applicant does not have one, the Individual Taxpayer Identification Number of the applicant;

[(4)] (5) Apply for a federal and State criminal background check at a designated office in the State;

[(5)] (6) Ensure that an application for a federal and State criminal background check is made at a designated office in the State by each:

- (a) Resident in the home who is 18 years old or older;
- (b) Individual to serve as the provider's substitute; and
- (c) Employee or volunteer of the family child care home who is 18 years old or older;

[(6)] (7) Submit a signed and notarized release form giving the office permission to examine records of abuse and neglect of children and adults for information about:

- (a) The applicant;
- (b) Each resident in the home who is 18 years old or older;
- (c) Each individual designated as a substitute;
- (d) If applicable, an additional adult; and
- (e) If required by the office, any other individual with regular access to the child care area during the approved hours of operation;

[(7)] (8) As applicable, submit documentation that:

- (a) The home meets State and local fire, health, and zoning requirements; and
- (b) If the home is located in a condominium or residence which requires homeowners' association membership, the applicant has homeowner's liability insurance coverage as required by Maryland law;

[(8)] (9) Submit documentation that the applicable training requirements specified in COMAR 13A.15.06.02 have been met;

[(9)] (10) Submit documentation showing that the home has met all applicable lead-safe environment requirements set forth in COMAR 13A.15.05.02; and

[(10)] (11) If the family child care home is located in an apartment or at another property that is rented or leased by the applicant, submit written authorization from the lessor, owner, or landlord permitting child care to be provided at that location.

C. (text unchanged)

D. (text unchanged)

Title 13A STATE BOARD OF EDUCATION

Subtitle 16 Child Care Centers

Chapter 02 License Application and Maintenance

Authority: Education Article, §§9.5-401, 9.5-404—9.5-411, and 9.5-413—9.5-418; 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 Initial License.

A. An individual or organization not currently licensed and wanting to operate a child care center shall:

- (1) Complete an orientation to child care center licensing regulations that is offered or approved 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) Submit to the office at least 60 days before the proposed opening date a completed and signed application form, supplied by the office, that contains a statement of truthfulness and commitment to comply with this subtitle; **[and]**
- (4) Provide the Social Security Number of the applicant or, if the applicant does not have one, the Individual Taxpayer Identification Number of the applicant; and**
- [(4)] (5) Ensure that an application for a federal and State criminal background check is submitted for:**
 - (a) The applicant, if the applicant is an individual who will have frequent contact with children who are cared for in the facility;
 - (b) The director;
 - (c) Each employee, including substitutes and volunteers; and
 - (d) Each individual 18 years old or older living on the child care center premises.

B. (text unchanged)

C. (text unchanged)

Title 13A STATE BOARD OF EDUCATION

Subtitle 17 Child Care—Letters of Compliance

Chapter 02 Letter of Compliance Application and Maintenance

Authority: Education Article, §§9.5-401, 9.5-404, 9.5-405, 9.5-409, 905-411, and 9.5-413—9.5-418; 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 Initial Letter of Compliance.

A. Application Requirements. An individual or organization that does not currently hold a letter of compliance and wishes to operate a nursery school or child care program under this subtitle shall:

(1) File a notice of intent with the office before applying for permits in connection with construction or operation of a facility;

(2) File with the office at least 60 days before the proposed opening date a signed and completed application form supplied by the office; [and]

(3) Provide the Social Security Number of the applicant or, if the applicant does not have one, the Individual Taxpayer Identification Number of the applicant; and

[(3)] (4) Ensure that an application for a federal and State criminal background check is submitted for:

(a) The applicant, if the applicant is an individual who will have frequent contact with children who are cared for in the facility;

(b) The director;

(c) Each employee, including substitutes and volunteers; and

(d) Each individual 18 years old or older living on the child care facility premises.

B. (text unchanged)

C. (text unchanged)

Title 13A STATE BOARD OF EDUCATION

Subtitle 18 Large Family Child Care Homes

Chapter 02 Registration Application and Maintenance

Authority: Education Article, §§9.5-301—9.5-308, 9.5-310—9.5-312, 9.5-320, 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.); 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 Initial Registration.

A. (text unchanged)

B. (text unchanged)

C. Before the proposed opening date of the child care home, an applicant for initial registration shall:

(1) Provide the Social Security Number of the applicant or, if the applicant does not have one, the Individual Taxpayer Identification Number of the applicant;

[(1)] (2) Ensure that an application for a federal and State criminal background check is submitted for:

(a) The applicant;

(b) Each employee, including substitutes and volunteers; and

(c) Each resident in the home who is 18 years old or older; and

[(2)] (3) Submit to the office each item specified under § D of this regulation that was not submitted at the time the written application form was submitted.

D. (text unchanged)

E. (text unchanged)

F. (text unchanged)