



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 Complaints.

The office shall investigate both written and oral complaints that relate to a violation of a regulation, including anonymous complaints, and prepare a written report of the findings.

INTENT: As the agency responsible for regulating child care facilities and assessing their compliance with licensing regulations, the Office must investigate all complaints of regulatory violations and prepare a written record of findings. Any person may file a complaint, and the complaint may be verbal or written.

Notes: Complaints alleging a violation of Letters of Compliance regulations are handled in the following manner:

- *The Regional Office accepts complaints that are filed in person, telephonically, or in writing by letter, fax, or e-mail.*
- *A complainant does not need to identify him/herself. Anonymous complaints are accepted.*
- *At the time it is received at the Regional Office, each complaint is classified as “Priority One” or “Priority Two”, based on the seriousness of the complaint allegations.*
 - *Investigation of Priority 1 complaints must be initiated within 48 hours.*
 - *Investigation of Priority 2 complaints must be initiated within ten (10) business days.*
- *Complaints are recorded by the Regional Office on a Complaint Intake form in the Child Care Administrative Tracking System (CCATS). An operator may review a Complaint Intake form completed for a complaint filed against the facility (although all material, if any, related to Child Protective Services must be redacted by the Regional Office).*
- *Complaint inspection/investigation results are recorded by the Regional Office in the Electronic Licensing Inspection System (ELIS).*
- *After the complaint investigation is finished, the complaint and the investigation findings are summarized on a Record of Complaint form in the Child Care Administrative Tracking System (CCATS).*
- *Upon receipt of a written Public Information Act (PIA) request, the summary of an unconfirmed or confirmed complaint may be released to:*
 - *The person making the complaint,*

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- *A parent whose child was enrolled at the child care facility, or*
- *A parent or business that currently uses (or is considering using) the child care facility.*
- *Any information related to Child Protective Services must be redacted by the Regional Office prior to releasing the Record of Complaint in response to a PIA request.*
- *Complex PIA requests or PIA requests from Attorneys must be referred to the Office of the Attorney General for processing.*

.02 Inspections.

A. An operator shall permit inspection by the agency representative of all areas of the facility regulated by this subtitle during the nursery school's or child care program's hours of operation without prior notice to the operator.

INTENT: Maryland law requires the Office to inspect each licensed facility to determine if the facility is complying with all applicable requirements. As a condition of licensing, the facility operator must allow Office licensing personnel to conduct an inspection at any time during the facility's approved operating hours.

Notes:

- *Except as noted under §D of this regulation, if the operator does not permit inspection of the facility during approved operating hours, the facility license may be suspended or revoked. If entry to the facility is refused, the Licensing Specialist must immediately notify the Regional Manager, and the Regional Manager must immediately notify the OCC Legal Enforcement Unit.*
- *If children are heard or seen on the premises and the operator refuses entry of OCC staff, the Licensing Specialist must call the local police.*
- *All inspection must be conducted in a manner exhibiting good customer service. (see **"Customer Service – Referenced in Manual"**)*
- *All findings of compliance and noncompliance must be noted by the Licensing Specialist in ELIS.*
- *"Non-compliances" and "Discussed" items are automatically summarized in the "Summary of Findings" in ELIS.*
- *The entire inspection report consists of the completed "Inspection Report" form and the "Summary of Findings."*

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- *The “Summary of Findings” (non-compliances and discussed items) are reviewed with the operator, and the operator may request a “Review of Findings” if there is any disagreement with the findings.*
- *The inspection report is signed by the operator and the Licensing Specialist.*
- *The inspection report is emailed or mailed to the operator.*

B. An operator may request satisfactory identification from the agency representative before admitting the representative for an inspection.

INTENT: For the protection of facility personnel and the children in care, the operator may ask Office licensing personnel for identification before permitting entry to the facility.

Notes:

- *At all times while on duty, each Office licensing staff member shall carry and be prepared to display valid State of Maryland employee identification.*
- *If an Office staff member cannot or will not produce valid State of Maryland employee identification, the operator may deny the staff member entry to the facility.*

C. Upon request, an operator shall make the records required by this subtitle available to an agency representative for inspection and copying.

INTENT: The operator must allow Office licensing personnel to inspect all records maintained in connection with the facility license and, if necessary, to temporarily remove any such record from the facility in order to copy it.

D. An agency representative shall inspect each facility:

- (1) **On an announced basis before the office issues an initial letter of compliance or a continuing letter of compliance; and**
- (2) **On an unannounced basis, at least once:**
 - (a) **Within each 12-month period after the date that an initial letter of compliance or a continuing letter of compliance was issued; or**
 - (b) **If the facility is currently operating on a renewed letter of compliance, during the 12-month period following the calendar year in which the renewed letter was issued.**

Note: (b) above is no longer valid. Will be removed from regulations.

INTENT for (1) and (2) (a) above:

- To validate compliance with the child care facility licensing regulations, the Regional Office will conduct an announced inspection before an initial or continuing license is issued.
- To validate ongoing compliance with the child care facility licensing regulations, the Office will conduct an unannounced inspection at least once every 12 months after the issuance of an initial or continuing license and at least 30 days prior to the anniversary date.

Note:

- An announced conversion inspection may be conducted on the same day as the 2nd 12-month “initial license” unannounced inspection; however, a separate ELIS report must be completed for each type of inspection. See **“Establishing Anniversary Dates and Coordinating Inspections”**.
- Routine unannounced inspections may be “piggybacked” onto monitoring visits as well as complaint investigations; however, a separate ELIS report must be completed for each type of inspection. See **“Establishing Anniversary Dates and Coordinating Inspections”**.
- During unannounced visits, oftentimes a facility may not be available for inspection due to the absence of the provider, the provider is not currently providing care, or the facility is simply closed. For guidance in addressing these issues, see **“Non Responsive Providers and Providers Not Providing Care”**.

E. An operator may contest a finding of noncompliance with this subtitle by requesting a review of findings by the regional office or the central office of the Agency.

INTENT: If the operator believes that a finding of noncompliance was wrong or unfair, the operator may ask for a review of that finding by OCC management staff.

Notes:

The following are the steps for appealing a finding of noncompliance:

1. Upon completion of the inspection, the Operator checks the box on the first page of the ELIS “Summary of Findings,” indicating that a review of findings is requested, or make the request to the Regional Office, via writing or email, within 30 days of the inspection.

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2. *The Licensing Specialist notifies the Regional Manager/designee of the request.*
3. *The Regional Manager/designee reviews the inspection data in ELIS and sends a letter to the operator outlining the findings of the review.*
 - *If the operator requests a meeting and at that meeting the issues are not resolved, the Regional Manager/designee contacts the Program Manager of the OCC Licensing Branch.*
 - *Instead of agreeing to meet with the Regional Manager/designee, the operator may choose to contact the Licensing Branch Program Manager directly. In this event, the Regional Manager/designee shall:*
 - *Give the operator the name and telephone number of the Program Manager, and*
 - *Call the Program Manager to summarize the situation, provide pertinent background information, and present the recommendation of the Regional Office.*

.03 Intermediate Sanctions.

- A. Upon a determination that an operator has violated the regulations in this subtitle, placing the health, safety, or welfare of children in care at risk, the office may:**
- (1) Restrict the ages or number of new children enrolled;**
 - (2) Reduce the number of children in care;**
 - (3) Require the operator or facility staff to participate in training in a specified content area;**
 - (4) Increase the frequency of monitoring of the facility during a specified period of time;**
 - (5) Enter into an agreement with the operator detailing requirements for remedying violations and achieving compliance; and**
 - (6) Notify, or require the operator to notify, a parent of a child who may be affected by the situation for which an intermediate sanction has been imposed.**

***INTENT:** As an alternative to suspending or revoking the facility's license, the Regional Office may pursue an intermediate sanction which places certain limits or conditions on facility operations. An intermediate sanction should be seen as an opportunity for the Regional Office to work closely with the operator to help bring the facility into satisfactory compliance.*

Notes:

- *An intermediate sanction may be voluntary on the part of the operator, or involuntary:*

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- *Voluntary – for example, a compliance agreement*
- *Involuntary – for example, the Regional Office imposes a reduction in facility capacity or a limitation on the number or ages of children approved for care*
- *Involuntary sanctions carry appeal rights, but voluntary sanctions do not. For additional information on “appeals” refer to the following:*
 - ***“Request for Hearing/Appeal” form, OCC 1281***
 - *COMAR 13A.16.18, Administrative Hearings (Chapter 18 of this Manual)*
- *A limitation on admission of children or a reduction in capacity may be imposed immediately on an emergency basis if deemed necessary to protect children from imminent harm.*
- *A voluntary compliance agreement must be in writing, signed by the operator and the Regional Office representative, and include a statement of:*
 - *Facts about the noncompliant situation that resulted in the agreement,*
 - *The respective responsibilities of the operator and the Regional Office under the agreement, and*
 - *The consequences to the operator of failing to observe the terms of the agreement.*
 - *The timeframe in which the compliance agreement will be in effect.*

B. If the office determines that an operator has violated a condition or requirement of the sanction, the office may suspend or revoke the operator's license.

INTENT: The operator must abide by all the terms of the agreement. Failure to do so may result in suspension or revocation of the facility's license.

.04 Suspension.

A. The office may suspend an operator's license for a period of not more than 60 calendar days:

- (1) **Upon determining that the:**
 - (a) **Regulations in this subtitle have been violated; and**
 - (b) **Health, safety, or welfare of children in the facility is threatened; or**
- (2) **If the letter of compliance is a continuing letter of compliance that was placed on conditional status, and the:**
 - (a) **Conditional status has lapsed; and**
 - (b) **Operator has failed to meet the requirements for reinstatement of the continuing letter of compliance.**

INTENT: The Office of Child care may suspend a facility license for up to 60 days if there are regulatory non-compliances that create a risk to children in care, or if the terms under which a conditional license was issued have not been satisfied.

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B. The office shall notify the operator in writing of the license suspension by certified mail 20 calendar days in advance, and the notice shall specify:

- (1) **The effective date and period of the suspension;**
- (2) **The reason for suspension;**
- (3) **The regulatory violation which is the basis for the suspension;**
- (4) **That the operator shall stop providing child care on the effective date of the suspension unless the operator requests a hearing in writing within 20 days of the date of the suspension notice;**
- (5) **That the operator may request a hearing;**
- (6) **That the suspension shall be stayed if a hearing is requested within 20 days of the date of the suspension notice;**
- (7) **That, if the suspension is upheld by the Superintendent following the hearing, the operator shall cease providing child care until the office determines that the health, safety, or welfare of a child in the facility no longer is threatened;**
- (8) **That the suspension may lead to revocation; and**
- (9) **That the operator is required to surrender the license to the office when the suspension becomes effective.**

INTENT: In accordance with due process requirements, the Regional Office must notify the operator about the reason(s) for the suspension, the operator's right to appeal the suspension, and how to exercise that right.

Notes:

- *If the operator requests a hearing within the required timeframe, the suspension does not begin until after the hearing decision. Until that time, the operator may continue to operate. If the suspension action is upheld, the operator must cease providing care until the Office determines that the children in care are no longer threatened.*
- *For additional information, refer to the following:*
 - ***“Request for Hearing/Appeal” form, OCC 1281***
 - *COMAR 13A.16.18, Administrative Hearings (Chapter 18 of this Manual)*

C. The office shall notify the parents of the children in care of the suspension.

INTENT: Parents need to know about the suspension so they can make an informed decision about whether to leave their children in care at the facility if it continues to operate pending an appeal hearing. They must also be notified so that they have an opportunity to make alternate child care arrangements as they deem necessary.

D. By the end of the suspension period, the office shall:

- (1) **Reinstate the license and return it to the operator; or**
- (2) **Revoke the license.**

INTENT: The Regional Office has until the end of the suspension period to determine if the violation(s) leading to the suspension have been sufficiently corrected. Based on that determination, the Office must either permit the operator to re-open the facility or move to revoke the facility's license.

.05 Emergency Suspension.

A. The office may suspend a letter of compliance on an emergency basis when it is determined that this action is required to protect the health, safety, or welfare of a child in the facility.

B. The office shall hand deliver written notice of the emergency suspension to the operator stating:

- (1) **The regulatory basis for the suspension; and**
- (2) **That the operator shall immediately stop providing child care;**
- (3) **That the operator is entitled to a hearing before the Superintendent within 7 calendar days of the operator's request for a hearing;**
- (4) **That the Superintendent shall issue a decision concerning the emergency suspension within 7 calendar days of the hearing;**
- (5) **That if the emergency suspension order is upheld, stoppage of child care at the facility shall continue until it is determined that the health, safety, or welfare of a child in the facility is no longer threatened;**
- (6) **That the suspension may lead to revocation; and**
- (7) **That the operator is required to surrender the license to the office when the suspension becomes effective.**

INTENT: In accordance with due process requirements, the Regional Office must notify the operator about the reason(s) for the suspension, the operator's right to appeal the suspension, and how to exercise that right.

Note: For information on the appeals process, refer to the following:

- “COMAR 13A.17.16, Administrative Hearings (Chapter 16 of this Manual)
- **“Request for Hearing/Appeal” form, OCC 1281.**

C. The office shall notify the parents of the children in care of the emergency suspension.

INTENT: Parents must be notified so that they have an opportunity to make alternate child care arrangements as they deem necessary.

Notes:

- *Once the decision is made to conduct an emergency suspension, the Regional Manager/designee notifies the local Child Care Resource Facility (CCRC) of the imminent emergency suspension. This allows the CCRC to be prepared to assist parents in finding alternate child care.*
- *As soon as the suspension action is taken, the Licensing Specialist compiles a list of names and addresses of all the parents of children in care.*
- *The Regional Manager sends a letter by regular mail to each parent reporting that:*
 - *The facility license has been suspended,*
 - *The operator may appeal the suspension,*
 - *The facility must immediately stop providing care, and*
 - *The parent may contact the local CCRC for assistance.*
- *If the action is appealed, another letter is sent to each parent as soon as the appeal has been decided to let the parent know the outcome of that decision.*

.06 Revocation.

A. The office may revoke a letter of compliance if:

- (1) **An operator or facility is in violation of this subtitle and the health, safety, or welfare of children in the facility is threatened;**
- (2) **An operator misrepresented or offered false information on the application or on any form or report required by the office;**
- (3) **An operator interferes with the agency representative in the performance of the duties of the office;**
- (4) **The operator fails to comply with the:**
 - (a) **Prohibitions on the use of an individual as an employee or a volunteer as set forth in COMAR 13A.17.06.03A and B and .07C; or**
 - (b) **Child security requirements set forth in COMAR 13A.17.07.06;**
- (5) **The terms or conditions of an intermediate sanction have been violated;**
- (6) **Violations required to be corrected during a period of suspension have not been corrected and the period has ended; or**
- (7) **The letter of compliance is a continuing letter of compliance that was replaced by a conditional letter of compliance, and the:**
 - (a) **Conditional status has lapsed; and**
 - (b) **Operator has failed to meet the requirements for reinstatement of the continuing letter of compliance.**

INTENT: The facility license may be revoked if the operator has demonstrated an inability or unwillingness to comply with licensing regulations, or if a situation or condition exists that presents a threat to children in care.

B. If the office decides to revoke a letter of compliance, the office shall notify the operator in writing 20 calendar days before the effective date of the revocation, stating:

- (1) **The effective date of the revocation;**
- (2) **The reason for revocation;**
- (3) **The regulatory violation which is the basis for the revocation;**
- (4) **That the operator shall stop providing child care unless a hearing is requested in writing within 20 days of the date of the revocation notice;**
- (5) **That the operator may request a hearing;**
- (6) **That the revocation shall be stayed if a hearing is requested within 20 days of the date of the revocation notice;**
- (7) **That, if the revocation is upheld by the Superintendent following the hearing, the operator shall cease providing child care; and**
- (8) **That the operator is required to surrender the letter of compliance to the office when the revocation becomes effective.**

INTENT: In accordance with due process requirements, the OCC Regional Office must notify the operator of the reason(s) for the revocation, the operator's right to appeal the revocation action, and how that right may be exercised.

Notes:

- *A revocation becomes effective 20 calendar days after notification of revocation. If the revocation action is appealed, the revocation is stayed and the facility may continue to operate until the Office of Administrative Hearings (OAH) has heard the appeal and made a decision. However, if the revocation action follows an emergency suspension, the facility must remain closed until OAH has reached a decision on the appeal.*
 - *For the steps involved in filing an appeal, see **“Request for Hearing/Appeal” form, OCC 1281.***
 - *COMAR 13A.16.18, Administrative Hearings (Chapter 18 of this Manual)*
- *For requirements pertaining to the OAH appeal hearing process, see COMAR 13A.17.16, Administrative Hearings (Chapter 16 of this Manual).*
- *If the revocation action is upheld by OAH at the appeal hearing, the operator must immediately surrender the facility license to the Regional Office.*

C. The office shall notify the parents of the children in care of the revocation.

INTENT: Parents need to know about the revocation action so they can make an informed decision about whether to leave their children in care at the facility if it is allowed to remain open pending an appeal hearing. They must also be notified so that they have an opportunity to make alternate child care arrangements if they wish to do so.

Notes: *Parents are notified of the revocation action as follows:*

- *As soon as the revocation action is taken, the Licensing Specialist compiles a list of names and addresses of all the parents of children in care.*
- *The Regional Manager sends a letter by regular mail to each parent reporting that:*
 - *The office has initiated a revocation action to go into effect in 20 days;*
 - *The operator may appeal the revocation; and*
 - *If the operator appeals the revocation action within 20 days, the facility may remain in operation until the appeal is concluded.*
- *If the action is appealed, another letter is sent to each parent as soon as the appeal has been decided to let the parent know the outcome of that decision.*
- *If the OCC is upheld, the parent is advised to contact the local CCRC for assistance in finding alternate child care.*

.07 Penalties.

A. Criminal Penalty. A person that maintains and operates a nursery school or a child care program without a license or a letter of compliance, if convicted, is guilty of a misdemeanor and subject to a fine not exceeding:

- (1) **\$1,500 for the first violation; and**
- (2) **\$2,500 for a second or subsequent violation.**

INTENT: It is against the law to operate a child care facility without a valid license. Illegal operation of a facility is a prosecutable offense.

B. Civil Penalty.

- (1) **A person who maintains and operates a nursery school or child care program without a license or a letter of compliance, or who violates any regulation in this subtitle, is subject to a civil penalty imposed in a civil action of not more than \$1,000 for each violation, and each day a violation occurs or the facility operates illegally is considered a separate violation.**
- (2) **The total amount of the civil penalties imposed in a civil action may not exceed \$5,000.**

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INTENT: *Operating a child care facility in violation of the law or of the regulations set forth under COMAR 13A.17 – Letters of Compliance may subject the violator to certain civil penalties as well as to any criminal penalties that may apply.*