

TO: Members of the State Board of Education

FROM: Carey M. Wright, Ed.D., Interim State Superintendent of Schools 

DATE: March 26, 2024

SUBJECT: Safe Sleep Proposed Regulations for:

COMAR 13A.15 *Family Child Care*
COMAR 13A.16 *Child Care Centers*
COMAR 13A.18 *Large Family Child Care Homes*
PERMISSION TO ADOPT

Purpose

The purpose of this item is to request permission to adopt amendments to COMAR 13A.15 *Family Child Care*, COMAR 13A.16 *Child Care Centers*, and COMAR 13A.18 *Large Family Child Care Homes* to ensure that early care and education programs are adhering to the latest research on safe sleep practices.

Standard 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.

Executive Summary

Proposed Regulation: Safe Sleep

The proposed regulations seek to align the requirements for safe sleep in child care settings with the latest research recommendations from the American Academy of Pediatrics (AAP). As an initial matter, these regulations clarify that cribs, portable cribs, and playpens used for child care must adhere to the current safety standards set by the U.S. Consumer Product Safety Commission. Additionally, these regulations mandate that sleep surfaces for children under 12 months old must be firm, flat, and non-inclined unless specifically authorized in writing by a physician or other licensed health care provider, which is in alignment with the AAP's guidance to reduce the risk of Sudden Infant Death Syndrome (SIDS).

While such authorizations have historically been given by physicians, the addition of “other licensed health care provider” to these regulations is intended to increase access for families so long as evaluation of a child for an inclined sleeping surface or positioning device is within the scope of the provider’s license. Furthermore, the use of weighted rest items, including blankets, sleepers, and swaddles, is prohibited for children under 12 months, consistent with the AAP's recommendations to create a safe sleep environment. These regulations collectively aim to ensure a safe and nurturing environment for children in child care programs while adhering to the latest research-backed guidelines from the AAP.

In addition, the proposed regulations provide guidance for the use of tummy time by adding it as an example of an age-appropriate activity that providers may include in their written schedule of daily activities. Tummy time, during short periods while a child under 12 months old is awake, is crucial for their development and well-being. This practice helps strengthen their neck and upper body muscles, promoting motor skill development. It also reduces the risk of positional plagiocephaly (flat head syndrome) by varying their head's position. Moreover, tummy time encourages exploration and interaction with their surroundings, supporting cognitive and sensory development. Overall, incorporating brief tummy time sessions into a baby's awake time fosters healthy physical and cognitive growth during their early months.

Stakeholder Engagement

MSDE met with the Office of Child Care (OCC) Advisory Council to discuss this proposed regulation and receive feedback. Stakeholders were consulted during an August OCC Advisory Council meeting and were supportive of the proposed amendments.

- The OCC Advisory Council is a public body, created by statute, that is responsible for providing guidance and recommendations related to child care services and regulations in Maryland. The Council serves as an advisory body to MSDE, offering insights and expertise on matters concerning early childhood education and child care programs. Its primary focus is to ensure the well-being, safety, and quality of child care services within the State, making recommendations for policy changes and improvements in the child care system as needed.

During the public comment period, which was held from January 12, 2024, to February 12, 2024, MSDE received one comment that suggested clarity around the permissibility of swaddling.

- Specifically, the commenter pointed out that, if the proposed language prohibiting weighted rest items, including swaddles, in the Rest Furnishings regulation was read apart from the general prohibition on swaddles in the Rest Time Safety regulation, it could be wrongly interpreted to mean that a swaddle is permitted so long as it is not weighted.
- In response, MSDE moved the proposed language from the Rest Furnishings regulation to the Rest Time Safety regulation, so that it is read in proper context. To be clear, the regulations generally prohibit swaddling, regardless of whether the swaddle is weighted. Moving the proposed text for clarity on this point is not a substantive change, and MSDE requests final adoption of these regulations as revised.

Action

Request that the State Board grant permission to adopt amendments to COMAR 13A.15 *Family Child Care*, COMAR 13A.16 *Child Care Centers*, and COMAR 13A.18 *Large Family Child Care Homes* regarding safe sleep practices.

Attachments

COMAR 13A.15.05.06 *Rest Furnishings*

COMAR 13A.15.09.01 *Activities*

COMAR 13A.15.10.06 *Rest Time Safety*

COMAR 13A.16.09.01 *Schedule of Daily Activities for All Children*

COMAR 13A.16.09.04 *Rest Furnishings*

COMAR 13A.16.10.05 *Rest Time Safety*

COMAR 13A.18.09.01 *Schedule of Daily Activities for All Children*

COMAR 13A.18.09.04 *Rest Furnishings*

COMAR 13A.18.10.05 *Rest Time Safety*

Title 13A STATE BOARD OF EDUCATION

Subtitle 15 FAMILY CHILD CARE

13A.15.05 Home Environment and Equipment

Authority: Education Article, §§9.5-301—9.5-308, 9.5-310—9.5-312, 9.5-320, and 9.5-321;
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)

.06 Rest Furnishings.

A.—D. (text unchanged)

E. Each crib, portable crib, and playpen that is used for child care shall meet the **current** standards of the U.S. Consumer Product Safety Commission.

F. Each sleep surface used for a child under 12 months old shall be firm, flat, and non-inclined, unless the need for an incline is specified in writing by the child's physician or other licensed health care provider.

[F.] G.—[H.] I. (text unchanged)

13A.15.09 Program Requirements

Authority: Family Law Article, §§5-550, 5-551, 5-557.1, and 5-560; Human Services Article, §1-202; State Government Article, §10-617;
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.)

.01 Activities.

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

(1) (text unchanged)

(2) Are appropriate to the age, needs, and capabilities of the individual **[child;] child based on the current recommendations of the American Academy of Pediatrics, such as short periods of tummy time, under adult supervision, while awake for a child under 12 months old;**

(3)—(7) (text unchanged)

B. (text unchanged)

13A.15.10 Child Safety

Authority: Education Article, §§9.5-301—9.5-308, 9.5-310—9.5-312, 9.5-320, and 9.5-321;
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)

.06 Rest Time Safety.

A. Unless specified otherwise in writing by the child's **[physician,] physician or other licensed health care provider,** a child who:

(1)—(2) (text unchanged)

B. 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,] physician or other licensed health care provider,** an object or device, including, but not limited to, a strap, wedge, roll, or swaddling, that restricts movement may not be used with a child in a crib, portable crib, playpen, cot, bed, mat, or other rest furnishing.

C. Weighted rest items, including but not limited to blankets, sleepers, and swaddles, may not be used for a child under 12 months old.

Subtitle 16 CHILD CARE CENTERS

13A.16.09 Program Requirements

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)

.01 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) (text unchanged)

(2) Are appropriate to the age, needs, and capabilities of the **[child;]** *child based on the current recommendations of the American Academy of Pediatrics, such as short periods of tummy time, under adult supervision, while awake for a child under 12 months old;*

(3)—(7) (text unchanged)

B.—C. (text unchanged)

.04 Rest Furnishings.

A.—B. (text unchanged)

C. Each crib shall meet the **current** standards of the U.S. Consumer Product Safety Commission.

D.—E. (text unchanged)

F. *Each sleep surface used for a child under 12 months old shall be firm, flat, and non-inclined, unless the need for an incline is specified in writing by the child's physician or other licensed health care provider.*

[F.] G.—[G.] H. (text unchanged)

13A.16.10 Safety

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)

.05 Rest Time Safety.

A. Unless specified otherwise in writing by the child's **[physician,]** *physician or other licensed health care provider,* a child who:

(1)—(2) (text unchanged)

B. Unless the need for a positioning device is specified in writing by **[a]** *the* child's **[physician,]** *physician or other licensed health care provider,* a restricting device of any **[type]** *type, including swaddling,* may not be applied to a resting child.

C. *Weighted rest items, including but not limited to blankets, sleepers, and swaddles, may not be used for a child under 12 months old.*

Subtitle 18 LARGE FAMILY CHILD CARE HOMES

13A.18.09 Program Requirements

Authority: Education Article, §§9.5-301—9.5-308, 9.5-310—9.5-312, 9.5-320, and 9.5-321;
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)

.01 Schedule of Daily Activities for All Children.

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

(1) (text unchanged)

(2) Are appropriate to the age, needs, and capabilities of the individual **[child;]** *child based on the current recommendations of the American Academy of Pediatrics, such as short periods of tummy time, under adult supervision, while awake for a child under 12 months old;*

(3)—(7) (text unchanged)

B.—C. (text unchanged)

.04 Rest Furnishings.

A.—B. (text unchanged)

C. Each crib, portable crib, and playpen shall meet the **current** standards of the U.S. Consumer Product Safety Commission.

D.—E. (text unchanged)

F. Each sleep surface used for a child under 12 months old shall be firm, flat, and non-inclined, unless the need for an incline is specified in writing by the child's physician or other licensed health care provider.

[F.] G.—[G.] H. (text unchanged)

13A.18.10 Safety

Authority: Education Article, §§9.5-301—9.5-308, 9.5-310—9.5-312, 9.5-320, and 9.5-321;
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)

.05 Rest Time Safety.

A. Unless specified otherwise in writing by the child's **[physician,]** *physician or other licensed health care provider,* a child who:

(1)—(2) (text unchanged)

B. Unless the need for a positioning device is specified in writing by **[a]** *the* child's **[physician,]** *physician or other licensed health care provider,* a restricting device of any **[type]** *type, including swaddling,* may not be applied to a resting child.

C. Weighted rest items, including but not limited to blankets, sleepers, and swaddles, may not be used for a child under 12 months old.

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MEMORANDUM

TO: Clarence Crawford, President, State Board of Education
Carey M. Wright, Interim State Superintendent of Schools
Shayna Cook, Assistant State Superintendent, Division of Early Childhood

FROM: Alan J. Dunklow
Assistant Attorney General

DATE: March 6, 2024

RE: Certification of Non-Substantive Changes in Language
COMAR 13A.15.05.06 & COMAR 13A.15.10.06
COMAR 13A.16.09.04 & COMAR 13A.16.10.05
COMAR 13A.18.09.04 & COMAR 13A.18.10.05

On September 26, 2023, the State Board of Education published amendments to COMAR 13A.15, 13A.16, and 13A.18 for public comment. After receiving public comment, the Maryland State Department of Education decided to make one non-substantive change to those amendments. Consistent with § 10-113 of the State Government Article, Annotated Code of Maryland, I certify that the regulations as revised by the Department after public comment do not differ substantively from the proposed text. The revisions are non-substantive because they do not change the position of any group affected by the regulation, decrease any benefits, or increase administrative burdens. A description of the nature of the change and the basis for this conclusion follows.

The proposed text that had been added to the Rest Furnishings regulation in each subtitle—prohibiting weighted rest items, including but not limited to blankets, sleepers, and swaddles, for children under 12 months old—has been moved to the Rest Time Safety regulation in each subtitle. The basis for the change is that, as one commenter observed, if the language on weighted swaddles in the Rest Furnishings regulation is read apart from the prohibition on swaddling in the Rest Time

Safety regulation, it could be wrongly interpreted to mean that a swaddle is permitted so long as it is not weighted. Moving the proposed text from the Rest Furnishings regulation to the Rest Time Safety regulation in each subtitle avoids any such confusion. Swaddling is generally prohibited for children under 12 months old regardless of whether the swaddle is weighted.

This change could reasonably have been anticipated by participants in rulemaking, given that the proposed text has not changed (only the location of the proposed text) and both the Rest Furnishings and Rest Time Safety regulations in each subtitle were undergoing revisions at the same time to align with the latest recommendations on safe sleep from the American Academy of Pediatrics. This change is non-substantive because the proposed text already prohibited weighted rest items and the pre-existing text already prohibited swaddling generally. Merely changing the location of the proposed text for clarity does not change the position of any group affected by the regulation, decrease any benefits, or increase administrative burdens.