COMMISSION ON CHILD CARE

November 5, 2019

Ms. Tara Bartosz
Assistant to the Director
Office of Child Care
Division of Early Childhood
Maryland State Department of Education
200 West Baltimore, Maryland 21201

Dear Ms. Bartosz:

The Commission on Child Care (CCC) thanks you for the opportunity to provide comments on the proposed action of regulations contained in Title 13A State Board of Education.

COMAR 13A.16.02 License Application and Maintenance: Specifically Denial of License (.06)
Issue: Child Care Provider denied due process regardless of intent
This is a disturbing change that strips a significant due process right from child care providers. This proposal amends COMAR to give MSDE the ability to deny an initial or continuing license, or revoke a license, if the provider gives false information on any required forms "regardless of intent." This amendment will give MSDE the power to revoke a license for even an innocent typo or inadvertent mistake. For example, if a provider submits a form in January 2019 and accidentally dates it January 2018 (instead of 2019), this date is technically "false information" and the license could be revoked for a simple typo. Given the number of forms providers are required to submit, this change would grant MSDE the power to revoke almost any provider's license any time it wished. The regulation as currently written already allows MSDE to deny or revoke a license if a provider submits fraudulent information. MSDE should analyze how many other licensing statutes or regulations permit denial or revocation of a license for an unintentional oversight. It is highly unlikely that the legislature or Courts will permit MSDE to have such sweeping and broad power. This provision should only apply to intentional misrepresentations or material omissions, which is the current language in the regulation.
Recommendation: No revision is necessary and this section should be deleted.

COMAR 13A.16.03 Management and Administration: Specifically Admission to Care (.02) and Child Records (.04)

Issue: Child Care Providers Making Medical Determinations and Child Records/Lead Testing

Under the current regulations, to admit and retain a child in care, a child care provider is required to have a completed health form that provides evidence of a medical evaluation, immunizations and a "lead screening" which is a simple review by a pediatrician or other medical professional that is marked on the health form. The lead screening may or may not lead to a lead test, but that is an issue between the pediatrician and the parent.

The proposed regulation would require a child care provider to have documentation that a child born after 2015 wasn't just screened, but received an actual blood test for lead at 12 and 24 months, no matter where they reside, and to exclude children from child care if they do not have evidence of such a test. This puts the child care provider in the position of having to review and overrule the judgment of the medical professional or else be cited for noncompliance. Additionally, if a 13 month-old or 25 month
old moves from out of state, and there was no such test required at the age of 12 months or 24 months, the parent would not be able to comply and the child would have to be excluded from care.

If the State wants to require lead testing at certain intervals for certain children, it should be doing so through the pediatricians and medical professions, not through a back-door regulation imposed on child care providers. A child should not be excluded from care for the lack of a lead test as it poses no risk to other children and has no relation to whether a child can safely be in child care.

Another issue is that the current regulation only requires the lead screening for children younger than 6 and there is a carve out for school-age children. The proposed regulation contains no such limitation. As of 2020 and thereafter, children who were born in 2015 will be 5 years old and in school age programs. It does not make sense for school age programs to have to exclude children from care if parents do not have documentation of these tests that would have had to take place years prior when the children were infants and toddlers and when they may not have even lived in Maryland at the time. Thus, the current carve out for school-age children must be maintained.

Recommendation: These proposed changes relating to lead testing should be rejected in full.

- ***The current regulation requires children to have a completed health form to be admitted and retained in care. Specifics about when lead tests are required should be addressed with the pediatricians and medical professionals required to perform them.***
- ***If a lead test is going to be something that child care providers are going to be required to oversee, the requirements should be revised to require proof of such testing only for children younger than six who resided in Maryland and, if entering the program after the ages of 12 months and 24 months, actually had the testing done at those ages.***
- ***Furthermore, the regulation should make clear that providers do not have to override or question the judgment of the pediatrician or medical professional.***

COMAR 13A.16.06 Staff Requirements: Specifically Staff Health (.04)

Issue: Medical evaluations must be signed by a practitioner

Section A.2 of this proposal requires that "[t]he medical evaluation shall be signed by the individual who conducted the evaluation…" However, consistent with common practice in the medical industry, medical evaluation forms are not always signed by the person who performed the evaluation, but may instead be signed by the medical provider's authorized agent. For example, employees may be able to have the form completed without a new physical if one was completed recently, and sometimes, the physician's administrative staff complete the form based on doctors/nurse practitioner's notes. Indeed, frequently forms are returned from doctors' offices completed by administrative staff and "stamped" with the medical facility's name and address rather than an actual signature from the doctor.

Recommendation: Delete the proposed language requiring a signature from the person providing the exam. The form supplied by MSDE can have a space for a signature, but the medical facility should be permitted to sign it consistent with its procedures for completing paperwork.

COMAR 13A.16.06 Staff Requirements: Specifically Directors of All Child Care Centers-General Requirements (.05), Child Care Teachers in Preschool Centers (.09), Child Care Teachers in School Age Centers (.10), Assistant Child Care Teachers (.11) and Aides (.12)

Issue: Additional Unfunded Mandate and the number of pre-service training requirements needs to be reduced

Providers have been raising cost and feasibility concerns about the additional training requirements that have been added over the past several years. While we appreciate that the latest revision of the Proposed Regulations gives newly hired staff 90 days to register for and complete the Health and Safety training, the ADA and breastfeeding training that were added as pre-service requirements in 2016 were not similarly adjusted. These added trainings are all unfunded mandates that increase costs for providers; costs that are ultimately passed through to parents who pay for child care. Employers must pay workers to take mandatory trainings based on wage and hour laws which results in additional salary costs and potentially overtime. Training as a preservice requirement creates a significant barrier in the hiring process for child care providers.

In addition, it sometimes takes months for OCC to process new hire paperwork and complete background checks. This means that providers must pay for training not knowing whether the child care worker will ultimately be approved to work in the child care program. This is a waste of precious resources.

Permitting training within the first six months of employment is a far more reasonable approach to ensuring a qualified and stable workforce. In addition to consistency for the timing of all training requirements, all three of these trainings have much more meaning for new hires after they have experience with the children in the program setting and are not necessary for a new hire on their first day of employment.

Moreover, these trainings are not always available on demand and giving time to complete these trainings after hire allows the trainings to be worked into a convenient time during the new employee's work day, thus reducing the costs to providers. Indeed, requiring pre-service training is such a financial commitment for child care providers that they may be less likely to fire someone who they have just paid to train, even if the new hire does not seem to be a good fit with young children. This is not in the best interest of children, families, and building quality programs.

Recommendation: Revise the proposed regulations to allow Health and Safety training, the ADA, and the breastfeeding training to be completed "within 180 days of employment" or at a minimum revise the ADA and the breastfeeding training to be "within 90 days of employment" and that all pre-service training requirements be deleted.

COMAR 13A.16.06 Staff Requirements: Specifically Substitutes (.13)

Issue: An unworkable process

This proposal includes a new section F, which will require providers to apply to MSDE for approval of a substitute. This is not workable for a number of reasons:

1. Providers are not required to get "pre-approval" for permanent staff before using them, and the requirement should be no different for substitutes.
2. Substitutes are often needed on short notice and it is not feasible for programs that rarely use substitutes to maintain an active list of approved substitutes.

For larger programs with multiple sites, it would also mean that multiple MSDE licensing specialists would need to approve the same substitute as many programs have different specialists who oversee them, but use the same substitutes. For smaller programs, including Family Child care, this regulation could result in providers having to temporarily close their program; leaving parents without child care and unable to work.

4. Providers often have to wait months to get responses from MSDE's licensing specialists for personnel qualifications on new hires. With the new requirement for substitutes, it could further lengthen response times which are already unacceptable. It recently took 49 business days to conduct a single evaluation of a background check and child protective services clearance on one employee who had already been cleared to work for eight months in Region 5. It is unrealistic to imagine that licensing specialists have the capacity to take on a new substitute approval process.

Recommendation: Substitutes should be treated the same as new hires in that providers should have five (5) days from the date of "hire" or the date the substitute is used to send paperwork in to Licensing to demonstrate the substitute is qualified. There should be no requirement for reporting to MSDE when a substitute is used.

COMAR 13A.16.17 Inspections, Complaints and Enforcement: Specifically Revocation (.07)
Concern: Stripping Providers of Due Process
This is a disturbing change that strips a significant due process right from child care providers. This proposal amends COMAR to give MSDE the ability to deny an initial or continuing license, or revoke a license, if the provider gives false information on any required forms "regardless of intent." This amendment will give MSDE the power to revoke a license for even an innocent typo or inadvertent mistake. For example, if a provider submits a form in January 2019 and accidentally dates it January 2018 (instead of 2019), this date is technically "false information" and the license could be revoked for a simple typo. Given the number of forms providers are required to submit, this change would grant MSDE the power to revoke almost any provider's license any time it wished. The regulation as currently written already allows MSDE to deny or revoke a license if a provider submits fraudulent information. MSDE should analyze how many other licensing statutes or regulations permit denial or revocation of a license for an unintentional oversight. It is highly unlikely that the legislature or Courts will permit MSDE to have such sweeping and broad power. This provision should only apply to intentional misrepresentations or material omissions, which is the current language in the regulation.
Recommendation: No revision is necessary and this section should be deleted.

As set forth more fully above, we believe that these modest revisions to the proposed regulations will enhance MSDE's efforts to expand the reach of affordable child care throughout the State and also maintain MSDE's federal compliance goals. If these important changes are not made and the regulations go into effect without revisions, licensed care will be significantly more expensive, which will definitively have a negative effect on providers' ability to stay in business.

Sincerely,

Michelle Belski

Michelle Belski
Chair