

# Small Entity Compliance Guide

## Child Care Center Regulations COMAR 13A.16

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## ***Introduction***

This 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 child care center regulations found at the Code of Maryland Regulations (COMAR) 13A.16 is to clarify certain requirements pertaining to the licensure and operation of child care centers and establish requirements for criminal background checks, swimming pool security, the 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 “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.16 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.16.06.03A; 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.16.06.03A, has been assessed by the office as suitable for employment pursuant to COMAR 13A.16.06.03B; 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 center, the individual has been assessed by the office as being suitable for employment, pursuant to COMAR 13A.16.06.03B; or
  - (ii) An independent contractor, the individual has not been identified as responsible for the abuse or neglect of a child.”

See COMAR 13A.16.01.02B(57).

## ***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 center whether they are paid or unpaid, unless they meet the definition of an independent contractor. (COMAR 13A.16.01.02B(25)(a).).
- Prohibit a child care center 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 until they have “successfully passed” the Agency’s review of the individual’s abuse and neglect clearances and both federal and State criminal background checks. (COMAR 13A.16.02.01I.).
- Require that volunteers and substitutes, whether paid or not paid, are required to 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 residents), are required to apply for federal and State criminal background checks. (COMAR 13A.16.02.02A(4).).
- Require that all employees, including substitutes and volunteers, submit signed and notarized Release of Information forms to enable the Agency to review the individual’s child and adult abuse and neglect records. (COMAR 13A.16.02.02B(1)(b).).
- Require that individuals, including, but not limited to, the child care center operator, the director, staff members, substitutes, and volunteers of the proposed child care center who reside or have resided in another state other than Maryland within 5 years prior to the date of application for child care, 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.16.02.02C.).
- Provide that the Agency may deny an application for a child care center license or continuing license if an applicant/child care center operator 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.16.02.06A(2).).
- Require that a child care center 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 the Health General Article, §18-106, Annotated Code of Maryland, and COMAR 10.11.04. (COMAR 13A.16.03.04E.).

- Require that a child care center located in a residential rental property constructed before 1978, rather than 1950 as required in previous child care center regulations, submit a copy of the current lead risk reduction or lead-free certificate to the Agency. (COMAR 13A.16.05.05B.).
- Revise the time period for when a child care center 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.16.03.06A(1)(c).).
- Amend a child care center 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 regarding an individual living on the child care premises. Additionally, within 5 days of an individual, who is 18 years old or older, moving onto the child care center premises, the child care center operator is required to submit to the Agency a signed and notarized Release of Information form to enable the Agency to examine records of abuse and neglect of children and adults. Additionally, within this same 5 day time frame, the child care center 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.16.04.06F.).
- Prohibit an operator from advertising a child care center unless the child care center is licensed. A licensed child care center advertisement must specify that the child care center is licensed and include the child care center's license number given to the child care center by the Agency. (COMAR 13A.16.03.09.).
- Require that a child care center that has a pool on the child care center's premises must make the pool inaccessible to children. To meet this requirement, a child care center 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.16.05.12F.).

- Require that a child care center may not allow children to use above ground swimming pools on the child care center’s premises. A child care center must further make above ground pools inaccessible to children. Child care children are also prohibited from using fill and drain molded plastic or inflatable pools. (COMAR 13A.16.05.13B,C.).
- Require that employees and staff members have medical evaluations completed every five (5) years which would be measured from the date of the prior medical evaluation date. (COMAR 13A.16.06.04A(3),(4).).
- Amend the training requirements to reflect that effective January 1, 2020, directors in all child care centers, must, regardless of the child care center’s approved age groups, have completed health and safety training within 90 days of employment. Directors are also required to document that each staff member at the child care center has completed the health and safety training by the end of each 12 month period. This will be reviewed each calendar year. (COMAR 13A.16.06.05B(5), C(3).).
- Amend the training requirements to reflect that effective January 1, 2020, child care teachers, assistant child care teachers, and aides must 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.16.06.09A(5); COMAR 13A.16.06.10A(4); COMAR 13A.16.06.11A(4); COMAR 13A.16.06.12A(3).).
- Prohibit a child care center from using an individual as a substitute until it has received notification from the Agency that the Agency has approved the child care center’s use of that substitute. The Agency will notify the child care center of its decision whether to approve or disapprove the substitute upon its evaluation of the substitute’s federal and State criminal background checks and records of abuse and neglect of children and adults. (COMAR 13A.16.06.13F.).
- Amend the supervision regulations regarding group size and staffing to specify the staff/child ratio and maximum group size requirements applicable to groups of children less than 2 years of age. To meet this requirement, the following is required:

<i>Child Ages</i>	<i>Staff/Child Ratio</i>	<i>Maximum Group Size</i>
<i>Infants</i>	<i>1 to 3</i>	<i>6</i>

<i>Toddlers</i>	<i>1 to 3</i>	<i>9</i>
<i>Infants and toddlers, with 1 or 2 infants in the group</i>	<i>1 to 3</i>	<i>9</i>
<i>Infants and toddlers, with 3 or more infants in the group</i>	<i>1 to 3</i>	<i>6</i>

(COMAR 13A.16.08.03C(1)).

- Amend the supervision during transportation regulations to reflect that when a child care center 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 child and adult abuse and neglect records and federal and State criminal background checks. (COMAR 13A.16.08.06A.).
- 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.16.16.03B.).
- Provide that the Agency may issue warnings to a child care center if following an investigation of a complaint or an inspection, the child care center is found to be in violation of COMAR 13A.16 regulations that do not pose an immediate threat to the health, safety, and welfare of a child in the child care center. The warning will include the COMAR 13A.16 regulatory violation; the time period for correcting the COMAR 13A.16 regulatory violation; and notice that the child care center’s failure to correct the COMAR 13A.16 regulatory violations may result in further action against the child care center’s license, including the imposition of sanctions; suspension of the child care center’s license; or revocation of the child care center’s license. (COMAR 13A.16.17.03.).
- Provide that the Agency may revoke a center’s child care center license if the operator misrepresented or offered any forms or reports to the Agency that contain false or altered information, regardless of the child care operator’s intent to submit such false or altered documents, to the Agency. (COMAR 13A.16.17.07A(2).)
- Provide that the Agency may revoke a child care center’s license if following an evaluation, the Agency determines that the child care center operator is unable to provide for the welfare of children. (COMAR 13A.16.17.07A(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 an unlicensed child care center. Additionally, the administrative hearing regulations further grants appeal rights to individuals who have been issued civil citations for providing or advertising an unlicensed child care center without a valid child care center license. (COMAR 13A.16.17.08B; COMAR 13A.16.18.01A; COMAR 13A.16.18.03A. ).

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

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

### ***Entities Subject to the Regulations***

The Agency is responsible for the licensure and oversight of child care facilities, including, but not limited to, child care centers. The regulations pertaining to the licensure of child care centers can be found at COMAR 13A.16. For Fiscal Year 2019, there were 2455 existing child care centers 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 centers for the cost of staff fingerprinting. While these child care centers/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 State utilized MSDE's Learning Management System to develop and deliver the online Health and Safety training at no cost to child care providers. The Agency did not incur any direct costs for the development of the training. For those child care centers that 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 centers that hold a Maryland Child Care Credential at Level 2 or higher. Child care centers 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 child care center employees and staff to take the training anytime. The new training is built on a better platform that is easy to maneuver and will test child care center employees and staff as they proceed through the training. This will also be available for no cost to child care centers or their staff.

Medical Evaluations: Individuals working in child care centers 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 112 pool owners who are licensed child care centers will 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 centers 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 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 child care center regulations. Please direct questions by telephone to (410) 767- 0120.