

# **Small Entity Compliance Guide**

## **Large Family Child Care Homes Regulations COMAR 13A.18**

### **Table of Contents**

<b>Introduction .....</b>	<b>Page 2</b>
<b>Purpose of This Regulatory Action .....</b>	<b>Page 2</b>
<b>Definitions .....</b>	<b>Page 2</b>
<b>Summary of the Major Provisions .....</b>	<b>Pages 2-6</b>
<b>Compliance Date for Entities Subject to These Regulations .....</b>	<b>Page 7</b>
<b>Entities Subject to These Regulations .....</b>	<b>Page 7</b>
<b>Estimate of Economic Impact On Small Entities .....</b>	<b>Page 7</b>
<b>Resources .....</b>	<b>Page 7</b>
<b>Technical Assistance/Contacting the Maryland State Department of Education, Office of Child Care .....</b>	<b>Page 8</b>

## ***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 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 large family child care regulations found at the Code of Maryland Regulations (COMAR) 13A.18 is to clarify certain requirements pertaining to the registration and operation of large family child care homes and establish requirements for criminal background checks, swimming pool security, and length of time for taking the basic health and safety training.

The proposed amendments will further implement the requirements of the Child Care and Development Block Grant Act (hereinafter “CCDGB 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 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.18 regulations “means, when used in connection with a criminal background check or a review of records of abuse and neglect of children or adults conducted on an individual, that the individual:

- (a) Does not have a disposition listed at COMAR 13A.18.02.07B or C;
- (b) Does not have other behavior deemed harmful to children; or
- (c) Has not been identified as responsible for the abuse or neglect of a child or an adult.”

See COMAR 13A.18.01.02B(45).

## ***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 large family child care home whether they are paid or unpaid, unless the individual meets the definition of an independent contractor. (COMAR 13.18.01.02B(15)).

- Provide that a large family child care home is not required to be registered when the individual providing care is a relative of each child; a friend of each child's parent or legal guardian and care is provided less than 20 hours a month; or the child has been placed in care by a child placement agency licensed by the Department of Human Services. (COMAR 13A.18.02.01A(2).).
- Prohibit a large family child care home provider 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 unless they have "successfully passed" the Agency's review the individual's abuse and neglect clearances and both federal and State criminal background checks. (COMAR 13A.18.02.01I.).
- Require that at the time of initial application and every 2 years thereafter during the large family child care continuing registration process, a large family child care home applicant and/or large family child care provider that plans to operate a large family child care home in an apartment or on property that is leased or rented, must submit written authorization from the lessor, owner, or landlord stating that child care is authorized in the large family child care home. (COMAR 13A.18.02.02D(14), COMAR 13A.18.02.03A(6).).
- Require that volunteers and substitutes, whether paid or not paid, are now required to apply for federal and State criminal background checks. (COMAR 13A.18.02C(1)(b).).
- Require that individuals, including, but not limited to, the family child care provider, the director, staff members, substitutes, and volunteers of the proposed large family child care home who reside or have resided in another state other than Maryland within 5 years before the large family child care home applicant's date of application, apply for state criminal background checks 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.16.02.02F.).
- Provide that the Agency may deny an application for a family child care certificate of registration if an applicant 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.18.02.07A(2),(7).)

- Provide that the Agency shall deny an application for a large family child care certificate of registration if, in addition to the applicant, a resident of the large family child care home has received a conviction, a probation before judgment disposition, a not criminally responsible disposition or has a pending charge for the commission or attempted commission of designated crimes or crimes that indicate behavior harmful to children. (COMAR 13A.18.02.07B,C.).
- Provide that the Agency shall deny an application for a large family child care certificate of registration and/or suspend an existing large family child care provider's family certificate of registration if the applicant and/or large family child care provider is in violation of Child Support Enforcement requirements pursuant to Family Law Article §10-119.3, Annotated Code of Maryland. (COMAR 13A.18.02.07D; COMAR 13A.18.14.05B.).
- Require that a large family child care home maintain complete child care children's files that includes 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 Health General § 18-106, Annotated Code of Maryland, and COMAR 10.11.04. (COMAR 13A.18.03.04E.).
- Require a large family child care home provider 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) within 5 working days of their date of hire. (COMAR 13A.18.03.06A(1)(c)).
- Amend a large family child care home provider'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 if the large family child care provider or a resident of the large family child care home is under investigation for a criminal charge or an allegation of abuse or neglect. (COMAR 13A.18.03.06E.).
- Require that a large family child care home that is located in a residential rental property constructed before 1978 rather than 1950, as required in prior regulations, submit a copy of the current lead risk reduction or lead-free certificate to the Agency. (COMAR 13A.18.05.05B.).
- Require that a large family child care home that has a pool on the large family child care premises must make the pool inaccessible to children. To meet this requirement, a large

family child care provider 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.18.05.12J.).

- Amend the water safety regulations to further reflect that not only may above ground pools not be used for swimming activities but a large family child care provider must make the above ground pool inaccessible to children in care. Additionally, fill and drain molded plastic or inflatable pools, regardless of whether or not these pools have operable circulation systems approved by the local health department, cannot be used by children in care. (COMAR 13A.18.05.13C.).
- Require that employees and staff members have medical evaluations completed every 2 years, measured from the date of the individual's prior medical evaluation date. (COMAR 13A.18.06.04A(4).).
- Amend the training requirements to reflect that effective January 1, 2020, directors must complete health and safety training within 90 days of employment. Directors 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.18.06.05E(3)(d).).
- Amend the training requirements to reflect that in order to qualify or continue to qualify as a large family child teacher, an individual must take 3 hours of training in complying with the Americans with Disabilities Act and effective January 1, 2020, large family 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.18.06.06B(1)(d),(e).).
- Amend the training requirements to reflect that effective January 1, 2020, aides must complete health and safety training within 90 days of employment. Aides 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.18.06.07A(3),(6).).
- Provide that the Agency will notify a large family child care provider within 30 days of receiving a request to have an individual approved as a substitute. The large family child care provider cannot allow an individual to be their substitute unless the individual is approved by the Agency. The regulations further require that all substitutes, regardless of whether they are paid or not, in addition to having submitted a signed and notarized

Release of Information form, will also have to apply for federal and State criminal background checks. Additionally, if the individual resided in a state other than Maryland in the prior 5 years to the large family child care provider requesting to use that individual as a substitute, the individual must also apply for a state criminal background check in that state and request that the state transmit the result of the criminal background check to the Agency. (COMAR 13A.18.06.08B(4),E,F).

- Amend the supervision during transportation regulations to reflect that when child transportation is being conducted to or from an offsite activity by an independent contractor, an adult other than the driver must be 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.18.08.06B.).
- Amend the general supervision regulations regarding resting children who are 2 years or older to require that staff check on the children often enough to verify that children are safe, but at a minimum at least every 15 minutes. (COMAR 13A.18.08.08C(1)).
- Provide that the Agency may revoke a large family child care home’s certificate of registration if the provider misrepresented or offered any forms or reports to the Agency that contain false or altered information, regardless of the provider’s intent to submit such false or altered documents, to the Agency. (COMAR 13A.18.14.07A(2)).
- Provide that the Agency may revoke a large family child care certificate of registration if the large family child care provider or a resident of the large family child care home has been identified as responsible for abuse or neglect of children or adults or has received a conviction, a probation before judgment disposition, a not criminally responsible disposition or has a pending charge for the commission or attempted commission of designated crimes or crimes that indicate behavior harmful to children. (COMAR 13A.18.14.07A(13),(14)).
- Amend the issuance of civil penalties regulations pertaining to unregistered care to further reflect that the Agency may issue civil citations to individuals who advertise child care. Additionally, the administrative hearing regulations further grants appeal rights to individuals who have been issued civil citations for providing or advertising an unregistered large family child care home without having been issued a valid large family child care certificate of registration. (COMAR 13A.18.14.09A; COMAR 13A.18.15.01A; COMAR 13A.18.15.03A(2)).

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

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

## ***Entities Subject to these Regulations***

The Agency is responsible for the registration and oversight of child care facilities, including, but not limited to, large family child care homes. The regulations pertaining to the registration of large family child care homes can be found at COMAR 13A.18. For Fiscal Year 2019, there were 137 existing large family child care homes 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: To comply with the CCDBG Act, the Agency has provided reimbursement to large family child care homes for the cost of staff fingerprinting. While these facilities/staff incurred the up-front cost for fingerprinting, the Agency 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, the Agency 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 large family child care providers. The Agency did not incur any direct costs for the development of the training. For those large family child care 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 large family child care providers who hold a Maryland Child Care Credential at Level 2 or higher. Large 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. The Agency is currently having a new online Health & 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.

Swimming Pool Security: An estimated 7 pool owners who are registered large family child care home programs 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 large family child care home registration would need to meet this requirement prior to becoming registered. An adverse impact could be that large family child care providers have to raise their fees to help cover the cost.

## ***Resources***

The final regulations published for the Maryland State Department of Education, Office of Child Care, can be found on the Agency's website found 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 large family child care regulations. Please direct questions by telephone to (410) 767- 0120.