

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	02/10/2015	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 3/20/2015

2. COMAR Codification

Title Subtitle Chapter Regulation

13A	17	01	02
13A	17	02	02, .03, .04 and .06
13A	17	03	02, .04, .05, .06
13A	17	06	02
13A	17	08	01
13A	17	09	01
13A	17	12	01

3. Name of Promulgating Authority

Maryland State Department of Education

4. Name of Regulations Coordinator

Charlene L Necessary

Telephone Number

410-767-0467

Mailing Address

200 W. Baltimore Street

City	State	Zip Code
Baltimore	MD	21201

Email

cnecessary@msde.state.md.us

5. Name of Person to Call About this Document

Elizabeth Kelley

Telephone No.

410-767-7806

Email Address

elizabeth.kelley@maryland.gov

6. Check applicable items:

New Regulations

Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: August 14, 2014.

Repeal of Existing Regulations

Recodification

Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

: Md. R

(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

Yes No

8. Incorporation by Reference

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Elizabeth M. Kameen, Assistant Attorney General, (telephone #410-576-6451) on December 10, 2014. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Lillian M. Lowery, Ed.D.

Title

State Superintendent of Schools

Date

February 9, 2015

Telephone No.

410-767-0467

**Title 13A
A STATE BOARD OF EDUCATION**

Subtitle 17 CHILD CARE — LETTERS OF COMPLIANCE

13A.17.01 Scope and Definitions

Subtitle 17 CHILD CARE — LETTERS OF COMPLIANCE

13A.17.02 Letter of Compliance Application and Maintenance

Subtitle 17 CHILD CARE — LETTERS OF COMPLIANCE

13A.17.03 Management and Administration

Subtitle 17 CHILD CARE — LETTERS OF COMPLIANCE

13A.17.06 Staff Requirements

Subtitle 17 CHILD CARE — LETTERS OF COMPLIANCE

13A.17.08 Child Supervision

Subtitle 17 CHILD CARE — LETTERS OF COMPLIANCE

13A.17.09 Program Requirements

Subtitle 17 CHILD CARE — LETTERS OF COMPLIANCE

13A.17.12 Nutrition

Authority: Authority: Family Law Article, §§5-502, 5-560, 5-564, and 5-570—5-585; State Government Article, §10-617; 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.)

Notice of Proposed Action

□

The State Superintendent of Schools proposes to amend Regulation .02 under COMAR 13A.17.01 Scope and Definitions; Regulations .02—.04, .06 under COMAR 13A.17.02

Letter of Compliance Application and Maintenance; Regulations .02, .04—.06 under COMAR 13A.17.03 Management and Administration; Regulation .02 under COMAR 13A.17.06 Staff Requirements; Regulation .01 under COMAR 13A.17.08 Child Supervision; Regulation .01 under COMAR 13A.17.09 Program Requirements; and Regulation .01 under COMAR 13A.17.12 Nutrition.

Statement of Purpose

The purpose of this action is to permit temporary admission to care under certain circumstances; require a plan of action in response to a notice of contaminated water; establish requirements to accommodate breast-feeding mothers; strengthen requirements for accommodation of children with special needs; limit the use of non-educational electronic media by children in care; and clarify requirements regarding the provision of milk and other beverages.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Elizabeth Kelley, Director, Office of Child Care, Maryland State Dept. of Education, Division of Early Childhood, 200 West Baltimore Street, Baltimore MD 21201, or call 410-767-7806, or email to elizabeth.kelley@maryland.gov, or fax to 410-333-6622. Comments will be accepted through April 20, 2015. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2015

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

General

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

These proposals do not involve any State or local government revenue or expenditure, nor do they involve any revenue or expenditure by child care programs affected by the proposals.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

The only small businesses affected by these proposals are letter of compliance facilities, and the proposals do not involve any revenue or expenditure by the operators of those facilities.

G. Small Business Worksheet:

Attached Document:

Title 13A STATE BOARD OF EDUCATION

Subtitle 17 CHILD CARE — LETTERS OF COMPLIANCE

Chapter 01 Scope and Definitions

Authority: Family Law Article, §§5-502, 5-560, 5-564, and 5-570—5-585; State Government Article, §10-617; 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.)

.02 Definitions.

A. In this subtitle, the following terms have the meanings indicated.

B. Terms Defined.

(1)—(7) (text unchanged)

(8) "Child" means an individual:

(a) [6 weeks]2 years old or older and younger than 16 years old; or

(b) (text unchanged)

(9)—(40) (text unchanged)

(41) School Building.

(a) "School building" means a facility that houses [an instructional program for kindergarten, a higher grade or grades, or any combination of grades.]:

(i) A nursery school;

(ii) An instructional program for kindergarten, a higher grade or grades, or any combination of grades; or

(iii) A combination of the entities specified at §B(54)(a)(i) and (ii) of this regulation.

[(b) "School building" may include a facility that houses a nursery school as well as higher grades.]

[(c)](b) (text unchanged)

(42)—(46) (text unchanged)

Chapter 02 Letter of Compliance Application and Maintenance

Authority: Family Law Article, §§5-560, 5-564, and 5-570—5-585; State Government Article, §10-617; 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.)

.02 Initial Letter of Compliance.

A. Application Requirements. An individual or organization that does not currently hold a letter of compliance and wishes to operate a nursery school or child care program under this subtitle shall:

(1) File a notice of intent with the office before applying for permits in connection with construction or operation of a facility; [and]

(2) File with the office at least 60 days before the proposed opening date a signed and completed application form supplied by the office[.]; and

(3) *Ensure that an application for a federal and State criminal background check is submitted for:*

(a) *The applicant, if the applicant is an individual who will have frequent contact with children who are cared for in the facility;*

(b) *The director;*

(c) *Each employee, including paid substitutes; and*

(d) *Each individual 14 years old or older living on the same premises as the child care facility.*

B. Before the proposed opening date, the applicant shall submit the following items to the office, if not submitted at the time the written application form was submitted:

[(1) Documentation of application for criminal background checks for:

(a) The applicant, if the applicant is an individual who will have frequent contact with children who are cared for in the facility;

(b) The director;

(c) Each employee, including paid substitutes; and

(d) Each individual 14 years old or older living on the same premises as the child care facility;]

[(2)](1)—[(13)](12) (text unchanged)

.03 Continuing Letter of Compliance.

A. Obtaining a Continuing Letter of Compliance. An operator shall submit to the office, before expiration of the initial letter of compliance:

(1) (text unchanged)

(2) Signed and notarized permission to examine records of abuse and neglect of children and adults for information about all individuals, as applicable, specified at Regulation [.02B(2)].02B(1) of this chapter; and

(3) (text unchanged)

B. (text unchanged)

C. Maintaining a Continuing Letter of Compliance.

(1)—(2) (text unchanged)

(a) Signed and notarized permission to examine records of abuse and neglect of children and adults for information about all individuals, as applicable, specified in Regulation [.02B(2)].02B(1) of this chapter; and

(b) Any other documentation required by law or regulation.

(3) (text unchanged)

.04 Provisional and Conditional Status.

A. Provisional Status.

(1) (text unchanged)

(2) An initial letter of compliance may not be approved if the office has not yet received evidence that the applicant and each individual, as applicable, specified at Regulation [.02B(1) and (2)].02A(3) and .02B(1) of this chapter has successfully passed a federal and State criminal background check and a review of child *and adult* abuse and neglect records.

(3)—(4) (text unchanged)

B. (text unchanged)

.06 Denial of Letter of Compliance.

A. An office may deny an application for an initial letter of compliance or a continuing letter of compliance if:

(1)—(5) (text unchanged)

(6) An evaluation of criminal records or records of abuse or neglect of children and adults indicates, for those identified in Regulation [.02B(1) and (2)].02A(3) and .02B(1) of this chapter, behavior harmful to children; or

(7) (text unchanged)

B.—C. (text unchanged)

Chapter 03 Management and Administration

Authority: Family Law Article, §§5-560, 5-564, and 5-570—5-585; State Government Article, §10-617; 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.)

.02 Admission to Care.

- A. An operator may not admit a child for care unless the operator has:
- (1) (text unchanged)
 - (2) Received the written records required by Regulation .04C—H of this chapter, *unless the child is temporarily admitted or retained in care on a temporary basis pursuant to §E of this regulation.*
- B. (text unchanged)
- C. As part of the admission process, the operator shall:
- (1) Give the parent, or advise the parent how to obtain, [a consumer education pamphlet on child care that is supplied by the office; and] *information that is supplied by the office concerning:*
 - (a) *Consumer education on child care;*
 - (b) *How to file a complaint against the child care facility; and*
 - (2) (text unchanged)
- D. (text unchanged)
- E. *Temporary Admission to Care.*
- (1) *An operator may temporarily admit or retain a child in care if:*
 - (a) *The child is homeless; or*
 - (b) *The child's parent is unable to provide the health-related records specified at Regulation .04D—H of this chapter.*
 - (2) *For a child to be temporarily admitted or retained in care, the parent 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;*
 - (b) *Receive a required immunization;*
 - (c) *Acquire evidence of age-appropriate immunizations on a form approved by the Office; or*
 - (d) *Reconstruct a lost health record.*
 - (3) *The date of the appointment required by §F(2) of this regulation may not be later than 20 calendar days after the date the child was temporarily admitted or retained.*
 - (4) *An operator shall exclude from care a child who has been temporarily admitted or retained in care if the parent fails to provide evidence of the required medical evaluation, immunization, or health record within 3 business days after the date of the appointment made pursuant to §F(2) of this regulation.*

.04 Child Records.

- A.—C. (text unchanged)
- D. Unless a parent objects to a child's medical examination because of bona fide religious beliefs and practices, a health assessment of the child shall be provided by the child's parent that:
- (1)—(2) (text unchanged)
 - (3) Includes a medical evaluation, signed and dated by a physician, that states the child is medically cleared to attend child care and is based on an examination completed by the physician within the last:
 - (a) 2 months before admission for a child younger than 9 months old;
 - (b) 3 months before admission for a child between 9 and 24 months old; or
 - (c) 12 months before *the child's* admission [for a child 2 years old or older].
- E.—J. (text unchanged)

.05 Staff Records.

- The operator shall:
- A. (text unchanged)
- B. During an individual's employment at the facility and for 2 years after the date of the individual's last employment there, maintain a record for each individual that includes:
- (1) (text unchanged)
 - (2) [Employment] *An employment medical evaluation;*
 - (3) *Criminal background check results, except that the operator shall destroy the record of those results immediately after the last day of the individual's employment; and*
 - (4) [Date] *The date on which the staff member received the information required by COMAR 13A.17.06.02;*
- C.—D. (text unchanged)

.06 Notifications.

- The operator shall:
- A. [Upon adding a new employee or staff member] *Within 5 business days of its occurrence, provide written notification to the office about the:*

(1) [Provide to the office, within 5 working days after the date of hire, a signed and, if required by the office, notarized permission to examine records of abuse and neglect of children and adults for information about the individual; and] *Addition of a new employee or staff member that includes:*

(a) *The individual's full name, date of birth, and date of hire;*

(b) *Information about the individual's work assignment; and*

(c) *Signed and notarized permission to examine records of abuse and neglect of children and adults for information about the individual; or*

(2) *Ending of employment, for whatever reason, of an individual that includes the:*

(a) *Individual's full name; and*

(b) *Date of the individual's last day of employment;*

[(2)]B. Have on file in the nursery school or child care program the following information *about each employee or staff member:*

[(a)](1)—[(c)](3) (text unchanged)

[B.]C.—[C.]D. (text unchanged)

[D. Immediately notify the office of an employee's criminal background check result received on or after October 1, 2005, that reports a conviction, a probation before judgment disposition, a not criminally responsible disposition, or a pending charge for the commission or attempted commission of a crime listed at COMAR 12.15.02.07B;]

E. Immediately notify the office of:

(1) An employee who is under investigation for:

(a) (text unchanged)

(b) An allegation of child abuse or neglect; [or]

(2) A change at the child care facility which may affect the status of the letter of compliance, including but not limited to:

(a)—(b) (text unchanged)

(c) Telephone number; [and]

F. Within 5 working days after there is a new resident on the premises who is 18 years old or older:

(1) (text unchanged)

(2) [Ensure that the resident applies] *Direct the resident to apply for a federal and State criminal background check[.]; and*

G. *Within 10 business days of receiving notice from the facility's supplier of water that the drinking water is contaminated, send a written notice of the contamination to the parent of each enrolled child that:*

(1) *Identifies the contaminants and their levels; and*

(2) *Describes the facility's plan for dealing with the water contamination problem until the water is determined by the appropriate authority to be safe for consumption.*

Chapter 06 Staff Requirements

Authority: Family Law Article, §§5-560, 5-564, and 5-570—5-585; State Government Article, §10-617; 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.)

.02 Staff Orientation.

On or before assignment, an operator shall [ensure and] document that each employee and staff member has been informed in writing about all areas pertinent to the health and safety of the children, including:

A.—(H. (text unchanged)

I. Signs and symptoms of abuse and neglect in children; [and]

J. The content of the most current regulations in this subtitle[.]; and

K. *The community resources available to the family of a child who may have special needs.*

Chapter 08 Child Supervision

Authority: Family Law Article, §§5-560, 5-564, and 5-570—5-585; State Government Article, §10-617; 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.)

.01 Individualized Attention and Care.

An operator shall ensure that:

A. Each child receives:

(1) Attention to the child's individual needs, *including but not limited to making reasonable accommodations for a child with special needs in accordance with applicable federal and State laws; and*

(2) (text unchanged)

B.—E. (text unchanged)

Chapter 09 Program Requirements

Authority: Family Law Article, §§5-560, 5-564, and 5-570—5-585; State Government Article, §10-617; 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.)

.01 Materials and Equipment.

A.—D. (text unchanged)

E. *Screen Time Activities.*

(1) *In this section, the following terms shall have the meanings indicated:*

(a) *“Passive technology” means non-interactive television, videos, and streaming media.*

(b) *“Interactive technology” means educational and age-appropriate technology, including programs, applications (apps), non-commercial television programming, videos, streaming media, and e-books, that is designed to:*

(i) *Facilitate active and creative use of technology; and*

(ii) *Encourage social engagement with other children and adults.*

(2) *Limited use of appropriate interactive technology may support, but may not replace, creative play, physical activity, hands-on exploration, outdoor experiences, social interactions and other developmentally appropriate learning activities for children.*

(3) *Viewing Restrictions. Except as set forth at §E(4) of this regulation, a child in attendance may not be permitted to view more than 30 minutes of age-appropriate, educational passive technology per week.*

(4) *Exceptions.*

(a) *An occasional exception to the weekly passive technology viewing limit set forth at §E(3) of this regulation may be made for a special event or project, including a holiday or birthday celebration.*

(b) *If an exception to the weekly passive technology viewing limit is made, a written record of the exception shall be made and retained on file that documents the:*

(i) *Nature and duration of the programming viewed; and*

(ii) *Reason for the exception.*

(5) *No child may be permitted to view any:*

(a) *Passive or interactive technology during a meal or a snack; or*

(b) *Media with brand placement or advertising for unhealthy or sugary food or beverages.*

(6) *The operator shall give the parent of each enrolled child a written screen time policy that addresses the use of passive and interactive technology during child care hours.*

Chapter 12 Nutrition

Authority: Family Law Article, §§5-560, 5-564, and 5-570—5-585; State Government Article, §10-617; 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.)

.01 Food Service.

A. [Food and beverages which are furnished by an operator for meals or snacks, or both, shall comply with the guidelines of the Child and Adult Care Food Program of the U.S. Department of Agriculture, as indicated on a chart supplied by the office.] *Food and Beverages.*

(1) *Food and beverages that are furnished by an operator for meals or snacks, or both, shall comply with the guidelines of the Child and Adult Care Food Program of the U.S. Department of Agriculture, as indicated on a chart supplied by the office.*

(2) *For children in care, the operator shall furnish:*

(a) *All beverages, including beverages for meals and snacks; and*

(b) *Milk with all meals.*

(3) *Except as prescribed for a child by a health care provider, a beverage furnished by the operator may not contain an added sweetener or caffeine.*

(4) *Unless otherwise ordered by a health care provider or requested by the child’s parent, milk furnished to a child by the operator shall be 1% fat milk or nonfat milk.*

(5) *The operator may arrange with a child’s parent to furnish milk of a type that is different from the milk ordinarily furnished by the operator.*

(6) *The operator shall keep a supply of nutritious food on hand in order to provide food to a child whose parent has not supplied:*

(a) *Food for meals or snacks; or*

(b) *Sufficient food to meet the standards of the Child and Adult Care Food Program of the U.S. Department of Agriculture.*

B. (text unchanged)

[C. The operator shall furnish and serve milk with all meals.]

[D.]C.—[E.]D. (text unchanged)

[F. An operator shall keep a supply of nutritious food on hand in order to provide food to a child whose parent has not supplied food or beverages for meals or snacks.]

[G.]E. (text unchanged)

Lillian M. Lowery, Ed.D.
State Superintendent of Schools