

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 .1725 and amend the rules cited as .0604, .1719 and .2904.

Link to agency website pursuant to G.S. 150B.19.1(c): <http://ncchildcare.dhhs.state.nc.us/general/whatsnew.asp>

Proposed Effective Date: *January 1, 2012*

Public Hearing:

Date: *September 27, 2011*

Time: *1:30 p.m.*

Location: *Division of Child Development and Early Education, 319 Chapanoke Road, Suite 120, Room 300, Raleigh, NC*

Reason for Proposed Action: *The NC Child Care Commission proposes rule-making in direct response to comments that were received from the public and the Child Fatality Task Force requesting rule-making to improve the safety and welfare of children while in child care. Amendments to Rules .0604 and .1719(6) are proposed as the result of incidents in which children were burned by the contents within a crock pot when the electrical cord was pulled and the pot fell down. The amended rule states that small appliances with heating elements and/or cords shall not be accessible to preschool children.*

The adoption of Rule .1725 is proposed as a result of concerns related to injuries from small appliances as well as an incident in which a child was attacked by a dog while in care at a family child care home. This rule would require the provider to inform parents if they do or do not carry accidental or liability insurance. The parent can then decide whether or not to enroll their child in the facility. Amendments to Rules .1719(10) and (11) also would notify parents if the facility maintains any animals on the premises and would require the child care provider to secure all animals (indoors or outdoors) while children are in care.

Rule 10A NCAC 09 .2904(c) regards the enrollment of children who are typically developing in developmental day preschool classrooms. The goal of the rule is to have inclusive classrooms so that developmental day classrooms include typically developing children along with children that have special needs. However, during regular child care program visits, DCDEE found that the rule causes difficulties in classrooms due to frequent enrollment changes, which are common and lead to programs being deemed as out of compliance with the rule. In order to comply with the rule as it is now, it would require the dismissal of 50% of the special needs children served in order to accommodate typical children. Schools continually turn away special needs children whose parents want placement for their children. Without an amendment to the rule, the program and services currently provided would be lost to the community and the children of Wake County. Inclusive classrooms that include typically developing children along with children with special needs is also considered as best practice according to current early childhood research. Amendments to Rule .2904(c), will eliminate the enrollment capacity of 50% or more for typically developing children in a developmental day preschool classroom.

Procedure by which a person can object to the agency on a proposed rule: *Anyone wishing to comment on these proposed rules or would like to request copies of the rules, should contact Dedra Alston, Rule-making Coordinator, NC Division of Child Development and Early Education, 2201 Mail Service Center, Raleigh, NC 27699-2201, at (919)890-7060 or Dedra.Alston@dhhs.nc.gov. Written comments will be accepted through **October 31, 2011**. Oral Comments may be made during the public hearing. The Commission Chair may impose time limits for oral remarks.*

Comments may be submitted to: *Dedra Alston, 2201 Mail Service Center, Raleigh, NC 27603, phone (919)890-7060, fax (919)662-4568, email Dedra.Alston@dhhs.nc.gov*

Comment period ends: *October 31, 2011*

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:
- Substantial economic impact (\geq \$500,000)
- Approved by OSBM
- Approval by OSBM not required

CHAPTER 09 - CHILD CARE RULES

SECTION .0600 - SAFETY REQUIREMENTS FOR CHILD CARE CENTERS

10A NCAC 09 .0604 GENERAL SAFETY REQUIREMENTS

- (a) Potentially hazardous items, such as archery equipment, hand and power tools, nails, chemicals, propane stoves, lawn mowers, and gasoline or kerosene, whether or not intended for use by children, shall be stored in locked areas or with other safeguards, or shall be removed from the premises.
- (b) Firearms and ammunition are prohibited in a licensed child care program unless carried by a law enforcement officer.
- (c) Electrical outlets not in use which are located in space used by the children shall be covered with safety plugs unless located behind furniture or equipment that cannot be moved by a child.
- (d) Electric fans shall be mounted out of the reach of children or shall be fitted with a mesh guard to prevent access by children.
- (e) All electrical appliances shall be used only in accordance with the manufacturer's instructions. For small appliances with heating elements, such as bottle warmers, crock pots, irons, coffee pots, or curling irons, neither the appliance nor the cord, if applicable, shall be accessible to preschool children.
- (f) Electrical cords shall not be accessible to infants and toddlers. Extension cords, except as approved by the local fire inspector, shall not be used. Frayed or cracked electrical cords shall be replaced.
- (g) All materials used for starting fires, such as matches and lighters, shall be kept in locked storage or shall be stored out of the reach of children.
- (h) Smoking is not permitted in space used by children when children are present. All smoking materials shall be kept in locked storage or out of the reach of children.
- (i) Fuel burning heaters, fireplaces and floor furnaces shall be provided with a protective screen attached securely to substantial supports to prevent access by children and to prevent objects from being thrown into them.
- (j) Plants that are toxic shall not be in indoor or outdoor space that is used by or is accessible to children.
- (k) Air conditioning units shall be located so that they are not accessible to children or shall be fitted with a mesh guard to prevent objects from being thrown into them.
- (l) Gas tanks shall be located so they are not accessible to the children or shall be in a protective enclosure or surrounded by a protective guard.
- (m) Cribs and playpens shall be placed so that the children occupying them shall not have access to cords or ropes, such as venetian blind cords.
- (n) Once a day, prior to initial use, the indoor and outdoor premises shall be checked for debris, vandalism, and broken equipment. Debris shall be removed and disposed.
- (o) Plastic bags, toys, and toy parts small enough to be swallowed, and materials that can be easily torn apart such as foam rubber and styrofoam, shall not be accessible to children under three years of age, except that styrofoam plates and larger pieces of foam rubber may be used for supervised art activities and styrofoam plates may be used for food service. Latex and rubber balloons shall not be accessible to children under five years of age.
- (p) When non-ambulatory children are in care, a crib or other device shall be available for evacuation in case of fire or other emergency. The crib or other device shall be fitted with wheels in order to be easily moveable, have a reinforced bottom, and shall be able to fit through the designated fire exit. For centers that do not meet institutional building code, and the exit is more than eight inches above grade, the center shall develop a plan to ensure a safe and timely evacuation of the crib or other device. This plan shall be demonstrated to a Division representative for review and approval. During the monthly fire drills required by Rule 10A NCAC 09 .0302(d)(4), the evacuation crib or other device shall be used in the manner described in the evacuation plan.
- (q) A first aid kit must always be available on site.

Authority G.S. 110-85; 110-91(3),(6); 143B-168.3.

SECTION .1700 –FAMILY CHILD CARE HOME REQUIREMENTS

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

The operator shall maintain a safe indoor and outdoor environment for the children in care. In addition, the operator shall:

- (1) keep all areas used by the children, indoors and outdoors, clean and orderly and free of items which are potentially hazardous to children. This includes the removal of small items that a child can swallow. In addition, loose nails or screws and splinters shall be removed on inside and outside equipment;
- (2) safely store equipment and supplies such as lawnmowers, power tools, or nails, so they are inaccessible to children;
- (3) ensure that all stationary outdoor equipment is firmly anchored and is not installed over concrete or asphalt. Footings which anchor the equipment shall not be exposed;
- (4) securely mount electric fans out of the reach of children or have a mesh guard on each fan;
- (5) cover all electrical outlets not in use and remove old, cracked or frayed cords in occupied outlets;
- (6) ensure that, for small appliances with heating elements, such as bottle warmers, crock pots, irons, coffee pots, or curling irons, neither the appliance nor the cord, if applicable, shall be accessible to preschool children;
- ~~(6)~~(7) have solid and safe indoor and outdoor stairs and steps if these are used by the children. Indoor and outdoor stairs with two or more steps which are used by the children shall be railed. Indoor stairs with more than two steps shall be made inaccessible to children in care who are two years old or younger;

- ~~(7)~~(8) maintain any swimming pools or wading pools on the premises in a manner which will safeguard the lives and health of the children. All swimming or wading pools used by children in care shall meet the "Rules Governing Public Swimming Pools," in accordance with 15A NCAC 18A .2500 which are hereby incorporated by reference including subsequent amendments. A copy of these Rules is on file at the Division at the address given in Rule .0102 of this ~~Subchapter~~ Chapter or may be obtained at no cost by writing the North Carolina Division of Environmental Health, 1630 Mail Service Center, Raleigh, NC 26799-1630;
- ~~(8)~~(9) enclose any in-ground swimming pools by a fence four feet high to prevent chance access by children. The swimming pool shall be separate from the play area. Access to the water in above ground swimming pools shall be prevented by locking and securing the ladder in place or storing the ladder in a place inaccessible to the children;
- ~~(9)~~(10) ~~ensure that animals that are potentially dangerous to children as determined by the Division are safely secured in areas not accessible to the children in care; and~~ secure all dogs in areas that are not accessible to children in care, indoors and outdoors, except those times when dogs are used in supervised activities or pet therapy programs;
- (11) notify parents prior to enrollment of children of all animals on the Family Child Care Home premises. In addition, before new animals come onto the Family Child Care Home premises, parents shall be notified; and
- ~~(10)~~(12) safely store all combustible materials that may create a fire hazard.

Authority G.S. 110-85; 110-88; 110-91(3),(4),(5),(6).

10A NCAC 09 .1725 ACCIDENT/LIABILITY INSURANCE

- (a) The legal operator shall provide written notification to the parent of each child enrolled that specifies the amount of accident or liability insurance carried by the Family Child Care Home (FCCH) operator or the lack of accident or liability insurance coverage.
- (b) Each parent must sign a statement which attests that a copy of the FCCH's written notice regarding insurance was given to and discussed with him or her. This statement shall be kept in the child's file.

Authority G.S. 110-85; 110-88.

SECTION .2900 - DEVELOPMENTAL DAY SERVICES

10A NCAC 09 .2904 PROGRAM REQUIREMENTS

- (a) Children shall participate in daily activities outlined in a plan of care such as an Individualized Family Service Plan (IFSP), Individualized Education Program (IEP), Person Centered Plan (PCP), or for children who are typically developing, an activity plan developed by the center. Activities shall allow children to participate in whole group, as part of a group, or independently.
- (b) In addition to the restrictions specified in 10A NCAC 09 .0713 regarding ages and grouping of children, preschool children aged three and older shall not be grouped with school aged children except for special events or activities such as birthday, holiday, or cultural celebrations and special presentations such as puppet or magic shows, a special story teller, or a discussion of safety practices by a fireman or nurse. Children aged birth to five years may be cared for in groups with older children for the first and last operating hour of the day provided the staff/child ratio for the youngest child in the group is maintained.
- (c) During the 10-month school year (as defined by the State Board of Education), 75 percent or more of classrooms with preschool children aged three and older, shall maintain an enrollment capacity of 50 percent or more typically developing children. In addition to operational policies required by 10A NCAC 09 .2805(a), Developmental Day Center policies shall also include a description of the ways that children with special needs have opportunities to interact with children who are typically developing.

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