



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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COMAR 13A.17.07 CHILD PROTECTION

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.01 Prohibition of Abuse, Neglect, and Injurious Treatment.

An operator, a staff member, substitute, volunteer, person residing on the premises of the facility, or other individual connected with the facility may not subject a child to abuse, neglect, mental injury, or injurious treatment.

INTENT: No person connected with the facility may subject a child (or allow a child be subjected) to abuse, neglect, or injurious treatment.

INSPECTION REPORT ITEM: "Prohibition of Abuse, Neglect, and Injurious Treatment"

COMPLIANCE CRITERIA: No child in care is being abused, neglected, or subjected to injurious treatment.

ASSESSMENT METHODS:

- *Observe the interactions between facility staff and children to determine whether abuse or neglect are suspected, or injurious treatment is occurring.*
- *If child abuse or neglect is suspected, contact CPS for a determination.*
- *If injurious treatment is occurring, document and follow established procedures.*

Notes:

- *"Abuse", "neglect," and "injurious treatment" are defined in Chapter .01 § .02B(1), (28), and (22), respectively.*
- *If CPS has determined that abuse or neglect occurred at the facility, the Regional Office may move to suspend the facility's letter of compliance on an emergency basis.*
- *If licensing staff has determined that injurious treatment occurred at the facility, the Regional Office may move to suspend the facility's letter of compliance on an emergency basis.*

.02 Abuse/Neglect Reporting.

A. An operator or staff member who has reason to believe that a child has been:

(1) Abused, in the facility or outside of the facility, shall report that belief directly to the protective services unit of the local department or to a law enforcement agency, as required under Maryland law;

(2) Neglected, in the facility or outside of the facility, shall report that belief directly to the protective services unit of the local department as required under Maryland law.

B. When a child has been subjected to injurious treatment, it shall be reported to the office.

C. An operator shall:

(1) Instruct the staff to monitor all children daily for signs and symptoms of child abuse and neglect;

(2) Instruct staff about their legal obligations to report suspected child abuse or neglect directly to the local department or the appropriate law enforcement agency; and

(3) Post, near each telephone in the facility, the telephone numbers of the Child Protective Services unit of the local department and the appropriate law enforcement agency.

D. An operator may not require an employee to report through the operator or director, rather than directly to the local department or a law enforcement agency, when the employee has reason to believe that a child has been abused or neglected.

INTENT: An operator, staff member, or other facility employee who suspects that a child may have been abused or neglected must report that suspicion directly and only to the local Child Protective Services (CPS) Unit or to local police authorities. If injurious treatment has occurred, the person must report the incident to the Regional Office. In addition, the operator must ensure that each staff member and employee knows how and when to:

- *Check children for signs of abuse or neglect, and*
- *Make a report of suspected abuse or neglect.*

INSPECTION REPORT ITEM: “Abuse and Neglect Reporting”

COMPLIANCE CRITERIA:

- *Suspected:*
 - *Abuse is reported immediately, directly, and only to Child Protective Services or police authorities;*
 - *Neglect is reported immediately, directly, and only to Child Protective Services;*
 - *Injurious treatment is reported immediately to the Regional Office.*
- *All staff members and employees have been instructed on the proper procedures for reporting suspected abuse or neglect.*
- *Facility staff members assess the daily appearance and behavior of each child for signs of abuse or neglect. See “**Signs and Symptoms of Child Abuse, Neglect, and Mental Injury**”.*
- *Telephone numbers for the local CPS Unit and police department are posted by each telephone.*

ASSESSMENT METHODS:

- *Interview facility staff members and employees to assess their knowledge of proper reporting procedures. If the facility maintains documentation of instruction in proper reporting procedures, review that documentation as needed.*
- *Interview facility staff members and employees to assess the nature and frequency of monitoring for signs of abuse or neglect.*
- *Observe to determine if CPS and police telephone numbers are posted as required.*

.03 Child Discipline.

A. Child discipline shall be:

- (1) Appropriate to the age, maturity, and physical condition of the child; and**
- (2) Consistent with the requirements of this chapter.**

B. The operator may not:

- (1) Force a child to eat or drink;**
- (2) Punish a child for refusing to eat or drink; or**
- (3) Withhold food or beverages as punishment.**

C. The operator shall:

- (1) Prepare a written child discipline policy that states the:**
 - (a) Discipline methods used at the facility; and**
 - (b) The circumstances under which the child discipline methods may be applied;**
- (2) Make the child discipline policy available to:**
 - (a) The parent of each child in care;**
 - (b) A parent who is considering whether to enroll their children; and**
 - (c) The office; and**
- (3) Ensure that the child discipline policy is followed by each employee, volunteer, and other individual connected with the facility.**

INTENT: The facility must have a written policy that addresses how children will be disciplined only in a way that is consistent with their health, safety, welfare, and individual developmental levels. This policy must be followed by all facility personnel. The written policy must be available for review by parents and the Regional Office.

INSPECTION REPORT ITEM: "Child Discipline"

COMPLIANCE CRITERIA:

- *The facility has a child discipline policy that is set in writing and maintained on file at the facility.*
- *The policy is posted, copied, or otherwise readily available for review by parents and Regional Office personnel.*

- *The policy is described in sufficient detail to enable an assessment of whether it is safe, non-harmful, and appropriate for use with children who are at different developmental levels.*

ASSESSMENT METHODS:

- *Review facility records to determine if a written discipline policy is present.*
- *Observe to determine if the policy is posted where it can be reviewed by parents, or interview facility personnel to determine how it is made available to parents.*
- *Review the contents of the policy to determine if it is safe, non-harmful, and appropriate for use with all of the developmental levels served by the facility.*

Note: *Maryland law forbids corporal punishment of a child, in any form, by anyone other than the child's parent or legal guardian. For additional information and guidance on child discipline, see **"Discipline Measures"**.*

.04 Parental Access.

An operator shall permit the parent of a child in care to:

A. Freely observe all areas of the facility used for child care during operating hours; and

B. Have access to the parent's child at any time during the facility's hours of operation, without appointment.

INTENT: Whenever the facility is in operation, parents must have access to their children and to the areas of the facility that are approved for care. The operator is prohibited from requiring parents to give any advance notice of a visit to the facility during operating hours.

INSPECTION REPORT ITEM: "Parental Access"

COMPLIANCE CRITERIA: Without prior notification, parents have free access to their children and to the approved care areas at all times during operating hours.

ASSESSMENT METHOD: Observe to determine if parents have free and unannounced access. If observation is not possible, interview facility staff to determine how parents are assured free and unannounced access.

.05 Authorized Release.

An operator shall ensure that a staff member release a child only to the child's parent or to another individual, if directed by the parent, whose identity is verified. If the parent or identified individual is not available due to death, illness, emergency, or any other cause,

or if requested by a Child Protective Services worker, the child may be released to Child Protective Services.

***INTENT:** To protect children from harm (and the facility from liability), the operator may not release a child to anyone except the child's parent or legal guardian, an identified person who has been explicitly named by the parent, or an identified Child Protection Services worker.*

***INSPECTION REPORT ITEM:** "Authorized Release"*

***COMPLIANCE CRITERIA:** The facility has a policy to ensure that each child is released only to:*

- *The child's parent or legal guardian,*
- *A person identified as being someone authorized by the parent or guardian to pick the child up, as stated on the child's "**Emergency Form**", **OCC 1214**, or in a special written authorization for a specific date or situation (see "Notes" below), or*
- *An identified Child Protection Services worker.*

ASSESSMENT METHOD:

Interview facility personnel to determine if:

- *There is a child release policy,*
- *Each facility staff member and employee is aware of the policy, and*
- *The policy is followed.*

Notes:

- *The "**Emergency Form**", **OCC 1214**, is intended to provide the names and contact information for persons who are routinely authorized to pick the child up if the parent or guardian is unavailable. However, a parent may want to have the child picked up from the facility by someone else as part of a special occasion or activity (for example, an out-of-town relative who has arrived for a visit, or a car pool driver for an afterschool sports practice). In this type of situation, the operator may release the child only if:*
 - *The parent has specified in writing who is expected to pick the child up, and when the pick up will occur, or*

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- *The parent cannot pick up the child due to unforeseen circumstances (e.g., parent has an accident, is stuck in traffic, etc.), the specified emergency contacts cannot be reached, and the parent calls the facility and provides explicit instructions for an alternate person to retrieve the child; and*
- *Facility personnel are able to verify the identity of the person who arrives for the child.*
- *If a parent or legal guardian who shows signs of being intoxicated, or otherwise impaired, arrives to pick up the child, facility personnel do not have the right to deny the person access to the child or to prevent the person from taking the child. However, facility personnel do have the right to contact Child Protective Services immediately to express concern about the apparent condition of the person and the possible risk to the child. The following are some other courses of action the operator may wish to consider:*
 - *If the person shows signs of being so intoxicated, or otherwise impaired, that the child would be placed at risk of serious and immediate harm by being released to the person, call the police. If the person poses a threat to facility personnel or any of the other children, call the police and request immediate assistance. If possible and prudent, facility personnel should try to stall the person until the police arrive.*
 - *If there is another parent or authorized adult noted on the child's "Emergency Form", OCC 1214, facility personnel may try to contact that person to explain the situation and request the person's assistance.*
 - *If the person plans to drive the child home, facility personnel might suggest using an alternative means of transportation (for example, calling a taxi).*

.06 Child Security.

A. The operator shall ensure the safety and security of each child at all times.

INTENT: The operator is fully responsible at all times for the safety, health, and welfare of each child in attendance.

B. Unless an employee or staff member has successfully passed federal and State criminal background checks and, if hired on or after October 1, 2005, a review of child abuse and neglect records, the individual may not be alone with an unrelated child in care.

INTENT: Before a facility employee may be left alone with an unrelated child in care, the employee must have successfully completed federal and State criminal background checks and a child and adult abuse/neglect clearance.

INSPECTION REPORT ITEM: "Child Security"

COMPLIANCE CRITERIA: Only employees who have successfully completed both criminal background checks and a child and adult abuse/neglect clearance are alone with children at any time.

ASSESSMENT METHOD: If an employee is observed to be alone with an unrelated child in care, determine if that person has successfully completed the required background checks and clearance.

Note: If a newly hired employee is someone for whom OCC has previously received federal and State criminal background check results (due either to employment at another child care facility or to having been a family day care home provider or resident) and those results were "clean," the person may be left alone with children at the current facility pending receipt of results of the federal and State CBC application made in connection with the person's current employment.

C. A facility employee or staff member who has successfully passed federal and State criminal background checks and, if hired on or after October 1, 2005, a review of child abuse and neglect records shall:

(1) Accompany a child whenever the child is in the presence of another individual, unless the individual is:

- (a) Another child in care;**
- (b) A health service consultant used by the facility operator pursuant to COMAR 13A.16.06.14C;**
- (c) The child's parent, guardian, or other individual to whom the child may be released pursuant to Regulation .05 of this chapter;**
- (d) An individual who is authorized by the child's parent or guardian, and whose identity is verified, to provide a health care, academic, or other service to the child;**
- (e) During an off-site activity, another child's parent or guardian, who is designated in writing by the facility operator to assist in transporting children to or from the facility; or**
- (f) If the facility is located at a school, an individual who for compensation is employed to work at the school; and**

(2) Unless documentation is on file at the facility that an independent contractor performing a service at the facility has successfully passed federal and State criminal background checks and a review of child abuse and neglect records, remain within sight and sound of the contractor whenever the contractor is in an area where children are present.

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INTENT: *With certain stated exceptions, a facility employee who has successfully passed federal and State criminal background checks and, if hired on or after October 1, 2005, has had a satisfactory child and adult abuse/neglect clearance, must chaperone a child in care whenever the child is in the presence of a person who is not officially associated with the facility. A similarly screened employee must remain within sight and sound of an outside contractor if that contractor has not passed background checks and clearance and is in an area where children are present.*

INSPECTION REPORT ITEM: *"Child Security"*

COMPLIANCE CRITERIA: *Each child is chaperoned as required whenever the child is in the presence of a person who is not associated with the facility, unless that person is excepted by regulation.*

ASSESSMENT METHOD: *If a visitor or other non-excepted outsider is present, observe to determine if each child in that person's presence is chaperoned as required. If observation is not possible, interview the Director and facility staff as needed to determine how and by whom this requirement is met.*

Notes:

- *A person hired by the parent of a child in care to provide a particular service only to that child is not considered to be an "independent contractor" as defined in Chapter .01 regulation .02B(21). Therefore, the operator is not required to have the person accompanied. The requirement for a staff member to be present during a "third-party" activity is intended only where the activity has been arranged (wholly or in part) at the program or facility level and may be open to participation by other children in care.*
- *OCC performs child abuse/neglect clearances only for persons who are officially associated with the child care program (i.e., employees, substitutes, residents, etc.). For an independent contractor, the Director must arrange with the local Child Protective Services (CPS) Unit to perform the clearance. For this purpose, the Director will need to request a CPS release of information form (DHR/SSA 1279) from the local department, have the contractor complete the release form, and then submit it directly to the local CPS Unit.*
- *Maryland's Family Law Article §5-554(e) and (f) prevent an operator from sharing with OCC the specific findings of criminal background check (CBC) reports that the operator has received from CJIS on an independent contractor. In view of this prohibition, OCC can assess compliance with this regulation in one of two ways:*
 - *The Licensing Specialist may request the Director to reveal only enough of the contractor's CBC reports to show the CJIS letterhead, the name of*

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the report subject, and the nature of each report (federal or State). This is sufficient to verify that “documentation exists on file.” As to whether the person has “successfully passed” the background check, the Licensing Specialist may request the Director to give a statement (verbal or written) affirming that assessment. If this statement is given, compliance with the requirement is assessed.

- *The Licensing Specialist should request the Director to provide a written (signed and dated) statement saying that (a) the contractor’s federal and State criminal background check results have been received at the facility, and (b) the contractor successfully passed the background check. If this statement is submitted, compliance with the requirement is assessed.*
- *An outside person hired to do staff training at the facility would fall under the definition of independent contractor unless the facility is located in a school and the trainer is a school employee. As such, the trainer would have to be "chaperoned" when in the presence of children unless the trainer had completed State and federal CBCs as well as an abuse/neglect clearance.*