



Issuing Letters of Compliance

(December 2016)

for use with

COMAR 13A.17 Letters of Compliance

(as amended effective 7/20/15)

Table of Contents

COMAR 13A.17.02 LETTER OF COMPLIANCE APPLICATION AND MAINTENANCE

.01 Letter of Compliance – General Requirements	1
.02 Initial Letter of Compliance	1
.03 Continuing Letter of Compliance	5
.04 Provisional and Conditional Status	7
.05 Response of the Office to Application	9
.06 Denial of Letter of Compliance	10



.01 Letter of Compliance—General Requirements.

- A. Requirement to be Licensed or Hold a Letter of Compliance. A tax exempt religious organization that operates a nursery school or a child care program in a school building used exclusively for children who are enrolled in that school, is required to be licensed under COMAR 13A.16 or to hold a letter of compliance in accordance with the requirements of this subtitle.**

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 letter of compliance is also required to protect the health and safety of the children in care. A Letter of Compliance is the type of letter of compliance 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.

Note: Operating a child care facility without a valid letter of compliance is a violation of Maryland law and may result in criminal prosecution.

B. General Requirements.

- (1) **A letter of compliance:**
 - (a) **Is nontransferable; and**
 - (b) **Remains the property of the office.**
- (2) **The operator shall surrender the letter of compliance to the office immediately if any of the following occurs or becomes effective:**
 - (a) **The operator closes the facility permanently;**
 - (b) **The letter of compliance is suspended;**
 - (c) **The letter of compliance is revoked;**
 - (d) **The operator has not applied for a continuing letter of compliance before the expiration date of the initial letter of compliance; or**
 - (e) **The letter of compliance expires and an application for a continuing letter of compliance is denied.**

.02 Initial Letter of compliance.

- A. Application Requirements. An individual or organization that does not currently hold a letter of compliance and wishes to operate a nursery school or child care program shall:**

- (1) **File a notice of intent with the office before applying for permits in connection with construction or operation of a facility;**

INTENT: The notice of intent alerts the Regional Office that a new child care facility is being planned. This enables the Regional Office to open a new letter of compliance

COMAR 13A.17.02 Letter of compliance Application and Maintenance

application file and to begin arranging any technical assistance the applicant may need.

Note: A pre-site visit must be conducted to assess feasibility of proposed site. Size, layout, and outdoor space are major considerations. Continue the provision of technical assistance throughout the process to ensure that development activities meet regulatory requirements.

- (2) **File with the office at least 60 days before the proposed opening date a signed and completed application form, supplied by the office; and**
- (3) **Ensure that an application for a federal and State criminal background check is submitted for:**
 - (a) **The applicant, if the applicant is an individual who will have frequent contact with children who are cared for in the facility;**
 - (b) **The director;**
 - (c) **Each employee, including paid substitutes; and**
 - (d) **Each individual 14 years old or older living on the child care facility premises.**

INTENT: To ensure that OCC is aware of the criminal histories of the applicant, individuals living on the premises, employees, and others who will have frequent contact with children in care.

INSPECTION REPORT ITEM: “Initial Letter of Compliance”

COMPLIANCE CRITERIA: The applicant, employees and other individuals, as applicable, have applied to CJIS for a FBI and State Criminal History Records Check.

Note:

- Whenever submitting a criminal background check (CBC) request, the operator must include the appropriate OCC Regional Office authorization number on the CBC request form along with the applicant’s authorization number. The following is a list of the Regional Office authorization numbers:

<u>Authorization Number</u>	<u>OCC Regional Office</u>
1100000016	Region 1 (Anne Arundel Co.)
1100000020	Region 2 (Baltimore City)
1100000031	Region 3 (Baltimore Co.)
1100000042	Region 4 (Prince George’s Co.)
1100000053	Region 5 (Montgomery Co.)
1100000064	Region 6 (Howard Co.)
1100000075	Region 7 (Allegany, Garrett, Washington Co.)

COMAR 13A.17.02 Letter of compliance Application and Maintenance

1100000086	Region 8 (Caroline, Dorchester, Kent, Queen Anne's, Talbot Co.)
1100000090	Region 9 (Somerset, Wicomico, Worcester Co.)
1100000101	Region 10 (Calvert, Charles, St. Mary's Co.)
1100000112	Region 11 (Cecil, Harford Co.)
1100000123	Region 12 (Frederick Co.)
1100000182	Region 13 (Carroll Co.)

- This process allows CBC results and subsequent "Alerts" to be sent to the child care provider and OCC.

B. Before the proposed opening date, the applicant shall submit the following items to the office, if not submitted at the time the written application form was submitted:

- (1) **Signed and notarized permission to examine records of abuse and neglect of children and adults for information about:**
 - (a) **The director;**
 - (b) **Each employee;**
 - (c) **Each individual 18 years old or older living on the same premises as the child care facility;**
 - (d) **The applicant, if the applicant is an individual who will have frequent contact with children who are cared for in the facility; and**
 - (e) **Trustees, managers, or board members who may have frequent contact with children in care, if the applicant is a corporation, agency, association, or other organizational entity;**

Note: See "Release of Information" form OCC 1260.

- (2) **Evidence of compliance with all applicable zoning and building codes;**
- (3) **Site plans;**
- (4) **Floor plans with architectural details;**
- (5) **A written plan of operation;**
- (6) **Workers' Compensation insurance information;**

Note: See "Worker's Compensation Insurance Information Form"- OCC 1201.

- (7) **Fire evacuation plan;**
- (8) **A complete personnel list, on a form supplied or approved by the office, and all related supporting documentation required by the office;**

Note: See "OCC 1203 Child Care Facility Personnel List/Staff Change Form"

- (9) **A complete staffing pattern, on a form supplied or approved by the office, which specifies by staff name all child care assignments;**

Note: See *OCC 1206 Staffing Pattern for Child Care Centers*”

- (10) **Menu for 4 weeks;**
- (11) **A written child discipline policy; and**
- (12) **All other documentation required by law or regulation, including but not limited to:**
 - (a) **Proof of an on-site inspection and approval by the local fire authority having jurisdiction; and**
 - (b) **Building use and occupancy permits.**

INTENT of §B above: A letter of compliance to operate will not be issued until the OCC Regional Office has received and approved all required application-related documentation. If the applicant wants the facility to open on a specific date, the applicant must make sure this date is communicated to the Regional Office and that all necessary documentation is submitted by the date determined by the Regional Office.

The Regional Office must have certain information in order to determine if the applicant meets licensing requirements.

- *Criminal background checks and child abuse/neglect checks on anyone who will have access to the children in care are needed to help protect the safety of those children.*
- *Evidence of code compliance is necessary to ensure that the facility’s physical plant is safe for use.*
- *Other physical plant documentation is necessary to ensure that there is sufficient, appropriate space to accommodate the proposed child capacity.*
- *Staffing patterns are necessary to ensure that children will have sufficient, appropriate adult supervision at all times.*
- *Menu plans are needed to ensure that the children’s nutritional needs will be consistently met through an appropriate food variety.*
- *Written child discipline procedures are needed to ensure that all facility employees and parents of children in care are aware of the circumstances under which discipline may occur, and the nature of that discipline.*

Note: *If all required documentation is not received by the Regional Office within six (6) months after the proposed opening date, the Office may consider the application void.*

.03 Continuing Letter of Compliance.

A. Obtaining a Continuing Letter of Compliance. An operator shall submit to the office, before expiration of the initial letter of compliance:

- (1) **A request for a continuing letter of compliance, on a form supplied by the office;**

INTENT: Prior to expiration of the initial letter of compliance, the operator must apply to convert the facility letter of compliance to continuing (non-expiring) status. To provide sufficient time for application to be made, OCC shall furnish the operator with an application packet at least 120 days before expiration of the initial letter of compliance.

Note: *At least 120 days before current letter of compliance expiration, the Regional Office will transmit to the operator a "Request for Continuing Status" application packet. This packet serves as the 120-day notice of the initial letter of compliance expiration. Additional notification will occur at least 60 days before the letter of compliance expiration when the Regional Office Licensing Specialist contacts the operator or director to schedule the announced "letter of compliance conversion" inspection that must be conducted as part of the continuing letter of compliance application process. Use **"Universal Conversion from Initial to Continuing Cover Letter"** to transmit the application packet.*

- (2) **Signed and notarized permission to examine records of abuse and neglect of children and adults for information about all individuals, as applicable, specified at Regulation .02B(1) of this chapter; and**
- (3) **Any other documentation required by law or regulation.**

INTENT: In order to obtain a continuing letter of compliance, the operator must complete and submit all application items required by OCC.

Note: *The **"Request for Continuing Letter of compliance or Letter of Compliance – OCC 672"** specifies all the forms and other documentation that the operator will need to submit to the Regional Office. The operator can either mail the completed application packet (which must include all specified documentation) to the Regional Office, or the completed packet may be given to the Licensing Specialist at the time of the letter of compliance conversion inspection.*

B. The office may not approve a continuing letter of compliance until:

- (1) **All items specified in §A of this regulation have been received and approved by the office; and**
- (2) **The facility has passed a fire safety inspection conducted by the local fire authority having jurisdiction.**

INTENT: A continuing letter of compliance will not be issued until the OCC Regional Office has received and approved all required application-related documentation, including documentation that the facility has passed a fire safety inspection by the appropriate fire authority.

Notes:

- The Provider's Initial Letter of compliance expires after two years with no provision for renewal; therefore, a Continuing Letter of compliance must be issued prior to the expiration date of the Initial Letter of compliance. If all items required in §B above are not received prior to the Initial Letter of compliance expiration date, a Continuing Letter of compliance on Provisional status must be issued.
- The letter of compliance anniversary month and day must be noted in the remarks section of the letter of compliance.

C. Maintaining a Continuing Letter of Compliance.

- (1) **The operator shall comply with all applicable requirements under this chapter.**
- (2) **By the end of each 24-month period after the date of issuance of a continuing letter of compliance, the operator shall provide to the office:**
 - (a) **Signed and notarized permission to examine records of abuse and neglect of children and adults for information about all individuals, as applicable, specified at Regulation .02B(1) of this chapter; and**
 - (b) **Any other documentation required by law or regulation.**
- (3) **The child care facility shall maintain documentation of having passed the most recent fire inspection required by the local fire authority having jurisdiction.**

INTENT: While a continuing letter of compliance does not have an expiration date and will not need to be renewed; the operator must periodically update certain documentation to avoid an enforcement action which could result in the revocation of the letter of compliance.

INSPECTION REPORT ITEM: "Continuing Letter of compliance"

COMPLIANCE CRITERIA: All documentation required to maintain a continuing letter of compliance has been submitted.

ASSESSMENT METHOD: Review provider file to determine if all required documentation has been submitted.

Notes:

- By the end of each 24-month period following issuance of a continuing letter of compliance, the operator must provide the following to the Regional Office:

- A signed and dated **“Release of Information” form OCC 1260** for:
 - The operator, if the operator is an individual,
 - The director, if different from the operator,
 - Each employee who was hired on or after October 1, 2005,
 - Each person 18 years old or older living on the premises of the facility, and
 - Each director or trustee who may have frequent contact with the children in care.
- Documentation that the facility has satisfactorily passed:
 - A fire safety inspection every 12 months (or within whatever other timeframe may be required by the applicable fire authority);
 - Well and septic testing, if the facility has private water and/or sewage; and
 - If applicable, boiler inspection, pool approval, and any other certification required by local law.
- The operator can either mail the documentation items listed above to the Regional Office, or maintain them at the facility for presentation and review by the Licensing Specialist during an unannounced inspection visit.
- A criminal background check (CBC) conducted on an employee or other person for whom a CBC is required does not need to be updated every 24 months unless the original CBC results were not fingerprint-supported. A person for whom non-fingerprint-supported CBC results have been received will need to submit biennial "name-check only" CBC requests until such time (if ever) that the person's CBC results can be fingerprint-supported.
- At least 30 days prior to letter of compliance anniversary date, mail or deliver to Provider the **“Universal 24-Month Maintenance Cover Letter and Checklist” form, OCC 674.**
- If all required documentation is not received timely, encourage the provider to comply just as you would if it was a noncompliance resulting from an inspection. **DO NOT PLACE PROVIDER ON A CONDITIONAL LETTER OF COMPLIANCE SIMPLY FOR NON-RECEIPT OF THIS INFORMATION.** The Regional Manager will determine action to be taken based upon the length of time provider remains noncompliant.

.04 Provisional and Conditional Status.

A. Provisional Status.

- (1) **Except as provided in §A (2) of this regulation, to allow an applicant for an initial or a continuing letter of compliance additional time to meet all applicable requirements, the Office may approve an initial or a continuing letter of compliance on a provisional basis for a period of up to 120 days after**

- determining that the health and safety of the children in care are not in imminent danger.
- (2) **An initial letter of compliance may not be approved if the Office has not yet received evidence that the applicant and each individual, as applicable, specified at Regulation .02A(3) and B(1) of this chapter has successfully passed a federal and State criminal background check and a review of child and adult abuse and neglect records.**
 - (3) **At the end of the provisional period, if all requirements for the initial or continuing letter of compliance are not met due to:**
 - (a) **Failure by the applicant to take an action necessary to achieve compliance, the Office shall deny the application for letter of compliance; or**
 - (b) **Circumstances beyond the control of the applicant, the Office may continue the provisional status for one or more additional periods of up to 120 days per period, except that provisional status may not be continued for more than 24 months after the start of the first provisional period.**
 - (4) **If the Office denies a letter of compliance at the end of the provisional period, the applicant or operator does not have a valid letter of compliance and shall cease operating.**

INTENT: A letter of compliance on a provisional status permits the facility to operate on a temporary basis even though certain necessary requirements have not yet been fully met. It grants a specified amount of time to meet those requirements. A letter of compliance may be issued with a provisional status only if the unmet requirements do not represent a potential threat to the health, safety, or welfare of children in care.

Note: When removing an applicant from provisional status to letter of compliance, be sure to include the provisional time period(s) in the two-year expiration/anniversary date. For example:

Provisional was issued on February 22, 2010 for 120 days. Another provisional was issued on June 22, 2010 for another 60 days ending August 21, 2010. Provider came into compliance on August 21, 2010. You would issue the Letter of compliance, with the start date of August 22, 2010 and calculate the expiration/anniversary date by using the 1st provisional dated February 22, 2010 which would result in an expiration/anniversary date of January 31, 2012.

B. Conditional Status.

- (1) **If an operator who holds a continuing letter of compliance fails to remedy a violation as required, the Office may place the letter of compliance on conditional status for:**
 - (a) **A period of up to 120 days; and**

- (b) **Upon approval by the Agency's central office, an additional period of up to 120 days.**
- (2) **Upon placing a continuing letter of compliance on conditional status, the Office shall issue to the operator a revised letter of compliance that states the:**
 - (a) **Placement of the letter of compliance on conditional status;**
 - (b) **Period of time of the conditional status; and**
 - (c) **Requirements for lifting the conditional status.**
- (3) **If the operator satisfies all requirements for lifting the conditional status within the specified period of time, the Office shall promptly:**
 - (a) **Discontinue the conditional status; and**
 - (b) **Reinstate the continuing letter of compliance.**
- (4) **If the operator fails to satisfy all requirements for lifting the conditional status within the specified period of time, the Office may suspend or revoke the continuing letter of compliance.**

INTENT: After a continuing letter of compliance is issued, if an operator fails to correct certain noncompliance, OCC may replace the continuing letter of compliance with a revised letter of compliance placing it on conditional status. Conditional status is issued for a specified period of time and sets forth specific requirements for reinstatement of the continuing letter of compliance. If the operator has still failed to make the necessary corrections by the end of the specified timeframe, the continuing letter of compliance may be suspended or revoked.

***Note:** A Continuing Letter of compliance is placed on “Conditional” status as a last resort to encourage the Provider to come into compliance with regulations. Placing a provider’s continuing letter of compliance on conditional status is optional. Using the progressive discipline processes, i.e., warning letters, compliance agreements, and intermediate sanctions, continue to be viable disciplinary options. If these instruments fail, moving on to suspension, emergency suspension, and revocation is appropriate without ever having placed a continuing letter of compliance on conditional status.*

.05 Response of the Office to Application.

- A. Upon receiving a completed application for an initial letter of compliance or a continuing letter of compliance, and all documentation required by law or regulation, the office promptly shall determine compliance with the requirements of this subtitle by:**
 - (1) **Evaluating the application and required documentation; and**
 - (2) **Inspecting the:**
 - (a) **Facility proposed for use as a nursery school or child care program, if the application is for an initial letter of compliance; or**

Note: When an applicant is ready for an “Initial Inspection”, the majority of the application requirements should have been met (U&O, Fire, CBCs, Releases, Medicals, Provider Requirements, and Staff Requirements, etc.) leaving only the physical plant, certain program requirements, and certain health and safety requirements to check during the “Initial Inspection”. For special instructions, see **“Conducting ‘Initial’ Inspections”**.

- (b) **Nursery school or child care program, if the application is for a continuing letter of compliance.**

INTENT: Once a complete Initial or Continuing Letter of compliance application has been submitted, the Regional Office must assess it in its entirety to ensure that all pertinent application requirements have been met. Before an application can be approved, the facility must also be inspected to ensure that all applicable facility requirements have been met. The Regional Office has an obligation to the applicant to complete its review of the application and conduct the required inspection in an expeditious manner.

B. Except as specified at §C of this regulation, the office shall, within 30 days after completing the procedures in §A of this regulation, promptly:

- (1) **For an initial letter of compliance application:**
- (a) **Issue an initial letter of compliance;**
 - (b) **Issue an initial letter of compliance with provisional status; or**
 - (c) **Deny an initial letter of compliance; or**
- (2) **For a continuing letter of compliance application, issue or deny a continuing letter of compliance.**

INTENT: Once the complete application has been evaluated and the facility itself has been found to be in compliance with all applicable requirements, The Regional Office has an obligation to approve or deny the letter of compliance in an expeditious manner.

C. The office may not issue an initial letter of compliance until child care staff, sufficient in number to meet the staff/child ratio and group size requirements of COMAR 13A.17.08.03 as they apply to the requested child capacity, have successfully passed federal and State criminal background checks and a review of child and adult abuse and neglect records.

.06 Denial of Letter of compliance.

A. An office may deny an application for an initial letter of compliance or a continuing letter of compliance if:

- (1) **The applicant or the building in which child care is provided fails to meet the requirements of this chapter;**

- (2) **An evaluation of the application form by the office reveals that the applicant reported false information;**
- (3) **The applicant has a history of regulatory violations which demonstrates an inability to provide for the health or safety of children;**
- (4) **The applicant has previously had a family day care registration, child care center license, or letter of compliance denied or revoked by the office, unless the office is satisfied that the condition that was the basis for the denial or revocation has been corrected;**
- (5) **The applicant prevents the office from completing its responsibilities for licensing;**
- (6) **An evaluation of criminal records or records of abuse or neglect of children and adults indicates, for those identified in Regulation .02A(3) and B(1) of this chapter, behavior harmful to children; or**
- (7) **The office concludes that the applicant cannot provide for the health, safety, or welfare of the children in care on the basis of:**
 - (a) **Substantial, credible evidence of the applicant's abuse of alcohol or controlled dangerous substances, mental instability, or other condition; or**
 - (b) **Other pertinent information received by the office which creates reasonable doubt as to the applicant's ability to provide child care in accordance with this subtitle.**

INTENT: As specified by Maryland law, the primary purpose of facility licensing regulations is to protect the health, safety, and well-being of each child in care. For this reason, OCC may disapprove a letter of compliance application if the applicant falsifies information submitted in connection with the application or has demonstrated an inability to maintain satisfactory compliance with licensing regulations, or if OCC has substantial reason to believe that the applicant, the physical condition of the facility, or a person connected with the facility may present a risk of harm to a child in care.

Notes:

- *Reporting false Information: This includes falsification of any required documentation. As a basis for denial, this is generally used in combination with another basis, such as an unreported criminal history, a history of licensing violations, or a child abuse history.*
- *Previous regulatory history: The applicant previously held a letter of compliance, certificate, or other permission to operate a program or facility serving children, and the applicant's compliance history as an operator shows an inability to provide for the health or safety of children.*
- *Refusal to comply: Examples include refusal to complete a required orientation session, submit required application documents, allow an*

COMAR 13A.17.02 Letter of compliance Application and Maintenance

inspection of the facility, apply for criminal background checks, or abide by the requirements of a compliance agreement.

- *Previous denial or revocation: Generally, if a child care letter of compliance or letter of compliance previously held by the applicant was denied or revoked due to gross or repeated overcapacity, serious lack of supervision, repeated failure to meet staff/child ratio and/or group size requirements, child neglect or abuse, or illegal activity involving the facility, the Office of Child Care will not approve another letter of compliance or letter of compliance.*
- *Criminal history: The applicant's criminal background check report (State or FBI) reveals a conviction, pending charge, probation before judgment, or not criminally responsible disposition for certain acts or attempted acts, which include but are not limited to the following:*
 - *A crime involving:*
 - ❖ *A child;*
 - ❖ *Cruelty to animals;*
 - ❖ *Domestic violence; or*
 - ❖ *A weapons or firearms violation of federal or state laws;*
 - *A sex offense;*
 - *A violent crime classified as a felony;*
 - *Abduction or kidnapping;*
 - *Abuse of a child or an adult;*
 - *Confinement of an unattended child;*
 - *Manufacturing, distributing, or dispensing a controlled dangerous substance;*
 - *Perjury;*
 - *Pornography;*
 - *Possession with intent to manufacture, distribute, or dispense a controlled dangerous substance; or*
 - *Reckless endangerment.*
- *Child abuse and neglect: The Regional Office carefully evaluates each report of indicated abuse or neglect to determine:*
 - *The seriousness of the abuse or neglect,*
 - *How long ago the abuse or neglect occurred,*
 - *Whether it indicates a current potential risk to children in care, and*
 - *Whether the offender has undergone any rehabilitation.*
 - *The presence, by itself, of an abuse or neglect finding does not automatically disqualify the applicant from being approved for a child care letter of compliance.*

Note:

See chapter 06, regulation .03, Suitability for Employment, for additional information regarding disqualification based on criminal history or child abuse/neglect background checks.

B. If the office denies an application, the office shall notify the applicant in writing by certified mail of the denial, stating the:

- (1) **Reason for denial;**
- (2) **Specific regulation with which the applicant has failed to comply that is the basis for the denial;**
- (3) **Applicant's right to request a hearing; and**
- (4) **Procedure to be used if the applicant wishes to request a hearing to appeal the decision of the office.**

INTENT: Under Maryland law, OCC must comply with due process requirements if an application is denied. This means that OCC must inform the applicant why the decision to deny was made, the applicant's appeal rights, and how those rights may be exercised.

Notes:

- See the **"Request for Hearing" form, OCC 1281.**
- See chapter 16, Administrative Hearings, for requirements pertaining to the appeal hearing process under the Office of Administrative Hearings (OAH).

C. Denial Before Complete Application.

- (1) **The office may deny an application for an initial or a continuing letter of compliance at any point during the application process if, following evaluation of information received to that point, the office determines that a basis for denial exists as set forth in §A of this regulation.**
- (2) **If the office decides to deny the application before the application process is complete, the office shall send written notice of that decision to the applicant within 30 calendar days after making the decision.**

INTENT: To spare the applicant unnecessary additional expense or effort, if the office concludes during the application process that the application cannot be approved, the office will terminate the process and advise the applicant accordingly.