



# **Child Care Center Licensing Manual**

(August 2016)

for use with  
**COMAR 13A.16 Child Care Centers**  
(as amended effective 7/20/15)

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**.01 Scope.**

- A. Applicability of Subtitle. Except as specified at §B of this regulation, this subtitle governs non-parental care of children for part of a 24-hour day not in the child's own home, in a group setting such as a child care center, preschool, child development center, nursery school, before-school and after-school program, school age child care, or early learning center, by whatever name known, under private nonprofit, proprietary, public, and religious auspices.**

*INTENT: When a parent or guardian enrolls in a child care facility, there may be certain risks for the child. To offset these risks, child care center regulations have been established to protect the child's health and safety. These regulations set certain minimum standards for child health and safety and the operation of a child care program.*

**B. Exemptions. This subtitle does not apply to:**

- (1) **A family child care home registered under COMAR 13A.15;**
- (2) **A facility that offers or provides a residential placement for a child under Family Law Article, Title 5, Subtitle 5, or Health-General Article, Title 6 or 10, Annotated Code of Maryland;**
- (3) **A youth camp, as defined by Health-General Article, §14-401(j), Annotated Code of Maryland;**
- (4) **A child care service operated by the federal government or on federal property;**
- (5) **A public school during the hours in which an instructional program is offered;**
- (6) **A nonpublic kindergarten for children at least 5 years old during the hours in which an instructional program is offered;**
- (7) **A nonpublic elementary school during the hours in which an instructional program is offered;**
- (8) **Child care services provided in connection with a shelter housing individuals temporarily without residences, exclusively for the children of those individuals;**
- (9) **The physical plant, including sanitary facilities, of a child care center exclusively for school age children, located in a currently operating public or nonpublic school building, if the application of the regulation would require modification of the physical plant;**
- (10) **Programs that operate for 6 weeks or less in any calendar year; or**
- (11) **The instructional program, curriculum, and teacher, principal, and administrator qualifications of a:**
  - (a) **Nursery school operated by a tax-exempt religious organization which does not have a certificate of approval from the State Board of Education; or**
  - (b) **Child care program operated by a tax-exempt religious organization in a school building used exclusively for children who are enrolled in that school.**

*INTENT: Certain early childhood programs and services are exempt from the requirements of COMAR 13A.16 – Child Care Centers, because:*

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- They do not meet the definition of a child care center;
- They are granted licensing exemption under Maryland law; or
- Their period of operation is too short to allow the application of licensing requirements.

**Exemption Categories include:**

- **Unconditionally Exempt.** *The following are exempt from the requirement to be licensed because they are outside the scope of licensing regulations:*
  - *Child care provided in connection with a shelter (for homeless persons, battered women, etc.) as long as the service are exclusively for children of persons residing in the shelter. The child care service need not be provided in the shelter facility itself, but may be provided in an adjacent building.*
  - *Summer Youth Camps licensed by Maryland State Department of Health and Mental Hygiene.*
  - *A nonpublic nursery school operated by a bona fide tax-exempt religious organization as long as the nursery school holds a certificate of approval from the Maryland State Department of Education.*
  - *Child care service provided on federal government property.*
  - *A program for children that is operated for six weeks or less in a calendar year.*
  - *An instructional program for three-year old or four-year-old children offered by a non-public or public school during school hours.*
  - *Sunday schools (no matter when actually held) or Bible schools.*
- **Exempt by Definition.** *The following are exempt from the requirement to be licensed because they are not considered “child care” as defined under COMAR 13A.16.01.02B (14) (b). These programs include:*
  - *Before school or after school activity conducted or sponsored by a public or nonpublic school that is approved or exempt from approval by the Maryland State Department of Education.*
  - *Group lessons or classes, unless provided in a pattern indicating that a child care center is being operated. “Lessons or classes” mean specialized training in a specific subject such as swimming, tennis, sports clinics, computers, foreign languages, dance, gymnastics, arts and crafts, and music.*
  - *Scouting, sports, or youth club activities. A "youth club" means an organization where participants come together for a common purpose in*

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*which there may be a membership fee. Examples include hobby clubs, photography clubs, drama clubs, service clubs, etc.*

- *School-age recreational or supplementary education programs operated by local Departments of Recreation and Parks or by public or nonpublic schools, as long as custodial supervision is not the primary purpose of the program. Some Departments of Recreation and Parks offer latch-key child care services. The services do not differ in substance from after-school child care and must be licensed.*
- *Preschool programs offered by Departments of Recreation and Parks that mirror traditional nursery schools must be licensed. However, a preschool program that lasts for approximately 1 hour per day, 1 or more times per week, which consists of skills instruction (such as gymnastics, dance, tumbling, art, etc.) does not need to be licensed.*
- *Before-and-after-school programs for school age children operated by tax-exempt religious organizations that are located in schools and serve only children who are enrolled in those schools.*
- *Supervisory services to children while parents are immediately available. A program does not need to be licensed if it provides child supervision in support of occasional or intermittent parental activities by sponsors such as health spas, aerobics classes, doctor's offices, supermarkets, etc., where the parents are on-site, can be notified immediately by the sponsor in the event of emergency, and can return to the child.*
- **Partial Exemptions** – *Staff Qualifications, Curriculum, Certain Equipment. Pursuant to COMAR 13A.16.02.01B, certain facilities are exempt from requirements pertaining to staff qualification, program curriculum, and certain equipment. These programs include:*
  - *Nursery schools or child care centers operated by tax-exempt religious organizations, and*
  - *Approved Montessori Schools*
  - **Partial Exemption** – **Physical Plant**. *Child care centers for school-age children operated before and after school in a building that is currently in use as a public or private school are exempt from any licensing regulation that would require modification of the physical plant; however, such child care programs are subject to local fire, health, and zoning codes required of school buildings.*

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**NOTE:** *Particularly with respect to businesses or organizations that offer after-school programs, it is sometimes difficult to determine if child care is being provided, or whether an organized "lesson" or "class" is truly the primary focus of the program. As applicable, the following questions should be asked to help make this determination:*

- *What time do children arrive for the after-school program?*
- *Does the program provide transportation to the after-school site? If so, beginning at what time are the children picked up? At what time do they arrive at the after-school site? At what time are lessons offered and for how long? When do the children leave? Who transports them when they depart the after-school site? Does the program serve children who do not participate in the after-school program?*
- *Are there any children who are at the after-school program all day? If so, at what times are lessons offered to those children? What activities are the children involved in when they are not taking lessons?*
- *Is the after-school program open to children on school holidays? If so, how long are children at the program site when they are not actually participating in a specific lesson or class? What are they doing when they are not in class, and who supervises them?*
- *Are field trips offered? If so, how often and what do they consist of? How long is their duration? Who supervises the children during the field trips?*
- *What services does the program offer in its advertising? If the program has any advertising flyers or brochures, request that the program director provide copies for review. If the program has a website, get the address.*
- *Does the program hold a camp license pursuant to Maryland Department of Health and Mental Hygiene regulations governing youth camps?*

**.02 Definitions.**

**A. In this chapter, the following terms have the meanings indicated.**

**B. Terms Defined.**

**(1) Abuse.**

- (a) **"Abuse" means the physical or mental injury of a child, under circumstances that indicate that the child's health or welfare is significantly harmed or at risk of being significantly harmed, by:**
  - (i) **A parent;**
  - (ii) **An individual who has permanent or temporary care or custody or responsibility for supervision of a child; or**
  - (iii) **A household or family member.**
- (b) **"Abuse" includes sexual abuse of a child, whether physical injuries are sustained or not.**

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- (2) **"Acute illness"** means an abnormal condition of the body with rapid onset accompanied by abnormal symptoms and signs that has a short course of duration, as opposed to a chronic illness of long duration.
- (3) **"Acute illness center"** means a child care center which is exclusively for the temporary care of children who are ill and cannot attend their usual child care or school.
- (4) **"Adolescent center"** means a child care center that offers programs exclusively to children in middle school and junior high school.
- (5) **"Agency"** means the Office of Child Care, Division of Early Childhood Development, in the State Department of Education.
- (6) **"Agency representative"** means an individual designated by the Agency to determine compliance with this subtitle.
- (7) **"Applicant"** means a person who has submitted to the office all of the required forms and documentation to request approval for licensure either for an initial license or for a continuing license.
- (8) **"Approved continued training"** means training, including but not limited to workshops, seminars, and conferences, that is:
  - (a) **Approved by the office; and**
  - (b) **Used by child care center staff members to maintain the employment qualifications required by COMAR 13A.16.06.**
- (9) **"Approved Montessori school"** means an educational program in a nonpublic nursery school that has been validated by a Montessori validating organization as meeting, at a minimum, Montessori school standards regarding teacher qualifications, written curriculum, instructional methods, and materials and equipment.
- (10) **"Approved preservice training"** means training that is:
  - (a) **Approved by the office; and**
  - (b) **Used to meet initial employment qualifications required by COMAR 13A.16.06 for child care center staff members.**
- (11) **Assistant Child Care Teacher.**
  - (a) **"Assistant child care teacher"** means a staff member who:
    - (i) **Is responsible for helping a child care teacher in a school age child care program; and**
    - (ii) **Meets the requirements of COMAR 13A.16.06.11.**
  - (b) **"Assistant child care teacher"** includes a staff member known before December 17, 2008, as an assistant group leader.
- (12) **"Capacity"** means the total number of children specified by the license of the center who may be in care at any one time.
- (13) **"Child"** means an individual:
  - (a) **6 weeks old or older and younger than 16 years old; or**

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- (b) **Younger than 21 years old who has a disabling condition or other emotional, developmental, physical, educational, or medical need necessitating child care beyond 16 years old.**
- (14) **Child Care.**
- (a) **"Child care" means the care or supervision of a child when the child's parent has given the child's care over to another for some portion of a 24-hour day as a supplement to the parent's primary care of the child.**
  - (b) **"Child care" does not mean:**
    - (i) **A before-school or after-school activity conducted or sponsored by a public or nonpublic school that is approved or exempt from approval by the Maryland State Department of Education;**
    - (ii) **Scouting, sports, or youth club activities;**
    - (iii) **School-age recreational or supplementary education programs operated by a local department of recreation and parks, law enforcement agency, or a public or nonpublic school, if custodial supervision is not the primary purpose of the program;**
    - (iv) **Supervisory services to children provided by a church, health club, health provider, or similar sponsor in support of an occasional or intermittent parental activity or service offered by the sponsor while parents are on the same premises as the services to children and are immediately available to the children; or**
    - (v) **Programs primarily designed for the religious training of children, provided on a weekly basis or for a short period in the summer, commonly known as Sunday schools or Bible schools.**
- (15) **Child Care Center.**
- (a) **"Child care center" means an agency, institution, or establishment that, on a regular schedule for at least 2 days per week and for at least 2 hours per day, or on a 24-hour basis, offers or provides child care to children who do not have the same parentage, except as otherwise provided for in law or regulation.**
  - (b) **"Child care center" includes:**
    - (i) **A nonpublic nursery school approved under Education Article, §2-206, Annotated Code of Maryland, in which an educational program is offered or provided for children who are 2 years old or older but younger than 5 years old;**
    - (ii) **A facility providing specialized training in a specific discipline or subject that also offers a child related service such as, but not limited to, transportation, free play, meals or snacks, tutoring, or homework sessions; and**
    - (iii) **Child care operated by a State or local government agency.**
  - (c) **"Child care center" may offer more than one type of program or care.**
- (16) **Child Care Teacher.**

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- (a) **"Child care teacher" means a staff member who:**
  - (i) **Is responsible for supervising a child care activity or a group of children in care; and**
  - (ii) **Meets the requirements of COMAR 13A.16.06.09 or .10, as applicable.**
- (b) **"Child care teacher" includes a staff member known before December 17, 2007, as:**
  - (i) **Senior staff, if working with infants, toddlers, or preschoolers; or**
  - (ii) **Group leader, if working with school age children.**
- (17) **"Combined preschool and school age center" means a child care center that serves both preschool children and school age children, whether in separate groups or mixed age groups.**
- (18) **"Continuing license" means a child care center license that does not expire.**
- (19) **"Core of knowledge training" means training in any of the following topics that has been approved by the Office as meeting Maryland Child Care Credential Program requirements:**
  - (a) **Child development;**
  - (b) **Curriculum;**
  - (c) **Health, safety, and nutrition;**
  - (d) **Special needs;**
  - (e) **Professionalism; and**
  - (f) **Community.**
- (20) **Custodial Supervision.**
  - (a) **"Custodial supervision" means parentally authorized oversight of a child by an individual other than the child's parent or guardian.**
  - (b) **"Custodial supervision" includes responsibility for:**
    - (i) **The well-being and the whereabouts of the child for a given period of time; and**
    - (ii) **Direct transfer of the custody of the child from and to an authorized person.**
  - (c) **"Custodial supervision" does not include the oversight of a child who is participating in a specific activity, such as scouting, sports, or youth clubs.**
- (21) **"Department" means the Maryland State Department of Education.**
- (22) **"Drop-in center" means a child care center which only provides care to children on an intermittent and occasional basis for less than 4 hours a day.**
- (23) **"Educational program" means a program of instruction as defined by the State Board of Education.**
- (24) **"Elective training" means training taken from an approved source such as a national conference or seminar that is not necessarily core of knowledge training.**
- (25) **Employee.**
  - (a) **"Employee" means an individual:**



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- (i) **Who for compensation is employed by the center operator to work at or for the center; and**
- (ii) **Whose work assignment involves the care or supervision of children in the facility or access to children who are cared for or supervised in the facility.**
- (b) **"Employee" does not include an individual who:**
  - (i) **Is an independent contractor; or**
  - (ii) **Provides a consultative health service pursuant to COMAR 13A.16.06.14C.**
- (c) **For the purpose of applying the criminal background check requirements and the child and adult abuse and neglect record review requirements set forth in this subtitle, "employee" includes any individual who:**
  - (i) **Is compensated by the operator to perform a service at the center;**
  - (ii) **Has access to children in care; and**
  - (iii) **Does not clearly meet, or is not excluded from, the definition of independent contractor set forth in §B(29) of this regulation.**
- (26) **"Family child care" means the care given to a child younger than 13 years old or to a developmentally disabled person younger than 21 years old, in place of parental care for less than 24 hours a day, in a residence other than the child's residence and for which the provider is paid, in accordance with Family Law Article, §§5-550— 5-557.1, Annotated Code of Maryland.**
- (27) **"Group" means a unit of children together with the staff assigned to them.**
- (28) **"Health officer" means the health officer in each of the 23 counties and the Commissioner of Health in Baltimore City, or the duly designated representative of the health officer, or both, and refers to the health officer in the jurisdiction where the center is or will be located.**
- (29) **"Identified as responsible for child abuse or neglect" means being determined by a local department to be responsible for indicated child abuse or neglect, or awaiting the local department's appeal hearing after the determination.**
- (30) **Independent Contractor.**
  - (a) **"Independent contractor" means an individual or entity:**
    - (i) **That is hired by the center operator or by another party, on the basis of a service contract or agreement, to perform a specialized service at the center, including but not limited to food catering, child transportation, facility maintenance or repair, or supplemental recreational programming, for a specified period of time or in order to achieve a specified result;**
    - (ii) **That determines how the specialized service shall be performed; and**
    - (iii) **Whose specialized service is not restricted to the center, but is available for hire by other customers.**
  - (b) **"Independent contractor" does not include an individual who:**

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- (i) **Provides a consultative health service pursuant to COMAR 13A.16.06.14C;**
  - (ii) **Under a private arrangement with the parent or guardian of a child or children in care, provides a health care, academic, or other service only to that child or those children; or**
  - (iii) **Is employed for compensation by a public school or by a private or nonpublic school required to report annually to the State Board of Education.**
- (31) **"Infant" means a child 6 weeks old or older but younger than 18 months old.**
- (32) **"Infant-toddler center" means a child care center which offers programs only for children younger than 2 years old.**
- (33) **"Injurious treatment" means:**
- (a) **Deliberate infliction in any manner of any type of physical pain, including but not limited to spanking, hitting, shaking, or any other means of physical discipline or enforcement of acts which result in physical pain;**
  - (b) **Failure to attend to a child's physical needs and other physically damaging acts, excluding reasonable acts to protect the child from imminent danger;**
  - (c) **Subjecting a child to verbal abuse intended to cause mental distress, such as shouting, cursing, shaming, or ridiculing; and**
  - (d) **Using discipline methods which create undue discomfort, such as washing a child's mouth with soap, putting pepper or other spicy or distasteful items in a child's mouth, requiring a child to stand on one foot as punishment, or tying a child to a cot or other equipment.**
- (34) **"Kindergarten" means an educational program for children who are 5 years old, or who will be 5 years old by September 1 of the year they enter the program, provided in a:**
- (a) **Public school or a nonpublic school approved by the State Department of Education; or**
  - (b) **Nonpublic school operated by a tax-exempt religious organization which holds a letter of exemption from approval by the State Board of Education under Education Article, §2-206, Annotated Code of Maryland.**
- (35) **"License" means the document issued to a licensee by the Department, which gives permission to operate a child care center in accordance with this subtitle.**
- (36) **"Licensee" means an individual or a partnership, group, association, cooperative, or corporation which has the legal authority and responsibility for governing and operating a center and for compliance with this subtitle.**
- (37) **"Local department" means the department of social services, by whatever name known, in any of Maryland's 24 local jurisdictions.**
- (38) **"Mental injury" means the observable, identifiable, and substantial impairment of a child's mental or psychological ability to function.**

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- (39) **“Montessori validating organization”** means an entity that is constituted to determine if an educational program meets Montessori school standards and is recognized by the Department as qualified for that purpose.
- (40) **Neglect.**
- (a) **"Neglect"** means leaving a child unattended or otherwise failing to give proper care and attention to a child by the child's parents, guardian, or custodian under circumstances that indicate that the child's health or welfare is significantly harmed or placed at risk of significant harm.
  - (b) **"Neglect"** does not include, for that reason alone, providing a child with nonmedical religious remedial care and treatment recognized by State law in place of medical treatment for a child's injuries or illnesses.
- (41) **"Nursery school"** means an educational program:
- (a) **For children who are 2 years old, 3 years old, 4 years old, or any sequence of these ages; and**
  - (b) **That, unless approved by the Department before July 1, 2007, to operate for more than 6 hours per day, may not operate in excess of 6 hours per day.**
- (42) **"Office"** means the central office or a regional office of the Agency.
- (43) **"Operated by a tax-exempt religious organization"** means that the operator has submitted a copy of the determination letter from the Internal Revenue Service which recognizes the organization as a bona fide church organization exempt from taxation under the Internal Revenue Code of 1954, 26 U.S.C. §501(c)(3).
- (44) **"Operator"** means a licensee or an agent of a licensee.
- (45) **"Parent"** means the biological or adoptive parent or the legal guardian or custodian of a child, who enrolls the child in child care.
- (46) **Potentially Hazardous Food.**
- (a) **"Potentially hazardous food"** means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients including synthetic ingredients capable of supporting rapid and progressive growth of infectious, toxigenic microorganisms.
  - (b) **"Potentially hazardous food"** does not include clean, whole, uncracked, odor-free shell eggs.
- (47) **"Preschool center"** means a child care center which offers programs for children younger than 5 years old.
- (48) **"Preschooler"** means a child who:
- (a) **Is 2 years old or older; and**
  - (b) **Does not attend kindergarten or a higher grade.**
- (49) **"Professional development plan"** means the written instrument for tracking continued training that is:
- (a) **Distributed by the office; and**
  - (b) **To be completed annually by each staff member in a child care center.**
- (50) **"Sanction"** means an enforcement action under this subtitle.

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- (51) **"Sanitization"** means effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals for a sufficient period of time to destroy vegetative cells of pathogenic bacteria and to reduce substantially the number of other microorganisms.
- (52) **"School age center"** means a child care center which offers programs to children who attend a public or nonpublic school in kindergarten or grades 1—12.
- (53) **"School age child"** means a child younger than 16 years old who attends a public or nonpublic school in grades kindergarten or above.
- (54) **School Building.**
- (a) **"School building"** means a facility that houses:
  - (b) **A nursery school;**
  - (c) **An instructional program for kindergarten, a higher grade or grades, or any combination of grades; or**
  - (d) **A combination of the entities specified in §B (54) (a) (i) and (ii) of this regulation.**
  - (e) **"School building" does not include a church or other facility that houses only:**
    - (i) **A program for preschoolers; or**
    - (ii) **A before- and after-school program.**
- (55) **"Small center"** means a child care center which is:
- (a) **Located in a private residence; and**
  - (b) **Licensed for 12 or fewer children.**
- (56) **"Staff member"** means an individual 16 years old or older, whether paid or not, who is assigned responsibility for child care in a child care center and whose assignment helps to maintain the staff/child ratios required by COMAR 13A.16.08.03.
- (57) **"Successfully passed"** means, when used in connection with:
- (a) **A criminal background check, that an individual:**
    - (i) **Has not received 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 13A.16.06.03A; or**
    - (ii) **If having received 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 not listed at COMAR 13A.16.06.03A, has been assessed by the office as suitable for employment pursuant to COMAR 13A.16.06.03B; or**
  - (b) **A review of records of abuse and neglect of children or adults, that if an individual is:**
    - (i) **An employee of, or applying for employment by, a child care center, the individual has been assessed by the office as being suitable for employment, pursuant to COMAR 13A.16.06.03B; or**

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- (ii) **An independent contractor, the individual has not been identified as responsible for the abuse or neglect of a child.**
- (58) **"Superintendent" means the State Superintendent of Schools or the Superintendent's designee.**
- (59) **"Toddler" means a child 18 months old or older but younger than 2 years old.**
- (60) **"Volunteer" means an individual who:**
  - (a) **Is 13 years old or older;**
  - (b) **Works in or for a child care center but is not a compensated employee of the center;**
  - (c) **Is not counted by the child care center toward maintenance of the staff/child ratios required by this chapter; and**
  - (d) **Is not enrolled as a child in care at the child care center.**

*INTENT: The purpose of these definitions is to establish a clear and consistent meaning of certain terms used in COMAR 13A.16. Whenever one of these terms appears in these regulations, it means only what its definition set forth above says it means.*