

.23 CAPACITY

A. A provider may not care for more day care children than the number which appears 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.

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, your home is inspected to assess its suitability for the number of day care children requested. Particular consideration is given to:
 - The number and ages of your own children.
 - Other children living in your home, such as relatives' children or foster children, as well as children who you 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 you devote 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 completes a Capacity Worksheet form and submits it along with a capacity recommendation to the Licensing Supervisor or Regional Manager. The Supervisor or Manager is responsible for making the capacity decision. Before reaching that decision, the Supervisor or Manager may need to obtain additional information or conduct a further inspection of your 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 you are promptly notified about the decision. If the approved capacity is less than you want, you have the right to appeal the decision (see Section E below).

B. At any one time, a provider shall:

- (1) Care for not more than eight children, of whom not more than four may be younger than 24 months old;**
- (2) Maintain an adult-to-child ratio of at least one adult to every two children younger than 24 months old;**
- (3) Have present an additional adult, who has met the applicable requirements of §C of this regulation, whenever more than two children younger than 24 months old are present in care at the home; and**
- (4) Count as children served the provider's own children who are younger than 6 years old.**

INTENT:

- Under no circumstances may you be authorized to have more than:
 - Eight children of any age present in care at the same time. All of your own

children (see Notes below) who are younger than 6 years old are counted toward this number.

- Four children under the age of 2 present in care at the same time if you do have an approved additional adult, or two children under the age of 2 in care at the same time if you do not have an approved additional adult. In either case, each child of your own who is under the age of 2 is counted toward the applicable maximum number.

- 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, at least one approved adult must be present at all times for every two children under the age of 2 who are in attendance. This means that whenever a third or fourth child under 2 years old is in attendance, at least two approved adults must be present.

INSPECTION REPORT ITEM: "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 you are 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 your home, regardless of whether the child is related to you.
- 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 your program is greater than your approved maximum capacity, you must be careful to schedule their attendance so that the number of children actually present in your home at any one time does not exceed your maximum capacity.

C. Additional Adult.

(1) If the provider has successfully completed at least 3 semester hours or 45 clock hours of training approved by the Office that is related exclusively to the care of children younger than 24 months old, an individual who wishes to serve as an additional adult, before assisting the provider to care for children younger than 24 months old, shall:

- (a) Be 18 years old or older;**
- (b) Attend an information session offered by the Office concerning the requirements of this chapter for the care of children younger than 24 months old;**
- (c) File with the Office:**
 - (i) A completed additional adult application form;**
 - (ii) Signed and, if required by the Office, notarized release forms giving the Office permission to examine records of abuse and neglect of children and adults for information about the applicant;**
 - (iii) Completed information, on a form supplied by the Office, for each of the applicant's substitutes; and**
 - (iv) A medical report on the applicant based on a medical evaluation conducted within the previous 12 months by a practicing physician, certified nurse practitioner, or registered physician's assistant, and signed by the individual who conducted the evaluation;**

- (d) If the individual will be paid, apply for a federal and State criminal background check at a designated office in the State; and
 - (e) Receive the approval of the Office to serve as an additional adult.
- (2) If the provider has not successfully completed at least 3 semester hours or 45 clock hours of training approved by the Office that is related exclusively to the care of children younger than 24 months old, an individual who wishes to serve as an additional adult, before assisting the provider to care for children younger than 24 months old, shall:
- (a) Meet all of the requirements set forth at subsections C(1)(a)-(e) of this regulation; and
 - (b) Provide to the Office documentation of completion of the provider training requirements set forth at Regulation .14C-F of this chapter;
- (3) The provider or the provider's substitute shall be physically present on-site and remain within sight or sound of the additional adult or additional adult substitute at all times.

INTENT:

- Because children younger than 2 years old are especially vulnerable, the additional adult must meet the same personal application requirements as the provider.
- Very young children have particular developmental needs that an additional adult must be prepared to meet. For this reason, your additional adult must meet the same minimum training requirements that you have met, or you must provide the necessary guidance to your additional adult. If you have completed approved special training in the care and supervision of very young children, you can provide that guidance.

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COMPLIANCE CRITERIA:

- All additional adult applicant documentation has been received as required by the Regional Office.
- The additional adult applicant has attended the required information session.
- If the additional adult will be paid, the Regional Office has received the federal and/or State criminal background checks before the person begins work.
- Either you have completed approved special training in the care of very young children, or your additional adult has met the training requirements specified at Regulation .14C-F.
- The person begins serving as an additional adult only after you have received approval of the person from the Regional Office.

ASSESSMENT METHOD:

- Review of your licensing file to determine if:
 - The additional adult applicant has met all application and information session requirements, and
 - You have completed the special training, or your additional adult has met the minimum training requirements.
- Review of records maintained by you or, if records are not maintained, discussion with you to determine when the person began serving as an additional adult.

Notes:

- The person you named to serve as an additional adult must complete and submit the following forms to the Regional Office:
 - Medical Report for Family Child Care (DHR/CCA [1258](#))
 - Release of Information (DHR/CCA [1260](#))
 - Additional Adult Application (DHR/CCA [1275](#))
- Each of the proposed additional adult's substitutes must submit to the Regional Office a completed and signed Substitute Form (DHR/CCA [1229](#)).
- If you pay your additional adult (regardless of how much or how often) to help you provide care, that person becomes your employee. This means that you become subject to certain State and/or federal requirements pertaining to employers, such as payroll taxes, workers' compensation, liability insurance, etc. If you are not familiar with these requirements, you

are encouraged to seek information about them from your local library or Internet sites such as www.irs.gov, or to sign up for a class or workshop that addresses employer responsibilities.

D. The Office may restrict the number and ages of children who may be in care at one time in a particular family day care home to less than the maximum group size of eight children if the Office determines that the maximum is unsuitable for that home, based on any of the following factors:

- (1) Space available, indoor or outdoors;**
- (2) Equipment available;**
- (3) Number and ages of the provider's own children;**
- (4) Number of residents in the home;**
- (5) 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;**
- (6) Applicable fire, zoning, health, environmental, or other codes; or**
- (7) Other factors the Office determines may cause a risk to a child's health, safety, or welfare.**

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.

Note:

If you home school your own children, the Regional Office shall assess the potential impact of that activity on the care provided to children during your approved hours of operation. Depending on the circumstances of the home schooling activity, the Regional Office may limit your child care capacity to less than the permitted maximum. For details about home schooling in a family child care home, see Circular Letter [99-01](#), "Home Instruction."

E. The Office may count as children in care children visiting the home for whom payment is not received, only if all of the following conditions are met:

- (1) The child is younger than 8 years old;**
- (2) The child is unaccompanied by an adult; and**
- (3) The child cannot be sent home immediately.**

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

F. A provider may appeal the determination by the Office of the number of children who may be in care or a decision by the Office to reduce the number of children who may be in care at the family day care home 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, you may appeal that decision in accordance with established administrative hearing procedures.

Note:

- If you wish to appeal a capacity decision, submit a written request to the Regional Manager to review the decision.
- If you are not satisfied with the outcome of the review by the Regional Manager, you may file an appeal to have the decision reviewed by the Office of Administrative Hearings (OAH).
 - See "[Requesting an Appeal](#)" for the steps involved in filing an appeal.
 - Complete a "Request for Hearing" form (DHR/CCA [1281](#)) and submit it to the CCA Office of Program Standards. This office will forward it to OAH for scheduling of an

- appeal hearing.
- The OAH appeal hearing will be conducted in accordance with COMAR 07.04.03 (see [“COMAR 07.04.03, Administrative Hearings – Family Day Care Homes”](#)). The decision of OAH with respect to the capacity request is final.