

**Impact Analysis – Proposed Rule Change**

**November 2017**

**Agency:** DHHS/Division of Child Development & Early Education  
**Contact:** Heather Laffler (919) 527-6516/Dedra Alston (919) 527-6502  
**Rule Title:** 10A NCAC 09 Child Care Rules - Administrative Actions, Civil Penalties and Criminal Records Check (Two through Five Star Rated Licenses)

**Statutory Authority:** G.S. 110-85; 110-88(6); 110-90(9); 110-99; 110-102.2; 110-103.1; 143B-168.3; 150B-3; 150B-23

**State Impact:** Yes  
**Local Impact:** No  
**Substantial Economic Impact:** Unlikely but unquantified  
**Private Sector Impact:** Yes

**I. Necessity, Purpose, and Background:**

The NC Child Care Commission proposes to readopt rules in 10A NCAC 09 .2200, .2700 and adopt Rule .4001 in accordance with G.S. 150B-21.3A as part of the periodic review of rules process. The rules in Section .2200 pertain to the implementation of administrative actions and civil penalties that a facility could be penalized for if the regulations aren't practiced. These changes add clarification to the existing rules. Rules .0401, .1904, and .2208 are proposed for repeal. Rules in Section .2700 Criminal Records Check sets the standards for obtaining background checks for potential owners and employees that choose to work in child care. The proposed rules promote the quality of child care for children enrolled in child care facilities that choose to participate in the two through five star rated license process.

**Adoptions:**

.4001 - Administrative Actions for Child Care Trainers

**Readoptions:**

.2201 - Administrative Penalties: General Provisions  
.2202 - Written Reprimands  
.2203 - Written Warnings  
.2204 - Probationary License  
.2205 - Suspension  
.2206 - Revocation  
.2207 - Summary Suspension  
.2209 - Amount of Penalty  
.2213 - Schedule of Civil Penalties for Child Care Centers  
.2216 - Amount of Civil Penalties for Child Care Facilities  
.2217 - Schedule of Civil Penalties for Child Care Centers  
.2701 - Scope  
.2702 - Definitions  
.2703 - Criminal History Record Check Requirements for Child Care Providers  
.2704 - Criminal History Record Check Requirements for Non-Licensed Child Care Providers

**Repeals:**

.2208 - Civil Penalties: Scope and Purpose  
.0401- Provisional Licenses for Facilities  
.1904 - Administrative Sanctions

**II. Summary of Proposed Rule Changes:**

**Summary of Proposed Rules with No Fiscal Impact**

<b>Rule</b>	<b>Changes</b>	<b>Rationale</b>
<b>.2202 Written Reprimand</b>	<p>Minor wording changes</p> <p>Reference to .2201 added.</p> <p>Duplicative language moved to .2201.</p>	<p>This is not a new type of administrative action.</p> <p><b>No fiscal impact</b></p>
<b>.2208 Civil Penalties: Scope and Purpose</b>	<p>Duplicative language moved to .2201.</p> <p>This rule is recommended for repeal.</p>	<p><b>No fiscal impact</b></p>
<b>.2213 Summary Suspension</b>	<p>This was previously .2207.</p> <p>Reference to .2201 added.</p> <p>Duplicative language moved to .2201.</p> <p>Minor wording changes.</p>	<p>This is not a new type of administrative action.</p> <p>No substantive change to criteria.</p> <p>Division expects that the number of summary suspension orders issued to remain approximately the same.</p> <p><b>No fiscal impact</b></p>
<b>.2216 Amount of Civil Penalties for Child Care Facilities</b>	<p>This was previously .2209.</p> <p>Minor wording changes.</p> <p>Some language in (a) was included in .2201(b) and not needed in this rule.</p>	<p><b>No fiscal impact</b></p>
<b>.0401 Provisional Licenses for Facilities</b>	<p>This information was moved to .2204.</p> <p>This rule is recommended for repeal.</p>	<p><b>No fiscal impact</b></p>

<b>.1904 Administrative Sanctions</b>	Information from this rule was incorporated into .2201, .2203, .2207, and .2217.  This rule is recommended for repeal.	<b>No fiscal impact</b>
---	--	-------------------------

**Summary of Proposed Rules with Substantive Impact:**

Overall, most of the changes to the rules are the addition of clarifying language intended to set clear expectations for the provider regarding the provision of administrative actions and civil penalties with the ultimate goal of increasing compliance and decreasing the number of actions over time. The relative impact of the changes is expected to be minimal; however, it is important to acknowledge that, to any individual provider, any administrative action may be costly. When administrative actions are issued, they can be disruptive to a business. Administrative actions are automatically posted on the website for parents to see when they are making their decisions about child care. The amount a provider's business is compromised as a result is non-quantifiable, but that does not mean it is not considerable.

While acknowledging the potential implications of any administrative action, it is also important to note that the changes will not necessarily result in an increase in the quantity of administrative actions and/or civil penalties. Any discussion of the impact of changes to the administrative action and civil penalties rules must be placed in the context of the relative infrequency of these actions. There are currently 6000 licensed child care facilities in North Carolina, and in 2016-2017, there was a total of 344 administrative actions (5.7%). As stated above, most of the changes below add clarifying language and/or description of existing policy and practice, which would mean no expected change in occurrence. Several changes do include additions to the existing rules, which *could* result in an increase in the number of actions; however, myriad factors that are considered when determining administrative actions, so additions to the criteria do not automatically mean there will be an increase in the number of actions.

<b>Rule</b>	<b>Changes</b>	<b>Rationale</b>
<b>.2201 General Provisions</b>	<ul style="list-style-type: none"> <li>(a) Clarifies what types of actions are available to the Division in list form as the introduction to this Section. There were no new types of administrative actions proposed.</li> <li>(b) Factors for consideration by the Division were moved from .1904 to this Rule and new language was added at the Commission's request to be more specific. (b)(4), (5) and (6) reflects those additions.</li> <li>(c) Defines terms that are used in criteria for the issuance of the various types of actions. This was proposed to ensure that operators understand the terms used in this Section.</li> <li>(f) Language regarding when the Division offers prior notice to child care operators was added to this rule. In addition, an option for extension of time for operator response was added to the rule text to inform child care operators.</li> </ul>	<p>Addition of .2201(b)(4), (5) and (6) offer specific examples that the Division must consider in determining what type of administrative action and civil penalty are issued to a child care operator. The Division and Commission agree that these additions are a benefit to the operator and would likely result in some administrative actions being less stringent upon issuance than would have been possible without those considerations.</p> <p>Addition of .2201(f) reflects the administrative action process in place and ensures that child care operators have complete knowledge and understanding of the process and options available.</p> <p>Revision of .2201(l) requirements eliminate administrative time for child care operators while maintaining transparency for parents and the general public that may visit a child care facility. Previous requirements mandated written notification to parents and maintenance</p>

	<p>(l) Revised to require posting of the administrative action in a prominent location of the child care facility for parent notification. In addition, the time frame for posting was revised as appropriate to the type and stringency of the administrative action.</p> <p>Other subparagraphs of this rule were added or revised to clarify and organize existing procedure. In addition, requirements that were duplicative across various types of administrative actions were moved to this general provision section rather than being repeated numerous times throughout the section. This section is referenced in all subsequent rules to ensure that child care operators understand that .2201 applies to all types of administrative actions and civil penalties.</p>	<p>of documents in a binder for 3 years. Those documents also included substantiated complaints which are no longer required to be included. Overall, this revision should result in a cost savings of administrative time and overall effect of an administrative action on the business of the child care facility. While the amount of savings cannot be quantified, the burden has been significantly diminished for facilities. Previously they were required to keep a binder with every complaint and action for three years and they were required to have every parent sign that they had seen the binder. Now, the parent signatures are no longer required and only actions must be posted for the time of the action.</p>
<p><b>.2203 Written Warning</b></p>	<p>Wording changes to reflect child maltreatment law rather than abuse/neglect investigations.</p> <p>Reference to .2201 added.</p> <p>Duplicative language moved to .2201</p> <p>Specific criteria were added to this rule that reflects the Division's current process. The rule was vaguely worded and it was not clear under what conditions a written warning would be issued to a child care operator.</p>	<p>This is not a new type of administrative action.</p> <p>Language provides</p> <ul style="list-style-type: none"> <li>• structure for the Division</li> <li>• information and expectations to child care operators</li> </ul> <p>The Division is unable to determine the fiscal impact for this rule for the following reasons:</p> <ol style="list-style-type: none"> <li>1. The Division cannot predict the occurrence and frequency of violations incurred by child care operators.</li> <li>2. The addition of criteria for issuing this type of action may result in more situations that are reviewed for a Written Warning. However, the Division has added factors for consideration when issuing actions that may impact the final decision.</li> <li>3. Current rules are written generally which means that the Division has more flexibility to issue an action now than would occur with the proposed rule. The proposed rules, even with the addition of specific criteria, overall limit the situations for which each type of administrative action could be issued.</li> </ol> <p>*The addition of criteria that are deemed punishable with an administrative action could result in an increase in the number actions taken, but not necessarily; the determination would depend on myriad factors as outlined in the general provisions .2201. In addition, any violation could be a part of an existing administrative action, which would mean it would not be counted separately</p>

<p><b>.2204 Provisional License or Notice of Compliance</b></p>	<p>This was previously .0401.</p> <p>Wording changes to reflect child maltreatment law rather than abuse/neglect investigations.</p> <p>Reference to .2201 added.</p> <p>Duplicative language moved to .2201.</p> <p>Specific criteria were added to this rule that reflects the Division’s current process. The rule was vaguely worded and it was not clear under what conditions a provisional license or notice of compliance would be issued to a child care operator.</p>	<p>This is not a new type of administrative action.</p> <p>Language provides</p> <ul style="list-style-type: none"> <li>• structure for the Division</li> <li>• information and expectations to child care operators</li> </ul> <p>The Division is unable to determine the fiscal impact for this rule for the following reasons:</p> <ol style="list-style-type: none"> <li>1. The Division cannot predict the occurrence and frequency of violations incurred by child care operators.</li> <li>2. The addition of criteria for issuing this type of action may result in more situations that are reviewed for a Provisional. However, the Division has added factors for consideration when issuing actions that may impact the final decision.</li> <li>3. Current rules are written generally which means that the Division has more flexibility to issue an action now than would occur with the proposed rule. The proposed rules, even with the addition of specific criteria, overall limit the situations for which each type of administrative action could be issued.</li> </ol>
<p><b>.2205 Probationary License or Notice of Compliance</b></p>	<p>This was previously .2204.</p> <p>Wording changes to reflect child maltreatment law rather than abuse/neglect investigations.</p> <p>Reference to .2201 added.</p> <p>Duplicative language moved to .2201.</p> <p>Specific criteria were added to this rule that reflects the Division’s current process. The rule was vaguely worded and it was not clear under what conditions a probationary license or notice of compliance would be issued to a child care operator.</p>	<p>This is not a new type of administrative action.</p> <p>Language provides</p> <ul style="list-style-type: none"> <li>• structure for the Division</li> <li>• information and expectations to child care operators</li> </ul> <p>The Division is unable to determine the fiscal impact for this rule for the following reasons:</p> <ol style="list-style-type: none"> <li>1. The Division cannot predict the occurrence and frequency of violations incurred by child care operators.</li> <li>2. The addition of criteria for issuing this type of action may result in more situations that are reviewed for a Probationary. However, the Division has added factors for consideration when issuing actions that may impact the final decision.</li> <li>3. Current rules are written generally which means that the Division has more flexibility to issue an action now than would occur with the proposed rule. The proposed rules, even with the addition of specific criteria, overall limit the situations for which each type of administrative action could be issued.</li> </ol>

<p><b>.2206 Suspension</b></p>	<p>This was previously .2205.</p> <p>Reference to .2201 added.</p> <p>Duplicative language moved to .2201. Three criteria were specified regarding when this type of administrative action will be issued. The rule was vaguely worded and it was not clear under what conditions a suspension would be issued to a child care operator.</p> <p>Rule text was revised to match G.S. 110-102.2 regarding the length of time allowed for suspension.</p>	<p>This is not a new type of administrative action.</p> <p>Language provides</p> <ul style="list-style-type: none"> <li>• structure for the Division</li> <li>• information and expectations to child care operators</li> </ul> <p>The Division is unable to determine the fiscal impact for this rule for the following reasons:</p> <ol style="list-style-type: none"> <li>1. The Division cannot predict the occurrence and frequency of violations incurred by child care operators.</li> <li>2. The addition of criteria for issuing this type of action may result in more situations that are reviewed for a Suspension. However, the Division has added factors for consideration when issuing actions that may impact the final decision.</li> <li>3. Current rules are written generally which means that the Division has more flexibility to issue an action now than would occur with the proposed rule. The proposed rules, even with the addition of specific criteria, overall limit the situations for which each type of administrative action could be issued.</li> </ol>
<p><b>.2207 Special Provisional License or Notice of Compliance</b></p>	<p>This was previously .1904.</p> <p>Wording changes to reflect child maltreatment law rather than abuse/neglect investigations.</p> <p>Reference to .2201 added.</p> <p>Duplicative language moved to .2201.</p>	<p>This is not a new type of administrative action.</p> <p>No substantive change to criteria.</p> <p>The Division is unable to determine the fiscal impact for this rule for the following reasons:</p> <ol style="list-style-type: none"> <li>1. The Division cannot predict the occurrence and frequency of violations incurred by child care operators.</li> <li>2. The addition of criteria for issuing this type of action may result in more situations that are reviewed for a Special Provisional. However, the Division has added factors for consideration when issuing actions that may impact the final decision.</li> <li>3. Current rules are written generally which means that the Division has more flexibility to issue an action now than would occur with the proposed rule. The proposed rules, even with the addition of specific criteria, overall limit the situations for which each type of administrative action could be issued.</li> </ol>
<p><b>.2209 Revocation or Order to Cease Operation</b></p>	<p>This was previously .2206.</p> <p>Wording changes to reflect child maltreatment law rather than abuse/neglect investigations.</p>	<p>This is not a new type of administrative action.</p> <p>Language provides</p> <ul style="list-style-type: none"> <li>• structure for the Division</li> </ul>

	<p>Reference to .2201 added.</p> <p>Duplicative language moved to .2201.</p> <p>Specific criteria were added to this rule that reflects the Division’s current process. The rule was vaguely worded and it was not clear under what conditions a revocation or order to cease operation would be issued to a child care operator.</p>	<ul style="list-style-type: none"> <li>• information and expectations to child care operators</li> </ul> <p>The Division is unable to determine the fiscal impact for this rule for the following reasons:</p> <ol style="list-style-type: none"> <li>1. The Division cannot predict the occurrence and frequency of violations incurred by child care operators.</li> <li>2. The addition of criteria for issuing this type of action may result in more situations that are reviewed for a Revocation. However, the Division has added factors for consideration when issuing actions that may impact the final decision.</li> <li>3. Current rules are written generally which means that the Division has more flexibility to issue an action now than would occur with the proposed rule. The proposed rules, even with the addition of specific criteria, overall limit the situations for which each type of administrative action could be issued.</li> </ol>
<p><b>.2217 Schedule of Civil Penalties for Child Care Centers</b></p>	<p>This was previously .2213.</p> <p>Minor wording changes.</p> <p>Some criteria revised to match revisions to other rules in this Chapter, including the Schedule of Civil Penalties for Family Child Care Homes in .2214. (adopted as of October 1, 2017)</p>	<p>The amount of civil penalties has not changes.</p> <p>Changes to criteria reflect newly revised rules of this Chapter.</p> <p>Division expects that the type and number of civil penalties issued to remain approximately the same. Six new criteria have been made explicit for Child Care Centers that were not previously in Rule; however, in practice, they may have been cited under existing rule and the overall number of civil penalties administered to Centers would not increase. Civil penalties may include \$250, \$500, or \$1000 penalties depending on the action.</p>
<p><b>.4001 Administrative Actions for Child Care Trainers</b></p>	<p>This is a new rule for trainers approved by the Division to provide training to child care operators and their staff.</p> <p>When an approved trainer does not fulfill the expectations of the Division regarding the training the provide, limitations may be placed on their training or they may be disqualified from training child care operators and their caregiving staff.</p> <p>This ensures training that operators receive is accurate and promotes quality of child care as well as a safe and healthy environment for children in care.</p>	<p>While the disqualification of a trainer could potentially result in loss of wages and costs of retraining, in a new vocation, the amount is not able to be quantified. In addition, the incidence of his occurrence is exceedingly rare; only a single documented disqualification of a trainer has occurred in the last five years.</p> <p>This would protect child care operators from investing administrative time, staff time and money with a trainer that is providing inaccurate or incomplete information to child care caregiving staff.</p> <p><b>Economic impact unquantified</b></p>

<p><b>.2700 Criminal Record Checks</b>  (.2701, .2702, .2703, and .2704)</p>	<p>This section is proposed to be re-adopted with one change.</p> <p>10A NCAC 09 .2703(h) specifies that a disqualification of a child care provider living in a family child care home shall be grounds for issuance of a summary suspension of the child care license.</p> <p>The Division recommends the addition of centers in a residence to this requirement.</p>	<p>This change includes a type of facility that operates in a personal residence but was not previously noted in this rule. This change is not expected result in a significant increase in summary suspensions. While not explicitly stated in the existing Rule for Centers in a residence, the practice already existed. In addition, there are an estimated 10 summary suspensions per year in Family Child Care Homes (n=2000). Therefore, there would only be an estimated 1-2 summary suspensions for the estimated 300 centers in residence.</p>
--	---	--

### III. Impact

As stated previously, any discussion of the impact of changes to the administrative action and civil penalties rules must be placed in the context of the relative infrequency of these actions. There are currently 6000 licensed child care facilities in North Carolina, and in 2016-2017, there were a total of 344 administrative actions (5.7%). Overall, most of the changes to the rules add clarification to the existing rule or describe in the rule what is essentially already in policy and practice. Therefore, it is expected that the overall impact will be minimal in terms of increasing the quantity of actions and penalties. However, it must be acknowledged that any individual action has the potential of resulting in cost to a provider. A provider may lose business or the ability to receive funding through grant agencies, which could ultimately result in the closing of the business altogether. The overarching goal is to set clear expectations for providers resulting in greater compliance and fewer administrative actions and civil penalties.



1 ATTACHMENT OF RULES

2  
3 SECTION .2200 - ADMINISTRATIVE ACTIONS AND CIVIL PENALTIES

4  
5 10A NCAC 09 .2201 ADMINISTRATIVE ACTIONS AND CIVIL PENALTIES: GENERAL  
6 PROVISIONS

7 (a) Pursuant to G.S. 110-102.2, the ~~secretary~~ Secretary or their designee may order one or more administrative  
8 ~~penalties actions, civil penalties, or both,~~ against any owner of a child care facility operator who violates any provision  
9 of ~~Article 7 of Chapter 110 of the General Statutes or of this Chapter.~~ G.S. 110, Article 7, or rules in this Chapter ~~this~~  
10 ~~Chapter,~~ or 10A NCAC 10. The administrative actions and civil penalties include:

- 11 (1) a written reprimand;  
12 (2) a written warning;  
13 (3) a provisional license or provisional notice of compliance not to exceed 12 months;  
14 (4) a special provisional license or special provisional notice of compliance not to exceed six months  
15 and may include a limited enrollment restriction;  
16 (5) a probationary license or probationary notice of compliance not to exceed 12 months;  
17 (6) revocation of the child care license, or an order to cease operation to operate a child care facility;  
18 (7) summary suspension of the child care license, notice of compliance, or other permit to operate a  
19 child care facility that results in immediate closure of the facility;  
20 (8) suspension of the child care license, notice of compliance, or other permit to operate a child care  
21 facility not to exceed 12 months and results in closure of the facility on the date of the order; and  
22 (9) the assessment of civil penalties as set forth in Rules .2214, .2216, and .2217 of this Section.

23 (b) The Division shall consider the following factors when determining the type of administrative action and civil  
24 penalty to be issued:

- 25 (1) the severity of the violation or incident;  
26 (2) the probability of recurrence of the violation or incident;  
27 (3) all prior incidents of where the Division has determined that abuse, neglect, or child maltreatment  
28 occurred at the facility;  
29 (4) the operator's response to the violation or incident, including actions taken to prevent recurrence  
30 such as revision to facility policies and procedures or additional staff training;  
31 (5) a self- report of the violation or incident to the Division by the operator; and  
32 (6) information or records received from local, State, or federal agencies relevant to the violation or  
33 incident.

34 Nothing shall prevent the issuance of an administrative action or civil penalty for a situation that does not fit the  
35 specified criteria set forth in this Section so long as these factors are considered by the Division.

36 (c) For purposes of this Section, the following definitions shall apply:

1           (1)       “Pattern of noncompliance” means documented violations of G.S. 110, Article 7, this Chapter, or  
2                   10A NCAC 10 during a time period of 18 months or less involving similar situations or incidents.

3           (2)       “History of noncompliance” means violations of G.S. 110, Article 7, this Chapter, or 10A NCAC  
4                   10 documented over the duration of the license and includes any previous administrative actions.

5           (3)       “Serious harm” means:

6                   (A)       physical, psychological, or emotional injury to a child by a caregiver;

7                   (B)       an act of omission or commission to a child by a caregiver that is likely to result in or that  
8                   results in permanent limitations or disability;

9                   (C)       sexual abuse; or

10                  (D)       the death of a child.

11       (d) Any child care operator who violates any provision of G.S. 110, Article 7, this Chapter, or 10A NCAC 10, or who  
12       fails to take corrective action after being provided written notice by the Division, shall be considered to be in willful  
13       violation of the licensing law and a civil penalty may be levied against the operator by the Secretary or their designee  
14       pursuant to rules and schedules of penalties adopted by the Commission.

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

18       (f) The Division shall issue a prior notice of administrative action to the owner or prospective owner regarding the  
19       determination to issue a provisional license or notice of compliance, special provisional license or notice of  
20       compliance, probationary license or notice of compliance, revocation of the license, order to cease operation,  
21       suspension of the license or notice of compliance, or denial of a license or notice of compliance. The owner or  
22       prospective owner shall be given an opportunity to respond in writing as to why the administrative action should not  
23       be taken. The written response shall be submitted to the Division within 15 days of receiving the prior notice of  
24       administrative action. The owner or prospective owner may request an extension of time, not to exceed an additional  
25       15 days, by submitting a written request to the Division before the initial response time has ended. Pursuant to the  
26       provisions of G.S. 110-105.3, the prior notice shall include the reasons for the action.

27       (g) The Division shall issue a final notice of administrative action to the owner or prospective owner regarding a  
28       determination to issue any administrative action. Pursuant to G.S. 110-105.3, the final notice of administrative action  
29       shall describe the reasons for its issuance including identification of the statutes or rules violated.

30       (h) When a corrective action plan is included in the notice of administrative action, it shall describe those actions  
31       necessary for the operator to be in full compliance with requirements of G.S. 110, Article 7, this Chapter, or 10A  
32       NCAC 10, and shall specify a time period for completion of additional requirements that may prevent recurrence such  
33       as training or policy implementation. Corrective action plans may be issued only with a written warning, provisional  
34       license or notice of compliance, special provisional license or notice of compliance, and probationary license or notice  
35       of compliance. Subject to the exceptions in Paragraph (i) of this Rule, corrective action plans are stayed during the  
36       pendency of an appeal.

1 (i) Corrective action plans resulting from an investigation or determination of child maltreatment as set forth in G.S.  
2 110-105.3 and restrictions that prohibit new enrollment shall not be stayed during the pendency of an appeal.

3 (j) Administrative actions summarily suspending a child care license, notice of compliance, or other permit to operate  
4 a child care facility shall not be stayed during the pendency of an appeal pursuant to G.S. 150B-3(c).

5 ~~(k)~~ (k) The issuance of an administrative action or civil penalty may be appealed pursuant to G.S. 150B-23.

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

8 ~~(1) maintain copies of documentation of the substantiated complaint investigation or of the~~  
9 ~~administrative action issued against the facility for the past three years in a binder which is accessible~~  
10 ~~to parents;~~

11 ~~(2) within 30 days, notify the parents of the children currently enrolled that a complaint was~~  
12 ~~substantiated or that an administrative action was taken against the facility, including administrative~~  
13 ~~actions that may be stayed pending appeal. The notice shall:~~

14 ~~(A) be in writing;~~

15 ~~(B) include information on the nature of the substantiated complaint or the type of~~  
16 ~~administrative action taken; and~~

17 ~~(C) state where the binder containing copies of the substantiated complaint investigation or~~  
18 ~~administrative action may be found on site for review by the parents; and~~

19 ~~(3) document the date that the written notice was given to all parents and have parents sign an~~  
20 ~~acknowledgement that they have received said notice.~~

21 Following the issuance of any administrative action against a child care owner, the operator shall post the  
22 administrative action, cover letter, and corrective action plan, if applicable, received from the Division in a prominent  
23 location near the entrance of the child care facility as follows:

24 (1) An administrative action shall remain posted during the pendency of an appeal and throughout the  
25 effective time period of an administrative action;

26 (2) The effective time period shall end:

27 (A) three months from receipt of a final notice of administrative action containing a written  
28 reprimand;

29 (B) three months and upon receipt of a closure letter from the Division stating that the  
30 corrective action plan has been completed for a final notice of administrative action  
31 containing a written warning;

32 (C) upon issuance of a star rated license following a final notice of administrative action  
33 containing a special provisional license, a provisional license, or a probationary license; or

34 (D) upon re-issuance of a notice of compliance following a final notice of administrative action  
35 containing a special provisional notice of compliance, a provisional notice of compliance,  
36 or a probationary notice of compliance.

37 (m) Following the issuance of an administrative action, the Division shall:

1           (1)     monitor the child care facility for compliance with health and safety requirements, and license  
2                     restrictions during the time period of the administrative action, including administrative actions that  
3                     may be stayed pending appeal; and

4           (2)     monitor the child care facility for compliance with the terms of the administrative action,  
5                     including license restrictions and completion of the corrective action plan, except for  
6                     administrative actions that are stayed pending appeal.

7     (n) Injunctive relief shall not be available to operators:

8           (1)     for administrative actions that prohibit new enrollment; or

9           (2)     to stay termination of child care subsidy payments after issuance of a revocation, summary  
10                    suspension, or suspension.

11     (o) If the operator fails to achieve compliance during the specified time period of an administrative action, the  
12     Division may assess a civil penalty and take more restrictive action to achieve compliance, including or up to issuing  
13     a revocation of the child care license, notice of compliance or other permit to operate a child care facility, or an order  
14     to cease operation.

15     (p) Failure to comply with the revocation order, the order to cease operation, or the summary suspension order shall  
16     result in civil action in accordance with G.S. 110-103.1 or a criminal penalty in accordance with G.S. 110-103, or  
17     both. The Secretary may also seek injunctive relief in accordance with G.S. 110-104.

18  
19     *History Note:*     Authority G.S. 110-85; 110-88; 110-90; 110-102.2; 110-103.1; 143B-168.3; ~~150B-23~~;  
20                             Eff. July 1, 1988;  
21                             Amended Eff. July 1, 2010; January 1, 2006; April 1, 2001; November 1, 1989.  
22

23     **10A NCAC 09 .2202         WRITTEN REPRIMANDS**

24     A written reprimand may be issued in accordance with 10A NCAC 09 .2201 for any violation related to a brief event  
25     that is unlikely to recur in the ordinary operation of the child care facility, when no determination of child maltreatment  
26     occurred and no corrective action is needed.

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

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

31  
32     *History Note:*     Authority G.S. 110-88; 110-90; 110-102.2; 143B-168.3;  
33                             Eff. July 1, 1988;  
34                             Amended Eff. April 1, 2001; August 1, 1990; November 1, 1989.  
35

36     **10A NCAC 09 .2203         WRITTEN WARNINGS**

37     ~~(a)~~ A written warning and a corrective action plan may be issued in accordance with the provisions of 10A NCAC 09  
38     .2201 and G.S. 110-88(6a) for any period of time not to exceed 12 consecutive months for the following reasons: ~~in~~  
39     regard to any violation to allow the operator an opportunity to demonstrate compliance with all requirements.

- 1           (1)       substantiated violations as a result of a complaint where the Division has made a determination  
2                   that child maltreatment did not occur and the violation meets criteria for an administrative action  
3                   set forth in this Rule;
- 4           (2)       citation of eight or more rule violations in a single visit where the operator does not meet the  
5                   criteria of other administrative actions set forth in this Section of rules and has not been subject to  
6                   an administrative action within the last three years;
- 7           (3)       citation of one of the following rules on two consecutive visits as set forth in this Paragraph:
- 8                   (a)       Supervision of children;  
9                   (b)       Discipline, nurture, or care of children;  
10                  (c)       Staff/child ratio;  
11                  (d)       Group size;  
12                  (e)       Licensed capacity; or  
13                  (f)       Permit restriction;
- 14          (4)       two citations of a violation of the provisions of G.S. 110-90.2 regarding criminal history record  
15                   check requirements has occurred within an 18-month time period;
- 16          (5)       receipt of two provisional sanitation classifications within one year or a disapproved sanitation  
17                   that was corrected prior to the Division being notified of the disapproved status; or
- 18          (6)       receipt of documentation regarding lead hazards with remediation as provided by the  
19                   environmental health inspector.

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

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

26 *History Note:*     Authority G.S. 110-88; 110-90; 110-102.2; 143B-168.3;  
27                            *Eff. July 1, 1988;*  
28                            *Amended Eff. April 1, 2001; November 1, 1989.*  
29

30 **10A NCAC 09 .2204        PROVISIONAL LICENSE OR PROVISIONAL NOTICE OF**  
31                                    **COMPLIANCE**

32 A provisional license or provisional notice of compliance may be issued in accordance with the provisions of 10A  
33 NCAC 09 .2201 and G.S. 110-88(6) for any period of time not to exceed 12 consecutive months for the following  
34 reasons:

- 35           (1)       substantiated violations as a result of a complaint where the Division has made a determination that  
36                   child maltreatment did not occur and the violation meets criteria for an administrative action set  
37                   forth in this Rule;

- (2) allowance of 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;
- (3) receipt of more than two provisional sanitation classifications within 12 months, regardless of the approved sanitation classifications that may follow;
- (4) two or more disapproved sanitation classifications within 12 months, regardless of the approved sanitation classifications that may follow;
- (5) receipt of a disapproved sanitation classification followed by a provisional sanitation classification at any time, regardless of the approved sanitation classifications that may follow;
- (6) when the compliance history of the facility drops below the minimum requirement set forth in G.S. 110-90, provided that the conditions at the facility are not hazardous to the health and safety of the children or staff;
- (7) citation of one of the following rules on two consecutive visits:
  - (a) Supervision of children;
  - (b) Discipline, nurture, or care of children;
  - (c) Staff/child ratio;
  - (d) Group size;
  - (e) Licensed capacity;
  - (f) CPR training;
  - (g) First Aid training;
  - (h) ITS-SIDS training; or
  - (i) Health and Safety Training;
- (8) citation of 16 or more rule violations in a single visit where the operator does not meet the criteria of other administrative actions as set forth in this Section of rules;
- (9) more than two citations of a violation of the provisions of G.S. 110-90.2 regarding criminal history record check requirements within an 18-month time period; or
- (10) pattern of noncompliance.

*History Note:* Authority G.S. 110-88(6); 110-90; 110-99; 143B-168.3;  
Eff. \_\_\_\_\_.

**10A NCAC 09 ~~.2204~~ .2205                      PROBATIONARY LICENSE OR PROBATIONARY NOTICE OF COMPLIANCE**

A probationary license or probationary notice of compliance may be issued in accordance with the provisions of 10A NCAC 09 .2201 for any period of time not to exceed 12 consecutive months for the following reasons:

- (1) a violation of any section of the G.S. 110, Article 7 or this Chapter that has been willful, continual, or hazardous to the health or safety of children;

- 1           (2)     the operator has failed to comply with the terms of a corrective action plan issued with a  
2                     written warning or provisional license or notice of compliance;  
3           (3)     there is a history of noncompliance with child care requirements; or  
4           (4)     when, in accordance with G.S. 110-105.3, the Division determines that child maltreatment occurred  
5                     in a child care facility, and there is a pattern or history of noncompliance.

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

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

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

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

16  
17 *History Note:*     Authority G.S. 110-88; 110-90; 110-102.2; 143B-168.3;  
18                     *Eff. July 1, 1988;*  
19                     *Amended Eff. April 1, 2001; November 1, 1989.*  
20

21 **10A NCAC 09 ~~.2205~~ .2206       SUSPENSION**

22 Suspension of a license or suspension of a notice of compliance may be ordered in accordance with the provisions of  
23 10A NCAC 09 .2201 and for a time period not to exceed 12 consecutive months for the following reasons:

- 24           (1)     the owner of the child care facility is a corporate entity that has been placed under revenue  
25                     suspension by the North Carolina Secretary of State;  
26           (2)     when the Division has issued a provisional license or notice of compliance related to building, fire,  
27                     or sanitation requirements and the operator has failed to comply; or  
28           (3)     allowance of a specific time period for correcting a violation of building, fire, or sanitation  
29                     requirements, provided that the appropriate inspector documents that closure of the child care  
30                     facility is necessary to protect health or safety of children during correction.

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

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

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

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

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

9  
10 *History Note:* Authority G.S. 110-88; 110-90; 110-102.2; 143B-168.3; 150B-3;  
11 *Eff. July 1, 1988;*  
12 *Amended Eff. April 1, 2001; November 1, 1989.*  
13  
14

15 **10A NCAC 09 .2207**      **SPECIAL PROVISIONAL LICENSE OR SPECIAL PROVISIONAL NOTICE OF**  
16 **COMPLIANCE**

17 A special provisional license or special provisional notice of compliance may be issued in accordance with the  
18 provisions of 10A NCAC 09 .2201. A special provisional license or special provisional notice of compliance may be  
19 issued for a six-month period when, in accordance with G.S. 110-105.3, the Division determines that child  
20 maltreatment occurred in a child care facility. A limited enrollment restriction may be included on the special  
21 provisional license or special provisional notice of compliance that prevents new children from being enrolled during  
22 the special provisional time period until the Division is satisfied that unsafe conditions no longer exist.

23  
24 *History Note:* Authority G.S. 110-88; 110-90; 143B-168.3;  
25 *Eff. \_\_\_\_\_.*  
26

27 **10A NCAC 09 .2208**      **CIVIL PENALTIES: SCOPE AND PURPOSE**

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

32  
33 *History Note:* Authority G.S. 110-90(9); 110-103.1; 143B-168.3;  
34 *Eff. January 1, 1986;*  
35 *Amended Eff. April 1, 2001; November 1, 1989; January 1, 1987;*  
36 *Repealed Eff. \_\_\_\_\_.*  
37

38 **10A NCAC 09 .2206 .2209**      **REVOCATION OF A LICENSE OR AN ORDER TO CEASE**  
39 **OPERATION**



1 ~~(a)~~ Revocation of a permit license or an order to cease operation may be ~~ordered~~ issued in accordance with the  
2 provisions of 10A NCAC 09 .2201 for the following reasons: when violation of any section of the statutes or rules has  
3 been willful, continual, or hazardous to health or safety, or the operator has not made reasonable efforts to conform to  
4 standards or is unable to comply.

- 5 (1) child maltreatment has occurred in a child care facility and serious harm occurred;
- 6 (2) when one or more prior determinations of child maltreatment have occurred at a child care facility  
7 within three years;
- 8 (3) violation of any section of G.S. 110, Article 7 or this Chapter has been willful, continual, or  
9 hazardous to health or safety of children;
- 10 (4) the operator fails to comply with an implemented protection plan;
- 11 (5) the operator fails to comply with immediate corrective action required pursuant to an  
12 investigation or determination of child maltreatment as set forth in G.S. 110-105.3(f);
- 13 (6) the operator falsifies information in violation of G.S. 110-91(14);
- 14 (7) the operator fails to comply with the terms of an administrative action or corrective action plan  
15 issued with a special provisional or probationary license or notice of compliance;
- 16 (8) the operator has not made reasonable efforts to conform to G.S. 110, Article 7, this Chapter, or  
17 10A NCAC 10 or is unable to comply;
- 18 (9) the compliance history of the facility drops below the minimum requirement set forth in G.S.  
19 110-90, and the conditions at the facility are hazardous to the health and safety of the children or  
20 staff;
- 21 (10) history of noncompliance;
- 22 (11) receipt of a disapproved sanitation classification that is not corrected with a provisional or  
23 approved classification;
- 24 (12) change of ownership of a child care facility without proper notification to the Division as  
25 specified in Rules 10A NCAC 09 .0204(a), .0403(a), and .1702(e);
- 26 (13) change of location of a child care facility without proper notification to the Division as  
27 specified in Rules 10A NCAC 09 .0204(b), .0403(a), and .1702(d); or
- 28 (14) the owner of the child care facility is a corporate entity that has been administratively  
29 dissolved from the North Carolina Secretary of State.

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

33 (c) ~~The revocation order shall specify the reasons for its issuance and the effective date of revocation and shall be~~  
34 ~~posted prominently in the center or home immediately upon receipt. The operator shall surrender the permit on the~~  
35 ~~effective date of the revocation order and shall refrain from operating the center or home thereafter.~~

1 ~~(d) Failure to comply with the revocation order shall result in civil action in accordance with G.S. 110-103.1 or a~~  
2 ~~criminal penalty in accordance with G.S. 110-103, or both. The Secretary may also seek injunctive relief in~~  
3 ~~accordance with G.S. 110-104.~~

4  
5 *History Note:* Authority G.S. 110-88; 110-90; 110-102.2; 110-105.6; 143B-168.3; 150B-3;  
6 Eff. July 1, 1988;  
7 Amended Eff. April 1, 2001; August 1, 1990; November 1, 1989.  
8

9 **10A NCAC 09 ~~.2207~~ .2213 SUMMARY SUSPENSION**

10 Summary suspension of operation of a child care facility may be ordered in accordance with the provisions of 10A  
11 NCAC 09 .2201 and G.S. 150B-3(c) when, in the Division's determination, immediate action is required to protect  
12 the health and safety of children in a child care facility regulated by the Division. The order shall be effective on the  
13 date specified in the order. The order shall be effective during proceedings to suspend or revoke the license or during  
14 proceedings to cease operation of a facility with a notice of compliance.

15 ~~(a) Summary suspension of a permit may be ordered in accordance with G.S. 150B-3(c) when, in the Division's~~  
16 ~~determination, emergency action is required to protect the health, safety, or welfare of children in a child care facility~~  
17 ~~regulated by the Division.~~

18 ~~(b) The suspension order shall specify the reasons for its issuance including identification of the specific section of~~  
19 ~~the statutes and rules violated and the determination of the need for emergency action. The order shall be effective on~~  
20 ~~the date specified in the order. The order shall be effective during proceedings to suspend or revoke the permit.~~

21 ~~(c) The operator shall surrender the permit on the effective date of the order and shall refrain from operating a center~~  
22 ~~or home until final action is determined.~~

23 ~~(d) Failure to comply with the summary suspension order shall result in civil action in accordance with G.S.~~  
24 ~~110-103.1, and/or criminal penalty in accordance with G.S. 110-103. The Division may also seek injunctive relief in~~  
25 ~~accordance with G.S. 110-104.~~

26  
27 *History Note:* Authority G.S. 110-88; 110-90; 110-102.2; 143B-168.3; ~~150B-3;~~  
28 Eff. July 1, 1988;  
29 Amended Eff. April 1, 2001; November 1, 1989.  
30

31 **10A NCAC 09 ~~.2209~~ .2216 AMOUNT OF ~~PENALTY~~ CIVIL PENALTIES FOR CHILD CARE**  
32 **FACILITIES**

33 (a) The amount of the penalty assessed to a child care facility shall be based upon the following factors:

- 34 (1) willful or negligent ~~non-compliance~~ noncompliance by the ~~operator~~, operator;  
35 (2) history of ~~non-compliance~~, noncompliance;  
36 (3) extent of deviation from the ~~regulation~~, regulation;  
37 (4) evidence of ~~good faith~~ effort to ~~comply~~, comply; and  
38 (5) any other factors relevant to the ~~unique~~ situation.

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

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

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

8  
 9 *History Note: Authority G.S. 110-88; 110-90(9); 110-103.1; 143B-168.3;*  
 10 *Eff. January 1, 1986.*

11  
 12  
 13 **10A NCAC 09 ~~2213~~ 2217 SCHEDULE OF CIVIL PENALTIES FOR CHILD CARE CENTERS**

14 (a) The following penalties may be assessed against child care centers as defined in G.S. ~~110-86(3)~~. 110-86(3) for  
 15 each violation documented.

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

- 17 (1) ~~Non-compliance~~ Noncompliance with the standards for:
- 18 (A) ~~Staff-child~~ staff-child ratios;
- 19 (B) ~~Adequate~~ adequate supervision of children;
- 20 (C) ~~Transportation~~ transportation of children; ~~or~~
- 21 (D) ~~Use~~ use of swimming pools and other swim areas;
- 22 (E) administration of medication;
- 23 (F) discipline, nurture, or care of children; or
- 24 (G) medical action plan requirements;
- 25 (2) Disapproved fire safety, ~~building~~ building, or sanitation inspection reports;
- 26 (3) Exceeding licensed capacity of center, or use of unauthorized space;
- 27 (4) Change of ownership or relocation of center without prior notification to the Division;
- 28 (5) Substantiation ~~that a child (or children) was abused or neglected while in the care of~~ child  
 29 maltreatment at the center; or
- 30 (6) Willful, repeated pattern of ~~non-compliance~~ noncompliance with any requirement over extended  
 31 period of ~~time~~. time; or
- 32 (7) Denial of entry to an authorized representative of the Department or Division.

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

- 34 (1) ~~Non-compliance~~ noncompliance with the standards for:
- 35 (A) ~~Staff~~ staff health requirements;
- 36 (B) ~~Staff~~ staff qualifications;
- 37 (C) ~~Children's~~ children's health requirements;
- 38 (D) ~~Proper~~ proper nutrition;
- 39 (E) ~~Sanitation~~ sanitation and personal hygiene practices;

- 1                   (F)     ~~Discipline of children;~~  
 2                   (G) (F) ~~Indoor~~ indoor or outdoor space; or  
 3                   (H) (G) ~~Emergency~~ emergency medical plan; or  
 4               (2)     Failure to comply with a corrective action ~~plan;~~ plan.  
 5               (3)     ~~Denial of entry to an authorized representative of the department or Division.~~  
 6 (d) A civil penalty in an amount up to two hundred and fifty dollars (\$250.00) may be imposed for the following  
 7 violations:  
 8               (1)     ~~Non-compliance~~ noncompliance with the standards to provide:  
 9                   (A)     Safe Environment;  
 10                  (B) (A) Age-appropriate activities; or  
 11                  (C) (B) ~~Staff development.~~ development;  
 12               (2)     Failure to post ~~provisional permit;~~ current child care license, notice of compliance, or other permit  
 13                   to operate a child care facility; or  
 14               (3)     Failure to maintain accurate records.  
 15 (e) Violation of other standards may result in the assessment of a penalty according to the effect or potential effect of  
 16 the violation on the safety and well-being of the child.

17  
 18 *History Note:*     Authority G.S. 110-88; 110-90(9); 110-103.1; 143B-168.3;  
 19                            Eff. January 1, 1986;  
 20                            Amended Eff. April 1, 2001; October 1, 1991;  
 21                            Readopted Eff. \_\_\_\_\_.

22  
 23                            **SECTION .0400 - ISSUANCE OF PROVISIONAL AND TEMPORARY LICENSES**

24  
 25 **10A NCAC 09 .0401           PROVISIONAL LICENSES FOR FACILITIES**

- 26 (a) ~~A provisional license may be issued in accordance with the provisions of G.S. 110-88(6) for any period of time~~  
 27 ~~not to exceed twelve consecutive months for any of the following reasons:~~  
 28               (1)     ~~To allow a specific time period for correcting a violation of the building, fire, or sanitation~~  
 29                    ~~requirements, provided that the appropriate inspector documents that the violation is not hazardous~~  
 30                    ~~to the health or safety of the children but nevertheless necessitates a provisional classification until~~  
 31                    ~~corrected.~~  
 32               (2)     ~~To allow a specific time period for the facility to comply fully with all licensing requirements other~~  
 33                    ~~than building, fire, or sanitation, and to demonstrate that compliance will be maintained, provided~~  
 34                    ~~that conditions at the facility are not hazardous to the health or safety of the children or staff.~~  
 35               (3)     ~~To allow time for the applicant or licensee to obtain a declaratory ruling pursuant to Section .2000~~  
 36                    ~~of this Subchapter.~~  
 37               (4)     ~~As a possible administrative action for substantiation of child abuse or neglect.~~  
 38 (b) ~~The provisional license may be issued upon the Division's determination that the applicant or licensee is making~~  
 39 ~~a reasonable effort to conform to such requirements.~~

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

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

5  
6 *History Note: Authority G.S. 110-88(6); 110-99; 143B-168.3;*  
7 *Eff. January 1, 1986;*  
8 *Amended Eff. July 1, 1998; April 1, 1992; August 1, 1990; July 1, 1988; January 1, 1987;*  
9 *Repealed Eff. \_\_\_\_\_.*  
10

### 11 **10A NCAC 09 .1904 ADMINISTRATIVE SANCTIONS**

12 ~~(a) A special provisional license may be issued for a six month period when the Division determines that abuse or~~  
13 ~~neglect occurred in a child care center or home. The following provisions shall apply:~~

- 14 (1) ~~the special provisional license and the reasons for its issuance shall be posted in a prominent place~~  
15 ~~in the center or home as soon as they are received by the operator;~~  
16 (2) ~~the special provisional license and reasons for issuance shall remain posted for the entire six months~~  
17 ~~covered by the license, and also during the time of any administrative proceedings;~~  
18 (3) ~~no new children shall be enrolled in the center or home until the Division is satisfied that the abusive~~  
19 ~~or neglectful situation no longer exists and gives the operator written permission to accept new~~  
20 ~~children; and~~  
21 (4) ~~an operator may obtain an administrative hearing on the issuance of a special provisional license in~~  
22 ~~accordance with the provisions of G.S. 150B-23.~~

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

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

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

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

- 35 (1) ~~severity of the incident;~~  
36 (2) ~~probability of reoccurrence;~~  
37 (3) ~~prior incidents of abuse or neglect in the center or home;~~  
38 (4) ~~history of compliance with child care requirements; or~~



- 1 (4) a "conviction" includes when a plea of guilty or no contest is accepted by the trial court, or entry of  
2 an order granting a prayer for judgment continued; and  
3 (5) a "pending criminal charge" includes, but is not limited to, a charge that has been deferred pursuant  
4 to G.S. 15A-1341(a1).  
5

6 *History Note: Authority G.S. 110-85; 110-90.2; 110-90.2(a)(3); 114-19.5; 143B-168.3; S.L. 1995, c. 507, s. 23.25;*  
7 *Temporary Adoption Eff. January 1, 1996;*  
8 *Eff. April 1, 1997;*  
9 *Amended Eff. March 1, 2014; November 1, 2007; April 1, 2003.*  
10

11 **10A NCAC 09 .2703 CRIMINAL HISTORY RECORD CHECK REQUIREMENTS FOR CHILD CARE**  
12 **PROVIDERS**

13 (a) In addition to the requirements in Rules .0302 and .1702 of this Chapter, a child care provider shall submit the  
14 following to the Division prior to the issuance of a license or prior to beginning employment:

- 15 (1) a signed and completed Authority for Release of Information form;  
16 (2) fingerprint impressions submitted on the form(s) required by the Division and State Bureau of  
17 Investigation; and  
18 (3) if a child care provider is an out-of-state resident, he or she shall also submit a certified local history  
19 from the Clerk of Superior Court in his or her county of residence.

20 All required forms can be found on the Division's website at  
21 [http://ncchildcare.dhhs.state.nc.us/general/dhhsrsc\\_childcare.asp](http://ncchildcare.dhhs.state.nc.us/general/dhhsrsc_childcare.asp).

22 (b) If the child care provider has a criminal history of convictions, pending indictment of a crime, or pending criminal  
23 charges, he or she may submit to the Division additional information concerning the conviction or charges that the  
24 Division shall use in making the determination of the child care provider's qualification. The Division shall also  
25 consider the following in making its decision:

- 26 (1) length of time since conviction;  
27 (2) whether the child care provider is currently on probation;  
28 (3) nature of the offense;  
29 (4) circumstances surrounding the commission of the offense or offenses;  
30 (5) evidence of rehabilitation;  
31 (6) number and type of prior offenses; and  
32 (7) age of the child care provider at the time of occurrence.

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

36 (d) If a Letter of Intent to Operate pursuant to G.S. 110-106 is submitted to the Division, the person signing the Letter  
37 of Intent shall submit all forms as required in Paragraph (a) of this Rule.

- 1 (e) Child care providers must have a valid qualification letter prior to employment or living in the family child care  
2 home and the qualification letter must be kept on file at the facility for review by representatives of the Division.
- 3 (f) Child care providers found to be disqualified are not eligible for employment in child care until a qualification  
4 letter has been issued by the Division.
- 5 (g) Child care providers determined by the Division to be disqualified shall be terminated by the center or family  
6 child care home immediately upon receipt of the disqualification notice.
- 7 (h) Disqualification of a child care provider living in a family child care home shall be grounds for issuance of a  
8 summary suspension of the family child care home or center in a residence license in accordance with 10A NCAC 09  
9 .2207.
- 10 (i) Refusal on the part of the employer to dismiss a child care provider who has been found to be disqualified shall be  
11 grounds for suspension, denial, or revocation of the license or any other administrative action or civil penalty permitted  
12 by law or rule. If an applicant appeals the disqualification, the child care provider shall not be employed during the  
13 appeal process.
- 14 (j) Operators, as defined by G.S. 110-86(7), shall include the criminal history mandatory reporting requirement in all  
15 new employee orientation information. Mandatory reporting requires all child care providers and household members  
16 who have incurred any pending charges, indictments or convictions (other than minor traffic offenses) since the last  
17 qualification letter was issued by the Division to notify the operator of such charges within five business days or before  
18 returning to work, whichever comes first. The operator shall notify the Division of any such pending charges,  
19 indictments or convictions within one business day of being notified.
- 20 (k) The qualification letter is valid for a maximum of three years from the date of issuance.
- 21 (l) Prior to the expiration date of the qualification letter, the child care provider shall complete and submit the forms  
22 listed in Paragraph (a) of this Rule.
- 23 (m) After a child care provider has been qualified, the Division may complete a new criminal history record check at  
24 any time when the Department of Social Services or the Division of Child Development and Early Education conducts  
25 an investigation that references the child care provider.
- 26 (n) Any individuals who live in the household who have had their 16<sup>th</sup> birthday after the initial licensing of a family  
27 child care home, shall complete and submit the forms listed in Paragraph (a) of this Rule to the Division within five  
28 business days.
- 29 (o) Child care operators must notify the Division of any new child care providers who are hired or moved into the  
30 home within five business days by submitting the form provided by the Division.

31  
32 *History Note: Authority G.S. 110-85; 110-86(7); 110-90.2; 110-90.2(a); 110-106; 114-19.5; 143B-168.3; S.L.*  
33 *2012-160, s.1;*  
34 *Temporary Adoption Eff. January 1, 1996;*  
35 *Eff. April 1, 1997;*  
36 *Amended Eff. March 1, 2014; November 1, 2007.*  
37



1 **10A NCAC 09 .2704 CRIMINAL HISTORY RECORD CHECK REQUIREMENTS FOR**  
2 **NONLICENSED CHILD CARE PROVIDERS**

3 (a) A nonlicensed child care provider shall submit the following to the local purchasing agency prior to caring for  
4 children and receiving subsidy payments:

- 5 (1) a signed Authority for Release of Information using the form provided by the Division;
- 6 (2) fingerprint impressions submitted on the form(s) required by the Division and State Bureau of  
7 Investigation; and
- 8 (3) if a prospective child care provider is an out-of-state resident, he or she shall also submit a certified  
9 local history from the Clerk of Superior Court in his or her county of residence.

10 This Rule applies to any individuals over 15 years old who move into the household, or any individuals who live in  
11 the household who have had his or her 16<sup>th</sup> birthday after the initial approval, including family members and non-  
12 family members who use the home either on a permanent or temporary basis as their primary residence. The individual  
13 shall submit the items in this Paragraph to the local purchasing agency within five business days of moving into the  
14 home or their 16<sup>th</sup> birthday.

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

20 (c) Any individual over 15 years old, including family members and non-family members who use the home either  
21 on a permanent or temporary basis as their primary residence, shall submit all criminal history record check forms as  
22 required in Subparagraphs (a)(1) and (a)(2) of this Rule, within five business days of joining the household.

23 (d) If a nonlicensed child care provider has a criminal history of convictions, pending indictment of a crime, or  
24 pending criminal charges, he or she may submit to the Division additional information concerning the conviction or  
25 charges that could be used by the Division in making the determination of the child care provider's qualification. The  
26 Division shall consider the following in making a decision:

- 27 (1) length of time since conviction;
- 28 (2) whether the nonlicensed child care provider is currently on probation;
- 29 (3) nature of the offense;
- 30 (4) circumstances surrounding the commission of the offense or offenses;
- 31 (5) evidence of rehabilitation;
- 32 (6) number and type of prior offenses; and
- 33 (7) age of the nonlicensed child care provider at the time of occurrence.

34 (e) The local purchasing agency shall mail the Authority for Release of Information using the form provided by the  
35 Division, and fingerprint impressions to the Division no later than five business days after receipt. A copy of the  
36 submitted information shall be maintained in the nonlicensed child care provider's file until the notice of qualification

1 is received by the nonlicensed child care provider. The notice of qualification shall be maintained in the nonlicensed  
2 child care provider's file. The local purchasing agency shall keep the child care provider's file.

3 (f) A nonlicensed child care provider shall not receive payment during the period in which the state and federal  
4 criminal history record check is being completed.

5 (g) Disqualification of a nonlicensed child care provider by the Division shall be reasonable cause for the local  
6 purchasing agency to deny payment.

7 (h) If a nonlicensed child care provider disagrees with the decision of disqualification and files a civil action in district  
8 court, the provider may continue to operate as a nonlicensed child care provider, but shall not receive payment during  
9 the proceedings. If the determination in the civil action is that the nonlicensed child care provider is qualified, the  
10 nonlicensed provider shall receive retroactive payment for the uncompensated care provided during the proceedings.

11 (i) After a nonlicensed child care provider is qualified, the Division may complete a new criminal history record  
12 check at any time when the Department of Social Services or the Division of Child Development and Early Education  
13 conducts an investigation that references the child care provider. If the Division requests a new criminal history record  
14 check, the child care provider shall complete and submit the forms listed in Paragraph (a) of this Rule to the Division  
15 within five business days of the Division's request.

16 (j) The qualification letter is valid for a maximum of three years from the date of issuance.

17 (k) Prior to the expiration date of the qualification letter, the nonlicensed child care provider shall complete and submit  
18 the forms described in Paragraph (a) of this Rule.

19 (l) Nonlicensed child care providers and household members must have a valid qualification letter prior to receiving  
20 subsidy payments.

21  
22 *History Note:* Authority G.S. 110-90.2; 114-19.5; 143B-168.3; S.L. 2012-160, s. 1;  
23 *Temporary Adoption Eff. January 1, 1996;*  
24 *Eff. April 1, 1997;*  
25 *Amended Eff. March 1, 2014; December 1, 2007; April 1, 2003.*  
26

## 27 **SECTION .4000 CHILD CARE TRAINERS**

### 28 29 **10A NCAC 09 .4001 ADMINISTRATIVE PENALTIES FOR CHILD CARE TRAINERS**

30 (a) For purposes of this Rule, “in-service trainer” and “training agent” means an individual, agency, or organization  
31 that submits training content to be approved for the award of contact hour credits to meet child care staff training  
32 requirements. When an approved in-service trainer or training agent fails to comply with requirements specified in  
33 Rules 10A NCAC 09 .1105 and .1703(j), the Division shall issue an administrative penalty.

34 (b) A written warning letter shall be issued when an in-service trainer or training agent fails to submit training  
35 documentation. The written warning letter shall describe the reasons for its issuance including identification of the  
36 specific statutes or rules violated. The letter shall describe actions necessary for the operator to be in compliance and  
37 specify a time period for compliance to be achieved. The Division shall determine the need for corrective action on  
38 an individual basis.

1 (c) A Notice of Termination of Trainer Approval shall be issued when falsification of training documentation by an  
2 in-service trainer or training agent is determined by the Division. The Notice of Termination shall describe the reasons  
3 for its issuance including identification of the specific statutes or rules violated.

4 (d) A Denial of Trainer Approval shall be issued when the Division determines that:

5 (1) an in-service trainer or training agent has previously received an administrative penalty from the  
6 Division; or

7 (2) if the Division has received information regarding inaccuracy of training by the in-service trainer or  
8 training agent and the Division determines that the inaccuracy would impact the care provided to  
9 children by the child care providers receiving the training.

10 The Notice of Denial shall describe the reasons for its issuance including identification of the specific statutes or rules  
11 violated.

12 (e) Failure to comply with the Notice of Termination and Denial may result in civil action in accordance with G.S.  
13 110-103.1 or a criminal penalty in accordance with G.S. 110-103. The Secretary may also seek injunctive relief in  
14 accordance with G.S. 110-104.

15

16 History Note: Authority G.S. 110-88; 110-90; 110-91(8), (11);  
17 Eff. \_\_\_\_\_.