

Family Child Care Licensing Manual

(November 2016)

For use with

COMAR 13A.15 - Family Child Care

(As amended effective 7/20/15)

Table of Contents

COMAR 13A.15.04

OPERATIONAL REQUIREMENTS

.01 Hours of Care	1
.02 Age Group Enrollment.....	1
.03 Child Capacity	2
.04 Restriction of Operations	5

01. Hours of Care.

- A. **The provider may not permit a child to remain in care for more than 14 hours in any 24-hour period on a regular basis without prior approval from the office.**

INTENT: The intent of this regulation is to permit the Provider to care for, but not assume primary responsibilities for, the child on a regular basis. It is also to prevent "provider burn-out."

INSPECTION REPORT ITEM: "Hours of Care"

COMPLIANCE CRITERIA: Child attendance records show that no child has spent more than 14 hours in care on more than an occasional basis without prior Regional Office approval.

ASSESSMENT METHOD: Review of the Provider's attendance records.

Notes: Upon written request from the Provider, and on a case-by-case basis, the Regional Manager/designee may approve regular care of a child for more than 14 hours per 24-hour period. The Provider must submit a separate request for each child affected. In deciding whether to approve the request, the Regional Manager/designee will, at a minimum, take the following factors into account:

- *The reason for the Provider's request;*
- *The circumstances under which the additional hours of care will be provided; and*
- *The Provider's compliance history.*

- B. **A provider may not offer overnight care without prior written approval from the office.**

- C. **A provider who wishes to provide overnight care shall:**

- (1) **Submit to the office a written plan of operation that includes:**

- (a) **The number and ages of children to be served;**
- (b) **A meal and snack schedule;**
- (c) **The name of the overnight care substitute, if different from the daytime care substitute;**
- (d) **A child supervision plan;**
- (e) **A bedtime routine; and**
- (f) **An evacuation plan for each room where a child in care will sleep; and**

- (2) **Obtain the written approval of each child's parent for the child's sleeping arrangements.**

02. Age Group Enrollment.

A provider may enroll a child for care at the home only if the child's age group is approved for care, as indicated on the provider's current certificate of registration.

INSPECTION REPORT ITEM: "Age Group Enrollment"

03. Child Capacity.

- A. **The number of children present in care at any one time may not exceed the child capacity number stated on the certificate of registration.**

INTENT: Maryland Law sets the maximum number of children a family day care provider may care for, but not all providers or homes can be licensed for the maximum number. The decision to issue a registration for less than the maximum is based on considerations for safety of children in care. Therefore, having more than this number of children present in care at any given time represents a potential risk to the children and is prohibited.

INSPECTION REPORT ITEM: “Child Capacity”

COMPLIANCE CRITERIA: Children in attendance does not exceed approved capacity.

ASSESSMENT METHOD: Children in care are counted.

Notes: Capacity decisions are made at the Regional Office as part of the process of issuing registration certificates. In making each capacity decision, the following steps are taken:

- First, consideration is given to any capacity limitations that might be imposed by applicable fire, environmental health, and zoning requirements.
- Second, the Provider’s home is inspected to assess its suitability for the number of children requested. Particular consideration is given to:
 - The number and ages of the Provider’s own children.
 - Other children living in the Provider’s home, such as relatives' children or foster children, as well as children who the Provider regularly care for, whether for compensation or not.
 - The adequacy of indoor and outdoor activity space. Indoors, there must be enough floor area to allow the number and ages of the children authorized for care to engage in active play without overcrowding or risk of injury. Outdoors, there must be ample, accessible space that is free from hazards.
 - The amount and appropriateness of activity equipment and materials, and of napping and eating space and equipment.
 - Whether the Provider devotes time and energy to caring for other persons such as infirm or elderly relatives who either live in the home or come into the home on a regular basis.
 - Other factors that may affect the health, safety, or welfare of children in care at the home.
- Based on an assessment of the above items, the Licensing Specialist makes a capacity recommendation to the Licensing Supervisor or Regional Manager. The Supervisor or Manager is responsible for making the capacity decision. Before

COMAR 13A.15.04 Operational Requirements

reaching that decision, the Supervisor or Manager may need to obtain additional information or conduct a further inspection of the Provider's home in order to determine the appropriateness of the Specialist's recommendation. Once a capacity decision has been made, the Supervisor or Manager is responsible for ensuring that the Provider is promptly notified about the decision.

- B. Care may not be provided at any one time to more than two children younger than 2 years old unless approved by the office.**

***INTENT:** Children under the age of 2 are especially vulnerable. They require constant attention and close supervision. To provide adequate supervision and ensure child safety in the event of an emergency, the Provider may only care for two children under the age of 2 years. To care for more than two children under the age of 2, an additional adult would need to be approved by the Office. (See "C" and "D" below)*

***INSPECTION REPORT ITEM:** "Child Capacity"*

COMPLIANCE CRITERIA:

- *The overall number of children present in care at the same time does not exceed the total capacity number stated on the registration certificate; and*
- *If the Provider is approved to care for children younger than 2 years old:*
 - *The number of children younger than 2 does not exceed the limit set by the Office, and*
 - *One approved adult is present for two children younger than 2, and a second approved adult is present for the third or fourth child younger than 2.*

***ASSESSMENT METHOD:** Observation to determine if the number of children present, by age, is within the number stated on the registration certificate. As necessary, verification of children's ages.*

Notes:

- *The "provider's own children" includes any child who resides in the Provider's home, regardless of whether the child is related to the Provider.*
- *A resident child under the age of 6 years is to be counted toward the maximum authorized capacity regardless of where the child may actually be at any given time.*
- *If the number of children enrolled in the Provider's program is greater than the Provider's approved maximum capacity, the Provider must be careful to schedule their attendance so that the number of children actually present in the Provider's home at any one time does not exceed the Provider's maximum capacity.*

- C. Whenever more than two children younger than 2 years old are present in care, an additional adult shall be present who has met the applicable requirements of COMAR 13A.15.06.04.**

COMAR 13A.15.04 Operational Requirements

INTENT: *Very young children have particular developmental needs that an additional adult must be prepared to meet. For this reason, the Provider's additional adult must meet certain requirements.*

INSPECTION REPORT ITEM: *"Child Capacity"*

COMPLIANCE CRITERIA: *An approved "Additional Adult" is present if there are 3 or 4 children under age 2 years in care.*

ASSESSMENT METHOD: *Review of the Provider's licensing file to determine if the additional adult has met all applicable requirements.*

Notes:

- *The Provider must submit the following information to the Regional Office when seeking approval for an "Additional Adult":*
 - *Medical Report for Family Child Care (OCC 1258)*
 - *Release of Information (OCC 1260)*
 - *Additional Adult Application (OCC 1275)*
 - *Each of the proposed "Additional Adult's" substitutes must submit to the Regional Office a completed and signed **Substitute Form (OCC 1229)**.*
 - *If the Provider pays the "Additional Adult" (regardless of how much or how often) to help the Provider provide care, that person becomes the Provider's employee. This means that the Provider becomes subject to certain State and/or federal requirements pertaining to employers, such as payroll taxes, workers' compensation, liability insurance, etc. If the Provider is not familiar with these requirements, the Provider is encouraged to seek information about them from the Provider's local library or Internet sites such as www.irs.gov, or to sign up for a class or workshop that addresses employer responsibilities.*
 - *A paid "Additional Adult" must apply for a criminal background check.*
 - *The Additional Adult must take the "**Infant-Toddler Orientation**" offered by the Office.*
- D. The maximum total capacity of a family child care home may not exceed eight children, of whom not more than four may be younger than 2 years old.**
- E. The office:**
- (1) Shall count as a child in care a resident who is younger than 6 years old; and**
 - (2) May count as a child in care a child who is visiting the home if the child:**
 - (a) Is younger than 8 years old and unaccompanied by an adult; or**
 - (b) Cannot be sent home immediately.**

INTENT: A child for whom the Provider must assume supervisory responsibility must be counted as a child in care.

04. Restriction of Operations.

- A. **Upon determining that any of the following is unsuitable for the home, the office may restrict or reduce the provider's approved:**

- (1) **Hours of care;**
- (2) **Child care age groups; or**
- (3) **Child capacity.**

INTENT: For a given home, the Office may limit the children who may be present at one time to less than the maximum permitted capacity in order to ensure that safe, adequate, and appropriate child care and supervision can be provided.

Notes: If the Provider home school the Provider's own children, the Regional Office shall assess the potential impact of that activity on the care provided to children during the Provider's approved hours of operation. Depending on the circumstances of the home schooling activity, the Regional Office may limit the Provider's child care capacity to less than the permitted maximum. For details about home schooling in a family child care home, see resource document, "[Home Instruction](#)."

- B. **The office may base a restriction or reduction under §A of this regulation on any of the following factors:**

- (1) **Space available, indoors or outdoors;**
- (2) **Equipment available;**
- (3) **Number and ages of residents in the home;**
- (4) **Responsibility of the provider to care for another individual who may require special attention or care, including, but not limited to, an elderly resident or a child with a serious physical, emotional, or behavioral condition;**
- (5) **Applicable fire, zoning, health, environmental, or other codes;**
- (6) **Failure by a provider approved for a capacity of up to four children younger than 2 years old to meet the infant-toddler training requirement specified at COMAR 13A.15.06.02G; or**
- (7) **Other factors the office determines may cause a risk to a child's health, safety, or welfare.**

- C. **A provider may appeal a restriction or reduction pursuant to §A of this regulation by filing a request for hearing:**

- (1) **Not later than 20 calendar days after the notification of the office's action; or**
- (2) **In the case of an emergency reduction in capacity, within 72 hours of notification by the office of its decision to immediately reduce the number of children in care.**

INTENT: A decision by the Office to limit or reduce the capacity of the home affects the status of the registration. Therefore, the Provider may appeal that decision in accordance with established administrative hearing procedures.

COMAR 13A.15.04 Operational Requirements

Notes:

- *If the Provider wish to appeal a capacity decision, submit a written request to the Regional Manager to review the decision.*
- *If the Provider is not satisfied with the outcome of the review by the Regional Manager, the Provider may file an appeal to have the decision reviewed by the Office of Administrative Hearings (OAH).*
 - *Complete a “**Request for Hearing**” form (OCC 1281) and submit it to the MSDE Office of the Attorney General. This office will forward it to OAH for scheduling of an appeal hearing.*
 - *The OAH appeal hearing will be conducted in accordance with Chapter 14 (“Administrative Hearings”) under this subtitle.*