Maryland General Assembly
Department of Legislative Services

Proposed Regulations
State Board of Education
(DLS Control No. 15-006)

Overview and Legal and Fiscal Impact

These regulations update and clarify various requirements that relate to child care programs that operate as letter of compliance facilities.

The regulations present no legal issue of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

State Board of Education:

Child Care – Letters of Compliance: Scope and Definitions: COMAR 13A.17.01.02
Letter of Compliance Application and Maintenance: COMAR 13A.17.02.02, .03, .04, and .06
Management and Administration: COMAR 13A.17.03.02, .04, .05, and .06
Staff Requirements: COMAR 13A.17.06.02
Child Supervision: COMAR 13A.17.08.01
Program Requirements: COMAR 13A.17.09.01
Nutrition: COMAR 13A.17.12.01

Legal Analysis

Background

The Maryland State Department of Education has primary responsibility for regulating child care providers and facilities in the State. Among other things, the department issues licenses, inspects facilities, and investigates complaints related to child care centers. Under Maryland law, a child care center is defined as an agency, institution, or establishment that offers or provides child care services for part or all of a day, or on a 24-hour basis on a regular schedule, and at least twice a week. A nonpublic nursery school in which an instructional program is offered or provided for children under the age of five years is also considered to be a child care center. However, an exception to the licensing requirement allows some nursery schools and child care programs operated by religious organizations that are exempt from taxation under § 501(c)(3) of the Internal Revenue Code to be regulated by the department as letter of compliance facilities. A letter of compliance facility must meet the same health and safety requirements as a regularly licensed child care center, but is exempt from certain staff qualification and instructional program content requirements.

Summary of Regulations

In addition to making stylistic changes, these regulations update, clarify, and add requirements that relate to child care programs operating as letter of compliance facilities.

Definitions

The regulations alter the minimum age for an individual to meet the definition of "child" from six weeks to two years. The department advises that the revised definition reflects long-standing practice that has not authorized letter of compliance facilities to provide care for children under the age of two. The definition of "school building" is also altered to mean a facility that houses a nursery school, among other programs or entities.

Admission to Care

The regulations authorize an operator to temporarily admit or retain in care a child (1) who is homeless; or (2) whose parent is unable to provide specified health-related records if the parent presents evidence that the date of a certain health care appointment is within 20 calendar days from the date the child was admitted or retained in care and provides evidence of the required medical evaluation, immunization, or health record within three business days from the date of the health care appointment. The regulations also require an operator to provide a parent with specified information concerning consumer education on child care and how to file a complaint against a child care facility.

Recordkeeping

The regulations repeal provisions that relate to children under two years of age because, according to the department, those children may not be admitted to a letter of compliance facility. The regulations also add a requirement that an operator destroy a record of the results of an individual's criminal background check immediately after the last day of the individual's employment.

Notice

The regulations require an operator to provide specified information in a written notice submitted to the department regarding the addition of a new employee or staff member within five working days of the addition. An operator must also provide written notice, including specified information, within five business days of the end of an individual's employment. In addition, within 10 business days after receiving notice of a contaminated drinking water supply, an operator must send to the parent of each child a written notice that identifies the contaminants and their levels, and describes the plan for dealing with the problem.

The regulations also repeal a requirement that an operator immediately notify the department of certain criminal background check results. The department advises that the provision is no longer necessary because the Criminal Justice Information Service electronic reporting system provides the information directly to the department in a more timely and comprehensive manner than in the past.

Staff Preparation

An operator must document that each employee and staff member has been informed about community resources available to the family of a child who may have special needs.

Supervision

The regulations clarify that an operator must ensure that each child receives "attention to the child's individual needs," which includes making reasonable accommodations for a child with special needs in accordance with federal and State laws.

Programming

The regulations establish limits on the use of interactive technology and on the viewing of passive technology. In addition, an operator must provide a written screen time policy to the parent of each enrolled child and make and retain a record of any time an exception is made to the passive technology viewing limit.

Nutrition

The regulations require an operator to provide beverages for meals and snacks, including milk with all meals. An operator may provide only 1% fat or nonfat milk unless otherwise ordered by a healthcare provider or requested by a child's parent. An operator may not provide a beverage, other than a beverage prescribed by a health care provider, that contains an added sweetener or caffeine. Additionally, an operator is required to have nutritious food available for a child whose parent has not supplied sufficient food to meet certain national standards.

Legal Issue

The regulations present no legal issue of concern.

Statutory Authority and Legislative Intent

The State Superintendent of Schools cites §§ 5-502, 5-560, 5-564, and 5-570 through 5-585 of the Family Law Article, § 10-617 of the State Government Article, and § 1-202 of the Human Services Article as legal authority for the regulations. More specifically, § 5-573 requires the State Superintendent to adopt regulations for licensing and operating child care centers. Among other things, the regulations must (1) ensure safe and sanitary conditions; (2) ensure the proper care, protection, and supervision of children; (3) ensure the health of children; (4) promote sound growth and development; (5) promote proper nutrition and developmentally appropriate practices; and (6) require a center, within 10 days after receiving notice of a contaminated drinking water supply, to send to the parent or guardian of each child a written notice that identifies the contaminants, the levels in the center's water supply, and a description of the center's plan for dealing with the problem. Section 5-574 requires letter of compliance facilities to comply with specified regulations for child care centers.

In addition, § 5-564 of the Family Law Article requires the Department of Public Safety and Correctional Services to provide statements of the criminal history records checks of specified employees of child care facilities to the department. This section also requires an

operator to maintain the confidentiality of information obtained as a result of a criminal history records check.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

Please note that several cross-references have been corrected since these regulations were submitted to the Joint Committee on Administrative, Executive, and Legislative Review. In addition, the department has agreed to delete the phrase "establish requirements to accommodate breast-feeding mothers" from the Statement of Purpose. Finally, the department advises that the requirement that an operator provide immediate notice of certain criminal background check results is no longer necessary because the department receives more timely and comprehensive reports directly from the Criminal Justice Information Service electronic reporting system under § 5-564(b)(1)(ii) of the Family Law Article.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs and notes that the regulations, in part, implement Chapters 331 and 332 of 2014 (Senate Bill 716 and House Bill 1276), which required rules and regulations for licensing and operating child care centers to promote proper nutrition and developmentally appropriate practices by specified methods, including by setting limits on screen time and establishing training and policies relating to breast-feeding.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

Contact Information

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