



Issuing Letters of Compliance

(December 2016)

for use with

COMAR 13A.17 Letters of Compliance

(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:

- (1) Non-parental care of children for part of a 24-hour day in nursery schools operated by tax-exempt religious organizations; and**
- (2) Child care programs operated by tax-exempt religious organizations in school buildings used exclusively for children who are enrolled in those schools, by whatever name known.**

INTENT: Many tax exempt religious organizations operate nonpublic schools and prefer that the State of Maryland provide minimal oversight in those schools. Nursery schools are considered child care centers and must be licensed to protect the health and safety of the children in care. If the religious organization provides before and after school care to children exclusively enrolled in the school, a child care license is also required to protect the health and safety of the children in care. A Letter of Compliance is the type of license issued for those programs. The regulations set certain minimum standards for child health and safety and the operation of a child care program in a school operated by a tax exempt religious organization.

B. Exemptions. This subtitle does not apply to:

- (1) A nonpublic kindergarten for children at least 5 years old during the hours in which an instructional program is offered;**
- (2) A nonpublic elementary school during the hours in which an instructional program is offered;**
- (3) A program that operates for 6 weeks or less in any calendar year;**
- (4) 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; and**
- (5) 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.17 – Letters of Compliance, because:

- 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.*

.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.**

(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) **"Adolescent center" means a child care center that offers programs exclusively to children in middle school and junior high school.**

(4) **"Agency" means the Office of Child Care, Division of Early Childhood Development, in the State Department of Education.**

(5) **"Agency representative" means an individual designated by the Agency to determine compliance with this subtitle.**

(6) **"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.**

(7) **"Capacity" means the total number of children specified by the license of the center who may be in care at any one time.**

(8) **"Child" means an individual:**

(a) **2 years old or older and younger than 16 years old; or**

(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.**

(9) **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;**

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- (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.**
- (10) **Child Care Facility.**
- (a) **"Child Care Facility" means a nursery school or a child care program operated by a tax-exempt religious organization.**
 - (b) **"Child care facility" may offer more than one type of program or care.**
- (11) **"Child Care Program" means child care provided by a tax-exempt religious organization in a school building used exclusively for children who are enrolled in that school.**
- (12) **"Combined preschool and school age facility" means a child care facility that serves both preschool children and school age children, whether in separate groups or mixed age groups.**
- (13) **"Continuing letter of compliance" means a letter of compliance that does not expire.**
- (14) **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.**
- (15) **"Department" means the Maryland State Department of Education.**
- (16) **"Educational program" means a program of instruction as defined by the State Board of Education.**
- (17) **Employee.**
- (a) **"Employee" means an individual:**
 - (i) **Who for compensation is employed by the center operator to work at or for the center; and**

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- (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.17.06.06C.**
- (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(21) of this regulation.**
- (18) **"Group" means a unit of children together with the staff assigned to them.**
- (19) **"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.**
- (20) **"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.**
- (21) **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:**
 - (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.**

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- (22) **"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.**
- (23) **"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.**
- (24) **"Letter holder" means the tax exempt religious organization that has been issued a letter of compliance.**
- (25) **"Letter of compliance" means a letter issued by the Department to a tax-exempt religious organization that meets the requirements under Family Law Article, §5-574, Annotated Code of Maryland.**
- (26) **"Local department" means the department of social services, by whatever name known, in any of Maryland's 24 local jurisdictions.**
- (27) **"Mental injury" means the observable, identifiable, and substantial impairment of a child's mental or psychological ability to function.**
- (28) **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.**
- (29) **"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.**

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- (30) **"Office"** means the central office or a regional office of the Agency.
- (31) **"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).
- (32) **"Operator"** means a licensee or an agent of a licensee.
- (33) **"Parent"** means the biological or adoptive parent or the legal guardian or custodian of a child, who enrolls the child in child care.
- (34) **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.
- (35) **"Preschooler"** means a child who:
- (a) **Is 2 years old or older; and**
- (b) **Does not attend kindergarten or a higher grade.**
- (36) **"Preschool facility"** means a child care center which offers programs for children younger than 5 years old.
- (37) **"Sanction"** means an enforcement action under COMAR 13A.17.15.
- (38) **"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.
- (39) **"School age child"** means a child younger than 16 years old who attends a public or nonpublic school in grades kindergarten or above.
- (40) **"School age facility"** means a child care center which offers programs to children who attend a public or nonpublic school in kindergarten or grades 1—12.
- (41) **School Building.**
- (a) **"School building"** means a facility that houses:
- (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 in §B (41) (a) (i) and (ii) of this regulation.**
- (b) **"School building"** does not include a church or other facility that houses only:
- (i) **A program for preschoolers; or**

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- (ii) **A before- and after-school program.**
- (42) **"Small facility" means a child care facility which is:**
 - (a) **Located in a private residence; and**
 - (b) **Licensed for 12 or fewer children.**
- (43) **"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.17.08.03.**
- (44) **"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.17.06.03A; 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.17.06.03A, has been assessed by the office as suitable for employment pursuant to COMAR 13A.17.06.03B; 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**
 - (ii) **An independent contractor, the individual has not been identified as responsible for the abuse or neglect of a child.**
- (45) **"Superintendent" means the State Superintendent of Schools or the Superintendent's designee.**
- (46) **"Volunteer" means an individual who:**
 - (a) **Is 13 years old or older;**
 - (b) **Works in or for a child care facility but is not a compensated employee of the facility;**
 - (c) **Is not counted by the child care facility toward maintenance of the staff/child ratios required by COMAR 13A.17.08.03; and**
 - (d) **Is not enrolled as a child in care at the child care facility.**

INTENT: The purpose of these definitions is to establish a clear and consistent meaning of certain terms used in COMAR 13A.17. Whenever one of these terms appears in these regulations, it means only what its definition set forth above says it means.