



# 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 Minimum Staff Age.**

**In a nurse school or child care program:**

- A. Except as provided in §B of this regulation, staff members shall be at least 18 years old.**

*INTENT: A minimum age of 18 is established to help ensure that a staff member will be mature enough to handle the responsibilities associated with caring for children who are enrolled in the child care facility. In addition, to facilitate child supervision in a school-age program, each staff member must be older than the oldest child typically in care.*

**INSPECTION REPORT ITEM:** “Minimum Staff Age”

**COMPLIANCE CRITERIA:** Each staff member is at least 18 years old.

**ASSESSMENT METHOD:** Review the facility’s current Employment Record to determine current employees to determine if each staff member is at least 18-years-old. Request operator to produce documentation of the age of staff members.

Documentation may be any of the following:

- Driver’s letter of compliance;
- Birth certificate;
- Age of majority card;
- College transcript; or
- Other government-issued document (e.g., passport, naturalization papers, green card, etc.)

- B. An aide and a substitute aide shall be 16 years old or older and shall work under the direct supervision of the staff member in charge of the group to whom the aide is assigned.**

**.02 Staff Orientation.**

**On or before assignment, an operator shall 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. The location of the telephone and emergency telephone numbers;**
- B. The location of each child's emergency form;**
- C. Emergency evacuation procedures;**
- D. Identity of the staff members who have first aid and CPR training;**
- E. Identity of the adult who is required to be available to provide emergency coverage pursuant to COMAR 13A.17.08.02;**
- F. Hand washing procedures;**
- G. The facility's child discipline policy;**
- H. The requirements and procedures for reporting suspected child abuse and neglect, according to Family Law**

**Article, §§5-704—5-705, Annotated Code of Maryland;**

- I. **Signs and symptoms of abuse and neglect in children;**
- 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.**

*INTENT: In order for staff members to be knowledgeable about facility requirements and procedures pertaining to child health and safety, including child abuse and neglect reporting and child care facility licensing requirements, the facility must provide written information, as specified in A.- K. of this regulation, to each staff member before the staff member begins his or her work assignment.*

*INSPECTION REPORT ITEM: “Staff Orientation”*

*COMPLIANCE CRITERIA: No later than the person’s actual start date at the facility, each new employee or staff member receives all required child health and safety information in writing.*

*ASSESSMENT METHOD: Review the facility’s records for documentation indicating that each new employee and staff member received the required written information and when it was provided.*

**.03 Suitability for Employment.**

- A. **A child care facility operator may not employ an individual who, as reported on or after October 1, 2005, has received a conviction, a probation before judgment disposition, a not criminally responsible disposition, or a pending charge for the commission or attempted commission of:**
  - (1) **A crime involving:**
    - (a) **A child;**
    - (b) **Cruelty to animals;**
    - (c) **Domestic violence; or**
    - (d) **A weapons or firearms violation of federal or state laws;**
  - (2) **A sex offense;**
  - (3) **A violent crime classified as a felony;**
  - (4) **Abduction or kidnapping;**
  - (5) **Abuse of a child or an adult;**
  - (6) **Confinement of an unattended child;**
  - (7) **Manufacturing, distributing, or dispensing a controlled dangerous substance;**
  - (8) **Perjury;**
  - (9) **Pornography;**
  - (10) **Possession with intent to manufacture, distribute, or dispense a controlled dangerous substance; or**
  - (11) **Reckless endangerment.**

COMAR 13A.17.06 Staff Requirements

***INTENT:** By their very nature, certain criminal offenses involve acts that obviously carry extreme risks for children. An operator is absolutely forbidden to hire, or continue to employ, any person with a criminal history that includes any of the above-referenced offenses.*

***INSPECTION REPORT ITEM:** “Suitability for Employment”*

***COMPLIANCE CRITERIA:** The facility does not employ any person for whom a criminal background check (CBC) report issued on or after October 1, 2005 reveals a pending charge for, or adjudication on any of the listed offenses.*

***ASSESSMENT METHOD:** Review the facility's Employment Record/Personnel List in conjunction with OCC's copies of CBC reports received since October 1, 2005 to determine if any individual listed has been charged with, or adjudicated (i.e., been convicted, received a probation before judgment, etc.) for one of the enumerated offenses. Initial CBC requests for employee and subsequent “alerts” are used to determine employability.*

***Note:** See “**Suitability for Employment Process**” and “**Verifying Staff Employment During Unannounced Inspections**”.*

- B. If, as reported on or after October 1, 2005, an individual has been identified as responsible for child abuse or neglect or 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 or offense that is not included in §A of this regulation, the office:**
- (1) Shall assess, on the basis of the following factors, the individual's suitability for employment:**
    - (a) The job position at the facility for which the individual is applying or in which the individual is currently employed;**
    - (b) The nature and seriousness of the incident, crime, or offense;**
    - (c) How long ago the incident, crime, or offense occurred;**
    - (d) The age of the individual at the time the incident, crime, or offense occurred;**
    - (e) The individual's probation or parole status, if applicable; and**
    - (f) Any other information the office considers pertinent; and**
  - (2) Depending on the results of the assessment, shall permit or prohibit employment of the individual.**

***INTENT:** If a facility employee (or employment applicant) has a Child Protective Services (CPS) history of indicated child abuse or neglect or a criminal history that includes certain offenses other than those listed under §A of this regulation, the agency will evaluate that information to determine the person's suitability to work in a child care environment. Based on the results of that evaluation, the agency may find that person to be unsuitable for child care facility employment and direct the program operator to deny or terminate the person's employment.*

***INSPECTION REPORT ITEM: "Suitability for Employment"***

***COMPLIANCE CRITERIA:*** For any facility employee or employment applicant who has a Child Protection Services history of indicated child abuse or neglect or a criminal history that includes certain offenses other than those listed under §A of this regulation, such an individual's suitability to work in a child care environment has been evaluated.

*If the evaluation by the agency has resulted in a finding of unsuitability for child care program employment, the facility has terminated or denied employment of that individual.*

***ASSESSMENT METHOD:*** Review the facility's Employment Record to determine if the requirements of this regulation have been met.

**C. Request for Reassessment.**

- (1) An individual who is prohibited from employment by the office pursuant to §B of this regulation may request the office to conduct a reassessment with respect to the incident, crime, or offense.**
- (2) For a reassessment request to be eligible for consideration:**
  - (a) The request shall be in writing and shall include documentation, such as but not limited to letters of support or evaluation reports, pertinent to the incident, crime, or offense; and**
  - (b) The individual may not have submitted a reassessment request, whether for the same or a different job position, within the previous 12 months.**
- (3) In order to reach a decision on the request, the office may request additional information from the individual, the facility operator, or any agency or entity cited by the individual or the operator in connection with the reassessment request.**
- (4) Upon reaching a decision on the request, the office shall promptly notify the individual of that decision.**
- (5) The operator may not permit the individual to begin or to resume employment until the office has notified the operator that the individual may be employed.**

***INTENT:*** Any person evaluated by OCC as unsuitable for employment may ask for a reconsideration of that evaluation. The agency will agree to conduct a re-evaluation if the request is in writing and includes pertinent documentation explaining why the finding of unsuitability by OCC should be changed, and if OCC has not received a similar request from the person within the past year. As soon as the re-evaluation has been completed, the agency shall notify the person and the facility operator of its outcome. If the outcome is favorable to the person, the operator may not allow the person to begin working before receiving permission from OCC to do so.

**D. Notification of Employment Prohibition.**

- (1) **If the office, pursuant to this chapter, determines that an individual may not be employed at a facility, the office shall notify the individual and the facility operator in writing of that decision and its basis.**
- (2) **The written notification to the individual shall also:**
  - (a) **State that the individual may appeal the decision to the Office of Administrative Hearings (OAH); and**
  - (b) **Specify the requirements for submitting an appeal to the OAH.**

*INTENT: If OCC denies employment on the basis of unsuitability, the agency shall notify the person and the facility operator in writing of that decision and the reason for it. The notification to the person shall also include information concerning the person's right to appeal the decision.*

**E. Upon notification that an individual may not be employed, the facility operator:**

- (1) **Shall promptly terminate the individual from employment or from consideration for employment, as applicable; and**
- (2) **Unless the individual appeals the decision to the OAH and the appeal is concluded in favor of the individual, may not:**
  - (a) **Reconsider the individual for employment;**
  - (b) **Permit the individual to have any contact with an unrelated child in care; or**
  - (c) **Allow the individual on the premises of the facility except to exercise parental responsibilities with respect to a related child in care.**

*INTENT: If OCC directs an operator to deny or terminate a person's employment for reasons of unsuitability, the operator must comply immediately. Unless the person appeals OCC's action and the action is overturned, the operator may not attempt to re-hire the person or, unless the person is a parent of a child in care, allow the person to be on the facility's premises.*

**INSPECTION REPORT ITEM:** "Suitability for Employment"

**COMPLIANCE CRITERIA:** Unless OCC's employment prohibition has been overturned on appeal, the facility does not:

- *Employ any person whose employment has been prohibited by OCC, or*
- *Permit the person on the facility's premises except as the parent of a child in care.*

**ASSESSMENT METHOD:** *If a person should have been terminated from, or denied employment at the facility, review the facility's current Employment Record to determine if the person's name is appears in the record. Interview the Director to determine if there is any other documentation (for example, a denial of employment application letter or a*

notice of termination) verifying that the person has been terminated from, or denied employment.

**.04 Staff Health.**

**A. Medical Evaluation.**

- (1) **An operator shall obtain a medical evaluation, including a tuberculosis screen, if indicated, on a form supplied or approved by the office, that has been completed within 6 months before the individual begins work in the facility, from each prospective:**
  - (a) **Staff member; and**
  - (b) **Except for a health care professional serving as a consultant pursuant to Regulation .14C of this chapter, support staff who will be present at the facility while children are in care.**
- (2) **The medical evaluation may transfer directly from one nursery school or child care program to another when there has been no gap in employment longer than 3 months.**

***INTENT:** A facility employee must be free of any communicable disease that would prohibit the person from working in a child care program. Staff who work with children must be able to participate fully in a program for active youngsters. This might include lifting infants and young children, getting up and down from the floor, lively outdoor activities, and moving furniture. It may also include transporting children in a motor vehicle. Therefore, the person must be evaluated for any physical condition that might adversely affect his or her job performance.*

***INSPECTION REPORT ITEM:** “Staff Health”*

***COMPLIANCE CRITERIA:***

- *For each facility employee whose job duties require the person to be present when children are in attendance, there is a medical evaluation on file that was completed no more than 6 months before the person began working at the facility.*
- *The medical evaluation is documented on a **“Medical Report for Child Care”, OCC 1204** form, or on a similar form that has been approved by the Regional Office.*

***ASSESSMENT METHOD:** Review employee records on file at the facility to determine if the required medical evaluations are present for each employee and determine if these evaluations were completed within 6 months before the employee began work in the facility.*

- B. Exclusion from Work. Except with the approval of the office and the health officer, an operator may not permit an individual with a serious transmissible infection or communicable disease listed on a chart supplied by the office to work at a facility**

**during the period of exclusion from child care recommended on the chart for that infection or disease.**

***INTENT:** Children in care must be protected from exposure to certain infectious and communicable diseases identified by the Maryland Department of Health and Mental Hygiene (DHMH). A facility employee who has such a disease and is in its communicable stage may not be permitted to work at the facility.*

***INSPECTION REPORT ITEM:** "Staff Health"*

***COMPLIANCE CRITERIA:** An employee who has a disease listed in the current **DHMH "Communicable Diseases Summary"** chart, is kept away from work for the period of time stated in that chart.*

***ASSESSMENT METHOD:** Interview the Director and other facility staff as necessary to determine if:*

- *The facility maintains a copy of the current **DHMH "Communicable Diseases Summary"** chart, and*
- *The facility's policy on staff with infectious and communicable diseases is consistent with the exclusion guidelines stated in the "Communicable Diseases Summary" chart.*

**.05 Substitutes.**

- A. When a staff member is absent, the operator shall provide a substitute as needed to maintain the staff/child ratios required by COMAR 13A.17.08.03.**
- B. A substitute shall be 18 years old or older, except that a substitute aide may be 16 years old or older.**

***INTENT:** Except for the position of aide (for which the minimum age is 16-years-old), a substitute must be at least 18-years-old.*

***INSPECTION REPORT ITEM:** "Substitutes"*

***COMPLIANCE CRITERIA:** Each substitute aide is at least 16-years-old, and each substitute for all other positions is at least 18-years-old.*

***ASSESSMENT METHOD:** Review the **OCC form 1229, "Substitute Form"**, to determine if the person meets the applicable minimum age requirement. Request operator to produce documentation of the age of the substitutes. Documentation verifying age may include one of the following:*

- *Driver's letter of compliance;*
- *Birth certificate;*
- *Age of majority card;*
- *College transcript; or*



- *Other government-issued document (e.g., passport, naturalization papers, green card, etc.)*

**.06 Support Personnel.**

- A. The operator or the director shall provide additional personnel for all duties not involving direct supervision of children, such as personnel for food preparation and service, housekeeping, transportation, clerical, and other duties, if necessary to maintain the correct staff/child ratios at all times.**

*INTENT: The facility must maintain correct staff/child ratios at all times. If attention by child care staff to program support duties such as meal preparation or child transportation will result in the inability to maintain those ratios, the operator must arrange for additional personnel to perform the support duties.*

**INSPECTION REPORT ITEM:** “Support Personnel”

**COMPLIANCE CRITERIA:** *All support duties are performed without detriment to the maintenance of minimum staff/child ratios.*

**ASSESSMENT METHOD:** *Review the facility’s current personnel list and staffing pattern for evidence of needed support personnel, and observe implementation of appropriate support services.*

- B. In a small facility, the operator need not provide additional staff if children are involved in appropriate activities and supervised at all times while necessary duties, such as food preparation, are performed.**

*INTENT: If routine program support duties can be performed without detriment to appropriate child supervision or activities, a small facility operator is not required to arrange for additional personnel to perform those duties.*

**INSPECTION REPORT ITEM:** “Support Personnel”

**COMPLIANCE CRITERIA:** *All support duties are performed without detriment to appropriate child supervision or activities.*

**ASSESSMENT METHOD:** *While support duties are being performed, observe to determine the appropriateness of child supervision and the implementation of child activities. If unable to observe, interview the provider to ascertain how supervision is provided when support duties are performed.*

- C. The operator of a facility that provides a regular service involving the use of specialized health care procedures or equipment shall use as a consultant to the facility in providing the service a registered nurse, nurse practitioner, physician's**

**assistant, physician, or other licensed or certified service professional as appropriate.**

*INTENT: The operator may provide specialized health care services only if those services are administered by, or under the professional guidance of, properly qualified health care personnel.*

**INSPECTION REPORT ITEM:** “Support Personnel”

**COMPLIANCE CRITERIA:** *Each specialized health care service or procedure offered by the facility is conducted as follows:*

- *Directly by a properly qualified health care professional, or*
- *Under the review of a properly qualified health care professional.*

**ASSESSMENT METHOD:** *Review facility records for documentation that the specialized health care service or procedure is conducted by, or under the professional guidance of, an appropriately qualified health care professional.*

**.07 Volunteers.**

- A. A child care facility volunteer shall be under the close supervision of a staff member whenever the volunteer is in contact with an unrelated child in care at the facility.**
- B. The operator may not use as a volunteer an individual who has been prohibited, or automatically would be prohibited, from employment at the facility pursuant to Regulation .03A or B of this chapter.**

*INTENT: For the safety of the other children in care, each volunteer must be monitored closely by a staff member whenever the volunteer is in the presence of an unrelated child. A person who would be barred from employment at the facility due to a criminal record or a history of child abuse or neglect may not serve at the facility as a volunteer.*

**INSPECTION REPORT ITEM:** “Volunteers”

**COMPLIANCE CRITERIA:** *Each volunteer at the facility is:*

- *Monitored closely by facility staff whenever in the presence of an unrelated child, and*
- *Used only if not unsuitable on the basis of criminal or abuse/neglect history.*

**ASSESSMENT METHOD:**

- *Observe each volunteer to determine if, when, and how monitored by facility staff. If observation is not possible, interview the director and other facility staff as necessary to determine monitoring level and procedures.*

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- *Interview the director to determine if background checks were conducted on the volunteer and, if so, whether the results would have barred the person from serving as a volunteer.*

**Note:** *For detailed guidelines concerning the use of volunteers and practicum students, see **Resource Guide entitled "Volunteers and Practicum Students in Child Care Facilities"**.*