

Small Entity Compliance Guide
COMAR 13A.17
Child Care — Letters of Compliance Regulations

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Introduction

The Maryland State Department of Education, Office of Child Care (hereinafter “the Agency”), has prepared this document as the “Small Entity Compliance Guide” required by State Government Article, §2-1505.2, Annotated Code of Maryland. 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 September 28, 2021, the Agency’s proposed amendments were considered by the Maryland State Board of Education. The purpose of the amendments to the child care — letters of compliance regulations found at the Code of Maryland Regulations (COMAR) 13A.17 is to clarify certain requirements pertaining to the requirements for criminal background checks for employment in child care.

The proposed amendments will update language to better align with the criminal background check requirements of the Child Care and Development Block Grant Act (hereinafter “CCDBG”), as amended (42 U.S.C. § 9858 et seq.).

Definitions

“Intimate Partner” means a person eligible to seek relief from domestic violence as specified in Family Law Article, §4- 501(m)(1), (2), (6) or (7), Annotated Code of Maryland. See COMAR 13A.17.01.02B(22-1).

Summary of the Major Provisions

As stated in the Maryland Register, the regulations:

- Amend the existing criminal background check regulations to clarify that with the exception of certain drug-related offenses committed during the preceding five years, all convictions listed by the CCDBG are lifetime bans against employment by a child care program. The language “has received a conviction” has been expanded upon to include “at any time” to read “has received a conviction at any time” to make it clear the regulations are intended to apply retroactively to any disqualifying crimes committed prior to the promulgation of the regulations consistent with the Office of Child Care’s past and current interpretation. (COMAR 13A.17.06.03A; COMAR 13A.17.06.03B).
- Amend the existing criminal background check regulations to clarify that the mandatory exclusions for domestic violence are limited to domestic violence crimes of an intimate partner or spouse. The language “of an intimate partner or spouse” has been added after the term “domestic violence” to exclude certain crimes of domestic violence from the mandatory employment exclusions. (COMAR 13A.17.06.03A(1)(c)).
- Amend the existing criminal background check regulations to permit individuals charged or convicted of older drug-related crimes to be eligible for consideration for possible employment under the discretionary employment provisions as permitted by the CCDGG. The language “if committed during the preceding 5 years” has been added to

the disqualifying drug-related crimes to exclude older drug-related crimes from the mandatory employment exclusions. (COMAR 13A.17.06.03A(7); COMAR 13A.17.06.03A(10)).

Compliance Date for Entities Subject to These Regulations

The tentative implementation date of these regulations is April 18, 2022.

Entities Subject to These Regulations

The Agency is responsible for the regulation and oversight of child care facilities, including but not limited to, tax exempt religious organizations that operate a nursery school or a child care program in a school building used exclusively for children enrolled in the school. The regulations pertaining to the licensure of these child care facilities can be found at COMAR 13A.17. For Fiscal Year 2021, there were 215 existing letters of compliance facilities throughout Maryland.

Estimate of Economic Impact On Small Entities

It is unknown how many child care facilities are considered a small business in Maryland. However, an analysis of the economic impact is as follows:

Lifetime Ban:

The economic impact on child care programs should be neutral as this amendment clarifies the regulations are intended to apply retroactively to any mandatory disqualifying crimes committed prior to the promulgation of the regulations consistent with the Office of Child Care's past and current interpretation.

Limitation of Domestic Violence Crimes: Child care programs will benefit because they will be allowed to hire individuals that may have a domestic violence charge that is not related to an intimate partner or spouse. The amendment will decrease the number of denials for child care applicants or staff, who may have a domestic charge against someone other than an intimate partner or spouse. In addition, it will also decrease the number of revocations against existing providers that may have a domestic violence charge against someone, other than an intimate partner or spouse.

Past Drug Convictions: Child care programs will benefit because they will be allowed to hire additional individuals, under the discretionary employment provisions, who have older (i.e., over five years old) drug convictions or charges. The amendment will decrease the number of denials for child care applicants or staff, who may have older drug charges or convictions. In addition, it will also decrease the number of revocations against existing providers that may have older drug charges or convictions.

Effect on the work force: The amendments would result in an increase to the workforce, in that it would increase the candidate pool for child care programs and the individuals they would be allowed to hire. The increase in child care programs will then lead to an increase in child care options that would be more attainable to families in need, so that the families themselves may enter the work force.

Capital investment, taxation, competition, and economic development: The amendments are not expected to have a direct impact on capital investment and competition. However, more child care providers will result in additional business taxations that may help fund economic development and environmental projects within the State of Maryland.

Consumer choice: Consumer choice would benefit from the amendments by allowing families access to an increased child care provider candidate pool, which would result in more child care options, especially in areas that may be underserved or that are located in child care deserts.

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.

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 email at keisha.maxwell@maryland.gov or telephone at (410) 767-7852.