

Title 13A STATE BOARD OF EDUCATION

Subtitle 15 FAMILY CHILD CARE

Notice of Proposed Action

[19-193-P]

The Maryland State Board of Education proposes to:

(1) Amend Regulation .02 under **COMAR 13A.15.01 Scope and Definitions**;

(2) Amend Regulations .01—,03, .07, and .08 under **COMAR 13A.15.02 Registration Application and Maintenance**;

(3) Amend Regulations .02—.05 under **COMAR 13A.15.03 Management and Administration**;

(4) Amend Regulation .04 under **COMAR 13A.15.04 Operational Requirements**;

(5) Amend Regulations .02, .05, and .06 under **COMAR 13A.15.05 Home Environment and Equipment**;

(6) Amend Regulations .02—.05 under **COMAR 13A.15.06 Provider Requirements**;

(7) Amend Regulation .04 under **COMAR 13A.15.07 Child Protection**;

(8) Amend Regulation .01, repeal existing Regulation .03, and recodify existing Regulations .04 and .05 to be Regulations .03 and .04 under **COMAR 13A.15.08 Child Supervision**;

(9) Amend Regulations .01, .04, and .06 under **COMAR 13A.15.10 Child Safety**;

(10) Amend Regulations .03, .04, and .06 under **COMAR 13A.15.11 Health**;

(11) Amend Regulation .01 under **COMAR 13A.15.12 Nutrition**;

(12) Amend Regulations .02 and .05—.09 under **COMAR 13A.15.13 Inspections, Complaints, and Enforcement**;

(13) Amend Regulations .01, .03, and .04 under **COMAR 13A.15.14 Administrative Hearings**; and

(14) Amend Regulations .03 and .04 under **COMAR 13A.15.15 Public Access to Licensing Records**.

Also, at this time, the Maryland State Board of Education is withdrawing the proposal to amend **COMAR 13A.15 Family Child Care** that was published in 46:4 Md. R. 227—237 (February 15, 2019).

This action was considered by the Maryland State Board of Education at its April 23, 2019, meeting.

Statement of Purpose

The purpose of this action is to clarify certain requirements pertaining to the registration and operation of family child care homes 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 provided.

Comparison to Federal Standards

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

Estimate of Economic Impact

I. Summary of Economic Impact. The purpose of the proposed amendments is to implement the requirements of the Child Care and Development Block Grant 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 four subtitles of 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. The State reimbursed the cost to child care providers for the cost of fingerprinting to meet the new requirement.

<http://earlychildhood.marylandpublicschools.org/fingerprinting>

II. Types of Economic Impact.	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(E+)	Actual \$1,000,000
B. On other State agencies:	(R+)	Approximately \$10,542
C. On local governments:	NONE	
	Benefit (+) Cost (-)	
	Magnitude	
D. On regulated industries or trade groups:		
(1) Family child care home cost of fingerprinting	(+)	Actual \$1,000,000
(2) Swimming pool security	(+)	Approximately \$1,000,000
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. Background Clearances: The State has processed fingerprint reimbursement requests for 1953 family child care providers for a total of \$1,007,860 in obligations. The State has provided a one-time reimbursement for fingerprinting costs to family child care providers.

B. Maryland Department of Public Safety and Correctional Services (DPSCS) Criminal Justice Information System is allowed to keep \$2 from the FBI background check. The State estimates there are approximately 5,271 providers going through the fingerprinting process. Therefore, revenue to the DPSCS is estimated to be \$10,542 annually.

D(1). Background Clearances: Family child care providers and staff will incur up-front costs for meeting fingerprinting requirements. Cost for fingerprinting ranges from \$35 to \$75 per person. The State reimbursed the cost of fingerprinting for providers meeting the new requirement. If the provider does not request reimbursement from the State, they would incur the cost of the fingerprinting.

D(2). Swimming Pool Security: Family child care providers will be required to have secure, safe fencing around any pool in their home. Each fence would cost an estimated \$3,000 to \$5,000 depending on the size of the pool and the outdoor space. Using estimates from January 2018 regional office survey, 244 pool owners (family child care providers) would spend an average of \$4,000 per fence for a total of \$975,000 to bring all facilities into compliance. This is a one-time-only cost. All new applicants would need to meet this requirement prior to becoming licensed.

Economic Impact on Small Businesses

The proposed action has a meaningful economic impact on small businesses. An analysis of this economic impact follows.

Intended Beneficiaries

Background Clearances/Fingerprinting: To comply with the Child Care and Development Block Grant (CCDBG) Act referenced in Part A, the State has provided reimbursement to family child care homes for the cost of staff fingerprinting. While these facilities/staff incurred the up-front cost for fingerprinting, the State reimbursed that cost, thereby alleviating the economic impact to child care facilities who request reimbursement.

Health and Safety Training: To comply with the CCDBG Act referenced in Part A, the State utilized the Maryland State Department of Education’s Learning Management System to develop and deliver the online Health and Safety training at no cost to child care providers. The State did not incur any direct costs for the development of the training. For those providers 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 providers who hold a Maryland Child Care Credential at Level 2 or higher. Family child care providers 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. MSDE is currently having a new online health and 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 providers as they proceed through the training. This will also be available at no cost to providers or their staff.

Intended Beneficiaries: Households

Families with children enrolled in a registered family child care home will benefit because their children will receive care and education services from staff and administration who have met higher standards for criminal background checks and health and safety training and whose facilities will meet requirements for protecting children from swimming pool dangers.

Intended Beneficiaries: Businesses

The amendments are not expected to have an impact on any businesses beyond the child care businesses that comply with the new requirements.

Other Direct or Indirect Impacts: Adverse

Background clearances: Facilities who incur the cost of fingerprinting (\$35—\$75 per person) and choose not to request reimbursement did not benefit from the alleviation of those costs by the State.

Swimming Pool Security: An estimated 244 pool owners who are registered family child care home programs 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 family child care home registration would need to meet this requirement prior to becoming licensed. An adverse impact could be that family child care providers have to raise their fees to help cover the cost.

Other Direct or Indirect Impacts: Positive

Improving the quality of child care and early education in Maryland is expected to enhance the overall reputation of Maryland’s early care and education industry, and this may help attract businesses to Maryland. Higher-quality child care and early education services for children may result in those children more effectively developing the skills they will need to succeed in school and in life and may positively affect the State workforce in the years to come. Maryland’s compliance with the federal CCDBG Act ensures that federal funding continues, which in turn supports working families in Maryland through the Child Care Subsidy

program and other quality initiatives to improve long-term benefits to children.

Long-Term Impacts

No long-term effects on Maryland small businesses are anticipated which may differ from, compound, mitigate, or offset the initial effects described above.

Estimates of Economic Impact

(1) Cost of providing goods and services:

Some family child care providers who incur costs related to the amendments may charge higher fees to families for their services. Because child care fees are determined independently by each provider, the overall change, if any, in those expenses cannot be determined.

(2) Effect on the workforce:

Families in Maryland’s workforce with young children and school-age children using family child care services will have the ability to choose from registered facilities that are meeting higher standards for: criminal background checks, health and safety training, and, if applicable, fencing requirements for swimming pools. Access to this information will enable families to make informed decisions when choosing a program for their children; and may be seen as a benefit for business growth in Maryland.

(3) Capital investment, taxation, competition, and economic development:

These proposals are not expected to have any direct effect on capital investment, taxation, competition, or economic development. However, as noted above, they may help provide a more attractive environment for business growth.

(4) Consumer choice:

Consumer choice is expected to be affected positively by making higher quality child care services available to families seeking those services.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Tara Bartosz, Assistant to the Director, Office of Child Care, Division of Early Childhood, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, or call 410-767-7806 (TTY 410-333-6442), or email to earlychildhoodregs.msde@maryland.gov, or fax to 410-333-6226. Comments will be accepted through November 12, 2019. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by the State Board of Education during a public meeting to be held on December 3, 2019, at 9 a.m., at 200 West Baltimore Street, Baltimore, MD 21201.

13A.15.01 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; [Family Law Article, §§5-550, 5-557.1 and 5-560;] General Provisions Article, §4-333; Human Services Article, §1-202; [State Government Article, §10-617; Article 88A, §6(b);] 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)—(12) (text unchanged)

(13) Employee.
 (a) “Employee” means an individual who [for compensation] is employed to work in a family child care home and who:

(i)—(ii) (text unchanged)

(b) “Employee” includes a [paid] substitute.

(c) (text unchanged)

(d) For the purpose of applying the criminal background check requirements and the child and adult abuse and neglect record review requirements set forth in this subtitle, “employee” includes an individual who:

[(i) Is compensated by the provider or a resident to perform a service at the family child care home;]

(i) Meets the definition of an employee as set forth in this subsection; and

[(ii) Has access to children in care; and]

[(iii)] (ii) (text unchanged)

(14) “Family child care” has the same meaning as family [day] child care as defined in [Family Law Article, §5-501(e)] *Education Article, §9.5-301(d)*, Annotated Code of Maryland, and means the care given to a child younger than 13 years old or to a developmentally disabled person younger than 21 years old in place of parental care for less than 24 hours a day, in a residence other than the child’s residence, for which the provider is paid in cash or in kind.

(15)—(17) (text unchanged)

(18) “Identified as responsible for child abuse or neglect” means being determined by a local department of *social services* or other state agency to be responsible for indicated child abuse or neglect, or awaiting the local department’s appeal hearing after the determination.

(19)—(19-1) (text unchanged)

(20) “Injurious treatment” means:

(a) [Deliberate infliction in any manner of any type of physical pain] *Physical discipline*, including but not limited to spanking, hitting, shaking, or any other means of physical discipline, or enforcement of acts which result in physical pain;

(b) (text unchanged)

(c) Subjecting a child to verbal abuse intended to cause mental distress, such as shouting, cursing, shaming, *threatening*, or ridiculing; and

(d) (text unchanged)

(21)—(25) (text unchanged)

(26) *Potentially Hazardous Food*.

(a) “Potentially hazardous food” means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients, including synthetic ingredients capable of supporting rapid and progressive growth of infectious, toxigenic microorganisms.

(b) “Potentially hazardous food” does not include clean, whole, uncracked, odor-free shell eggs.

[(26)] (27)—[(35)] (36) (text unchanged)

13A.15.02 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*; [Family Law Article, §§5-550, 5-551, 5-557.1, and 5-560;] *General Provisions Article, §4-333*; 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.); *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 Registration—General Requirements.

A.—E. (text unchanged)

F. Except as provided under §G of this regulation, a residence approved for use under a family child care registration may not also be used to operate a:

(1) (text unchanged)

(2) Child care program that is subject to the requirements of COMAR 13A.16 [or], 13A.17, or 13A.18.

G—H. (text unchanged)

.02 Initial Registration.

A. (text unchanged)

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

(1)—(2) (text unchanged)

(3) Submit a medical evaluation for the applicant and each resident in the home that:

(a) (text unchanged)

(b) Was conducted by a practicing physician, certified nurse practitioner, or registered physician’s assistant; [and]

(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*

[(c)] (d) (text unchanged)

(4) (text unchanged)

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

(a) (text unchanged)

(b) Individual [paid] to serve as the provider’s substitute; and

(c) [Paid employee] *Employee or volunteer* of the family child care home who is [14] 18 years old or older;

(6)—(7) (text unchanged)

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

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

(10) *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. *Non-Maryland State Criminal Background Check. If an individual subject to the requirements of §B(4) or (5) of this regulation currently resides or has resided in a state other than Maryland within 5 years before the date of application for registration, the individual shall:*

(1) *Apply for a state criminal background check to be performed by a duly authorized entity within that state; and*

(2) Request the non-Maryland state entity performing the criminal background check to transmit the result of that background check directly to the Agency.

[C.] D. (text unchanged)

.03 Continuing Registration.

A. Application for Continuing Registration. To obtain a continuing registration, a provider shall submit to the office before expiration of the initial registration:

(1)—(3) (text unchanged)

(4) A completed and notarized release of information form that permits the office to examine records of abuse and neglect of children and adults for:

(a)—(d) (text unchanged)

(e) If required by the office, any other individual with regular access to the child care area during the approved hours of operation, including volunteers.

(5) Documentation that the family child care home has passed the most recent fire inspection required by the local fire authority having jurisdiction; [and]

(6) If the family child care home is located in an apartment or at another property that is rented or leased by the applicant, written authorization from the lessor, owner, or landlord permitting the provider to continue providing child care in the home; and

[(6)] (7) (text unchanged)

B. Maintenance of Continuing Registration.

(1) (text unchanged)

(2) By the end of each 24-month period after the date of issuance of a continuing registration, the provider shall submit to the office the items specified in §A(3)—[(6)] (7) of this regulation.

.07 Denial of a Registration Application.

A. The office may deny a certificate of registration if:

(1) (text unchanged)

(2) An evaluation of the application or documents required by the office reveals that the applicant, regardless of intent, reported false information;

(3)—(6) (text unchanged)

(7) An evaluation of the medical report or other information about the applicant, a coprovider, or a resident indicates that the:

(a) Physical or mental health of the applicant, coprovider, or resident may pose a risk to children; [or]

(b) Applicant or coprovider is unable to care for children; or

(c) Applicant, regardless of intent, submitted false or altered medical documentation for the applicant, resident, coprovider, or additional adult for consideration by the office;

(8) In addition to the requirements set forth at §B of this regulation, an evaluation of the criminal record of the applicant, a [paid] coprovider, an additional adult, a [paid] substitute, a volunteer, or a resident in the home reveals that the individual has a criminal conviction, probation before judgment disposition, or not criminally responsible disposition, or is awaiting a hearing for a criminal charge that indicates other behavior harmful to children;

(9) An evaluation of the information provided in records of abuse and neglect of children and adults reveals that the applicant, a coprovider, an additional adult, a substitute, a volunteer, or a resident is identified as responsible for abuse or neglect of children or adults, or is currently under investigation for alleged acts of abuse or neglect of children or adults;

(10)—(11) (text unchanged)

B. The office shall deny a certificate of registration [to] if an applicant [who] or resident has received a conviction, a probation before judgment disposition, a not criminally responsible disposition, or a pending charge for the commission or attempted commission of:

(1)—(2) (text unchanged)

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

(4)—(11) (text unchanged)

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

(1) Murder;

(2) Spousal abuse; or

(3) Arson.

D. The office shall deny a certificate of registration upon notification that the applicant is in noncompliance with Child Support Enforcement requirements pursuant to Family Article Law, §10-119.3, Annotated Code of Maryland.

[C.] E. (text unchanged)

[D.] F. If an evaluation of criminal records or records of abuse and neglect of children or adults reveals that a coprovider, substitute, volunteer, or [an] additional adult designated by the applicant may pose a risk to children in care, the office, instead of denying the registration certificate, may require the provider to designate another coprovider, substitute, volunteer, or additional adult.

[E.] G. Denial Before Complete Application.

(1) The office may deny an application for registration at any point during the application process if, following evaluation of information received to that point, the office determines that a basis for denial exists as set forth in §A [or], B, C, or D of this regulation.

(2) (text unchanged)

.08 Voluntary Surrender of Registration.

A. A provider may voluntarily surrender a family child care registration at any time by notifying the office in writing.

B. (text unchanged)

13A.15.03 Management and Administration

Authority: Education Article, §§9.5-301—9.5-308, 9.5-310—9.5-312, 9.5-320, and 9.5-321; [Family Law Article, §§5-550, 5-551, 5-557.1, and 5-560;] General Provisions Article, §4-333; 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.); 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 Admission to Care.

A. (text unchanged)

B. If a child is younger than 6 years old at the time of admission to the home, the provider may not allow the child to remain in care at the home if the parent does not, within 30 days after the child's admission, submit evidence to the provider on a form supplied or approved by the office that the child has received an appropriate lead screening or test in accordance with applicable State or local requirements.

C. (text unchanged)

D. Temporary Admission.

(1) (text unchanged)

(2) For a child to be temporarily admitted or retained in care, the parent or guardian shall present evidence of the child's appointment with a health care provider or local health department to:

(a) Receive a medical evaluation to include, if applicable, a lead screening or test;

(b)—(d) (text unchanged)

(3)—(4) (text unchanged)

.03 Program Records.

The provider shall:

A.—B. (text unchanged)

C. Maintain a record of each day on which a substitute provides care [for more than 2 hours];

D. If applicable, maintain a record of each volunteer in the family child care program that includes:

- (1) (text unchanged)
- (2) If [the] a volunteer is present at the home [more than once per week]:

- (a) (text unchanged)

- (b) [A] *And if present more than once per week, a medical evaluation of the volunteer that was completed within 12 months before the start of the volunteer's duties;*

E. Document that, on or before the date of a child's admission to care, the child's parent was given, or was advised how to obtain, information that is supplied by the office concerning:

- (1) (text unchanged)
- (2) How to file a complaint with the office against a child care provider[.];

F. Record the date and time of each fire evacuation drill and emergency and disaster drill required by this subtitle; [and]

G. *Document that the health and safety training, specified at COMAR 13A.15.06.02A(4) and B(1), was completed by the end of each 12-month period, measured from the date of initial registration; and*

[G.] H. (text unchanged)

.04 Child Records.

- A. (text unchanged)
- [A-1.] B. (text unchanged)

[B.] C. During the period of a child's enrollment and for 2 years after the child's disenrollment, a provider shall maintain a file for each child that includes records of:

- (1) (text unchanged);
- (2) The child's health assessment, immunizations, and allergies, if any, to include:

- (a) [If the child is younger than 6 years old, evidence that the child has received an appropriate lead screening as] *As required by State or local law, evidence that the child has received[; and]:*

- (i) *An appropriate lead screening, if the child is younger than 6 years old and was born before January 1, 2015; or*

- (ii) *A lead test when the child is 12 months old and again when the child is 24 months old, regardless of where the child resides, if the child was born on or after January 1, 2015; and*

- (b) (text unchanged)

- (3)—(6) (text unchanged)

[C.] D. A medical evaluation and, if applicable, documentation of an appropriate lead screening *or test* that are transferred directly from another registered family child care home, a licensed child care center, or a public or nonpublic school in Maryland may be accepted as meeting the requirements of [§B(2)] §C(2) of this regulation.

.05 Notifications.

The provider or substitute shall:

- A.—C. (text unchanged)

D. Within 5 working days after an existing resident becomes 18 years old, or after there is a new resident in the home who is 18 years old or older:

- (1) Submit to the office a signed and notarized release form giving the office permission to examine records of abuse and neglect of children and adults for information about the resident *pursuant to COMAR 13A.15.02.02B(6); and*

- (2) Ensure that the resident applies for a federal and State criminal background check *pursuant to COMAR 13A.15.02.02B(5) and C;*

E. Within 15 working days after notifying the office of a new resident, submit to the office:

- (1) A medical report on the resident, on a form supplied or approved by the office, that is based on a medical evaluation completed within the previous 12 months; or

- (2) Evidence that a medical evaluation of the resident has been scheduled; [and]

F. When the provider plans a temporary absence of more than 2 hours, notify the parents of the children in care in advance that a substitute will be caring for the children during the provider's absence[.]; *and*

- G. (text unchanged)

13A.15.04 Operational Requirements

Authority: *Education Article, §§9.5-301—9.5-308, 9.5-310—9.5-312, 9.5-320, and 9.5-321; [Family Law Article, §§5-550, 5-557.1 and 5-560;] General Provisions Article, §4-333; Human Services Article, §1-202; [State Government Article, §10-617; Article 88A, §6(b);] 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)*

.04 Restriction of Operations.

- A. (text unchanged)

B. The office may base a restriction or reduction under §A of this regulation on any of the following factors:

- (1)—(5) (text unchanged)

- (6) Failure by a provider approved for a capacity of up to four children younger than 2 years old to meet the infant-toddler training requirement specified at COMAR [13A.15.06.02G] *13A.15.06.02E;* or

- (7) (text unchanged)

C. A provider may appeal a restriction or reduction pursuant to §A of this regulation by filing a request for hearing:

- (1) (text unchanged)

- (2) In the case of an emergency reduction in capacity, [within 72 hours of] *not later than 30 calendar days after the notification by the office of its decision to immediately reduce the number of children in 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; [Family Law Article, §§5-550, 5-551, 5-557.1, and 5-560;] General Provisions Article, §4-333; 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.); 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 Lead-Safe Environment.

- A. (text unchanged)

B. If the home is a residential rental property constructed before [1950] 1978, which is an affected property as defined in Environment Article, §6-801(b), Annotated Code of Maryland, the provider shall submit a copy of the current lead risk reduction or lead-free certificate.

- C.—D. (text unchanged)

.05 Outdoor Activity Area.

- A.—B. (text unchanged)

C. *Any pool on the premises of the facility shall be made inaccessible to children in care and have security features, including but not limited to a:*

- (1) *Fence that surrounds the pool at least 4 feet in height;*
 - (2) *Self-closing and self-latching mechanism on the gate, door, or access to the pool;*
 - (3) *Lock that is operable and secured; and*
 - (4) *Sensor or alarm in the pool and on the access door.*

.06 Rest Furnishings.

A.—G. (text unchanged)

H. *A child under 12 months who falls asleep in a furnishing other than a crib shall be immediately moved to an approved sleeping arrangement specified at §C(1) of this regulation.*

13A.15.06 Provider Requirements

Authority: *Education Article, §§9.5-301—9.5-308, 9.5-310—9.5-312, 9.5-320, and 9.5-321; [Family Law Article, §§5-550, 5-551, 5-557.1, and 5-560;] General Provisions Article, §4-333; 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.); 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 Training Requirements.

A. Preservice Training. An individual who applies for an initial registration shall:

(1) Hold a current certificate indicating successful completion of training in approved:

(a) (text unchanged)

(b) Cardiopulmonary resuscitation (CPR) through the American Heart Association, or a program with equivalent standards, appropriate for each age group approved for care in the home;

[(c) If requesting approval to provide care for children younger than 24 months old, present evidence of having successfully completed, within 5 years before the date of the request, approved training in Sudden Infant Death Syndrome; and]

(2) Provide documentation of having successfully completed:

(a) (text unchanged)

(b) The 90 clock hour course, or its approved equivalent, that satisfies the preservice training requirement for a child care teacher or child care center director under COMAR 13A.16.06.05B(4), [.09A(1)(b), or .10B(1)(a)] *COMAR 13A.16.06.09A(3), or COMAR 13A.16.06.10B(1)(a)*, as applicable;

(c)—(g) (text unchanged)

(3) Complete approved training on emergency and disaster planning; [and]

(4) *Effective January 1, 2020, complete approved basic health and safety training within 90 days of initial registration; and*

[(4)] (5) [If applying on or after January 1, 2016, complete] *Complete:*

(a)—(c) (text unchanged)

B. Continued Training. A provider shall successfully complete:

(1) *The health and safety training, as required by the office, by the end of each 12-month period measured each calendar year;*

[(1)] (2)—[(2)] (3) (text unchanged)

[C. Emergency and Disaster Planning Training.

(1) The office shall not approve an initial registration application unless the applicant has completed approved training on emergency and disaster planning.

(2) To maintain an initial registration or a continuing registration approved before July 1, 2010, a provider shall complete approved training on emergency and disaster planning as directed by the office, if the provider has not already completed that training.]

[D.] C.—[E.] D. (text unchanged)

[F. Sudden Infant Death Syndrome (SIDS) Training.

(1) The office may not approve a request by an applicant or a provider to provide care for children younger than 24 months old unless the applicant or provider has met the requirements of §A(1)(c) of this regulation.

(2) SIDS training may not be used to satisfy the continued training requirements set forth in §B of this regulation.]

[G.] E. Infant-Toddler Training.

(1) [Effective July 1, 2010, the] *The office may not approve a request by an applicant or a provider for an infant-toddler capacity of more than two children younger than 2 years old unless the individual has completed 3 semester hours or 45 clock hours of approved training, or the equivalent, related [exclusively] to the care of children younger than 2 years old.*

[(2) A provider approved before July 1, 2010, for an infant-toddler capacity of more than two children younger than 2 years old shall complete, by December 31, 2010, 3 semester hours or 45 clock hours of approved training, or the equivalent, related exclusively to the care of children younger than 2 years old in order to maintain that approval.]

(2) *Sudden Infant Death Syndrome (SIDS) Training.*

(a) *The office may not approve a request by an applicant or a provider to provide care for a child younger than 24 months old unless the applicant or provider presents evidence of having successfully completed, within 5 years before the date of the request, approved SIDS training.*

(b) *SIDS training may not be used to satisfy the continued training requirements set forth in §B of this regulation.*

[H.] F. [Medication Administration Training. Effective January 1, 2016:]

[(1)] The office may not approve an application for an initial registration or a continuing registration unless the applicant has completed [medication administration training approved by the office; and]:

(1) *Approved training in:*

(a) *Supporting breastfeeding practices; and*

(b) *Medication administration; and*

(2) *3 clock hours of approved training in complying with the Americans with Disabilities Act.*

[(2)] G. A currently registered provider shall have completed [medication administration] *approved training [approved by the office] as specified in §F of this regulation.*

.03 Provider Substitute.

A. The provider shall designate at least one substitute who is available on short notice to care for the children *at the provider's registered family child care home.*

B. Approval by Office.

(1)—(2) (text unchanged)

(3) *The office shall notify the provider of its decision to approve or disapprove a substitute within 30 days of the request being submitted.*

C. (text unchanged)

D. A substitute shall:

(1) (text unchanged)

(2) Be familiar with *the requirements of this subtitle;*

(3) Complete, sign, and submit to the office the required forms for substitutes, [which include permission to examine records of abuse and neglect of children and adults;] *including:*

(a) *A medical evaluation completed within the past 12 months; and*

(b) *Permission to examine records of abuse and neglect of children and adults;*

(4) [If paid, apply] *Apply for a federal and State criminal background check at a designated law enforcement office in the State; [and]*

(5) *If residing or having resided in a state other than Maryland within 5 years before being hired as a substitute:*

(a) *Apply for a state criminal background check to be performed by a duly authorized entity within that state; and*

(b) Request the non-Maryland state entity performing the criminal background check to transmit the result of that background check directly to the Agency; and

[(5)] (6) (text unchanged)

E.— F. (text unchanged)

.04 Additional Adult.

A. Except as set forth in §B of this regulation, before an individual may be used as an additional adult, the provider shall ensure that the individual:

(1)—(3) (text unchanged)

(4) [If the individual will be paid, applies] *Applies* for a federal and State criminal background check at a designated office in the State;

(5) *If residing or having resided in a state other than Maryland within 5 years before being hired as an additional adult:*

(a) *Applies for a state criminal background check to be performed by a duly authorized entity within that state; and*

(b) *Requests the non-Maryland state entity performing the criminal background check to transmit the result of that background check directly to the Agency;*

[(5)] (6)—[(6)] (7) (text unchanged)

B. (text unchanged)

.05 Volunteers.

A. Before permitting an individual to begin volunteer duties at the family child care home, the provider shall:

(1) Ensure that the individual presents no risk to the health, safety, or welfare of children; [and]

(2) Conduct a child health and safety orientation for the individual that meets the requirements set forth in Regulation .03E of this chapter[.];

(3) *Ensure that the individual has applied for a federal and State criminal background check at a designated office in the State; and*

(4) *Ensure that the individual, if residing or having resided in a state other than Maryland within 5 years before being hired as an additional adult:*

(a) *Applies for a state criminal background check to be performed by a duly authorized entity within that state; and*

(b) *Requests the non-Maryland state entity performing the criminal background check to transmit the result of that background check directly to the Agency.*

B.—C. (text unchanged)

13A.15.07 Child Protection

Authority: *Education Article, §§9.5-301—9.5-308, 9.5-310—9.5-312, 9.5-320, and 9.5-321; [Family Law Article, §§5-550, 5-557.1, and 5-560;] General Provisions Article, §4-333; Human Services Article, §1-202; [State Government Article, §10-617; Article 88A, §6(b);] 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)*

.04 Child Discipline.

A. (text unchanged)

B. The provider or substitute may not:

(1) (text unchanged)

(2) Punish a child for refusing to eat or drink; [or]

(3) Withhold food or beverages as punishment[.]; or

(4) *Spank, hit, shake, or use any other means of physical discipline.*

13A.15.08 Child Supervision

Authority: *Education Article, §§9.5-301—9.5-308, 9.5-310—9.5-312, 9.5-320, and 9.5-321; [Family Law Article, §§5-550, 5-551, 5-557.1, and 5-560;] General Provisions Article, §4-333; 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.); *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 General Supervision.

A. (text unchanged)

B. Except as provided in Regulation .02C and D of this chapter, when a child is in attendance, the individual responsible for supervising the child shall at all times:

(1)—(4) (text unchanged)

(5) Provide supervision that is appropriate to the individual age, needs, capabilities, activities, and location of the child [and], *which* may include, but not be limited to:

(a) Making reasonable accommodations for a child with [special needs in accordance with applicable federal and State laws] *a disability*; and

(b) If applicable, allowing an adult who provides specialized services to a child in care [having special needs] to provide those services at the home in accordance with the child’s individualized education plan, individualized family services plan, or written behavioral plan.

C. (text unchanged)

D. *If the home has more than one residential level that is approved for child care:*

(1) *The provider or substitute shall ensure that, when awake, active, and indoors at the home, each child younger than 6 years old remains on the same level of the home as the provider or substitute; and*

(2) *A child 6 years old or older may be on a different level of the home from the provider or substitute if:*

(a) *The child’s status is checked by the provider or substitute often enough to ensure the child’s health, safety, and welfare, but at least every 15 minutes;*

(b) *The provider has informed the child’s parent that the child is permitted to be on a different level of the home; and*

(c) *The different home level is approved by the office for child care use and meets the applicable fire code requirements.*

[D.] E. Supervision of Resting Children.

(1) If a resting or napping child is younger than 2 years old, the provider or substitute shall:

(a) *Remain on the same level as the child;*

[(a)] (b)—[(b)] (c) (text unchanged)

(2) If a resting or napping child is 2 years old or older, the child:

(a) (text unchanged)

(b) Shall be observed by the provider or substitute to ensure the child’s safety and comfort at intervals [appropriate to the child’s age and individual need] *of at least every 15 minutes.*

[(3) If a resting or napping child is in a different room from the provider or substitute and that room can be closed off from the rest of the home by a door, screen, or similar furnishing, the provider or substitute shall ensure that the door, screen, or similar furnishing remains open so that the view into the room is unobstructed.]

[E.] F. The provider may use a video and sound monitoring system to meet the sound and sight requirement in [§D(1)(a)] *§E(1)(b)* of this regulation.

[F.] G. (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; [Family Law Article, §§5-550, 5-551, 5-557.1, and 5-560;] *General Provisions Article*, §4-333; *Human Services Article*, §1-202; [State Government Article, §10-617; Article 88A, §6(b);] *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 Emergency Safety.

The provider or substitute shall:

A.—C. (text unchanged)

D. Train each substitute and, if applicable, the additional adult on the contents of the written emergency and disaster plan required at [§B] §A of this regulation;

E. (text unchanged)

F. During an emergency evacuation or practice, take attendance records and *emergency cards* out of the home and verify the presence of each child currently in attendance;

G.—H. (text unchanged)

.04 Water Safety.

A. (text unchanged)

B. *An above-ground swimming pool:*

(1) *May not be used for swimming activities; and*

(2) *Shall be made inaccessible to children in care.*

[B.] C. A child in care may not use a pool, such as a fill-and-drain molded plastic or inflatable pool[, that does not have an operable circulation system approved by the local health department].

.06 Rest Time Safety.

A. (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, an object or device, including, but not limited to, a strap, wedge, [or] 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.

13A.15.11 Health

Authority: *Education Article*, §§9.5-301—9.5-308, 9.5-310—9.5-312, 9.5-320, and 9.5-321; [Family Law Article, §§5-550, 5-551, 5-557.1, and 5-560;] *General Provisions Article*, §4-333; *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.); *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 Infectious and Communicable Diseases.

A provider or substitute may not knowingly care for a child who has a serious transmissible infection or communicable disease during the period of exclusion for that infection or disease shown [on a list provided by the office] *in the Communicable Disease Summary, as published by the Maryland Department of Health.*

.04 Medication Administration and Storage.

A.—F. (text unchanged)

G. Effective January 1, 2016, medication may be administered to a child in care only by an individual who has completed approved medication *administration* training, unless:

(1)—(2) (text unchanged)

.06 Consumption of Alcohol and Drugs.

A provider, substitute, *volunteer*, or additional adult may not consume an alcoholic beverage or an illegal or nonprescribed controlled dangerous substance while:

A.—B. (text unchanged)

13A.15.12 Nutrition

Authority: *Education Article*, §§9.5-301—9.5-308, 9.5-310—9.5-312, 9.5-320, and 9.5-321; [Family Law Article, §§5-550, 5-551, 5-557.1, and 5-560;] *General Provisions Article*, §4-333; *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.); *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 Nutrition and Food Served.

A. (text unchanged)

B. [For children in care] *Unless provided by the child's parent*, the provider shall furnish:

(1)—(2) (text unchanged)

C.—G. (text unchanged)

13A.15.13 Inspections, Complaints, and Enforcement

Authority: *Education Article*, §§9.5-301—9.5-308, 9.5-310—9.5-312, 9.5-320, and 9.5-321; [Family Law Article, §§5-515, 5-550, 5-551, 5-554, 5-557, 5-557.1, and 5-560;] *Human Services Article*, §1-202; *General Provisions Article*, §4-333; [State Government Article, §10-617; Article 88A, §6(b);] *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 Complaints.

The office shall investigate:

A. (text unchanged)

B. Complaints of *providing or advertising* unregistered family child care.

.05 Nonemergency Suspension.

A. (text unchanged)

B. *The office shall suspend the certificate of registration upon notification that the provider is in noncompliance with Child Support Enforcement requirements pursuant to Family Law Article, §10-119.3, Annotated Code of Maryland.*

[B.] C.—[D.] E. (text unchanged)

.06 Emergency Suspension.

A. (text unchanged)

B. The office shall hand deliver a written notice to the provider informing the provider of the emergency suspension, giving the reasons for the action, and notifying the provider of the right to request, within 30 days of the delivery of the notice, a hearing before the [Superintendent's designee] *Office of Administrative Hearings.*

C. *If unable to hand deliver a written notice to the provider, the Office may send the notice by regular and certified mail to the provider's address.*

[C.] D. (text unchanged)

[D.] E. If a hearing is requested by the provider, the [Superintendent's designee] *Office of Administrative Hearings* shall hold a hearing within 7 calendar days of the date of the request.

[E.] F. Within 7 calendar days of the hearing, a decision concerning the emergency suspension shall be made by the [Superintendent's designee] *Office of Administrative Hearings.*

[F.] G.—[G.] H. (text unchanged)

.07 Revocation.

A. The office may revoke a certificate of registration if the:

- (1) (text unchanged)
- (2) Provider, *regardless of intent*, misrepresented or offered false information on the application or on any form or report required by the office;
- (3)—(7) (text unchanged)
- (8) Provider, an additional adult, a substitute, *a volunteer*, or a resident is identified as responsible for abuse or neglect of children or adults;
- (9) Provider, an additional adult, a substitute, *a volunteer*, or a resident has a criminal conviction, *a probation before judgment disposition*, or a not criminally responsible disposition, or is awaiting a hearing on a charge for a crime that:

- (a) Is listed at COMAR [13A.15.02.07B(1)—(11)] 13A.15.02.07B or C; or
- (b) (text unchanged)
- (10)—(13) (text unchanged)
- (14) [The family] *Family* child care home is no longer the primary residence of the provider.

B. If the office decides to revoke a certificate of registration, the office shall notify the provider in writing at least 20 calendar days in advance of the revocation, stating:

- (1)—(4) (text unchanged)
 - (5) That the provider is entitled to a hearing if requested in writing within 20 calendar days of the [delivery] *date* of the notice;
 - (6)—(8) (text unchanged)
- C. (text unchanged)

.08 Penalties.

A. An individual found to be operating a family child care home[, or advertising a family child care service,] without a valid family child care registration is guilty of a misdemeanor and on conviction is subject to a fine not exceeding:

- (1)—(2) (text unchanged)
- B. (text unchanged)

.09 Civil Citations.

A. The office may issue a civil citation imposing a civil penalty to an individual who provides *or advertises* unregistered family child care in violation of the requirements of this subtitle.

B.—D. (text unchanged)

13A.15.14 Administrative Hearings

Authority: *Education Article, §§9.5-301—9.5-308, 9.5-310—9.5-312, 9.5-320, and 9.5-321; [Family Law Article §§5-515—5-517 and 5-554;] General Provisions Article, §4-333; Human Services Article, §1-202; [State Government Article, §10-204;] 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 Scope.

A. This chapter applies to hearings concerning actions taken by the Office of Child Care which adversely impact [on] family child care registrations, such as registration denials, revocations, *and* suspensions, reductions in capacity, [or] limitations on the ages or numbers of children who may be admitted to a family child care home, *and the imposition of civil penalties for providing or advertising unregistered family child care services without a valid family child care certificate of registration.*

B. (text unchanged)

.03 Hearing Requests.

A. A hearing shall be held when [an applicant or provider requests a hearing to contest]:

- (1) *An applicant or provider requests a hearing to contest:*
 - [(1)] (a)—[(2)] (b) (text unchanged)
 - [(3)] (c) Any other action that adversely impacts [on] registration, including, but not limited to:
 - [(a)] (i)—[(b)] (ii) (text unchanged)
 - [(c)] (iii) A limitation on the ages or numbers of children who may be admitted to the family child care home[.]; *or*
- (2) *An individual requests a hearing to contest the imposition of civil penalties for providing unregistered child care or advertising family child care services without a valid family child care certificate of registration.*

B. Non-emergency Action Hearing Requests.

(1) All non-emergency action hearing requests shall be forwarded in writing to the Office and shall state the name and address of the provider *or the individual contesting the imposition of a civil penalty*, and the effective date and nature of the action appealed from.

- (2)—(5) (text unchanged)
- C. (text unchanged)

.04 Preliminary Conference.

A. [The Office shall hold a preliminary conference, on request of an appellant, before a hearing on an action] *A preliminary conference may be held before a hearing on an action if an appellant requests the conference.*

B.—D. (text unchanged)

13A.15.15 Public Access to Licensing Records

Authority: *Education Article, §§9.5-301—9.5-308, 9.5-310—9.5-312, 9.5-320, and 9.5-321; [Family Law Article, §§5-550, 5-557.1 and 5-560;] General Provisions Article, §4-333; Human Services Article, §1-202; [State Government Article, §10-617; Article 88A, §6(b);] 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 Request for Information from Licensing Records.

- A. (text unchanged)
 - B. The written request shall:
 - (1) Contain the applicant’s name, address, and telephone number; *and*
 - [(2)] Be signed by the applicant; *and*
 - [(3)] (2) (text unchanged)
 - [C. A request may be made in any form or format if it does not involve:
 - (1) Physical inspection of licensing records; *or*
 - (2) Preparation of a written or electronic:
 - (a) Copy of licensing records; *or*
 - (b) Report of information from licensing records.]
- [D.] C. (text unchanged)

.04 Compelling Public Purpose.

A compelling public purpose shall exist for the custodian of record to permit inspection of licensing records other than the records specified under [State Government Article, §10-617(h)(2)] *General Provisions Article, §4-333(b)*, Annotated Code of Maryland.

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State Superintendent of Schools