

1 10A NCAC 09 .2703 is amended with changes as published in 37:20 NCR 2015-2017 as follows:

2
3 10A NCAC 09 .2703 CRIMINAL HISTORY RECORD CHECK REQUIREMENTS FOR CHILD CARE
4 PROVIDERS

5 (a) In addition to the requirements in Rules .0302 and .1702 of this Chapter, a child care ~~provider~~ provider, as defined
6 in G.S. 110-90.2, shall submit the following to the Division prior to the issuance of a license or prior to beginning
7 employment:

- 8 (1) ~~a signed and completed Authority for Release of Information form;~~ any forms required by the State
9 Bureau of Investigation or Federal Bureau of Investigation to process a state and national fingerprint
10 check as required by G.S. 110-90.2; and
11 (2) fingerprint impressions submitted on ~~the forms~~ an FD-258 applicant fingerprint card or other form
12 required by the Division and State Bureau of Investigation;
13 (3) ~~if a child care provider is an out of state resident, he or she shall also submit a certified local history~~
14 ~~from the Clerk of Superior Court in his or her county of residence. any applicant who has lived~~
15 ~~outside of North Carolina in the previous five years, shall submit an affidavit [verifying they have~~
16 ~~completed a request for an out of state background check for each state in which they resided in the~~
17 ~~preceding five years.] attesting that the applicant has requested a background check from (a) the~~
18 ~~state criminal registry or repository, with use of fingerprints, (b) the state sex offender registry or~~
19 ~~repository, and (c) the state-based child abuse and neglect registry and database for each state in~~
20 ~~which the applicant has lived, at any time and for whatever length of time, within the five years~~
21 ~~preceding the application.~~

22
23 ~~All required forms can be found on the Division's website at~~
24 ~~http://ncchildcare.dhhs.state.nc.us/general/dhhsere_childcare.asp. All forms referenced in this subsection are available~~
25 ~~through the Automated Background Check Management System (ABCMS) at~~
26 ~~<https://ncabcms.nc.gov/DCDEE/Applicant/>~~

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

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

1 (8) any additional information the applicant wishes the Division to consider regarding the applicant's
2 criminal history.

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

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

9 (e) Child care ~~providers~~ providers, as defined in G.S. 110-90.2(a), shall have a valid qualification letter prior to
10 employment or living in ~~the family child care home,~~ a child care facility and the qualification letter shall be kept on
11 file at the facility for review by representatives of the Division.

12 (f) Provisional child care providers ~~may be employed~~ are eligible for employment at a child care facility ~~or~~ and are
13 eligible to reside in a family child care home, nonlicensed home, or child care center in a residence and shall be
14 counted in staff/child ratio. Provisional child care providers shall be supervised at all times by an individual who
15 received a qualifying result on a criminal background check within the past ~~three~~ five years and may not be left alone
16 with children. ~~Owners~~ Child care facilities found to be in violation of this Paragraph may be issued an administrative
17 action up to and including revocation of their child care license or notice of compliance in accordance with Section
18 .2200 of this Chapter.

19 (g) ~~Within five days of~~ When applying for provisional ~~status through the Division's online portal,~~ status, the applicant
20 shall complete and submit any documents specific to their former state(s) of residence that are necessary to complete
21 the out-of-state portion of their background check. ~~The applicant shall also certify in writing within five days to the~~
22 ~~Division that they have made the required requests.~~ When requested by the Division, the applicant shall submit a copy
23 and proof of submission of the documents necessary to complete the out-of-state portion of their background check.
24 The Division shall provide to the applicant the necessary information to make these requests, if applicable.

25 (h) ~~After six months,~~ Within 45 days of issuing a provisional status to an applicant, the Division shall issue a
26 qualification letter to a provisional child care provider if ~~the Division does not receive a response to its request~~ no
27 ~~criminal background check results that would disqualify the applicant are returned or if there is no response to the~~
28 ~~applicant's or the Division's request~~ for the state sex offender registry check, the state abuse and neglect registry, or
29 the state criminal history check from the state or states in which the provisional provider currently resides or has
30 resided at any time during the ~~preceding five years.~~ five years prior to submitting documents for a criminal history
31 check. ~~However, nothing in this Rule shall prevent the Division from disqualifying a provisional child care provider~~
32 ~~at a later date based upon failure to comply with the requirements of Paragraph (g) of this Rule or if the Division~~
33 ~~determines the applicant has submitted false information to the Division or if information is received from any other~~
34 ~~state after the qualification letter has been issued.~~ six months have elapsed.

35 (i) Child care providers found to be disqualified ~~pursuant to G.S. 110-90.2, G.S. 110-105.6, or 10A NCAC 09 .2703~~
36 ~~by the Division~~ shall not be eligible for employment in child care until a qualification letter has been issued by the
37 Division.

- 1 (j) ~~Child care providers determined by the Division to be disqualified shall be~~ ~~have their employment~~ terminated by
2 ~~the center or family child care home immediately upon receipt of the disqualification notice. A child care facility shall~~
3 ~~terminate the employment of any child care provider upon receipt of a notice of disqualification of the provider from~~
4 ~~the Division notwithstanding any appeal by provider of the disqualification.~~
- 5 (k) Disqualification of a child care provider living in a ~~family child care home or a center located in a residence~~ child
6 care facility shall be grounds for issuance of a summary suspension of the license in accordance with 10A NCAC 09
7 .2213.
- 8 (l) Refusal on the part of the employer to dismiss a child care provider who has been found to be disqualified shall be
9 grounds for suspension, denial, or revocation of the license or any other administrative action or civil penalty permitted
10 by ~~law or rule. Section .2200 of this Chapter.~~ If an applicant appeals the disqualification, the child care provider shall
11 not be employed during the appeal process.
- 12 (m) Operators, as defined by G.S. 110-86(7), shall include the criminal history mandatory reporting requirement in
13 all new employee orientation information. All child care ~~providers and household members~~ providers, as defined in
14 G.S. 110-90.2(a)(2), who have incurred any pending charges, indictments, or convictions (other than minor traffic
15 offenses) since the last qualification letter was issued by the Division shall notify the operator of such charges within
16 five business days or before returning to work, whichever comes first. The operator shall notify the Division of any
17 such pending charges, indictments, or convictions within one business day of being notified.
- 18 (n) The qualification letter shall be valid for a maximum of ~~three~~ five years from the date of issuance.
- 19 (o) Prior to the expiration date of the qualification letter, the child care provider shall complete and submit the forms
20 listed in Paragraph (a) of this Rule.
- 21 (p) After a child care provider has been qualified, the Division shall complete a new criminal history record check if
22 the Division of Child Development and Early Education conducts an investigation in accordance with G.S. 110-90.2,
23 G.S. 110-105.3, or 10A NCAC 09 .0201 involving alleged criminal activity by the child care provider.
- 24 (q) ~~Individuals who live in the household [use a family child care home or center located in a residence on a permanent~~
25 ~~or temporary basis as their place of residence, including those] who have had their 16th birthday after the initial~~
26 ~~licensing of a family child care home [or center located in a residence,] shall complete and submit the forms listed in~~
27 ~~Paragraph (a) of this Rule to the Division within five business days of [using the home as their permanent or temporary~~
28 ~~residence or] their 16th birthday. Any individual over the age of fifteen who resides, as defined in 10A NCAC 09~~
29 ~~.0102(40), in a child care facility on either a temporary or permanent basis shall comply with the requirements of~~
30 ~~Paragraph (a) of this Rule within five days of either moving into the facility or within five days after their sixteenth~~
31 ~~birthday.~~
- 32 (r) ~~Child care operators~~ Operators shall notify the Division of all new child care ~~providers~~ providers, as defined in
33 G.S. 110-90.2(a)(2), who are hired or have moved into the ~~home or center located with a residence~~ child care facility
34 within five business ~~days~~ days, by submitting the form provided by the Division.
- 35 (s) Any application for a criminal background check that is not complete, including the required components in
36 Paragraph (a) of this Rule, within 30 days of beginning the application, will expire and be withdrawn by the Division.

1 (t) The Division shall ~~disqualify any child care provider or household member of a family child care home or center~~
2 ~~located in a residence if they fail to comply with the requirements of~~ not issue, and shall revoke any previously issued,
3 qualification letters to an individual who fails to comply with Paragraph (g) of this ~~[Rule]~~ Rule, or if the Division
4 determines ~~[the applicant has submitted]~~ that the individual provided false information in connection with ~~[their]~~ either
5 an application or a criminal background check required by this Rule, or if the Division determines that the individual
6 is not qualified to be a child care provider pursuant to G.S. 110-90.2 or 42 USC 9558f. ~~[or application to the Division~~
7 ~~or if information that disqualifies the child care provider is received from any state during the qualification time~~
8 ~~period.]~~

9 *History Note:* Authority G.S. 110-85; 110-86(7); 110-90.2; 110-106; 114-19.5; 143B-168.3;
10 *Temporary Adoption Eff. January 1, 1996;*
11 *Eff. April 1, 1997;*
12 *Amended Eff. March 1, 2014; November 1, 2007;*
13 *Readopted Eff. January 1, 2019;*
14 *Amended Eff. October 1, 2023; February 1, 2021.*