

FAMILY CHILD CARE HOME REQUIREMENTS

Effective December 1, 2012

North Carolina Department of Health and Human Services

Division of Child Development and Early Education

**CHAPTER 9 – FAMILY CHILD CARE HOME RULES
(Amended Eff. December 1, 2012)**

	PAGE
SECTION .0100 PURPOSE AND DEFINITIONS	1
.0101 RESERVED FOR FUTURE CODIFICATION	
.0102 DEFINITIONS	
SECTION .0400 ISSUANCE PROVISIONAL AND TEMPORARY LICENSES	5
.0401 PROVISIONAL LICENSES FOR FACILITIES	
.0402 RESERVED FOR FUTURE CODIFICATION	
.0403 TEMPORARY LICENSES FOR CENTERS	
SECTION .1700 FAMILY CHILD CARE HOME REQUIREMENTS	6
.1701 GENERAL PROVISIONS RELATED TO LICENSURE OF HOMES	
.1702 APPLICATION FOR A LICENSE FOR A FAMILY CHILD CARE HOME	
.1703 CAREGIVER INTERACTIONS	
.1704 RESERVED FOR FUTURE CODIFICATION	
.1705 HEALTH AND TRAINING REQUIREMENTS FOR FAMILY CHILD CARE HOME OPERATORS	
.1706 NUTRITION STANDARDS	
.1707 RESERVED FOR FUTURE CODIFICATION	
.1708 RESERVED FOR FUTURE CODIFICATION	
.1709 RESERVED FOR FUTURE CODIFICATION	
.1710 RESERVED FOR FUTURE CODIFICATION	
.1711 RESERVED FOR FUTURE CODIFICATION	
.1712 RESERVED FOR FUTURE CODIFICATION	
.1713 RESERVED FOR FUTURE CODIFICATION	
.1714 RESERVED FOR FUTURE CODIFICATION	
.1715 RESERVED FOR FUTURE CODIFICATION	
.1716 FAILURE TO MAINTAIN REQUIREMENTS	
.1717 RESERVED FOR FUTURE CODIFICATION	
.1718 REQUIREMENTS FOR DAILY OPERATIONS	
.1719 REQUIREMENTS FOR A SAFE INDOOR/OUTDOOR ENVIRONMENT	
.1720 SAFETY, MEDICATION AND SANITATION REQUIREMENTS	
.1721 REQUIREMENTS FOR RECORDS	
.1722 DISCIPLINE POLICY	
.1723 TRANSPORTATION REQUIREMENTS	
.1724 SAFE SLEEP POLICY	
SECTION .1900 SPECIAL PROCEDURES CONCERNING ABUSE/NEGLECT IN CHILD CARE	24
.1901 NOTIFICATION TO COUNTY DEPARTMENTS OF SOCIAL SERVICES	
.1902 RESERVED FOR FUTURE CODIFICATION	
.1903 INVESTIGATION PROCEDURES	
.1904 ADMINISTRATIVE SANCTIONS	
SECTION .2000 RULEMAKING AND CONTESTED CASE PROCEDURES	26
.2001 PETITIONS FOR RULEMAKING	
.2002 RULEMAKING PROCEDURES	
.2003 DECLARATORY RULINGS	
.2004 CONTESTED CASE PROCEDURES	

SECTION	.2000 RULEMAKING AND CONTESTED CASE PROCEDURES, cont	
.2005	CONTESTED CASES: REQUEST FOR DETERMINATION	
.2006	CONTESTED CASES: RECORD	
.2007	CONTESTED CASES: EXCEPTIONS TO RECOMMENDED DECISION	
SECTION	.2200 ADMINISTRATIVE ACTIONS AND CIVIL PENALTIES	29
.2201	ADMINISTRATIVE PENALITES: GENERAL PROVISIONS	
.2202	WRITTEN REPRIMANDS	
.2203	WRITTEN WARNINGS	
.2204	PROBATIONARY LICENSE	
.2205	SUSPENSION	
.2206	REVOCAATION	
.2207	SUMMARY SUSPENSION	
.2208	CIVIL PENALTIES: SCOPE AND PURPOSE	
.2209	AMOUNT OF PENALTY	
.2210	NOTICE OF ASSESSMENT OF PENALTY	
.2211	RIGHT TO A HEARING	
.2212	FAILURE TO PAY ASSESSED PENALTY	
.2213	SCHEDULE OF CIVIL PENALTIES FOR CHILD CARE CENTERS	
SECTION	.2700 REQUIREMENTS FOR CRIMINAL RECORD CHECKS	35
.2701	APPLICATION FOR PERMITS	
.2702	CRIMINAL RECORD CHECK REQUIREMENTS FOR CHILD CARE PROVIDERS	
.2703	RESERVED FOR FUTURE CODIFICATION	
.2704	CRIMINAL RECORD CHECK REQUIREMENTS FOR NONREGISTERED HOME PROVIDERS	
SECTION	.2800 VOLUNTARY RATED LICENSES	40
.2801	SCOPE	
.2802	APPLICATION FOR A VOLUNTARY RATED LICENSE	
.2814	PROGRAM STANDARDS FOR A THREE COMPONENT RATED LICENSE FOR FAMILY CHILD CARE HOMES – REPEALED JULY 1, 2010	
.2815	EDUCATION STANDARDS FOR A THREE COMPONENT RATED LICENSE FOR FAMILY CHILD CARE HOMES – REPEALED JULY 1, 2010	
.2816	COMPLIANCE HISTORY STANDARDS FOR A THREE COMPONENT RATED LICENSE FOR FAMILY CHILD CARE HOMES – REPEALED JULY 1, 2010	
.2827	EDUCATION STANDARDS FOR OPERATORS FOR A RATED LICENSE FOR FAMILY CHILD CARE HOMES	
.2828	PROGRAM STANDARDS FOR A RATED LICENSE FOR FAMILY CHILD CARE HOMES	
.2829	QUALITY POINT OPTIONS	
.2830	MAINTAINING THE STAR RATING	
.2831	HOW AN OPERATOR MAY REQUEST OR APPEAL A CHANGE IN RATING	

The North Carolina Department of Health and Human Services does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or the provision of services.

CHAPTER 9 - CHILD CARE RULES

SECTION .0100 - DEFINITIONS

10A NCAC 09 .0101 RESERVED FOR FUTURE CODIFICATION

10A NCAC 09 .0102 DEFINITIONS

The terms and phrases used in this Chapter are defined as follows except when the context of the rule requires a different meaning. The definitions prescribed in G.S. 110-86 also apply to these Rules.

- (1) "Agency" as used in Section .2200 of this Chapter, means Division of Child Development and Early Education, Department of Health and Human Services located at 319 Chapanoke Road, Suite 120, Raleigh, North Carolina 27603.
- (2) "Appellant" means the person or persons who request a contested case hearing.
- (3) "Basic School-Age Care" training (BSAC training) means the training on the elements of quality afterschool care for school-age children, developed by the North Carolina State University Department of 4-H Youth Development and subsequently revised by the North Carolina School-age Quality Improvement Project. Other training shall be approved as equivalent if the Division determines that the content of the training offered is substantially equivalent to the BSAC training.
- (4) "Child Care Program" means a single center or home, or a group of centers or homes or both, that are operated by one owner or supervised by a common entity.
- (5) "Child care provider" as defined by G.S. 110-90.2 (a) (2) a. and used in Section .2700 of this Chapter, includes the following employees who have contact with the children in a child care program:
 - (a) facility directors,
 - (b) administrative staff,
 - (c) teachers,
 - (d) teachers' aides,
 - (e) cooks,
 - (f) maintenance personnel, and
 - (g) drivers.
- (6) "Child Development Associate Credential" means the national early childhood credential administered by the Council for Early Childhood Professional Recognition.
- (7) "Curriculum" means a curriculum that has been approved by the NC Child Care Commission as comprehensive, evidence-based and with a reading component.
- (8) "Developmentally appropriate" means suitable to the chronological age range and developmental characteristics of a specific group of children.
- (9) "Division" means the Division of Child Development and Early Education within the Department of Health and Human Services.
- (10) "Drop-in care" means a child care arrangement where children attend on an intermittent, unscheduled basis.
- (11) "Early Childhood Environment Rating Scale - Revised Edition" (Harms, Clifford, and Cryer, 2005, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are two and a half years old through five years old, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in June 2012 is twenty-one dollars and ninety-five cents (\$21.95).

- A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection during regular business hours.
- (12) "Experience working with school-aged children" means working with school-age children as an administrator, program coordinator, group leader, assistant group leader, lead teacher, teacher or aide.
 - (13) "Family Child Care Environment Rating Scale – Revised Edition" (Harms, Cryer and Clifford, 2007, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by children in family child care homes to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in June 2012 is twenty-one dollars and ninety-five cents (\$21.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection during regular business hours.
 - (14) "First aid kit" is a collection of first aid supplies (such as bandages, tweezers, disposable nonporous gloves, micro shield or face mask, liquid soap, cold pack) for treatment of minor injuries or stabilization of major injuries.
 - (15) "Group" means the children assigned to a specific caregiver or caregivers, to meet the staff/child ratios set forth in G.S. 110-91(7) and this Chapter, using space which is identifiable for each group.
 - (16) "Health care professional" means:
 - (a) a physician licensed in North Carolina;
 - (b) a nurse practitioner approved to practice in North Carolina; or
 - (c) a licensed physician assistant.
 - (17) "Household member" means a person who resides in a family home as evidenced by factors including maintaining clothing and personal effects at the household address, receiving mail at the household address, using identification with the household address, or eating and sleeping at the household address on a regular basis.
 - (18) "If weather conditions permit" means:
 - (a) temperatures that fall within the guidelines developed by the Iowa Department of Public Health and specified on the Child Care Weather Watch chart. These guidelines shall be used when determining appropriate weather conditions for taking children outside for outdoor learning activities and playtime. This chart may be downloaded free of charge from <http://www.idph.state.ia.us/hcci/common/pdf/weatherwatch.pdf>, and is incorporated by reference and includes subsequent editions and amendments;
 - (b) following the air quality standards as set out in 15A NCAC 18A .2832(d). The Air Quality Color Guide can be found on the Division's web site at <http://xapps.enr.state.nc.us/aq/ForecastCenter> or call 1-888-RU4NCAIR (1-888-784-6224); and
 - (c) no active precipitation. Caregivers may choose to go outdoors when there is active precipitation if children have appropriate clothing such as rain boots and rain coats, or if they are under a covered area.
 - (19) "Infant/Toddler Environment Rating Scale - Revised Edition" (Harms, Cryer, and Clifford, 2003, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are younger than thirty months old, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this

scale in June 2012 is twenty-one dollars and ninety-five cents (\$21.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection during regular business hours.

- (20) "ITS-SIDS Training" means the Infant/Toddler Safe Sleep and SIDS Risk Reduction Training developed by the NC Healthy Start Foundation for the Division of Child Development and Early Education for caregivers of children ages 12 months and younger.
- (21) "Licensee" means the person or entity that is granted permission by the State of North Carolina to operate a child care facility. The owner of a facility is the licensee.
- (22) "North Carolina Early Educator Certification (certification)" is an acknowledgement of an individual's verified level of educational achievement based on a standardized scale. The North Carolina Institute for Child Development Professionals certifies individuals and assigns a certification level on two scales:
 - (a) the Early Care and Education Professional Scale (ECE Scale) in effect as of July 1, 2010; or
 - (b) the School Age Professional Scale (SA Scale) in effect as of May 19, 2010.Each scale reflects the amount of education earned in the content area pertinent to the ages of children served. The ECE Scale is designed for individuals working with or on behalf of children ages birth to five. The SA Scale is designed for individuals working with or on behalf of children ages 5 to 12 who are served in school age care settings.
- (23) "North Carolina Early Childhood Credential" means the state early childhood credential that is based on completion of required early childhood coursework taken at any NC Community College. Other post secondary curriculum coursework shall be approved as equivalent if the Division determines that the content of the other post secondary curriculum coursework offered is substantially equivalent to the NC Early Childhood Credential Coursework. A copy of the North Carolina Early Childhood Credential requirements is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection or copying at no charge during regular business hours.
- (24) "Owner" means any person with a five percent or greater equity interest in a child care facility, however stockholders of corporations who own child care facilities are not subject to mandatory criminal history checks pursuant to G.S. 110-90.2 and G.S. 110-91(8) unless they are a child care provider.
- (25) "Parent" means a child's parent, legal guardian, or full-time custodian.
- (26) "Part-time care" means a child care arrangement where children attend on a regular schedule but less than a full-time basis.
- (27) "Passageway" means a hall or corridor.
- (28) "Person" means any individual, trust, estate, partnership, corporation, joint stock company, consortium, or any other group, entity, organization, or association.
- (29) "Preschooler" or "preschool-age child" means any child who does not fit the definition of school-age child in this Rule.
- (30) "School-Age Care Environment Rating Scale" (Harms, Jacobs, and White, 1996, published by Teachers College Press) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of the children in the group are older than five years, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in June 2012 is twenty-one

dollars and ninety-five cents (\$21.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection during regular business hours.

- (31) "School-age child" means any child who is attending or who has attended, a public or private grade school or kindergarten and meets age requirements as specified in G.S. 115C-364.
- (32) "Seasonal Program" means a recreational program as set forth in G.S. 110-86(2)(b).
- (33) "Section" means Division of Child Development and Early Education.
- (34) "Substitute" means any person who assumes the duties of a staff person for a time period not to exceed two consecutive months.
- (35) "Track-Out Program" means any child care provided to school-age children when they are out of school on a year-round school calendar.
- (36) "Volunteer" means a person who works in a child care facility and is not monetarily compensated by the facility.

*History Note: Authority G.S. 110-85; 110-88; 143B-168.3;
Eff. January 1, 1986;
Amended Eff. April 1, 1992; October 1, 1991; October 1, 1990; November 1, 1989;
Temporary Amendment Eff. January 1, 1996;
Amended Eff. September 1, 2012; July 3, 2012; July 1, 2012; November 1, 2007; May 1,
2006; May 1, 2004; April 1, 2003; July 1, 2000; April 1, 1999; July 1, 1998; April 1,
1997.*

SECTION .0400 - ISSUANCE OF PROVISIONAL AND TEMPORARY LICENSES

10A NCAC 09 .0401 PROVISIONAL LICENSES FOR FACILITIES

(a) A provisional license may be issued in accordance with the provisions of G.S. 110-88(6) for any period of time not to exceed twelve consecutive months for any of the following reasons:

- (1) To allow a specific time period for correcting a violation of the building, fire, or sanitation requirements, provided that the appropriate inspector documents that the violation is not hazardous to the health or safety of the children but nevertheless necessitates a provisional classification until corrected.
- (2) To allow a specific time period for the facility to comply fully with all licensing requirements other than building, fire, or sanitation, and to demonstrate that compliance will be maintained, provided that conditions at the facility are not hazardous to the health or safety of the children or staff.
- (3) To allow time for the applicant or licensee to obtain a declaratory ruling pursuant to Section .2000 of this Subchapter.
- (4) As a possible administrative action for substantiation of child abuse or neglect.

(b) The provisional license may be issued upon the Division's determination that the applicant or licensee is making a reasonable effort to conform to such requirements.

(c) The provisional license and the document describing the reasons for its issuance shall be posted in a prominent place in the facility that parents are able to view daily.

(d) A licensee may obtain an administrative hearing on the issuance of a provisional license in accordance with Section .2200 of this Chapter.

History Note: Authority G.S. 110-88(6); 110-99; 143B-168.3;

Eff. January 1, 1986;

Amended Eff. July 1, 1998; April 1, 1992; August 1, 1990; July 1, 1988; January 1, 1987.

10A NCAC 09 .0402 RESERVED FOR FUTURE CODIFICATION

10A NCAC 09 .0403 TEMPORARY LICENSES FOR CENTERS

(a) A temporary license may be issued in accordance with the provisions of G.S. 110-88(10) to the operator opening a new center or to the operator of a previously licensed center when a change in ownership or location occurs provided:

- (1) the operator applied for a license, pursuant to Section .0300, or Rule .0204(a) or (b) of this Subchapter prior to the change in status; and
- (2) the center has sufficient equipment and materials to operate for the number of children enrolled.

(b) The temporary license shall be posted in a prominent place in the center that parents are able to view daily.

(c) The temporary license shall expire after six months, or upon the issuance of a license or provisional license to the operator, whichever is earlier.

(d) An operator may obtain an administrative hearing on the denial of a temporary license in accordance with Section .2200 of this Subchapter.

History Note: Authority G.S. 110-88(10); 110-99; 143B-168.3;

Eff. July 1, 1988;

Amended Eff. July 1, 1998; April 1, 1992; November 1, 1989.

SECTION .1700 –FAMILY CHILD CARE HOME REQUIREMENTS

10A NCAC 09 .1701 GENERAL PROVISIONS RELATED TO LICENSURE OF HOMES

(a) All family child care homes shall comply with the standards for licensure set forth in this Section. A one- star rated license shall be issued to a family child care home operator who complies with the minimum standards for a license contained in this Section and G.S. 110-91.

(b) An individual who provides care for five hours or more in a week, during planned absences of the operator, shall be at least 21 years old, have a high school diploma or GED, have completed a first aid and cardiopulmonary resuscitation (CPR) course as described in Rule .1705, Subparagraphs (a)(3), (a)(4), (b)(2), and (b)(3) of this Section, have completed a health questionnaire, have proof of negative results of a tuberculosis test completed within 12 months prior to the first day of providing care, submit criminal records check forms as required in 10A NCAC 09 .2702, and annual in-service training as described in Rule .1705(b)(5) of this Section. Copies of required information shall be on file in the home available for review and shall be transferable to other family child care homes where the individual is providing care.

(c) An individual who provides care for less than five hours in a week, during planned absences of the operator shall meet all requirements listed in Paragraph (b) of this Rule, except the requirements for annual in-service training and a high school diploma or GED. The individual shall be literate.

(d) The operator shall review the appropriate requirements found in this Chapter and in G.S. 110 with any individuals who are providing care prior to the individual's assuming responsibility for the children. The operator and individual providing care shall sign and date a statement which attests that this review was completed. This statement shall be kept on file in the home available for review.

(e) An individual who provides care during unplanned absences of the operator, such as medical emergencies, shall be at least 18 years old and submit criminal records check forms as required in 10A NCAC 09 .2702, Paragraph (j). The children of an emergency caregiver shall not be counted in the licensed capacity for the first day of the emergency caregiver's service.

(f) The provisions of G.S. 110-91(8) which exclude persons with certain criminal records or personal habits or behavior which may be harmful to children from operating or being employed in a family child care home are hereby incorporated by reference and shall also apply to any person on the premises with the operator's permission when the children are present. This exclusion shall not apply to parents or other persons who enter the home only for the purpose of performing parental responsibilities; nor does it include persons who enter the home for brief periods for the purpose of conducting business with the operator and who are not left alone with the children.

(g) The parent of a child enrolled in any family child care home subject to regulation under G.S. 110, Article 7 shall be allowed unlimited access to the home during its operating hours for the purposes of contacting the child or evaluating the home and the care provided by the operator. The parent shall notify the operator of his or her presence immediately upon entering the premises.

(h) An operator licensed to care for children overnight may sleep during the nighttime hours when all the children are asleep provided:

- (1) the operator and the children in care, excluding the operator's own children, are on ground level; and
- (2) the operator can hear and respond quickly to the children if needed; and
- (3) a battery operated smoke detector or an electrically operated (with a battery backup) smoke detector is located in each room where children are sleeping.

(i) Each operator shall develop and adopt a written plan of care for completing routine tasks; including running errands, meeting family and personal demands, and attending classes, to ensure that routine tasks shall not interfere with the care of children during hours of operation. The plan shall:

- (1) Specify typical times for completing routine tasks and include those times on the written schedule, or specify that routine tasks will not occur during hours of operation;

- (2) Specify the names of any individuals, such as additional caregivers or substitutes, who will be responsible for the care of children when the operator is attending to routine tasks;
 - (3) Specify how the operator shall maintain compliance with transportation requirements specified in 10A NCAC 09 .1723 if children are transported;
 - (4) Specify how parents will be notified when children accompany the operator off premises for routine tasks not specified on the written schedule;
 - (5) Specify any other steps the operator shall take to ensure routine tasks will not interfere with the care of children;
 - (6) Be given and explained to parents of children in care on or before the first day the child attends the home. Parents shall sign a statement acknowledging the receipt and explanation of the plan. Parents shall also give written permission for their child to be transported by the operator for specific routine tasks that are included on the written schedule. The acknowledgment and written parental permission shall be retained in the child's record as long as the child is enrolled at the home and a copy of each document shall be maintained on file for review by Division representatives.
- (j) If the operator amends the written plan, the operator shall give written notice of the amendment to parents of all enrolled children at least 30 days before the amended plan is implemented. Each parent shall sign a statement acknowledging the receipt and explanation of the amendment. The operator shall retain the acknowledgement in the child's records as long as the child is enrolled in the home and a copy shall be maintained on file for review by Division representatives.
- (k) The written plan shall be developed and shared with parents of children currently enrolled within 60 days after Paragraph (i) of this Rule becomes effective.

History Note: Authority G.S. 110-85; 110-86(3); 110-88(1); 110-91; 110-99; 110-105; 143B-168.3; Eff. January 1, 1986; Amended Eff. November 1, 2006; April 1, 2003; April 1, 1999; July 1, 1998; January 1, 1991; January 1, 1990; July 1, 1988; January 1, 1987.

10A NCAC 09 .1702 APPLICATION FOR A LICENSE FOR A FAMILY CHILD CARE HOME

- (a) Any person who plans to operate a family child care home shall apply for a license using a form provided by the Division. The applicant shall submit the completed application, which complies with the following, to the Division:
- (1) Only one licensed family child care home shall operate at the location address of any home.
 - (2) The applicant shall list each location address where a licensed family child care home will operate.
- (b) When a family child care home will operate at more than one location address by cooperative arrangement among two or more families, the following procedures apply:
- (1) One parent whose home is used as a location address shall be designated the coordinating parent and shall co-sign the application with the applicant.
 - (2) The coordinating parent shall know the current location address at all times and shall provide the information to the Division upon request.
- (c) The applicant shall assure that the structure in which the family child care home is located complies with the following requirements:
- (1) The structure complies with the North Carolina Building Code for family child care homes or has written approval for use as a family child care home by the local building inspector.

- (2) The structure meets North Carolina Residential Building Code or is a manufactured home bearing a third party inspection label certifying compliance with the Federal Manufactured Home Construction and Safety Standards or certifying compliance with construction standards adopted and enforced by the State of North Carolina. Homes shall be installed in accordance with North Carolina Manufactured/Mobile Home Regulations adopted by the NC Department of Insurance.
Exception: Single wide manufactured homes are limited to a maximum of three preschool-age children (not more than two may be two years of age or less) and two school-age children.
- (3) All children are kept on the ground level with an exit at grade.
- (4) All homes are equipped with an electrically operated (with a battery backup) smoke detector, or one electrically operated and one battery operated smoke detector located next to each other.
- (5) All homes are provided with at least one five pound 2-A: 10-B: C type extinguisher for every 2,500 square feet of floor area.
- (6) Heating appliances shall be installed and maintained according to NC Building Code Chapter 603.5.3.
- (7) All indoor areas used by children are heated when the temperature is below 65 degrees and ventilated when the temperature is above 85 degrees.
- (8) Hot pipes or radiators which are hot enough to be capable of burning children and are accessible to the children are covered or insulated.

(d) The applicant shall also submit supporting documentation with the application for a license to the Division. The supporting documentation shall include:

- (1) a copy of the certified criminal history check from the Clerk of Superior Court's office in the county or counties where the applicant and any household member(s) over age 15, have resided during the previous 12 months;
- (2) a copy of documentation of completion of a first aid and cardiopulmonary resuscitation (CPR) course;
- (3) proof of negative results of the applicant's tuberculosis test completed within the past 12 months;
- (4) a completed health questionnaire;
- (5) a copy of current pet vaccinations for any pet in the home;
- (6) a negative well water bacteriological analysis if the home has a private well;
- (7) copies of any inspections required by local ordinances; and
- (8) any other documentation required by the Division according to the rules in this Section to support the issuance of a license.

(e) Upon receipt of a complete application and supporting documentation, a Division representative shall make an announced visit to each home unless the applicant meets the criteria in Paragraph (g) of this Rule to determine compliance with the requirements, to offer technical assistance when needed, and to provide information about local resources. The issuance of a license applies as follows:

- (1) If all applicable requirements of G.S. 110 and this Section are met, a license shall be issued;
- (2) If the applicable requirements are not met but the applicant has the potential to comply, the Division representative shall establish with the applicant a time period for the home to achieve compliance. If the Division representative determines that all applicable requirements are met within the established time period, a license shall be issued; or
- (3) If all applicable requirements are not met or cannot be met within the established time, the Division shall deny the application.

(f) The Division shall allow the applicant to temporarily operate prior to the Division representative's visit described in Paragraph (e) of this Rule when the applicant is currently licensed as a family child care home operator, needs to relocate and notifies the Division of the relocation, and the Division representative is unable to visit before the relocation occurs. A person shall not operate until he or she has received from the Division either temporary permission to operate or a license.

(g) When a person applies for a family child care home license, the Secretary may deny the application for the license under the following circumstances:

- (1) if any child care facility license previously held by that person has been denied, revoked or summarily suspended by the Division;
- (2) if the Division has initiated denial, revocation or summary suspension proceedings against any child care facility license previously held by that person and the person voluntarily relinquished the license;
- (3) during the pendency of an appeal of a denial, revocation or summary suspension of any child care facility license previously held by that person;
- (4) if the Division determines that the applicant has a relationship with an operator or former operator who previously held a license under an administrative action described in Subparagraph (g)(1), (2), or (3) of this Rule. As used in this Rule, an applicant has a relationship with a former operator if the former operator would be involved with the applicant's child care facility in one or more of the following ways:
 - (A) would participate in the administration or operation of the facility;
 - (B) has a financial interest in the operation of the facility;
 - (C) provides care to the children at the facility;
 - (D) resides in the facility; or
 - (E) would be on the facility's board of directors, be a partner of the corporation, or otherwise have responsibility for the administration of the business;
- (5) based on the person's previous non-compliance as an operator with the requirements of G.S. 110 and this Chapter; or
- (6) if abuse or neglect has been substantiated against the person, or if abuse or neglect was substantiated against a household member.

(h) In determining whether denial of the application for a license is warranted pursuant to Paragraph (g) of this Rule, the Division shall consider:

- (1) any documentation provided by the applicant which describes the steps the applicant will take to prevent reoccurrence of noncompliance issues which led to any prior administrative action taken against a license previously held by the applicant;
- (2) training certificates or original transcripts from a nationally recognized regionally accredited institution of higher learning related to providing quality child care for any coursework, and which were taken subsequent to any prior administrative action taken against a license previously held by the applicant. Nationally recognized means that every state in this nation acknowledges the validity of the coursework taken at higher education institutions that meet the requirements of one of the six regional accrediting bodies;
- (3) proof of employment in a licensed child care facility and references from the administrator or licensee of the child care facility regarding work performance;
- (4) documentation of collaboration or mentorship with a licensed child care provider to obtain additional knowledge and experience related to operation of a child care facility; and
- (5) documentation explaining relationships with persons meeting the criteria listed in Subparagraph (g)(4) of this Rule.

(i) The license shall not be bought, sold, or transferred from one individual to another.

- (j) The license is valid only for the location address listed on it.
- (k) The license must be returned to the Division in the event of termination, revocation, suspension, or summary suspension.
- (l) The license shall be displayed in a prominent place that parents are able to view daily and shall be shown to each child's parent when the child is enrolled.
- (m) A licensee shall notify the Division whenever a change occurs which affects the information shown on the license.

History Note: Authority G.S. 110-85; 110-88(5); 110-91; 110-93; 110-99; 143B-168.3; Eff. January 1, 1986; Amended Eff. December 1, 2012; August 1, 2011; July 1, 2010; April 1, 2003; April 1, 2001; July 1, 1998; January 1, 1991; November 1, 1989; January 1, 1987.

10A NCAC 09 .1703 CAREGIVER INTERACTIONS

Caregivers shall relate to children in positive ways by helping them feel welcome and comfortable, treating them with respect, listening to what they say, responding to them with acceptance and appreciation and participating in many activities with the children. For example, caregivers shall:

- (1) Make eye contact when speaking to a child;
- (2) Actively engage children in conversation to share experiences, ideas and opinions;
- (3) Help children develop problem-solving skills; and
- (4) Facilitate learning by providing positive reinforcement, encouraging efforts and recognizing accomplishments.

History Note: Authority G.S. 110-85; 110-91(8),(11); 143B-168.3; Eff. July 1, 2010.

10A NCAC 09 .1704 RESERVED FOR FUTURE CODIFICATION

10A NCAC 09 .1705 HEALTH AND TRAINING REQUIREMENTS FOR FAMILY CHILD CARE HOME OPERATORS

- (a) Prior to receiving a license, each family child care home operator shall:
 - (1) Complete and keep on file a health questionnaire which attests to the operator's physical and emotional ability to care for children.
The Division may require a written statement or medical examination report signed by a licensed physician or other authorized health professional if there is reason to believe that the operator's health may adversely affect the care of the children.
 - (2) Obtain written proof that he or she is free of active tuberculosis. The results indicating the individual is free of active tuberculosis shall be obtained within 12 months prior to applying for a license.
 - (3) Complete within 12 months prior to applying for a license a basic first aid course that shall address principles for responding to emergencies, and techniques for handling common childhood injuries, accidents and illnesses such as choking, burns, fractures, bites and stings, wounds, scrapes, bruises, cuts and lacerations, poisoning, seizures, bee sting, allergic reactions, eye and nose injuries and sudden changes in body temperature.
 - (4) Successfully complete within 12 months prior to applying for a license a course by the American Heart Association or the American Red Cross or other organizations approved by the Division in cardiopulmonary resuscitation (CPR) appropriate for the ages of children in care. Other organizations shall be approved if the Division determines that the

courses offered are substantially equivalent to those offered by the American Red Cross. Successfully completed is defined as demonstrating competency, as evaluated by the instructor, in performing CPR. Documentation of successful completion of the course from the American Heart Association, the American Red Cross, or other organization approved by the Division shall be on file in the home.

(b) After receiving a license, an operator shall:

- (1) Update the health questionnaire referenced in Paragraph (a) of this Rule annually. The Division may require the operator to obtain written proof that he or she is free of active tuberculosis.
- (2) Complete a first aid course as referenced in Paragraph (a) of this Rule. First aid training shall be renewed on or before expiration of the certification or every three years, whichever is less.
- (3) Successfully complete a CPR course as referenced in Paragraph (a) of this Rule. CPR training shall be renewed on or before the expiration of the certification, or every two years, whichever is less.
- (4) If licensed to care for infants ages 12 months and younger, complete ITS-SIDS training within four months of receiving the license, and complete it again every three years from the completion of previous ITS-SIDS training. Completion of ITS-SIDS training may be included once every three years in the number of hours needed to meet the annual in-service training requirement in Paragraph (b)(5) of this Rule.
- (5) Complete 12 clock hours of annual in-service training in the topic areas required by G.S. 110-91(11), except that persons with at least 10 years work experience as a caregiver in a child care arrangement regulated by the Division of Child Development shall complete eight clock hours of annual in-service training. Only training which has been approved by the Division as referenced in Rule .0708 of this Chapter shall count toward the required hours of annual in-service training. The operator shall maintain a record of annual in-service training activities in which he or she has participated. The record shall include the subject matter, the topic area in G.S. 110-91(11) covered, the name of the training provider or organization, the date training was provided and the number of hours of training completed. First aid training may be counted no more than once every three years.

History Note: Authority G.S. 110-85; 110-88; 110-91; 143B-168.3;

Eff. January 1, 1986;

Amended Eff. July 1, 2008; May 1, 2004; July 1, 1998; November 1, 1989; January 1, 1987.

10A NCAC 09 .1706 NUTRITION STANDARDS

(a) Meals and snacks served to children in a Family Child Care Home shall comply with the Meal Patterns for Children in Child Care Programs from the United States Department of Agriculture (USDA) which are based on the recommended nutrient intake judged by the National Research Council to be adequate for maintaining good nutrition. The types of food, number and size of servings shall be appropriate for the ages and developmental levels of the children in care. The Meal Patterns for Children in Child Care Programs are incorporated by reference and include subsequent amendments. A copy of the Meal Patterns for Children in Child Care Programs is available free of charge from the Division at the address in Rule .0102(1) of this Chapter.

(b) When children bring their own food for meals and snacks to the program, if the food does not meet the nutritional requirements specified in Paragraph (a) of this Rule, the operator must provide the additional food necessary to meet those requirements unless the child's parent or guardian opts out of

the supplemental food provided by the operator as set forth in G.S. 110-91(2) h.1. A statement acknowledging the parental decision to opt out of the supplemental food provided by the operator signed by the child's parent or guardian shall be on file at the home. Opting out means that the operator will not provide any food or drink so long as the child's parent or guardian provides all meals, snacks, and drinks scheduled to be served at the program's designated times. If the child's parent or guardian has opted out but does not provide all food and drink for the child, the program shall provide supplemental food and drink as if the child's parent or guardian had not opted out of the supplemental food program.

(c) The food required by special diets for medical, religious or cultural reasons, may be provided by the operator or may be brought to the program by the parents. If the diet is prescribed by a health care professional, a statement signed by the health care professional shall be on file at the program and written instructions must be provided by the child's parent, health care professional or a licensed dietitian/nutritionist. If the diet is not prescribed by a health care professional, written instructions shall be provided by the child's parent and shall be on file at the program.

(d) Food that does not meet the nutritional requirements specified in Paragraph (a) of this Rule, such as cookies, chips, donuts; etc. shall be available only for special occasions such as holidays, birthdays and other celebrations.

(e) For children ages 24 months and older a meal or snack must be provided at least every four hours.

(f) The parent or health care professional of each child under 15 months of age shall provide the operator an individual written feeding schedule for the child. This schedule shall be followed at the home. This schedule shall include the child's name, be signed by the parent or health care professional, and be dated when received by the operator. Each infant's schedule shall be modified in consultation with the child's parent or health care professional to reflect changes in the child's needs as he or she develops.

(g) Parents shall be allowed to provide breast milk for their children. Accommodations for breastfeeding mothers are provided that include seating and an electrical outlet, in a place other than a bathroom, that is shielded from view by staff and the public, which may be used by mothers while they are breastfeeding or expressing milk.

(h) Each infant shall be held for bottle feeding until able to hold his or her own bottle. Bottles shall not be propped. Each child shall be held or placed in feeding chairs or other age-appropriate seating apparatus to be fed.

(i) Any formula which is prepared by the operator shall be prepared according to the instructions on the formula package or label, or according to written instructions from the child's health care professional.

(j) Infants shall not be served juice in a bottle without a prescription or written statement on file from a health care professional or licensed dietitian/nutritionist.

(k) Drinking water must be freely available and offered to children on a frequent basis.

(l) When milk, milk products, or fruit juices are provided by the operator, only pasteurized products or products which have undergone an equivalent process to pasteurization shall be used.

(m) The operator will provide only the following beverages:

- (1) breast milk;
- (2) formula;
- (3) water;
- (4) unflavored whole milk, for children ages 12-24 months;
- (5) unflavored skim or lowfat milk for children two years old and older; or
- (6) 100 percent fruit juice, limited to 6 ounces per day.

*History Note: Authority G.S. 110-85; 110-91(2); 143B-168.3;
Eff. December 1, 2012.*

10A NCAC 09 .1707 RESERVED FOR FUTURE CODIFICATION

- 10A NCAC 09 .1708 RESERVED FOR FUTURE CODIFICATION**
- 10A NCAC 09 .1709 RESERVED FOR FUTURE CODIFICATION**
- 10A NCAC 09 .1710 RESERVED FOR FUTURE CODIFICATION**
- 10A NCAC 09 .1711 RESERVED FOR FUTURE CODIFICATION**
- 10A NCAC 09 .1712 RESERVED FOR FUTURE CODIFICATION**
- 10A NCAC 09 .1713 RESERVED FOR FUTURE CODIFICATION**
- 10A NCAC 09 .1714 RESERVED FOR FUTURE CODIFICATION**
- 10A NCAC 09 .1715 RESERVED FOR FUTURE CODIFICATION**

10A NCAC 09 .1716 FAILURE TO MAINTAIN REQUIREMENTS

(a) If the Division determines that a family child care home operator fails to maintain compliance with the requirements for licensure, the Division may establish a reasonable time period to allow the operator to achieve compliance or recommend issuance of a provisional license in accordance with Rule .0401 of this Subchapter.

(b) If the operator fails to achieve compliance within the established time period, the Division may suspend, terminate, or revoke the license. The operator may appeal any such action pursuant to the provisions of G.S. 150B.

(c) The Division may recommend imposition of a civil penalty in accordance with the procedures set forth in Section .2200 of this Subchapter and according to the following schedules:

- (1) A civil penalty in an amount up to one thousand dollars (\$1,000.00) may be imposed when the Division has substantiation that a child was abused or neglected while in care in a family child care home.
- (2) A civil penalty in an amount up to two hundred dollars (\$200.00) may be imposed for the following violations:
 - (A) Repeated incidents of exceeding the number of children allowed in a licensed family child care home;
 - (B) Repeated incidents where there has been a lack of supervision of the children; or
 - (C) Willful, repeated pattern of noncompliance with any requirement contained in this Subchapter or in the General Statutes.
- (3) A civil penalty in an amount up to one hundred dollars (\$100.00) may be imposed for the following violations:
 - (A) Denial of entry to an authorized representative of the Division;
 - (B) Documented noncompliance with the number of children allowed in a licensed family child care home;
 - (C) Lack of supervision of the children in care; or
 - (D) Failure to comply with a corrective action plan designed by the Division to correct noncompliance with any applicable requirement in this Subchapter or in the General Statutes.

*History Note: Authority G.S. 110-86(3); 110-88(1),(5),(6a); 110-91; 110-98; 110-103.1; 110-105; 110-105.2; 110-106; 143B-168.3; 150B-23;
 Eff. January 1, 1986;
 Amended Eff. July 1, 1998; January 1, 1991; January 1, 1987.*

10A NCAC 09 .1717 RESERVED FOR FUTURE CODIFICATION

10A NCAC 09 .1718 REQUIREMENTS FOR DAILY OPERATIONS

(a) The operator shall provide the following on a daily basis for all children in care:

- (1) Developmentally appropriate equipment and materials for a variety of outdoor activities which allow for vigorous play, large and small muscle development, and social, emotional, and intellectual development. Each child shall have the opportunity for outdoor play each day that weather conditions permit. The operator shall provide space and time for vigorous indoor activities when children cannot play outdoors;
- (2) An individual sleeping space such as a bed, crib, play pen, cot, mat, or sleeping bag with individual linens for each pre-school aged child in care for four hours or more, or for all children if overnight care is provided, to rest comfortably. Individual sleep requirements for infants aged 12 months or younger shall be provided for as specified in 10A NCAC 09 .1724(a)(2). Linens shall be changed weekly or whenever they become soiled or wet;
- (3) A quiet, separate area which can be easily supervised for children too sick to remain with other children. Parents shall be notified immediately if their child becomes too sick to remain in care;
- (4) Adequate supervision as described below:
 - (A) For children who are awake, staff shall interact with the children while moving about the indoor or outdoor area, and shall be able to hear and see the children at all times, except when emergencies necessitate that direct supervision is impossible for brief periods of time; and
 - (B) For children who are sleeping or napping, the staff are not required to visually supervise them, but shall be able to hear and respond quickly to them. Children shall not sleep or nap in a room with a closed door between the children and the supervising staff. The staff shall be on the same level of the home where children are sleeping or napping.
- (5) A safe sleep environment by ensuring that when a child is sleeping or napping, bedding or other objects shall not be placed in a manner that covers the child's face;
- (6) The opportunity each day for each child under the age of 12 months to play while awake while positioned on his or her stomach;
- (7) Developmentally appropriate activities as planned on a written schedule. Materials or equipment shall be available indoors and outdoors to support the activities listed on the written schedule. The written schedule shall:
 - (A) Show blocks of time usually assigned to types of activities and include periods of time for both active play and quiet play or rest;
 - (B) Be displayed in a place where parents are able to view;
 - (C) Reflect daily opportunities for both free choice and guided activities;
 - (D) Include a minimum of one hour of outdoor play throughout the day, if weather conditions permit; and
 - (E) Include a daily gross motor activity which may occur indoors or outdoors; and
- (8) When screen time, including videos, video games, and computer usage, is provided, it shall be:
 - (A) Offered only as a free choice activity,
 - (B) Used to meet a developmental goal, and
 - (C) Limited to no more than two and a half hours per week for each child two years of age and older.

Usage time periods may be extended for specific special events, projects, occasions such as a current event, homework, on-site computer classes, holiday; and birthday celebration. Screen

time is prohibited for children under the age of two years. The operator shall offer alternate activities for children under the age of two years.

History Note: Authority G.S. 110-85; 110-88; 110-91(2),(12);

Eff. July 1, 1998;

Amended Eff. December 1, 2012; July 1, 2010; March 1, 2006; May 1, 2004.

10A NCAC 09 .1719 REQUIREMENTS FOR A SAFE INDOOR/OUTDOOR ENVIRONMENT

(a) The operator of a family child care home shall maintain a safe indoor and outdoor environment for the children in care. In addition, the operator shall:

- (1) keep all areas used by the children, indoors and outdoors, clean and orderly and free of items which are potentially hazardous to children. This includes the removal of items that a child can swallow. In addition, loose nails or screws and splinters shall be removed on inside and outside equipment;
- (2) safely store equipment and supplies such as lawnmowers, power tools, or nails, so they are inaccessible to children;
- (3) ensure that all stationary outdoor equipment is firmly anchored and is not installed over concrete or asphalt. Footings which anchor the equipment shall not be exposed;
- (4) securely mount electric fans out of the reach of children or have a mesh guard on each fan;
- (5) cover all electrical outlets not in use and remove old, cracked or frayed cords in occupied outlets;
- (6) ensure that, for appliances with heating elements, such as bottle warmers, crock pots, irons, coffee pots, or curling irons, neither the appliance nor the cord, if applicable, is accessible to preschool children;
- (7) have solid and safe indoor and outdoor stairs and steps if these are used by the children. Indoor and outdoor stairs with two or more steps which are used by the children shall be railed. Indoor stairs with more than two steps shall be made inaccessible to children in care who are two years old or younger;
- (8) maintain any swimming pools or wading pools on the premises in a manner that will safeguard the lives and health of the children. All swimming or wading pools used by children in care shall meet the "Rules Governing Public Swimming Pools," in accordance with 15A NCAC 18A .2500 which are hereby incorporated by reference including subsequent amendments. A copy of these Rules is on file at the Division at the address given in Rule .0102 of this Chapter or may be obtained at no cost by writing the North Carolina Division of Environmental Health, 1630 Mail Service Center, Raleigh, NC 26799-1630;
- (9) enclose any in-ground swimming pools by a fence at least four feet high to prevent chance access by children. The swimming pool shall be separate from the play area. Access to the water in above ground swimming pools shall be prevented by locking and securing the ladder in place or storing the ladder in a place inaccessible to the children; and
- (10) safely store all combustible materials that may create a fire hazard.

(b) Prior to enrollment of children in a family child care home, and before new animals that will be in the home come into the family child care home, a parent of each child must sign a form acknowledging the type of animal and where the animal will be during operating hours. This documentation shall be maintained in each child's file.

*History Note: Authority G.S. 110-85; 110-88; 110-91(3),(4),(5),(6);
Eff. July 1, 1998;
Amended Eff. May 1, 2012; April 1, 2001.*

10A NCAC 09 .1720 SAFETY, MEDICATION, AND SANITATION REQUIREMENTS

- (a) To assure the safety of children in care, the operator shall:
- (1) empty firearms of ammunition and keep both in separate, locked storage;
 - (2) keep items used for starting fires, such as matches and lighters, out of the children's reach;
 - (3) keep all medicines in locked storage;
 - (4) keep hazardous cleaning supplies and other items that might be poisonous, e.g., toxic plants, out of reach or in locked storage when children are in care;
 - (5) keep first aid supplies in a place accessible to the operator;
 - (6) keep tobacco products out of reach or in locked storage when children are in care;
 - (7) ensure the equipment and toys are in good repair and are developmentally appropriate for the children in care;
 - (8) have a working telephone within the family child care home. Telephone numbers for the fire department, law enforcement office, emergency medical service, and poison control center shall be posted near the telephone;
 - (9) have access to a means of transportation that is always available for emergency situations; and
 - (10) be able to recognize common symptoms of illnesses.
- (b) The operator may provide care for a mildly ill child who has a Fahrenheit temperature of less than 100 degrees axillary or 101 degrees orally and who remains capable of participating in routine group activities; provided the child does not:
- (1) have the sudden onset of diarrhea characterized by an increased number of bowel movements compared to the child's normal pattern and with increased stool water; or
 - (2) have two or more episodes of vomiting within a 12 hour period; or
 - (3) have a red eye with white or yellow eye discharge until 24 hours after treatment; or
 - (4) have scabies or lice; or
 - (5) have known chicken pox or a rash suggestive of chicken pox; or
 - (6) have tuberculosis, until a health professional states that the child is not infectious; or
 - (7) have strep throat, until 24 hours after treatment has started; or
 - (8) have pertussis, until five days after appropriate antibiotic treatment; or
 - (9) have hepatitis A virus infection, until one week after onset of illness or jaundice; or
 - (10) have impetigo, until 24 hours after treatment; or
 - (11) have a physician's or other health professional's written order that the child be separated from other children.
- (c) The following provisions apply to the administration of medication in family child care homes:
- (1) No prescription or over-the-counter medication and no topical, non-medical ointment, repellent, lotion, cream or powder shall be administered to any child:
 - (A) without written authorization from the child's parent;
 - (B) without written instructions from the child's parent, physician or other health professional;
 - (C) in any manner not authorized by the child's parent, physician or other health professional;
 - (D) after its expiration date; or
 - (E) for non-medical reasons, such as to induce sleep.

- (2) Prescribed medications:
- (A) shall be stored in the original containers in which they were dispensed with the pharmacy labels specifying:
 - (i) the child's name;
 - (ii) the name of the medication or the prescription number;
 - (iii) the amount and frequency of dosage;
 - (iv) the name of the prescribing physician or other health professional; and
 - (v) the date the prescription was filled; or
 - (B) if pharmaceutical samples, shall be stored in the manufacturer's original packaging, shall be labeled with the child's name, and shall be accompanied by written instructions specifying:
 - (i) the child's name;
 - (ii) the names of the medication;
 - (iii) the amount and frequency of dosage;
 - (iv) the signature of the prescribing physician or other health professional; and
 - (v) the date the instructions were signed by the physician or other health professional; and
 - (C) shall be administered only to the child for whom they were prescribed.
- (3) A parent's written authorization for the administration of a prescription medication described in Paragraph (c)(2) of this Rule shall be valid for the length of time the medication is prescribed to be taken.
- (4) Over-the-counter medications, such as cough syrup, decongestant, acetaminophen, ibuprofen, topical antibiotic cream for abrasions, or medication for intestinal disorders shall be stored in the manufacturer's original packaging on which the child's name is written or labeled and shall be accompanied by written instructions specifying:
- (A) the child's name;
 - (B) the names of the authorized over-the-counter medication;
 - (C) the amount and frequency of the dosages;
 - (D) the signature of the parent, physician or other health professional; and
 - (E) the date the instructions were signed by the parent, physician or other health professional.

The permission to administer over-the-counter medications is valid for up to 30 days at a time, except as allowed in Subparagraphs (c)(6), (7), (8), and (9) of this Rule. Over-the-counter medications shall not be administered on an "as needed" basis, other than as allowed in Subparagraphs (c)(6), (7), (8), and (9) of this Rule.

- (5) When questions arise concerning whether any medication should be administered to a child, the caregiver may decline to administer the medication without signed, written dosage instructions from a licensed physician or authorized health professional.
- (6) A parent may give a caregiver standing authorization for up to six months to administer prescription or over-the-counter medication to a child, when needed, for chronic medical conditions and for allergic reactions. The authorization shall be in writing and shall contain:
 - (A) the child's name;
 - (B) the subject medical conditions or allergic reactions;
 - (C) the names of the authorized over-the-counter medications;
 - (D) the criteria for the administration of the medication;
 - (E) the amount and frequency of the dosages;
 - (F) the manner in which the medication shall be administered;
 - (G) the signature of the parent;

- (H) the date the authorization was signed by the parent; and
 - (I) the length of time the authorization is valid, if less than six months.
- (7) A parent may give a caregiver standing authorization for up to 12 months to apply over-the-counter, topical ointments, topical teething ointment or gel, insect repellents, lotions, creams, and powders such as sunscreen, diapering creams, baby lotion, and baby powder to a child, when needed. The authorization shall be in writing and shall contain:
- (A) the child's name;
 - (B) the names of the authorized ointments, repellents, lotions, creams, and powders;
 - (C) the criteria for the administration of the ointments, repellents, lotions, creams, and powders;
 - (D) the manner in which the ointments, repellents, lotions, creams, and powders shall be applied;
 - (E) the signature of the parent;
 - (F) the date the authorization was signed by the parent; and
 - (G) the length of time the authorization is valid, if less than 12 months.
- (8) A parent may give a caregiver standing authorization to administer a single weight-appropriate dose of acetaminophen to a child in the event the child has a fever and a parent cannot be reached. The authorization shall be in writing and shall contain:
- (A) the child's name;
 - (B) the signature of the parent;
 - (C) the date the authorization was signed by the parent;
 - (D) the date that the authorization ends or a statement that the authorization is valid until withdrawn by the parent in writing.
- (9) A parent may give a caregiver standing authorization to administer an over-the-counter medication as directed by the North Carolina State Health Director or designee, when there is a public health emergency as identified by the North Carolina State Health Director or designee. The authorization shall be in writing, may be valid for as long as the child is enrolled, and shall contain:
- (A) the child's name;
 - (B) the signature of the parent;
 - (C) the date the authorization was signed by the parent; and
 - (D) the date that the authorization ends or a statement that the authorization is valid until withdrawn by the parent in writing.
- (10) Pursuant to G.S. 110-102.1A, a caregiver may administer medication to a child without parental authorization in the event of an emergency medical condition when the child's parent is unavailable, providing the medication is administered with the authorization and in accordance with instructions from a bona fide medical care provider.
- (11) A parent may withdraw his or her written authorization for the administration of medications at any time in writing.
- (12) Any medication remaining after the course of treatment is completed or after authorization is withdrawn shall be returned to the child's parents. Any medication the parent fails to retrieve within 72 hours of completion of treatment, or withdrawal of authorization, shall be discarded.
- (13) Any time prescription or over-the-counter medication is administered by a caregiver to children receiving care, including any time medication is administered in the event of an emergency medical condition without parental authorization as permitted by G.S. 110-102.1A, the child's name, the date, time, amount and type of medication given, and the name and signature of the person administering the medication shall be recorded. This

information shall be noted on a medication permission slip, or on a separate form developed by the provider which includes the required information. This information shall be available for review by a representative of the Division during the time period the medication is being administered and for at least six months after the medication is administered. No documentation shall be required when items listed in Subparagraph (c)(7) of this Rule are applied to children.

- (d) To assure the health of children through proper sanitation, the operator shall:
- (1) collect and submit samples of water from each well used for the children's water supply for bacteriological analysis to the local health department or a laboratory certified to analyze drinking water for public water supplies by the North Carolina Division of Laboratory Services every two years. Results of the analysis shall be on file in the home;
 - (2) have sanitary toilet, diaper changing and handwashing facilities. Diaper changing areas shall be separate from food preparation areas;
 - (3) use sanitary diapering procedures. Diapers shall be changed whenever they become soiled or wet. The operator shall:
 - (A) wash his or her hands before, as well as after, diapering each child;
 - (B) ensure the child's hands are washed after diapering the child; and
 - (C) place soiled diapers in a covered, leak proof container which is emptied and cleaned daily;
 - (4) use sanitary procedures when preparing and serving food. The operator shall:
 - (A) wash his or her hands before and after handling food and feeding the children; and
 - (B) ensure the child's hands are washed before and after the child is fed;
 - (5) wash his or her hands, and ensure the child's hands are washed, after toileting or handling bodily fluids.
 - (6) refrigerate all perishable food and beverages. The refrigerator shall be in good repair and maintain a temperature of 45 degrees Fahrenheit or below. A refrigerator thermometer is required to monitor the temperature;
 - (7) date and label all bottles for each individual child, except when there is only one bottle fed child in care;
 - (8) have a house that is free of rodents;
 - (9) screen all windows and doors used for ventilation;
 - (10) have all household pets vaccinated with up-to-date vaccinations as required by North Carolina law and local ordinances. Rabies vaccinations are required for cats and dogs; and
 - (11) store garbage in waterproof containers with tight fitting covers.
- (e) The operator shall not force children to use the toilet and the operator shall consider the developmental readiness of each individual child during toilet training.
- (f) The operator shall not use tobacco products at any time while children are in care. Smoking or use of tobacco products shall not be permitted indoors while children are in care, or in a vehicle when children are transported.

History Note: Authority G.S. 110-88; 110-91(6);

Eff. July 1, 1998;

Amended Eff. May 1, 2004; April 1, 2003; April 1, 2001.

10A NCAC 09 .1721 REQUIREMENTS FOR RECORDS

- (a) The operator shall maintain the following health records for each child who attends on a regular basis, including his or her own preschool child(ren):
- (1) a copy of the child's health assessment as required by G.S. 110-91(1);

- (2) a copy of the child's immunization record;
 - (3) a health and emergency information form provided by the Division that is completed and signed by a child's parent. The completed form shall be on file the first day the child attends. An operator may use another form other than the one provided by the Division, as long as the form includes the following information:
 - (A) the child's name, address, and date of birth;
 - (B) the names of individuals to whom the child may be released;
 - (C) the general status of the child's health;
 - (D) any allergies or restrictions on the child's participation in activities with instructions from the child's parent or physician;
 - (E) the names and phone numbers of persons to be contacted in an emergency situation;
 - (F) the name and phone number of the child's physician and preferred hospital;
 - (G) authorization for the operator to seek emergency medical care in the parent's absence; and
 - (4) when medication is administered, authorization for the operator to administer the specific medication according to the parent's or physician's instructions.
- (b) The operator shall complete and maintain other records which include:
- (1) documentation of the operator's procedures in emergency situations, on a form which is provided by the Division;
 - (2) documentation that monthly fire drills are practiced. The documentation shall include the date each drill is held, the time of day, the length of time taken to evacuate the home, and the operator's signature;
 - (3) incident reports that are completed each time a child receives medical treatment by a physician, nurse, physician's assistant, nurse practitioner, community clinic, or local health department, as a result of an incident occurring while the child is in the family child care home. Each incident shall be reported on a form provided by the Division, signed by the operator and the parent, and maintained in the child's file. A copy shall be mailed to a representative of the Division within seven calendar days after the incident occurs;
 - (4) an incident log which is filled out any time an incident report is completed. This log shall be cumulative and maintained in a separate file and shall be available for review by a representative of the Division. This log shall be completed on a form supplied by the Division;
 - (5) documentation that a monthly check for hazards on the outdoor play area is completed. This form shall be supplied by the Division and shall be maintained in the family child care home for review by a representative of the Division; and
 - (6) Accurate daily attendance records for all children in care, including the operator's own preschool children. The attendance record shall indicate the date and time of arrival and departure for each child.
- (c) Written records shall be maintained as follows:
- (1) All children's records as required in this Chapter, except medication permission slips as required in Rule .1720(c)(13) of this Section, must be kept on file one year from the date the child is no longer enrolled.
 - (2) Additional caregiver records as required in this Chapter shall be maintained on file one year from the employee's last date of employment.
 - (3) Current program records as required in this Chapter shall be maintained on file for as long as the license remains valid. Prior versions shall be maintained based on the time frame in the following charts:

- (A) A minimum of 30 days from the revision or replacement date:

Record	Rule
Daily Schedule	.1718(13)
Infant Feeding Schedule	.1718(6)
SIDS Sleep Chart/Visual Check	.1724(8)

- (B) A minimum of one year from the revision or replacement date:

Record	Rule
Attendance	.1721 (b)(6)
Emergency Numbers	.1720(a)(8)
Emergency Procedures Form	.1721(b)(1)
Field Trip/Transportation Permission	.1723(1)
Fire Drill Log	.1721(b)(2)
Incident Log	.1721(b)(4)
Playground Inspection	.1721(b)(5)
Pet Vaccinations	.1720(d)(10)

- (4) Well-water analysis, pool inspection and inspections for local ordinances as referenced in Rules .1720(d)(1), .1719(7), and .1702(d) of this Section shall remain on file at the family child care home for as long as the license remains valid.
- (5) Records may be maintained in a paper format or electronically, except that records that require a signature of a staff person or parent shall be maintained in a paper format.
- (6) All records required in this Chapter shall be available for review by a representative of the Division.

History Note: Authority G.S. 110-85; 110-88; 110-91(1),(9);

Eff. July 1, 1998;

Amended Eff. July 1, 2010; July 1, 2008; April 1, 2003; April 1, 2001.

10A NCAC 09 .1722 DISCIPLINE POLICY

- (a) The operator shall provide a written copy of and explain the operator's discipline practices to a parent of each child at the time of enrollment. A parent must sign and date a statement which attests that a copy of the discipline policy was given to, and discussed with them. If an operator changes discipline practices, the parent must sign and date a statement acknowledging that they received written notice of and discussed the new policy at least 30 days prior to the implementation of the new policy. The signed statement shall be kept on file in the home available for review.
- (b) No child shall be subjected to any form of corporal punishment by the family child care home operator, substitute caregiver, or any other person in the home, whether or not these persons reside in the home.
- (c) No child shall be handled roughly in any way, including shaking, pushing, shoving, pinching, slapping, biting, kicking, or spanking.
- (d) No child shall ever be placed in a locked room, closet, or box, or be left alone in a room separated from staff.
- (e) No discipline shall ever be delegated to another child.
- (f) Discipline shall in no way be related to food, rest or toileting:
- (1) No food shall be withheld, or given, as a means of discipline.

- (2) No child shall ever be disciplined for lapses in toilet training.
- (3) No child shall ever be disciplined for not sleeping during rest period.
- (g) No child shall be disciplined by assigning chores that require contact with or use of hazardous materials, such as cleaning bathrooms or floors, or emptying diaper pails.
- (h) Discipline shall be age and developmentally appropriate.

*History Note: Authority G.S. 110-91(10);
Eff. July 1, 1998;
Amended Eff. April 1, 2003; April 1, 2001.*

10A NCAC 09 .1723 TRANSPORTATION REQUIREMENTS

To assure the safety of children whenever they are transported, the operator, or any other transportation provider, shall:

- (1) have written permission from a parent to transport his or her child and notify the parent when and where the child is to be transported, and who the transportation provider will be.
- (2) ensure that all children regardless of age or location in the vehicle shall be restrained by individual seat belts or child restraint devices. Only one person shall occupy each seat belt or child restraint device.
- (3) be at least 18 years old, and have a valid driver's license of the type required under the North Carolina Motor Vehicle Law for the vehicle being driven, or comparable license from the state in which the driver resides, and no convictions of Driving While Impaired (DWI), or any other impaired driving offense, within the last three years.
- (4) ensure that each child is seated in a manufacturer's designated area.
- (5) ensure that a child shall not occupy the front seat if the vehicle has an operational passenger side airbag.
- (6) never leave children in a vehicle unattended by an adult.
- (7) have emergency and identification information about each child in the vehicle whenever children are being transported.

*History Note: Authority G.S. 110-91; G.S. 110-91(13);
Eff. July 1, 1998;
Amended Eff. April 1, 2003.*

10A NCAC 09 .1724 SAFE SLEEP POLICY

(a) Each operator licensed to care for infants aged 12 months or younger shall develop and adopt a written safe sleep policy that:

- (1) specifies that the operator shall place infants aged 12 months or younger on their backs for sleeping, unless:
 - (A) for an infant aged six months or less, the operator receives a written waiver of this requirement from a health care professional; or
 - (B) for an infant older than six months, the operator receives a written waiver of this requirement from a health care professional, or a parent, or a legal guardian;
- (2) specifies that infants aged 12 months or younger shall be placed in a crib, bassinet or play pen with a firm padded surface when sleeping;
- (3) specifies whether pillows, blankets, toys, and other objects may be placed in a crib with a sleeping infant aged 12 months or younger, and if so, specifies the number and types of allowable objects;
- (4) specifies that nothing shall be placed over the head or face of an infant aged 12 months or younger when the infant is laid down to sleep;

- (5) specifies that the temperature in the room where infants aged 12 months or younger are sleeping does not exceed 75°F;
- (6) specifies the means by which the operator shall visually check sleeping infants aged 12 months or younger;
- (7) specifies the frequency with which the operator shall visually check sleeping infants aged 12 months or younger;
- (8) specifies how the operator shall document compliance with visually checking on sleeping infants aged 12 months or younger, with such documents to be maintained for a minimum of one month; and
- (9) specifies any other steps the operator shall take to provide a safe sleep environment for infants aged 12 months or younger.

(b) The operator shall post a copy of the safe sleep policy or a poster about safe sleep practices in a prominent place in the infant sleeping room or area.

(c) A copy of the operator's safe sleep policy shall be given and explained to the parents of an infant aged 12 months or younger on or before the first day the infant attends the home. The parent shall sign a statement acknowledging the receipt and explanation of the policy. The acknowledgement shall contain:

- (1) the infant's name;
- (2) the date the infant first attended the home;
- (3) the date the operator's safe sleep policy was given and explained to the parent; and
- (4) the date the parent signed the acknowledgement.

The operator shall retain the acknowledgement in the child's record as long as the child is enrolled at the home.

(d) If an operator amends a home's safe sleep policy, the operator shall give written notice of the amendment to the parents of all enrolled infants aged 12 months or younger at least 14 days before the amended policy is implemented. Each parent shall sign a statement acknowledging the receipt and explanation of the amendment. The operator shall retain the acknowledgement in the child's record as long as the child is enrolled at the home.

(e) A health care professional's or parent's waiver of the requirement that all infants aged 12 months or younger be placed on their backs for sleeping shall:

- (1) bear the infant's name and birth date;
- (2) be signed and dated by the infant's health care professional or parent; and
- (3) specify the infant's authorized sleep positions;

The operator shall retain the waiver in the child's record as long as the child is enrolled at the home.

(f) For each infant with a waiver on file at the home as specified in Paragraph (e) of this Rule, a notice shall be posted for quick reference near the infant's crib, bassinet, or play pen that shall include:

- (1) the infant's name;
- (2) the infant's authorized sleep position; and
- (3) the location of the signed waiver.

No confidential medical information, including an infant's medical diagnosis, shall be shown on the notice.

*History Note: Authority G.S. 110-85; 110-91(15); 143B-168.3;
Eff. May 1, 2004;
Amended Eff. July 1, 2010.*

SECTION .1900 - SPECIAL PROCEDURES CONCERNING ABUSE/NEGLECT IN CHILD CARE

10A NCAC 09 .1901 NOTIFICATION TO COUNTY DEPARTMENTS OF SOCIAL SERVICES

Any allegation of abuse or neglect received by the Division shall be referred to the county department of social services within 24 hours of receipt of the complaint or on the next working day. Even if the county department of social services determines the allegation does not warrant investigation according to G.S. 7B-302, the complaint shall be investigated by the Division.

*History Note: Authority G.S. 110-88(5); 143B-168.3;
Eff. January 1, 1986;
Amended Eff. April 1, 2001; November 1, 1989.*

10A NCAC 09 .1902 RESERVED FOR FUTURE CODIFICATION

10A NCAC 09 .1903 INVESTIGATION PROCEDURES

- (a) The investigation shall include interviews with the operator, staff, parents, or any other adult who has information regarding the allegation. Reports from law enforcement officers and other professionals, as well as photographs and other investigative tools, may be used as appropriate.
- (b) The Division's representative may interview the child or children about the allegations of abuse or neglect only in those cases where the county department of social services does not conduct an investigation.
- (c) The Division shall share information related to investigations with departments of social services, as appropriate. However, any information subject to confidentiality laws or regulations shall be handled so as to preserve the confidential nature of the material.
- (d) At any time during the investigation, the representative of the Division may conduct an evaluation for compliance with all applicable requirements.
- (e) The Division shall make a written report to the operator and the county department of social services when the investigation is completed. The Division may also report to law enforcement officers and other professionals that were involved in the investigation. This report shall explain the Division's findings and what further action will be taken, if any.
- (f) The final written report of findings and further action shall be made within 90 days of receipt of the allegation. If the investigation is not complete at that time, an interim report explaining the status of the investigation shall be made to the operator 90 days after receipt of the allegation and every 30 days thereafter until the final report is made. The county department of social services shall be sent a copy of each interim report.

*History Note: Authority G.S. 7B-301; 110-88(5); 110-105; 143B-168.3;
Eff. January 1, 1986;
Amended Eff. April 1, 2001; October 1, 1991; July 1, 1988; January 1, 1987.*

10A NCAC 09 .1904 ADMINISTRATIVE SANCTIONS

- (a) A special provisional license may be issued for a six-month period when the Division determines that abuse or neglect occurred in a child care center or home. The following provisions shall apply:
 - (1) the special provisional license and the reasons for its issuance shall be posted in a prominent place in the center or home as soon as they are received by the operator;
 - (2) the special provisional license and reasons for issuance shall remain posted for the entire six months covered by the license, and also during the time of any administrative proceedings;

- (3) no new children shall be enrolled in the center or home until the Division is satisfied that the abusive or neglectful situation no longer exists and gives the operator written permission to accept new children; and
- (4) an operator may obtain an administrative hearing on the issuance of a special provisional license in accordance with the provisions of G.S. 150B-23.

(b) A written warning specifying corrective action to be taken by the operator of the child care center or home may be issued when the investigation is concluded and the Division determines that abuse or neglect occurred in a center or home and the situation does not warrant issuance of a special provisional license.

(c) A civil penalty, in accordance with the schedules listed in Rule .1716 and .Section .2200 of this Subchapter, may be levied against the operator of a child care home or center when the Division determines that child abuse or neglect has occurred while the child was in the care of the home or center. In addition, any violation of the terms of a special provisional license may result in the assessment of a civil penalty as provided in Rule .1716 and Section .2200 of this Subchapter.

(d) Failure to implement the corrective action plan required by a written warning pursuant to G.S. 110-88(6a) may result in either the assessment of a civil penalty as provided in Section .2200 of this Subchapter or the issuance of a special provisional license or may result in both actions being taken.

(e) The type of sanction imposed by the Secretary shall be determined by one or more of the following criteria:

- (1) severity of the incident;
- (2) probability of reoccurrence;
- (3) prior incidents of abuse or neglect in the center or home;
- (4) history of compliance with child care requirements; or
- (5) the Division's assessment of the operator's response to the incident.

(f) Nothing in this Rule shall restrict the Secretary from using any other statutory or administrative penalty available pursuant to G.S. 110-102.2 and Section .2200 of this Subchapter, or the provisions in 150B-3(c) to summarily suspend a license if the health, safety or welfare of any child is in jeopardy.

History Note: Authority G.S. 110-88(5); 110-88(6a); 110-102.2; 110-103.1; 143B-168.3; 150B-3; 150B-23;

Eff. January 1, 1986;

Amended Eff. April 1, 2001; August 1, 1990; November 1, 1989; July 1, 1988.

SECTION .2000 - RULEMAKING AND CONTESTED CASE PROCEDURES

10A NCAC 09 .2001 PETITIONS FOR RULEMAKING

(a) Any person wishing to request the adoption, amendment, or repeal of a rule made by the Child Care Commission (hereinafter referred to as the Commission) shall make the request in a written petition to:

Administrative Procedures Coordinator
Division of Child Development
2201 Mail Service Center
Raleigh, North Carolina 27699-2201

(b) The petition shall contain either a draft of the proposed rule or a summary of its contents, the reasons for the proposal, and the name and address of the petitioner. The petition shall also include any of the following items known to the petitioner:

- (1) the statutory authority for the Commission to promulgate the rule;
- (2) the effect on existing rules;
- (3) any data supporting the proposal;
- (4) the effect of the proposed rule on existing practices in the area involved, including cost factors; and
- (5) the names and addresses of those most likely to be affected by the proposed rule.

(c) The Division Director or designee shall present the petition, plus any additional information or recommendations deemed relevant, to the Commission to determine whether the public interest will be served by granting the petition.

(d) The Commission shall render a decision as to whether to deny or approve the petition at its next scheduled meeting, which may be no later than 120 days after submission of the petition. If the decision is to deny the petition, the Division Director or designee shall notify the petitioner in writing, stating the reasons for the denial. If the decision is to approve the petition, the Commission shall initiate a rulemaking proceeding by issuing a rulemaking notice, as provided in these rules.

*History Note: Authority G.S. 143B-168.3; 150B-16;
Eff. November 1, 1989.*

10A NCAC 09 .2002 RULEMAKING PROCEDURES

(a) The rulemaking procedures for the Secretary of the Department of Health and Human Services codified in 10A NCAC 01 are hereby adopted by reference pursuant to G.S. 150B-14(c) to apply to the actions of the Commission, with the following modifications:

- (1) Correspondence related to the Commission's rulemaking actions shall be submitted to:

Administrative Procedures Coordinator
Division of Child Development
2201 Mail Service Center
Raleigh, North Carolina 27699-2201

- (2) The "Secretary's designee" shall mean the Director of the Division of Child Development (hereinafter referred to as the Division).
- (3) "The Division" shall be substituted for the "Office of General Counsel" in 10A NCAC 01.
- (4) "Hearing officer" shall mean the Chairman of the Child Care Commission or designee.

(b) Copies of 10A NCAC 01 may be inspected in the Division at the address given in Subparagraph (a)(1) of this Rule. Copies may be obtained from the Office of Administrative Hearings, 424 North Blount Street, Raleigh, North Carolina, 27601.

*History Note: Authority G.S. 143B-168.3; 150B-11; 150B-14;
Eff. November 1, 1989.*

10A NCAC 09 .2003 DECLARATORY RULINGS

(a) The Commission shall have the power to make declaratory rulings. All requests for declaratory rulings shall be by written petition and shall be submitted to:

Administrative Procedures Coordinator
Division of Child Development
2201 Mail Service Center
Raleigh, North Carolina 27699-2201

(b) Every request for a declaratory ruling must include the following information:

- (1) the name and address of the petitioner;
- (2) the statute or rule to which the petition relates;
- (3) a concise statement of the manner in which the petitioner is aggrieved by the rule or statute or its potential application to him or her; and
- (4) the consequences of a failure to issue a declaratory ruling.

(c) Where a declaratory ruling is deemed to be in the public interest, the Commission shall issue the ruling within 60 days of the receipt of the petition.

(d) A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedure as may be deemed appropriate, in the discretion of the Commission, in the particular case.

(e) The Commission may issue notice to persons who might be affected by the ruling that written comments may be submitted or oral presentations received at a scheduled hearing.

(f) A record of all declaratory ruling proceedings shall be maintained by the Division and shall be available for public inspection during regular business hours. This record shall contain:

- (1) the original request,
- (2) the reasons for refusing to issue a ruling,
- (3) all written memoranda and information submitted,
- (4) any written minutes or audio tape or other record of the oral hearing, and
- (5) a statement of the ruling.

*History Note: Authority G.S. 143B-168.3; 150B-11; 150B-17;
Eff. November 1, 1989.*

10A NCAC 09 .2004 CONTESTED CASES: DEFINITIONS

The following terms shall have the following meaning unless the context of the rule requires a different interpretation:

- (1) "Department" means the Department of Health and Human Services;
- (2) "Director" means the Director of the Division of Child Development;
- (3) "Hearing" means a contested case hearing as provided in G.S. 150B-2(2) and 150B-23;
- (4) "OAH" means the Office of Administrative Hearings.

*History Note: Authority G.S. 143B-10; 150B-11;
Eff. November 1, 1989.*

10A NCAC 09 .2005 CONTESTED CASES: REQUEST FOR DETERMINATION

(a) In accordance with G.S. 150B-2(2), any person may request a determination of his legal rights, privileges, or duties as they relate to laws or rules administered by the Department. All requests must be in writing and contain a statement of the facts prompting the request sufficient to allow for appropriate processing by the Department.

(b) Any person seeking such a determination must exhaust all informal procedures available before requesting a hearing under G.S. 150B-23.

(c) All petitions for hearings regarding matters under the control of the Department shall be filed with the OAH in accordance with G.S. 150B-23 and 26 NCAC 03 .0003. In accordance with G.S. 1A-1, Rule 4(j)4, the petition shall be served on a registered agent for service of process for the Department. A list of registered agents may be obtained from the Office of General Counsel, 2005 Mail Service Center, Raleigh, NC 27699-2005.

*History Note: Authority G.S. 143B-10; 150B-11; 150B-22; 150B-23;
Eff. November 1, 1989.*

10A NCAC 09 .2006 CONTESTED CASES: RECORD

(a) The official record of a hearing shall be maintained in the, Division of Child Development, 2201 Mail Service Center, Raleigh, North Carolina 27699-2201.

(b) Any person wishing to examine the hearing record shall submit such request in writing to the, Division of Child Development, 2201 Mail Service Center, Raleigh, North Carolina 27699-2201. Such request must be given in sufficient time to allow the record to be prepared for inspection.

*History Note: Authority G.S. 143B-10(j)(3); 150B-11; 150B-23(e); 150B-29(b);
Eff. November 1, 1989.*

10A NCAC 09 .2007 CONTESTED CASES: EXCEPTIONS TO RECOMMENDED DECISION

(a) Upon receipt of the official record as defined in G.S. 150B-37, the Director shall notify the parties to the contested case of receipt of the record and provide them an opportunity to file exceptions to the decision recommended by the administrative law judge and to present written arguments in accordance with G.S. 150B-36.

(b) The time provided to submit arguments and exceptions shall be specified in the notice and shall be at least 15 days from the date the notice was mailed.

(c) No new evidence may be included in the exceptions and arguments presented for consideration by the final decision-maker.

*History Note: Authority G.S. 143B-10; 150B-11; 150B-36; 150B-37;
Eff. November 1, 1989.*

SECTION .2200 - ADMINISTRATIVE ACTIONS AND CIVIL PENALTIES

10A NCAC 09 .2201 ADMINISTRATIVE PENALTIES: GENERAL PROVISIONS

(a) Pursuant to G.S. 110-102.2, the secretary or designee may order one or more administrative penalties against any operator who violates any provision of Article 7 of Chapter 110 of the General Statutes or of this Chapter.

(b) Nothing in this Section shall restrict the Secretary from using any other statutory or civil penalty available. A civil penalty in accordance with G.S. 110-103.1 and Section .2200 of this Chapter may be imposed in conjunction with any other administrative activity.

(c) The issuance of an administrative penalty may be appealed pursuant to G.S. 150B-23.

(d) Following the substantiation of any abuse or neglect complaint or the issuance of any administrative action against a child care facility, the operator shall:

- (1) maintain copies of documentation of the substantiated complaint investigation or the administrative action issued against the facility for the past three years in a binder, which is accessible to parents;
- (2) within 30 days, notify the parents of the children currently enrolled that a complaint was substantiated or that an administrative action was taken against the facility, including administrative actions that may be stayed pending appeal. The notice shall:
 - (A) be in writing;
 - (B) include information on the nature of the substantiated complaint or the type of administrative action taken; and
 - (C) state where the binder containing copies of the substantiated complaint investigation or administrative action may be found on site for review by the parents; and
- (3) document the date that the written notice was given to all parents and have parents sign an acknowledgement that they have received said notice.

*History Note: Authority G.S. 110-85; 110-102.2; 110-103.1; 143B-168.3; 150B-23;
Eff. July 1, 1988;*

Amended Eff. July 1, 2010; January 1, 2006; April 1, 2001; November 1, 1989.

10A NCAC 09 .2202 WRITTEN REPRIMANDS

(a) A written reprimand may be issued to censure any violation which the Division determines to have been a brief uncustomary event which is unlikely to recur in the ordinary operation of the center or home.

(b) The reprimand shall describe the reasons for its issuance including identification of the specific section of the statutes or rules violated.

*History Note: Authority G.S. 110-102.2; 143B-168.3;
Eff. July 1, 1988;*

Amended Eff. April 1, 2001; August 1, 1990; November 1, 1989.

10A NCAC 09 .2203 WRITTEN WARNINGS

(a) A written warning and a corrective action plan may be issued in regard to any violation to allow the operator an opportunity to demonstrate compliance with all requirements.

(b) The written warning and corrective action plan shall describe the reasons for its issuance including identification of the specific section of the statutes or rules violated. It shall also describe those actions necessary for the operator to be in full compliance with requirements and shall specify a time period for compliance to be achieved.

(c) If the operator fails to achieve compliance during the specified time period, the Division shall employ more restrictive action to achieve compliance or shall revoke the permit.

*History Note: Authority G.S. 110-102.2; 143B-168.3;
Eff. July 1, 1988;
Amended Eff. April 1, 2001; November 1, 1989.*

10A NCAC 09 .2204 PROBATIONARY LICENSE

(a) A permit may be placed in probationary status for a period of time not to exceed one year when, in the Division's determination, violation of any section of the statutes or rules has been willful, continual, or hazardous to health or safety.

(b) The document ordering probation shall describe the reasons for its issuance including identification of the specific section of the statutes or rules violated and shall specify the period of probation. It shall also specify terms of probation with which the operator must comply to retain the permit.

(c) The order of probation shall be posted in a prominent place in the center or home during the probationary period. If probation is stayed pending appeal, the probation order shall remain posted in the center or home pending final action.

(d) Failure of the operator to comply with the terms of probation shall result in the commencement of proceedings to suspend or revoke the permit.

*History Note: Authority G.S. 110-102.2; 143B-168.3;
Eff. July 1, 1988;
Amended Eff. April 1, 2001; November 1, 1989.*

10A NCAC 09 .2205 SUSPENSION

(a) Suspension of a permit for a period of time not to exceed 45 days may be ordered when violation of any section of the statutes or rules has been willful, continual, or hazardous to health or safety, and/or the operator has not made reasonable efforts to conform to standards.

(b) The operator shall be notified in advance of the determination to suspend the permit and the reasons for such action. The operator may request an agency review of the situation and shall be given an opportunity to show compliance with all requirements for retention of the permit.

(c) The suspension order shall specify the period of suspension and the reasons for its issuance. The operator shall surrender the permit to the Division on the effective date of the suspension order and shall refrain from operating a center or home during the suspension period.

(d) If suspension is stayed pending appeal, the suspension order shall be posted in a prominent place in the center or home pending final action.

(e) Failure to comply with the suspension order shall result in civil action in accordance with G.S. 110-103.1 and/or criminal penalty in accordance with G.S. 110-103. The Division may also seek injunctive relief in accordance with G.S. 110-104.

*History Note: Authority G.S. 110-102.2; 143B-168.3; 150B-3;
Eff. July 1, 1988;
Amended Eff. April 1, 2001; November 1, 1989.*

10A NCAC 09 .2206 REVOCATION

- (a) Revocation of a permit may be ordered when violation of any section of the statutes or rules has been willful, continual, or hazardous to health or safety, or the operator has not made reasonable efforts to conform to standards or is unable to comply.
- (b) The operator shall be notified in advance of the determination to revoke the permit and the reasons for such action. The operator may request an agency review of the situation and shall be given an opportunity to show compliance with all requirements for retention of the permit.
- (c) The revocation order shall specify the reasons for its issuance and the effective date of revocation and shall be posted prominently in the center or home immediately upon receipt. The operator shall surrender the permit on the effective date of the revocation order and shall refrain from operating the center or home thereafter.
- (d) Failure to comply with the revocation order shall result in civil action in accordance with G.S. 110-103.1 or a criminal penalty in accordance with G.S. 110-103, or both. The Secretary may also seek injunctive relief in accordance with G.S. 110-104.

*History Note: Authority G.S. 110-102.2; 143B-168.3; 150B-3;
Eff. July 1, 1988;
Amended Eff. April 1, 2001; August 1, 1990; November 1, 1989.*

10A NCAC 09 .2207 SUMMARY SUSPENSION

- (a) Summary suspension of a permit may be ordered in accordance with G.S. 150B-3(c) when, in the Division's determination, emergency action is required to protect the health, safety, or welfare of children in a child care facility regulated by the Division.
- (b) The suspension order shall specify the reasons for its issuance including identification of the specific section of the statutes and rules violated and the determination of the need for emergency action. The order shall be effective on the date specified in the order. The order shall be effective during proceedings to suspend or revoke the permit.
- (c) The operator shall surrender the permit on the effective date of the order and shall refrain from operating a center or home until final action is determined.
- (d) Failure to comply with the summary suspension order shall result in civil action in accordance with G.S. 110-103.1, and/or criminal penalty in accordance with G.S. 110-103. The Division may also seek injunctive relief in accordance with G.S. 110-104.

*History Note: Authority G.S. 110-102.2; 143B-168.3; 150B-3;
Eff. July 1, 1988;
Amended Eff. April 1, 2001; November 1, 1989.*

10A NCAC 09 .2208 CIVIL PENALTIES: SCOPE AND PURPOSE

Any operator who violates any provision of G.S. 110, Article 7 or of this Subchapter, or who fails to take corrective action after being provided adequate written notice by the Division, shall be considered to be in willful violation of the licensing law and a civil penalty may be levied against the operator by the secretary or designee pursuant to rules and schedules of penalties adopted by the Commission.

*History Note: Authority G.S. 110-90(9); 110-103.1; 143B-168.3;
Eff. January 1, 1986;
Amended Eff. April 1, 2001; November 1, 1989; January 1, 1987.*

10A NCAC 09 .2209 AMOUNT OF PENALTY

(a) The amount of the penalty assessed shall be based upon the following factors: willful or negligent non-compliance by the operator, history of non-compliance, extent of deviation from the regulation, evidence of good faith effort to comply, and any other factors relevant to the unique situation.

(b) The amount of the penalty, within the limitation established by G.S. 110-103.1, shall be in accordance with the following schedule:

- (1) Where a violation presents a clear and imminent danger to the safety of the children, a civil penalty up to one thousand dollars (\$1000) may be imposed;
- (2) Where a violation endangers, or has the potential to endanger the children's health, safety, or well-being, a civil penalty up to five hundred dollars (\$500.00) may be imposed;
- (3) Where a violation does not directly endanger the children, a civil penalty of up to two hundred and fifty dollars (\$250.00) may be imposed.

(c) A separate penalty may be imposed for each violation.

*History Note: Authority G.S. 110-90(9); 110-103.1; 143B-168.3;
Eff. January 1, 1986.*

10A NCAC 09 .2210 NOTICE OF ASSESSMENT OF PENALTY

The operator shall be notified by registered or certified mail of the amount and reasons for the assessment of the civil penalty. The notice shall specify the factors used to determine the amount of the penalty and must specify a time period by which payment must be received by the Division.

*History Note: Authority G.S. 110-90(9); 110-103.1; 143B-168.3;
Eff. January 1, 1986;
Amended Eff. July 1, 1988.*

10A NCAC 09 .2211 RIGHT TO A HEARING

Any operator contesting a penalty is entitled to an administrative hearing and judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedures Act.

*History Note: Authority G.S. 110-90(9); 110-103.1; 143B-168.3;
Eff. January 1, 1986;
Amended Eff. January 1, 1987.*

10A NCAC 09 .2212 FAILURE TO PAY ASSESSED PENALTY

Failure to pay the assessed penalty or to exercise appeal rights within 30 days after receipt of the notice of assessment may result in civil action in accordance with the provisions of G.S. 110-103.1(c).

*History Note: Authority G.S. 110-90(9); 110-103.1; 143B-168.3;
Eff. January 1, 1986;
Amended Eff. July 1, 1988.*

10A NCAC 09 .2213 SCHEDULE OF CIVIL PENALTIES FOR CHILD CARE CENTERS

(a) The following penalties may be assessed against child care centers as defined in G.S. 110-86(3).

(b) A civil penalty in an amount up to one thousand dollars (\$1,000) may be imposed for the following violations:

- (1) Non-compliance with the standards for:
 - (A) Staff-child ratios;
 - (B) Adequate supervision of children;
 - (C) Transportation of children; or
 - (D) Use of swimming pools and other swim areas;
- (2) Disapproved fire safety, building or sanitation inspection reports;
- (3) Exceeding licensed capacity of center, or use of unauthorized space;
- (4) Change of ownership or relocation of center without prior notification to the Division;
- (5) Substantiation that a child (or children) was abused or neglected while in the care of the center; or
- (6) Willful, repeated pattern of non-compliance with any requirement over extended period of time.

(c) A civil penalty in an amount up to five hundred dollars (\$500.00) may be imposed for the following violations:

- (1) Non-compliance with the standards for:
 - (A) Staff health requirements;
 - (B) Staff qualifications;
 - (C) Children's health requirements;
 - (D) Proper nutrition;
 - (E) Sanitation and personal hygiene practices;
 - (F) Discipline of children;
 - (G) Indoor or outdoor space; or
 - (H) Emergency medical plan;
- (2) Failure to comply with a corrective action plan;
- (3) Denial of entry to an authorized representative of the department or Division.

(d) A civil penalty in an amount up to two hundred and fifty dollars (\$250.00) may be imposed for the following violations:

- (1) Non-compliance with the standards to provide:
 - (A) Age-appropriate activities; or
 - (B) Staff development.
- (2) Failure to post provisional permit; or
- (3) Failure to maintain accurate records.

(e) Violation of other standards may result in the assessment of a penalty according to the effect or potential effect of the violation on the safety and well-being of the child.

*History Note: Authority G.S. 110-90(9); 110-103.1; 143B-168.3;
 Eff. January 1, 1986;
 Amended Eff. April 1, 2001; October 1, 1991.*

SECTION .2700 - CRIMINAL RECORDS CHECKS

10A NCAC 09 .2701 APPLICATION FOR PERMITS

(a) In addition to the requirements set forth in Rules .0302 and .1702, of this Chapter, a prospective child care provider shall submit to the Division at the time of application the following forms:

- (1) a certified criminal history check from the Clerk of Superior Court's office in the county or counties where the individual has resided during the previous 12 months;
- (2) a signed Authority for Release of Information using the form provided by the Division; and
- (3) a completed fingerprint card using SBI form FD-258.

If the prospective child care provider has lived in North Carolina for less than five consecutive years, immediately preceding the date the fingerprint card is completed, a national check shall be completed pursuant to G.S. 110-90.2(c).

(b) The prospective child care provider shall sign a statement declaring under penalty of perjury if he or she has been convicted of a crime other than a minor traffic violation. The prospective child care provider shall maintain this statement on file available for review by a representative of the Division until the notice of qualification is received by the provider. If the prospective child care provider has been convicted, has pending charges or indictments, is under deferred prosecution, has received a Prayer For Judgment, or is on probation for a crime, the prospective child care provider shall acknowledge that he or she is aware that the issuance of a permit is conditional pending approval by the Division.

(c) If the prospective child care provider has been convicted, has pending charges or indictments, is under deferred prosecution, has received a Prayer For Judgment, or is on probation for a crime, he or she may submit to the Division additional information concerning the conviction or charges that could be used by the Division in making the determination of the prospective child care provider's qualification. The Division may consider the following in making its decision:

- (1) length of time since conviction;
- (2) nature of the crime;
- (3) circumstances surrounding the commission of the offense or offenses;
- (4) evidence of rehabilitation;
- (5) number of prior offenses; and
- (6) age of the individual at the time of occurrence.

(d) A prospective child care provider's refusal to complete the required criminal history record check paperwork is grounds to deny issuance of a permit.

(e) Determination by the Division that the prospective child care provider is disqualified is reasonable cause to deny issuance of a permit.

(f) If the prospective child care provider is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity or a person designated by the chief executive officer as responsible for the operation of the facility, shall complete the criminal history record check as specified in Paragraph (a) of this Rule.

(g) When a Letter of Intent to Operate pursuant to G.S. 110-106 is submitted to the Division, the person signing the Letter of Intent shall also submit all forms as required in Rule .2702(a) of this Section.

(h) Determination by the Division that the person submitting the Letter of Intent is disqualified is reasonable cause to issue a Notice to Cease Operation.

(i) Any child care provider who owns or operates an existing child care program, and who is applying for a permit for an additional child care program within one year from the date of qualification that was based on fingerprinting, shall submit a certified criminal history check from the Clerk of Superior Court's office in the county or counties where the individual has resided during the previous 12 months. A new fingerprint card is not required unless deemed necessary by the Division in making the

determination of qualification. If the criminal history check was completed more than one year prior to the application for an additional child care program, the applicant shall complete all forms as required in Paragraph (a) of this Rule.

History Note: Authority G.S. 110-85; 110-90.2; 114-19.5; 143B-168.3; S.L. 1995, c. 507, s. 23.25; Temporary Adoption Eff. January 1, 1996; Eff. April 1, 1997; Amended Eff. November 1, 2007.

10A NCAC 09 .2702 CRIMINAL RECORD CHECK REQUIREMENTS FOR CHILD CARE PROVIDERS

(a) Child care providers shall submit the following to their employer no later than five business days after beginning work:

- (1) a certified criminal history check from the Clerk of Superior Court's office in the county where the individual resides;
- (2) a signed Authority for Release of Information using the form provided by the Division;
- (3) a fingerprint card using SBI form FD-258; and
- (4) a signed statement declaring under penalty of perjury if he or she has been convicted of a crime other than a minor traffic violation.

If the child care provider has been convicted, has pending charges or indictments, is under deferred prosecution, has received a Prayer For Judgment, or is on probation for a crime, the child care provider shall acknowledge on the statement that he or she is aware that the employment is conditional pending approval by the Division. If the child care provider has lived in North Carolina for less than five consecutive years immediately preceding the date the fingerprint card is completed, a national check shall be completed pursuant to G.S. 110-90.2(c).

(b) If the child care provider has been convicted, has pending charges or indictments, is under deferred prosecution, has received a Prayer For Judgment, or is on probation for a crime, he or she may submit to the Division additional information concerning the conviction or charges that could be used by the Division in making the determination of the provider's qualification for employment. The Division may consider the following in making a decision:

- (1) length of time since conviction;
- (2) nature of the crime;
- (3) circumstances surrounding the commission of the offense or offenses;
- (4) evidence of rehabilitation;
- (5) number and type of prior offenses; and
- (6) age of the individual at the time of occurrence.

(c) The child care provider's employer shall mail a complete and accurate packet that includes a certified criminal history check from the Clerk of Superior Court's office in the county where the individual resides, Authority for Release of Information using the form provided by the Division, and a fingerprint card to the Division no later than three business days after receipt. A copy of the submitted information and the declaration statement shall be maintained in the child care provider's personnel file, and shall be available for review by a representative of the Division until the notice of qualification is received by the provider. At that time the submitted information and the declaration statement may be discarded. The notice of qualification shall be maintained in the child care provider's personnel file, and shall be available for review by a representative of the Division.

(d) The child care provider shall be on probationary status pending the determination of qualification or disqualification by the Division.

(e) If the child care provider changes employers within one year from the date of qualification that was based on fingerprinting, he or she shall submit a certified criminal history check from the Clerk of Superior Court's office in the county where the individual resides. This local check shall be submitted to his or her employer no later than five business days after beginning work. The employer shall complete the steps as defined in Paragraphs (c), (d) and (g) of this Rule, except that the fingerprint card and the Authority for Release of Information as referenced in Paragraph (c) is not required. If the criminal history check was completed more than one year prior to employment, the child care provider shall complete all forms required in Paragraph (a) of this Rule.

(f) If a family child care home changes the location of operation, the family child care home providers and household members over 15 years old, including family members and non-family members who use the home on a permanent or temporary basis as their primary residence, shall submit a certified criminal history check from the Clerk of Superior Court's office in the county or counties where the provider and household members have lived during the previous 12 months. This local check shall be submitted to the child care consultant no later than 10 business days after the location change. A new fingerprint card is not required unless deemed necessary by the Division in making its determination of qualification.

(g) Child care providers determined by the Division to be disqualified shall be terminated by the center or family child care home immediately upon receipt of the disqualification notice.

(h) Refusal on the part of the employer to dismiss a child care provider who has been found to be disqualified shall be grounds for suspension, denial, or revocation of the permit in addition to any other administrative action or civil penalties pursued by the Division. If an employer appeals the administrative action, the child care provider shall not be employed during the appeal process.

(i) A substitute child care provider who is employed for more than five days, whether working full or part-time, shall submit all forms as required in Paragraph (a) of this Rule to the employer by the end of the fifth working day. The employer shall complete the steps as defined in Paragraphs (c), (d) and (g) of this Rule.

(j) If a child care provider or household member is employed or remains at the same facility for three consecutive years, a modified criminal record check shall be conducted by using the Administrative Office of the Courts (AOC) System. On each three year anniversary date of employment, the child care provider or household member shall complete and submit the form provided by the Division. The Division may request a certified criminal history check from the Clerk of Superior Court's office in the county where the individual resides or from the provider or household member to verify the AOC results.

(k) For persons employed at the same facility for more than three consecutive years, as of the effective date of this Rule, the required form shall be mailed to the provider by the Division on a schedule determined by the Division. These existing staff members shall complete and submit the form to the Division within 10 business days of Division notification.

(l) Existing family child care home providers and household members who were qualified more than three years prior to January 1, 2008, shall be notified by a separate mailing and shall complete and submit the required form to the Division within 10 business days of receipt of Division notification.

(m) After a child care provider or household member has been qualified, the Division may complete a new criminal record check at any time there has been an investigation that references the child care provider or household member conducted by the Department of Social Services or the Division of Child Development.

The Division may complete a new criminal record check for the discovery or indication of any charges or indictments (pending or otherwise) that occurred after the initial qualification. When requested, the child care provider or household member shall complete and submit the packet as described in Paragraph (c) of this Rule to the Division within five business days of the request for a new criminal record check.

(n) Any individuals over 15 years old who move into the household or any individuals who live in the household who have had their 16th birthday after the initial licensing of a family child care home, including family members and non-family members who use the home on a permanent or temporary basis as their primary residence, shall complete and submit the packet as described in Paragraph (c) of this Rule to the Division within five business days of moving into the home or their 16th birthday.

History Note: Authority G.S. 110-85; 110-90.2; 114-19.5; 143B-168.3; S.L. 1995, c. 507, s. 23.25; Temporary Adoption Eff. January 1, 1996; Eff. April 1, 1997; Amended Eff. November 1, 2007; April 1, 2003.

10A NCAC 09 .2703 RESERVED FOR FUTURE CODIFICATION

10A NCAC 09 .2704 CRIMINAL RECORD CHECK REQUIREMENTS FOR NONLICENSED HOME PROVIDERS

(a) A nonlicensed home provider and household members over 15 years old, including family members and non-family members who use the home on a permanent or temporary basis as their primary residence, shall submit the following to the local purchasing agency:

- (1) a certified criminal history check from the Clerk of Superior Court's office in the county or counties where the individual has resided during the previous 12 months;
- (2) a signed Authority for Release of Information using the form provided by the Division;
- (3) a fingerprint card using SBI form FD-258; and
- (4) a signed statement declaring under penalty of perjury if he or she has been convicted of a crime other than a minor traffic violation.

This rule also includes any individuals over 15 years old who move into the household, or any individuals who live in the household who have had their 16th birthday after initial approval, including family members and non-family members who use the home either on a permanent or temporary basis as their primary residence. These persons shall submit items in Subparagraphs (a)(1) through (a)(4) of this Rule to the local purchasing agency within five business days of moving into the home or their 16th birthday.

(b) New nonlicensed home providers and any household members over 15 years old shall submit the complete and accurate packet no later than five business days after applying for enrollment as a nonlicensed home provider of subsidized child care. If more than 12 months have elapsed since the criminal record check has been completed and subsidy funds were not received, then a new criminal record check must be submitted by the nonlicensed home provider and any household member over 15 years old.

(c) Any individual over 15 years old, including family members and non-family members who use the home either on a permanent or temporary basis as their primary residence, shall submit all criminal record check forms as required in 10A NCAC 09 .2704, Subparagraphs (a)(1) through (a)(4) of this Rule, within 10 business days of joining the household.

(d) If the nonlicensed home provider or household member has been convicted, has pending charges or indictments, is under deferred prosecution, has received a Prayer For Judgment, or is on probation for a crime, the nonlicensed home provider shall acknowledge on the statement that he or she is aware that payment is conditional pending approval by the Division. If the nonlicensed home provider has lived in North Carolina for less than five consecutive years immediately preceding the date the fingerprint card is completed, a national check shall be completed pursuant to G.S. 110-90.2(c).

(e) If a nonlicensed home provider or household member has been convicted, has pending charges or indictments, is under deferred prosecution, has received a Prayer For Judgment, or is on probation for a

crime, he or she may submit to the Division additional information concerning the conviction or charges that could be used by the Division in making the determination of the provider's qualification.

The Division may consider the following in making a decision:

- (1) length of time since conviction;
- (2) nature of the crime;
- (3) circumstances surrounding the commission of the offense or offenses;
- (4) evidence of rehabilitation;
- (5) number of prior offenses; and
- (6) age of the individual at the time of occurrence.

(f) The local purchasing agency shall mail the certified criminal history check from the Clerk of Superior Court's office in the county where the individual resides, Authority for Release of Information using the form provided by the Division, and a fingerprint card to the Division no later than five business days after receipt. A copy of the submitted information and the declaration statement shall be maintained in the nonlicensed home provider's file until the notice of qualification is received by the nonlicensed home provider. At that time the submitted information and the declaration statement may be discarded. The notice of qualification shall be maintained in the nonlicensed home provider's file.

(g) A nonlicensed home provider may receive payment during the period in which the state or national criminal history check is being completed if the applicant would otherwise receive approval or temporary approval from the local purchasing agency for enrollment in the subsidized child care program, subject to the provisions referenced in 10A NCAC 10 .0803(b), .0810, and .0811.

(h) Disqualification of a nonlicensed home provider by the Division shall be reasonable cause for the local purchasing agency to deny further payment.

(i) If a nonlicensed home provider disagrees with the decision of disqualification and files a civil action in district court, the provider may continue to operate as a nonlicensed home provider only but shall not receive payment during the proceedings. If the determination is that the nonlicensed home provider is qualified, the nonlicensed provider shall receive retroactive payment for the care that was provided.

(j) If a nonlicensed home provider remains open for three consecutive years, a provider and household member(s) shall have a modified criminal record check conducted using the Administrative Office of the Courts (AOC) System. On each three year anniversary date of approval by the local purchasing agency to receive subsidy funds, the provider or household member shall complete and submit the form provided by the Division. The Division may request a certified criminal history from Clerk of Superior Court, from the provider, or household member to verify the AOC results.

(k) Existing nonlicensed home providers who have been operating for more than three consecutive years, as of December 1, 2007, shall be notified by a separate mailing and shall complete and submit the form to the Division within 10 business days of receipt.

(l) After a nonlicensed home provider or household member has been qualified, the Division may complete a new criminal record check at any time there has been an investigation that references the nonlicensed home provider or household member conducted by the Department of Social Services or the Division of Child Development.

The Division may complete a new criminal record check for the discovery or indication of any charges or indictments (pending or otherwise) that occurred after the initial qualification. When requested, the nonlicensed home provider or household member shall complete and submit the packet as described in Subparagraphs (a)(1) through (a)(3) of this Rule to the Division within five business days of the request for a new criminal record check.

History Note: Authority G.S. 110-85; 110-90.2; 114-19.5; 143B-168.3; S.L. 1995, c. 507, s. 23.25; Temporary Adoption Eff. January 1, 1996; Eff. April 1, 1997; Amended Eff. December 1, 2007; April 1, 2003.

SECTION .2800 - VOLUNTARY RATED LICENSES

10A NCAC 09 .2801 SCOPE

- (a) This Section applies to all child care facilities that have achieved a voluntary rated license of two stars or higher or that apply to be assessed for a voluntary rated license of two stars or higher.
- (b) A child care facility is eligible for a voluntary rated license of two through five stars.
- (c) No requirement in any component of a two-star or higher rating shall be less than the requirements for a one-star rating described in G.S. 110-91 and this Chapter. Prior to issuance of an initial two through five-star rating, all requirements in G.S. 110-91 and this Chapter must be in compliance at the time the program is assessed. The requirements for a voluntary rated license of two stars or higher are in addition to the standards found in G.S. 110-91 and this Chapter.
- (d) Nothing in this Section precludes or interferes with issuance of an administrative action as allowed by G.S. 110 and this Chapter.
- (e) As used in this Section a two component license refers to a license issued based on an evaluation of program standards and education standards.

*History Note: Authority G.S. 110-85; 110-88(7); 110-90(4); 143B-168.3;
Eff. April 1, 1999;
Amended Eff. July 1, 2010; May 1, 2006.*

10A NCAC 09 .2802 APPLICATION FOR A VOLUNTARY RATED LICENSE

- (a) After a licensed child care center or home has been in operation for a minimum of six consecutive months, the procedures in this Rule apply to request an initial two- through five-star rated license or to request that a rating be changed to a two- through five-star rated license.
- (b) The operator shall submit a completed application to the Division for a voluntary rated license on the form provided by the Division.
- (c) An operator may apply for a star rating based on the total number of points achieved for each component of the voluntary rated license. In order to achieve a two- through five-star rating, for a two component license the minimum score achieved must be a least four points as follows:

TOTAL NUMBER OF POINTS	RATING
4 through 6	Two Stars
7 through 9	Three Stars
10 through 12	Four Stars
13 through 15	Five Stars

- (d) Facilities with a four or five-star rated license that are licensed to serve four-year-old children must implement a curriculum as defined in 10A NCAC 09 .0102 with their four year olds. This requirement must be met in any licensed child care facility.
- (e) A Division representative shall assess the facility requesting a voluntary rated license to determine if all applicable requirements have been met to achieve the score for the requested star rating. The assessment may include a review of Division records and site visits.
- (f) The Division shall provide for Infant/Toddler Environment Rating Scale Revised Edition, Early Childhood Environment Rating Scale - Revised Edition, School-Age Care Environment Rating Scale, or Family Child Care Environment Rating Scale - Revised Edition assessments to be completed, as appropriate for the program, free of charge to operators requesting an initial three or more points for program standards.

(g) Upon completion of the Division's assessment:

- (1) If the assessment indicates all the applicable requirements to achieve the score for the requested rating have been met, the Division shall issue the rating.
- (2) If the assessment indicates all the applicable requirements to achieve the score for the requested rating are not met, the Division shall notify the operator of the requirements that were not met and the requested voluntary rating shall not be issued. The operator may:
 - (A) Accept the rating for which the Division has found the operator to be eligible;
 - (B) Withdraw the request and reapply when the identified requirements to achieve the score for the requested rating have been met; or
 - (C) Appeal the denial of the requested rating as provided in G.S. 110-94.

History Note: Authority G.S. 110-85; 110-88(7); 110-90(4); 143B-168.3; S.L. 2011-145, s.10.7(b); Eff. April 1, 1999; Amended Eff. September 1, 2012; July 1, 2010; May 1, 2006.

10A NCAC 09 .2814 PROGRAM STANDARDS FOR A RATED LICENSE FOR FAMILY CHILD CARE HOMES

10A NCAC 09 .2815 EDUCATION STANDARDS FOR A RATED LICENSE FOR FAMILY CHILD CARE HOMES

10A NCAC 09 .2816 COMPLIANCE HISTORY STANDARDS FOR A RATED LICENSE FOR FAMILY CHILD CARE HOMES

History Note: Authority G.S. 110-88(7); 110-90(4); 143B-168.3; Eff. April 1, 1999; Amended Eff. April 1, 2003; Recodified from Rule .2805 Eff. May 1, 2006 (Rule .2813); Recodified from Rule .2806 Eff. May 1, 2006 (Rule .2814); Recodified from Rule .2807 Eff. May 1, 2006 (Rule .2815); Recodified from Rule .2808 Eff. May 1, 2006 (Rule .2816); Repealed Eff. July 1, 2010.

10A NCAC 09 .2827 EDUCATION STANDARDS FOR OPERATORS FOR A RATED LICENSE FOR FAMILY CHILD CARE HOMES

- (a) This Rule applies to evaluating family child care homes with regards to the operator.
- (b) To achieve two points, the operator shall have completed:
 - (1) Four semester credit hours in early childhood education or child development (not including the North Carolina Family Child Care Credential coursework); or
 - (2) Five years of verifiable early childhood work experience and eight additional clock hours annually of in-service training.
- (c) To achieve three points, the operator shall have completed the North Carolina Family Child Care Credential, its equivalent or a Level I or higher certification on the ECE scale.
- (d) To achieve four points, the operator shall have completed a Level II or higher certification on the ECE scale; or
 - (1) Have six semester credit hours in early childhood education or child development (not including the North Carolina Family Child Care Credential coursework); and
 - (2) Have the North Carolina Family Child Care Credential, its equivalent, or a Level I or higher certification on the ECE scale.

- (e) To achieve five points, the operator shall have completed a Level IV certification on the ECE scale and have one year verifiable early childhood work experience; or have
- (1) The North Carolina Family Child Care Credential, its equivalent, or a Level I or higher certification on the ECE scale; and
 - (2) 12 semester credit hours in early childhood education or child development (not including the North Carolina Family Child Care Credential coursework); and
 - (3) Either:
 - (A) Two of 12 semester hours in early childhood education in child care administration; or
 - (B) One year of verifiable early childhood work experience.
- (f) To achieve six points, the operator shall have completed a Level VI certification on the ECE scale and have one year verifiable childhood work experience; or have
- (1) The North Carolina Family Child Care Credential, its equivalent, or a Level I or higher certification on the ECE scale; and
 - (2) 18 semester credit hours in early childhood education or child development (not including the North Carolina Family Child Care Credential coursework); and
 - (3) Either:
 - (A) Five of the 18 semester hours in early childhood education are in child care administration; or
 - (B) Two years of verifiable early childhood work experience.
- (g) To achieve seven points, the operator shall have completed:
- (1) An A.A.S. degree in any major with a minimum of 12 semester credit hours in early childhood education/child development coursework and two years of full-time verifiable early childhood work experience; or
 - (2) An A.A.S. in early childhood education/child development and 18 months of full-time verifiable early childhood work experience; or
 - (3) A Level VI certification on the ECE scale and two years of experience.

*History Note: Authority G.S. 110-85; 110-88(7); 110-90(4); 143B-168.3;
 Eff. May 1, 2006;
 Amended Eff. August 1, 2012.*

10A NCAC 09 .2828 PROGRAM STANDARDS FOR A RATED LICENSE FOR FAMILY CHILD CARE HOMES

- (a) This Rule applies to evaluating the program standards for a two component rated license for family child care homes.
- (b) To achieve two points for program standards, the operator shall have written operational policies and procedures that include information about meal and snack practices, daily activities, parent involvement, health and safety practices, infection control/ill child exclusion/inclusion, and business practice.
- (c) To achieve three points for program standards, the operator shall:
- (1) Have written operational policies and procedures that include all information listed in Paragraph (a) of this Rule.
 - (2) Have an average score of 4.0 or higher on the Family Day Care Rating Scale.
- (d) To achieve four points for program standards, the operator shall:
- (1) Have written operational policies and procedures that include all information listed in Paragraph (a) of this Rule.
 - (2) Have an average score of 4.25 or higher on the Family Day Care Rating Scale.

- (e) To achieve five points for program standards, the operator shall:
 - (1) Have written operational policies and procedures that include all information listed in Paragraph (a) of this Rule.
 - (2) Have an average score of 4.5 or higher on the Family Day Care Rating Scale.
- (f) To achieve six points for program standards, the operator shall:
 - (1) Have written operational policies and procedures that include all information listed in Paragraph (a) of this Rule;
 - (2) Have an average score of 4.75 or higher on the Family Day Care Rating Scale; and
 - (3) Of the five preschoolers allowed to be enrolled, no more than four children shall be under one year of age.
- (g) To achieve seven points for program standards, the operator shall:
 - (1) Have written operational policies and procedures that include all information listed in Paragraph (a) of this Rule;
 - (2) Have an average score of 5.0 or higher on the Family Day Care Rating Scale; and
 - (3) Of the five preschoolers allowed to be enrolled, no more than three children shall be under one year of age.

History Note: Authority G.S. 110-88(7); 110-90(4); 143B-168.3; Eff. May 1, 2006; Recodified from Rule .2821 Eff. August 1, 2012.

10A NCAC 09 .2829 QUALITY POINT OPTIONS

Operators may earn one additional quality point as follows:

- (1) Education options:
 - (a) Completing additional education coursework as follows:
 - (i) An Infant and Toddler Certificate, by 75 percent of infant and toddler teachers,
 - (ii) An A.A.S. or higher in early childhood education or child development by 75 percent of teachers,
 - (iii) A BA or BS or higher in early childhood education or child development by 75 percent of lead teachers,
 - (iv) An A.A.S. or higher in early childhood education or child development by all lead teachers,
 - (v) A North Carolina School Age Care Credential or have completed six semester hours in school-age coursework by 75 percent of group leaders, or
 - (vi) An Infant and Toddler Certificate or has a BA or BS or higher in early childhood education or child development by a family child care home provider;
 - (b) Completing 20 additional annual in-service training hours for full-time lead teachers and teachers, and staff working part-time completing additional hours based on the chart in Rule .0707(c) of this Chapter;
 - (c) Completing 20 additional annual in-service training hours for family child care home providers;
 - (d) 75 percent of lead teachers and teachers having at least 10 years verifiable early childhood work experience;
 - (e) All lead teachers and teachers having at least five years verifiable early childhood work experience employed by no more than two different employers;

- (f) Having a combined turnover rate of 20 percent or less for the administrator, program coordinator, lead teachers, teachers and group leader positions over the last 12 months if the program has earned at least four points in education;
 - (g) In a stand alone school age program, 75 percent of group leaders having at least five years verifiable school-age work experience employed in no more than two different school-age settings; or
- (2) Programmatic options:
- (a) Using age or developmentally appropriate curriculum that addresses five domains of development. This programmatic option is not available to facilities that are required to use an approved curriculum in accordance with Rule .2802(d) of this Section;
 - (b) Having group sizes decreased by at least one child per age group from the seven point level as described in Rule .2818(c) of this Section;
 - (c) Having staff/child ratios decreased by at least one child per age group from the seven point level as described in Rule .2818(c) of this Section;
 - (d) Meeting at least two of the following three programs standards:
 - (i) Having enhanced policies which include the following topics: emergency evacuation plan, field trip policy, staff development plan, medication administration, enhanced discipline policy, and health rules for attendance;
 - (ii) Having a staff benefits package that offers at least four of the following six benefits: paid leave for professional development, paid planning time, vacation, sick time, retirement or health insurance; or
 - (iii) Having evidence of an infrastructure of parent involvement that includes at least two of the following: parent newsletters offered at least quarterly, parent advisory board, periodic conferences for all children, or parent information meetings offered at least quarterly;
 - (e) Completing a 30 hour or longer business training course by a family child care home provider;
 - (f) Completing a business training course and a wage and hour training by the center administrator that is at least 30 hours total;
 - (g) Restricting enrollment to four preschool children in a family child care home; or
 - (h) Reducing infant capacity by at least one child from the seven point level for a family child care home as described in Rule .2821(g)(3) of this Section.

History Note: Authority G.S. 110-85; 110-88(7); 110-90(4); 143B-168.3; S.L. 2011-145, s.10.7(b); Eff. May 1, 2006; Amended Eff. December 1, 2006; Recodified from Rule .2823 Eff. August 1, 2012; Amended Eff. September 1, 2012.

10A NCAC 09 .2830 MAINTAINING THE STAR RATING

- (a) A representative of the Division may make announced or unannounced visits to facilities to assess on-going compliance with the requirements of a star rating after it has been issued. When the Division representative documents violations with the standards that determine a rating, the representative may take one or more of the following actions:
- (1) Advise the operator to submit written verification that the violation(s) have been corrected.
 - (2) Return to the facility for an unannounced visit at a later date to determine if compliance has been achieved.

- (3) Recommend an Environmental Rating Scale assessment be conducted.
- (4) Recommend a complete reassessment of requirements of the star rating issued to the facility.
- (5) Recommend that the star rating be reduced.
- (6) Recommend administrative action in accordance with G.S. 110 and this Subchapter.

(b) If changes occur at a facility which result in the operator not complying with the standards in this Section for the star rating issued, the operator shall correct the noncompliance within 30 days. If the operator does not correct the noncompliance within 30 days, the operator shall notify the Division. Based upon the information obtained, the Division may take any of the actions described in Paragraph (a) of this Rule.

(c) A complete assessment of requirements for a voluntary rated license of two stars or higher shall be conducted at least once every three years. The Division shall provide for one evaluation of program standards using the environment rating scales referenced in Rule .2802(e) free of charge once every three years when reassessing the ratings of operators with three to five points for program standards.

*History Note: Authority G.S. 110-88(7); 110-90(4); 143B-168.3;
Eff. April 1, 1999;
Recodified from Rule .2809 Eff. May 1, 2006;
Recodified from Rule .2824 Eff. August 1, 2012.*

10A NCAC 09 .2831 HOW AN OPERATOR MAY REQUEST OR APPEAL A CHANGE IN RATING

(a) An operator may request a change in the star rating by following the procedures in Rule .2802 of this Section.

(b) After an initial three- through five-star rating is issued, the Division shall provide for one evaluation of program standards using the environment rating scales referenced in Rule .2802(e) of this Section during each three year period thereafter at no cost to the operator. An operator may have extra rating scale assessments as referenced in Rule .2802(e) of this Section performed at his or her own expense in addition to the free one performed by the Division. The additional rating scale assessments shall be completed by individuals approved by the Division to perform them. Approval shall be based upon the individual's successful completion of training designated or authorized by the authors of the environment rating scales.

(c) An operator may appeal the reduction of a star rating as provided in G.S. 110-94.

*History Note: Authority G.S. 110-88(7); 110-90(4); 143B-168.3;
Recodified from Rule .2810 Eff. May 1, 2006;
Amended Eff. May 1, 2006;
Recodified from Rule .2825 Eff. August 1, 2012.*