

## TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

*Notice* is hereby given in accordance with G.S. 150B-21.2 that the NC Child Care Commission intends to adopt the rule cited as 10A NCAC 09 .2701 and amend the rules cited as 10A NCAC 09 .0302, .1702, .2506, .2702-.2704, and .2903.

### Agency obtained G.S. 150B-19.1 certification:

- OSBM certified on: March 28, 2013 and April 19, 2013  
 RRC certified on:  
 Not Required

Link to agency website pursuant to G.S. 150B-19.1(c): <http://www.ncchildcare.net>

Fiscal Note if prepared posted at: [http://www.osbm.state.nc.us/files/pdf\\_files/DHHS03282013.pdf](http://www.osbm.state.nc.us/files/pdf_files/DHHS03282013.pdf) and [http://www.osbm.state.nc.us/files/pdf\\_files/DHHS04192013.pdf](http://www.osbm.state.nc.us/files/pdf_files/DHHS04192013.pdf)

**Proposed Effective Date:** November 1, 2013

### Public Hearing:

**Date:** June 27, 2013

**Time:** 1:00 p.m.

**Location:** Division of Child Development and Early Learning, 319 Chapanoke Road, Suite 120, Raleigh, NC 27603

### Reason for Proposed Action:

#### **10A NCAC 09 .2506 (Supervision)**

The NC Child Care Commission is proposing to amend this rule regarding the supervision for school-age children while in child care. This change will allow for school-age children to be heard “or” seen instead of heard “and” seen. This amendment will also be in alignment with the rules for pre-school children.

#### **10A NCAC 09 .2701, .2702, .2703, .2704, .0302 and .1702 (Criminal Record Checks)**

The NC Child Care Commission propose to adopt and amend child care rules to effectuate changes to N.C.G.S. § 110-90.2 enacted during the 2012 session of the General Assembly. New amendments to the statute became effective January 1, 2013. The amendments changed the existing statutory scheme to include: pre-service qualification for all child care providers, a more comprehensive federal fingerprint check for providers (prior law only required certain providers to obtain a federal fingerprint check), and allocated the cost of the federal check to child care providers while shifting the cost of the local and state level criminal record checks to DHHS. An explanation for each proposed rule is as follows:

- .2701** This rule sets forth the procedural change from qualifying applicants, through the criminal record check process, to work in child care on an individual basis rather than qualifying them to work at a specific child care facility. Under the current process, applicants have to be qualified, through the criminal record check process, at each individual child care facility they work for. The new process will qualify an individual to work at any child care facility during the three (3) year time period the criminal record check qualification is valid without the burden of having to repeat the criminal record check process each time they change employment.
- .2702** This rule defines terms used in support of NCGS 110-90.2.
- .2703** This rule is a consolidation of two sections of current rules (.2701 and .2702) that outlines the requirements of a criminal record check and the process the Division of Child Development and Early Education will follow.
- .2704** This rule is essentially the current .2704 rule with elimination of requirements that no longer apply based on the law change to NCGS 110-90.2 effective January 1, 2013.
- .1702** This rule is essentially the current .1702 rule with elimination of the requirement that individuals purchase a local criminal record check. This check will now be performed by DHHS and will be free of cost to providers.
- .0302** This rule is essentially the current .0302 rule with elimination of the requirement that individuals purchase a local criminal record check. This check will now be performed by DHHS and will be free of cost to providers.

#### **10A NCAC 09 .2903 (Developmental Day)**

The NC Child Care Commission proposes to amend rule 10A NCAC 09 .2903 as the result of a rule-making petition submitted by Ms. Diane Killen and Ms. Jan Guynn. The proposed rule amendment will serve children in developmental day programs in a way that is more cost effective and attainable for the service provider. The proposed rule change would relax the requirement for children three-years or older to be served by a B-K teacher by limiting its application only to children with an IEP. Children without an IEP would have to have turned three before the start of the school year for the requirement to be served by a B-K teacher to apply. The amendment aims to reduce the costs incurred by developmental day centers that maintain a higher ratio of typically developing children. The rule change would reduce the expenses of centers related to Birth-through-Kindergarten (B-K) certified staff.

**NOTE:** This rule was submitted pursuant to a rule-making petition and the NC Child Care Commission wishes to solicit comments regarding the potential impact of the proposed rule language. The commission has not taken a position as to whether the rule should be adopted.

**Procedure by which a person can object to the agency on a proposed rule:** *Objections to the proposed rules may be submitted in writing or via electronic mail during the comment period to Ms. Dedra Alston, Division of Child Development and Early Education, 2201 Mail Service Center, Raleigh, NC 27699-2201 or Dedra.Alston@dhhs.nc.gov.*

**Comments may be submitted to:** *Dedra Alston, 2201 Mail Service Center, Raleigh, NC 27699-2201; phone (919) 890-7060; fax (919) 662-4568; email Dedra.Alston@dhhs.nc.gov*

**Comment period ends:** *August 2, 2013*

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

- State funds affected**
- Environmental permitting of DOT affected**  
**Analysis submitted to Board of Transportation**
- Local funds affected**  
**Date submitted to OSBM:** *March 2012*
- Substantial economic impact ( $\geq$ \$500,000)**
- Approved by OSBM**
- No fiscal note required by G.S. 150B-21.4**

## CHAPTER 09 - CHILD CARE RULES

### SECTION .0300 - PROCEDURES FOR OBTAINING A LICENSE

#### 10A NCAC 09 .0302 APPLICATION FOR A LICENSE FOR A CHILD CARE CENTER

(a) The individual who will be legally responsible for the operation of the center, which includes assuring compliance with the licensing law and standards, shall apply for a license for a child care center using the form provided by the Division. If the operator will be a group, organization, or other entity, an officer of the entity who is legally empowered to bind the operator shall complete and sign the application.

(b) The applicant shall arrange for inspections of the center by the local health, building and fire inspectors. The applicant shall provide an approved inspection report signed by the appropriate inspector to the Division representative. A provisional classification may be accepted in accordance with Rule .0401(1) of this Chapter. When a center does not conform with a building, fire, or sanitation standard, the appropriate inspector may submit a written explanation of how equivalent, alternative protection is provided. The Division shall accept the inspector's documentation in lieu of compliance with the standard. Nothing in this Rule precludes or interferes with issuance of a provisional license pursuant to Section .0400 of this Chapter.

(c) The applicant, or the person responsible for the day-to-day operation of the center, shall be able to describe the plans for the daily program, including room arrangement, staffing patterns, equipment, and supplies, in sufficient detail to show that the center shall comply with applicable requirements for activities, equipment, and staff/child ratios for the capacity of the center and type of license requested. The applicant will make the following written information available to the Division for review to verify compliance with provisions of this Chapter and G.S. 110:

- (1) daily schedules;
- (2) activity plans;
- (3) emergency care plan;
- (4) discipline policy;
- (5) incident reports; and
- (6) ~~incident logs; and logs.~~
- (7) ~~a copy of the certified criminal history check for the applicant, or the applicant's designee as defined in Rule .2701(g) of this Chapter, from the Clerk of Superior Court's office in the county or counties where the individual has resided during the previous 12 months.~~

(d) The applicant shall demonstrate to the Division representative that measures will be implemented to have the following information in the center's files and readily available to the representative for review:

- (1) Staff records which include an application for employment and date of birth; documentation of previous education, training, and experience; medical and health records; documentation of participation in training and staff development activities; and required criminal records check documentation;

- (2) Children's records which include an application for enrollment; medical and immunization records; and permission to seek emergency medical care;
  - (3) Daily attendance records;
  - (4) Daily records of arrival and departure times at the center for each child;
  - (5) Records of monthly fire drills giving the date each drill is held, the time of day, the length of time taken to evacuate the building, and the signature of the person who conducted the drill;
  - (6) Records of monthly playground inspections documented on a checklist provided by the Division; and
  - (7) Records of medication administered.
- (e) The Division representative shall measure all rooms to be used for child care and shall assure that an accurate sketch of the center's floor plan is part of the application packet. The Division representative shall enter the dimensions of each room to be used for child care, including ceiling height, and shall show the location of the bathrooms, doors, and required exits on the floor plan.
- (f) The Division representative shall make one or more inspections of the center and premises to assess compliance with all applicable requirements as follows:
- (1) If all applicable requirements of G.S. 110 and this Section are met, the Division shall issue the license.
  - (2) If all applicable requirements of G.S. 110 and this Section are not met, the representative may recommend issuance of a provisional license in accordance with Section .0400 of this Chapter or the representative may recommend denial of the application. Final disposition of the recommendation to deny is the decision of the Secretary.
  - (3) The license shall be displayed in an area that parents are able to view daily.
- (g) When a person applies for a child care center 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 (1), (2), or (3) of this Paragraph. 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 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~~ person; or
  - (7) is a disqualified child care provider or has a disqualified household member residing in the center.

(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.

*Authority G.S. 110-85; 110-88(2); 110-88(5); 110-91; 110-92; 110-93; 110-99; 143B-168.3.*

## **SECTION .1700 - FAMILY CHILD CARE HOME REQUIREMENTS**

### **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 readily accessible for every 2,500 square feet of floor area.
  - (6) Fuel burning space heaters, fireplaces and floor furnaces which are listed and approved by the Department of Insurance for that installation and are provided with a protective screen attached securely to supports are allowed. Unvented fuel burning heaters and portable electric space heaters of all types are prohibited.
  - (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.
  - (9) 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.
- (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 a non-expired qualification letter, ~~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. Final disposition of the recommendation to deny is the decision of the Division.
- (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.~~ member; or
  - (7) is a disqualified child care provider or has a disqualified household member residing in the FCCCH.
- (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.

*Authority G.S. 110-85; 110-88(5); 110-91; 110-93; 110-99; 143B-168.3.*

## **SECTION .2500 - CARE FOR SCHOOL-AGE CHILDREN**

### **10A NCAC 09 .2506 GENERAL SAFETY REQUIREMENTS**

- (a) First aid equipment shall always be available regardless of where activities are provided.
- (b) All regulations in Rule .1403 regarding swimming pools apply.
- (c) Potentially hazardous items, such as archery equipment, hand and power tools, nails, chemicals, or propane stoves, shall be used by children only when adult supervision is provided. Such potentially hazardous items, whether or not intended for use by the children, shall be stored in locked areas or with other safeguards, or shall be removed from the premises.
- (d) All children shall be adequately supervised. Adequate supervision means staff shall be with the group of children and able to hear ~~and~~ or see each child in ~~his/her~~ his or her care, except:
  - (1) Children who are developmentally able may be permitted to go to the restroom independently, provided that:
    - (A) Staff members' proximity to children assures immediate intervention to safeguard a child from harm;
    - (B) Individuals who are not staff members may not enter the restroom area while in use by any child; and
    - (C) Children up to nine years of age are supervised by staff members who are able to hear the child. Children nine years of age and older are not required to be directly supervised, however, staff members shall know the whereabouts of children who have left their group to use the restroom.
  - (2) Adequate supervision for children ages nine and older means that staff are with the group of children and able to hear or see each child in ~~his/her~~ his or her care. A staff member shall accompany any children that leave the group to go indoors or outdoors.
  - (3) When emergencies necessitate that direct supervision is impossible for brief periods of time.

(e) Children riding bicycles must wear safety helmets.

Authority G.S. 110-85; 110-91; 143B-168.3.

## SECTION .2700 - CRIMINAL RECORD CHECKS

### 10A NCAC 09 .2701 SCOPE

The rules in this Section apply to all child care providers as defined in G.S.110-90.2. The Division, in accordance with G.S.110-90.2, shall determine if an individual is a qualified child care provider. If the Division determines an individual is a qualified child care provider, that individual may work or be present in any child care facility during the time the individual holds a valid qualification letter.

Authority G.S. 110-85; 110-90.2.

### 10A NCAC 09 .2702 DEFINITIONS

For purposes of this Section:

- (1) a "qualified child care provider" means an individual who the Division has determined is fit to have responsibility for the safety and well-being of children based on the criminal history as set forth in G.S. 110-90.2.
  - (2) a "disqualified child care provider" means an individual who:
    - (a) the Division has determined is not fit to have responsibility for the safety and well-being of children based on the criminal history in accordance with G.S. 110-90.2;
    - (b) has been convicted of a misdemeanor or felony crime involving child neglect or child abuse;
    - (c) has been adjudicated a "responsible individual" under G.S. 7B-807(a1);
    - (d) has been convicted of a "reportable conviction" as defined in G.S. 14-208.6(4);
    - (e) the Division determines to be an habitually excessive user of alcohol, who illegally uses narcotic or other impairing drugs, or who is mentally or emotionally impaired to an extent that may be injurious to children;
    - (f) refuses to consent to a criminal history record check; or
    - (g) intentionally falsifies any information required to conduct a criminal history record check.
  - (3) For purposes of this Section, a "qualification letter" or "qualifying letter" shall mean the letter issued by the Division notifying an individual that he or she is a qualified child care provider.
- ~~(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 (e) 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 (e) of this Rule to the Division within five business days of moving into the home or their 16th birthday.

Authority G.S. 110-85; 110-90.2; 114-19.5; 143B-168.3; S.L. 1995, c. 507, s. 23.25.

## **10A NCAC 09 ~~2701.2703~~ CRIMINAL RECORD CHECK REQUIREMENTS FOR CHILD CARE PROVIDERS**

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

- (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)(1) a signed and completed Authority for Release of Information form; and
- (3)(2) a completed fingerprint card using SBI form FD-258; fingerprint impressions submitted on the form(s) required by the Division and State Bureau of Investigation.

If a prospective child care provider is an out of state resident, he or she shall also submit a certified local history from the Clerk of Superior Court in his or her county of residence along with items listed in Subparagraphs (a)(1) and (2) of this Paragraph.

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(e).

(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. The Division, in accordance with G.S. 110-90.2, may disqualify a~~ If the prospective child care provider if he or she 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, convicted of a crime, 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 shall use in making the determination of the prospective child care provider's qualification. The Division ~~shall also 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 and type of prior offenses; and
- (6) age of the individual at the time of occurrence.

(d) A prospective ~~child care provider's operator's~~, as defined by G.S. 110-86(7), refusal to complete the required criminal history record check paperwork is grounds to deny issuance of a permit, license or Notice of Compliance as set forth in 10A NCAC 09 .2101(c).

(e) Determination by the Division that the prospective ~~child care provider operator~~, as defined by G.S. 110-86(7), is disqualified is grounds reasonable cause to deny issuance of a permit, license or Notice of Compliance as set forth in 10A NCAC 09 .2101(c).

(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) Paragraph (a) of this Section. Rule.~~

~~(h) Determination by the Division by 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.~~

(h) 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. Child care providers found to be disqualified are not eligible for employment in child care until a qualification letter has been issued by the Division.

(i) Disqualification of a child care provider living in a family child care home shall be grounds for issuance of a summary suspension of the family child care home license in accordance with 10A NCAC 09 .2207.

(j) 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 license or any other administrative action or civil penalty permitted by law or rule. If an applicant appeals the disqualification, the child care provider shall not be employed during the appeal process.

(k) Operators, as defined by G.S. 110-86(7), shall include the criminal history mandatory reporting requirement in all new employee orientation information. Mandatory reporting requires all child care providers and household members who have incurred any pending charges, indictments or convictions (other than minor traffic offenses) since the last qualification letter was issued by the Division to notify the owner, operator or director of such charges within five business days before returning to work whichever comes first. The owner, operator or director shall notify the Division of any such pending charges, indictments or convictions within one business day of being notified.

(l) On or before three years from the date of the qualification letter was issued, the child care provider shall complete and submit the forms listed in Paragraph (a) of this Rule. Out of state residents shall submit a certified local history from the Clerk of Superior Court in their county of residence along with the form provided by the Division.

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

(n) After a child care provider has been qualified, the Division may complete a new criminal record check at any time when there has been an investigation that references the child care provider conducted by the Department of Social Services or the Division of Child Development and Early Education. 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 shall complete and submit the forms listed in Paragraph (a) of this Rule to the Division within five business days of the request for a new criminal record check.

(o) Any individuals who live in the household who have had their 16<sup>th</sup> birthday after the initial licensing of a family child care home, shall complete and submit the forms listed in Paragraph (a) of this Rule to the Division within five business days.

(p) Child care providers must have a valid qualification letter prior to employment or living in the family child care home and the qualification letter must be kept on file at the facility for review by representatives of the Division.

(q) Child care owners or directors must notify the Division of any new child care providers who are hired or moved into the home within five business days by submitting the form provided by the Division.

*Authority G.S. 110-85; 110-90.2; 114-19.5; 143B-168.3; 110-106; S.L. 1995, c. 507, s. 23.25.*

#### **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; agency~~ prior to caring for children and receiving subsidy payments:

- ~~(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)(1) a signed Authority for Release of Information using the form provided by the Division; and~~
- ~~(3)(2) a fingerprint card using SBI form FD-258; and fingerprint impressions submitted on the form(s) required by the Division and State Bureau of Investigation.~~
- ~~(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 a prospective child care provider is an out of state resident, he or she shall also submit a certified local history from the Clerk of Superior Court in their county of residence along with the items listed in Subparagraphs (a)(1) and (2) of this Rule.

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~~ his or her 16<sup>th</sup> 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)~~ (a)(2) of this Rule to the local purchasing agency within five business days of moving into the home or their 16<sup>th</sup> 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 ~~42 months~~ three years 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 and (a)(4)~~ (a)(2) 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 and type 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 fingerprint impressions 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 not receive payment during the period in which the state and federal ~~or national~~ criminal history check is being completed, ~~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) After a child care provider or household member, including family members and non-family members over 15 years old who use the home on a permanent or temporary basis as their primary residence, has been qualified, the Division shall 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 and Early Education. 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 (a) of this Rule to the Division within five business days of the request for a new criminal record check. 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) On or before three years from the date of the qualification letter was issued, the nonlicensed child care provider and any household members may complete and submit the forms described in Paragraph (a) of this Rule. The Division may request a certified criminal history check from the provider or household member to verify the Administrative Office of the Courts (AOC) results. 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) The qualification letter is valid for a maximum of three years from the date of issuance.

(m) Nonlicensed home providers and household members must have a valid qualification letter prior to receiving subsidy payments.

(4) 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.

*Authority G.S. 110-90.2; 114-19.5; 143B-168.3; S.L. 1995, c. 507, s. 23.25.*

### **10A NCAC 09 .2903 STAFF QUALIFICATIONS**

(a) Each center serving children ages birth to three years shall have a minimum of one staff who holds a Infant Toddler Family Specialist certification issued from the North Carolina Division of Public Health, or Birth-through-Kindergarten (B-K) Standard Professional I licensure or provisional licensure in B-K issued from the Department of Public Instruction. This staff shall provide program oversight and supervision for any caregivers in classrooms with children ages birth to three years.

(b) During the 10 month school year (as defined by the State Board of Education), each ~~group of preschool children~~ child (as defined by the State Board of Education) aged three and older who is identified as having special needs as evidenced by an IEP (excluding children identified as speech/language impaired only) shall have at least one lead teacher who holds Birth-through-Kindergarten (B-K) Standard Professional I licensure or provisional licensure in B-K, or Preschool Add-on licensure issued from the Department of Public Instruction. Children who do not have an IEP but are three years old on or before August 31 shall be served by a B-K certified teacher. During the time when school is not in session, each group of preschool children shall have at least one lead teacher with a minimum of an A.A.S. degree in early childhood education or child development or an A.A.S. degree in any major with 12 semester hours in early childhood education or child development.

(c) During the 10 month school year, (as defined by the State Board of Education), each group of school-age children shall have at least one teacher who holds State certification as a Special Education Teacher. During the time when school is not in session, each group of school-age children shall have at least one teacher who has completed at least two semester hours of school-age care related coursework and has completed or is enrolled in at least two additional semester hours of school-age related coursework.

(d) Center administrators shall have a Level III North Carolina Early Childhood Administration Credential and two years of verifiable work experience with children with developmental delays or disabilities.

*Authority G.S. 110-85; 110-88(14).*