

(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.]]

[[E.]] **D. 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;]]

[[(b)]] **(a) Remain within sight and sound of the child; and**

[[(c)]] **(b) Observe the child at least every 15 minutes to determine that the child is safe, breathing normally, and in no physical distress.**

(2) (proposed text unchanged)

(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.

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

[[G.]] **E.** (proposed 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; Human Services Article, §1-202; General Provisions Article, §4-333; 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)*

.07 Revocation.

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

(1) (proposed 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)—(14) (proposed text unchanged)

B.—C. (proposed text unchanged)

KAREN B. SALMON, Ph.D.
State Superintendent of Schools

Subtitle 16 CHILD CARE CENTERS

Notice of Final Action

[19-194-F]

On December 3, 2019, the Maryland State Board of Education adopted:

(1) Amendments to Regulations .01 and .02 under **COMAR 13A.16.01 Scope and Definitions;**

(2) Amendments to Regulations .01—.04 and .06 under **COMAR 13A.16.02 License Application and Maintenance;**

(3) Amendments to Regulations .01—.06 and new Regulation .09 under **COMAR 13A.16.03 Management and Administration;**

(4) Amendments to Regulations .05, .12, and .13 under **COMAR 13A.16.05 Physical Plant and Equipment;**

(5) Amendments to Regulations .03—.06 and .09—.12 under **COMAR 13A.16.06 Staff Requirements;**

(6) Amendments to Regulations .02, .03, and .06 under **COMAR 13A.16.07 Child Protection;**

(7) Amendments to Regulations .01, .03, and .06 under **COMAR 13A.16.08 Child Supervision;**

(8) Amendments to Regulation .04 under **COMAR 13A.16.09 Program Requirements;**

(9) Amendments to Regulations .02 and .05 under **COMAR 13A.16.10 Safety;**

(10) Amendments to Regulations .02—.04 and .06 under **COMAR 13A.16.11 Health;**

(11) Amendments to Regulation .01 under **COMAR 13A.16.12 Nutrition;**

(12) Amendments to Regulation .02 under **COMAR 13A.16.13 Centers for Children with Acute Illness;**

(13) Amendments to Regulation .01 under **COMAR 13A.16.14 Adolescent Centers;**

(14) Amendments to Regulation .03 under **COMAR 13A.16.15 Drop-In Centers;**

(15) Amendments to Regulations .02—.04 under **COMAR 13A.16.16 Educational Programs in Nonpublic Nursery Schools;**

(16) Amendments to Regulation .01, new Regulation .03, the recodification of existing Regulation .03 to be Regulation .04, and amendments to and the recodification of existing Regulations .04—.07 to be Regulations .05—.08 under **COMAR 13A.16.17 Inspections, Complaints, and Enforcement;**

(17) Amendments to Regulations .01—.05 under **COMAR 13A.16.18 Administrative Hearings;** and

(18) Amendments to Regulation .03 and .04 under **COMAR 13A.16.19 Public Access to Licensing Records.**

This action, which was proposed for adoption in 46:21 Md. R. 909—920 (October 11, 2019), has been adopted with the nonsubstantive changes shown below.

Effective Date: January 13, 2020.

Attorney General's Certification

In accordance with State Government Article, §10-113, Annotated Code of Maryland, the Attorney General certifies that the following changes do not differ substantively from the proposed text. The nature of the changes and the basis for this conclusion are as follows:

The changes to the proposed text of the following regulations are non-substantive because the agency is removing the proposed text and reverting to the original existing regulatory language: (1) 13A.16.02.06A(2) Application and Maintenance; (2) 13A.16.03.02E Admission to Care; (3) 13A.16.03.04E Child Records; (4) 13A.16.06.13 Substitutes; and (5) 13A.16.17.07A(2) Revocation.

An amendment to a proposed regulation is considered substantive if it substantively affects “the rights, duties, or obligations of: (1) a member of a regulated group or profession; or (2) a member of the public.” State Government Article, §10-101(h), Annotated Code of Maryland. Regulated stakeholders support MSDE’s reversion to the original regulatory language in the above regulations. Regulated stakeholders and interested parties are not disadvantaged by the agency removing the proposed changes to the regulations and maintaining the existing language and requirements. The above changes maintain the benefits of the existing regulations and do not increase the burdens on regulated stakeholders that would have been imposed by the regulations as proposed. Because the changes do not change the position of any group affected by the regulation, decrease any benefits, or increase administrative burdens, they are deemed nonsubstantive. Reversion to the original language is consistent with nonsubstantive changes as discussed in 75 Md. Op. Atty. 27 (1990).

The additional changes to the proposed language of 13A.16.06.04A(2) Health are also nonsubstantive. This regulation

was changed to clarify that the medical evaluation form required of licensees may be signed by either the medical practitioner or the practitioner's designee and does not invalidate a medical form if someone other than the medical practitioner signs the form. Licensees are currently required to provide documentation of medical examinations. The change in language clarifies that the medical evaluation form may be completed according to the procedures followed by the practitioner's office. The change does not change the position of any group affected by the regulation, decrease any benefits, or increase administrative burdens, and as such are deemed nonsubstantive.

13A.16.02 License Application and Maintenance

Authority: *Education Article, §§9.5-401, 9.5-404—9.5-411, and 9.5-413—9.5-418; General Provisions Article, §4-333; Human Services Article, §1-202; Annotated Code of Maryland*

Agency Note: Federal Statutory Reference—Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.); Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.); *Child Care Development Block Grant (45 CFR Parts 98 and 99 and 42 U.S.C. 9858 et seq.); Social Security Act, §418 (42 U.S.C. 618)*

.06 Denial of License.

A. An office may deny an application for an initial license or a continuing license if:

(1) (proposed text unchanged)

(2) An evaluation of the application form, *medical documents, or any documents required by the office* reveals that the applicant[[*regardless of intent,*]] reported false information;

(3)—(7) (proposed text unchanged)

B.—C. (proposed text unchanged)

13A.16.03 Management and Administration

Authority: *Education Article, §§9.5-401, 9.5-404—9.5-411, and 9.5-413—9.5-418; General Provisions Article, §4-333; Human Services Article, §1-202; Annotated Code of Maryland*

Agency Note: Federal Statutory Reference—Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.); Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.); *Child Care Development Block Grant (45 CFR Parts 98 and 99 and 42 U.S.C. 9858 et seq.); Social Security Act, §418 (42 U.S.C. 618)*

.02 Admission to Care.

A.—D. (proposed text unchanged)

E. If a child is younger than 6 years old at the time of admission, the operator may not allow the child to remain in care if the parent does not, [[within 30 days after the child's admission]] in accordance with COMAR 10.11.04, submit evidence to the operator 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]].

F. (proposed text unchanged)

.04 Child Records.

A.—D. (proposed text unchanged)

E. *The operator shall maintain documentation that, as required by* [[State or local law]] COMAR 10.11.04, *each child admitted to, or continuing in, care has received:*

(1)—(2) (proposed text unchanged)

F.—K. (proposed text unchanged)

13A.16.06 Staff Requirements

Authority: *Education Article, §§9.5-401, 9.5-404—9.5-411, and 9.5-413—9.5-418; General Provisions Article, §4-333; Human Services Article, §1-202; Annotated Code of Maryland*

Agency Note: Federal Statutory Reference—Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.); Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.); *Child Care Development Block Grant (45 CFR Parts 98 and 99 and 42 U.S.C. 9858 et seq.); Social Security Act, §418 (42 U.S.C. 618)*

.04 Staff Health.

A. Medical Evaluation.

(1) (proposed text unchanged)

(2) *The medical evaluation shall be signed by the individual who conducted the evaluation or the individual's designee and include verification that the staff member:*

(a)—(b) (proposed text unchanged)

(3)—(4) (proposed text unchanged)

B. (proposed text unchanged)

.13 Substitutes.

A.—E. (proposed text unchanged)

[[F. *Approval by Office.*

(1) *An individual designated as a substitute may not be used in that capacity unless the office has approved the individual.*

(2) *If information received by the office indicates that an individual designated as a substitute may present a risk to the health, safety, or welfare of children in care, the office may disapprove the use of that substitute.*

(3) *The office shall notify the operator of its decision to approve or disapprove a substitute upon evaluation of all criminal background check information and child protective services clearances.]]*

13A.16.17 Inspections, Complaints, and Enforcement

Authority: *Education Article, §§9.5-401, 9.5-404—9.5-411, and 9.5-413—9.5-418; General Provisions Article, §4-333; Human Services Article, §1-202; Annotated Code of Maryland*

Agency Note: Federal Statutory Reference—Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.); Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.); *Child Care Development Block Grant (45 CFR Parts 98 and 99 and 42 U.S.C. 9858 et seq.); Social Security Act, §418 (42 U.S.C. 618)*

.07 Revocation.

A. The office may revoke a license if:

(1) (proposed text unchanged)

(2) An operator[[, *regardless of intent,*]] misrepresented or offered false information on the application or on any form or report required by the office;

(3) (proposed text unchanged)

(4) The operator fails to comply with the:

(a) Prohibitions on the use of an individual as an employee, a substitute, or a volunteer as set forth in COMAR 13A.16.06.03A and B[[, COMAR 13A.16.06.13F,]] or COMAR 13A.16.06.15B; or

(b) (proposed text unchanged)

(5)—(8) (proposed text unchanged)

B.—C. (proposed text unchanged)

KAREN B. SALMON, Ph.D.
State Superintendent of Schools