

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Child Care Commission

RULE CITATION: 10A NCAC 09 .0601, .1707, .1725

RECOMMENDATION DATE: December 12, 2023

RECOMMENDED ACTION:

X Approve, but note staff's comment

Object, based on:

Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

These three rules are complicated by ambiguities in statute which potentially give different agencies authority over their subject matter. Ultimately, I am recommending approval (or approval contingent on a technical change) because the statute appears ambiguous as to which agency has authority, the subject matter of the rules is clearly contemplated by the statutes, and the Child Care Commission reports that the other agencies who might have authority under the statute believe the Child Care Commission has authority. The specifics of each rule will be dealt with in turn:

10A NCAC 09 .0601

At issue in this rule is paragraph (f), dealing with lead poisoning and asbestos hazards in child care centers.

G.S. 110-91(3) gives authority to the Secretary of Health and Human Services over location: "Location. - Each child care facility shall be located in an area which is free from conditions which are considered hazardous to the physical and moral welfare of the children in care in the opinion of the Secretary."

G.S. 110-91(4) gives overlapping authority over building to the Child Care Commission and the Building Code Council: "Building. - Each child care facility shall be located in a building which meets the appropriate requirements of the North Carolina Building Code under standards which shall be developed by the Building Code Council, subject to adoption by the Commission specifically for child care facilities, including facilities operated in a private residence."

Seth Ascher
Commission Counsel

G.S. 110-91(6) does not give authority to another agency over space and equipment requirements, so the Child Care Commission would have authority under its general authority to make rules implementing this article, per 143B-168.3.

Finally, G.S. 130A-131.7, dealing with preventing lead poisoning in children, falls within statutes implemented by the Commission for Public Health.

10A NCAC 09 .1725

This rule deals with sanitation requirements for family child care homes. As background for this rule, G.S. 110-86(3) defines the category of “child care facilities” as including both “child care centers” and “family child care homes”. G.S. 110-91(1) directs the Commission for Public Health to adopt rules regarding sanitation standards for child care “centers.” The statute does not contain specific language about rules regarding sanitation in family child care homes.

Arguably, the agency could govern sanitation in family child care homes under their authority over “space and equipment” in G.S. 110-91(6). In particular, it would seem that safety could include sanitation in the following language: “Each child care facility shall provide indoor area equipment and furnishings that are child size, sturdy, safe, and in good repair. Each child care facility that provides outdoor area equipment and furnishings shall provide outdoor area equipment and furnishings that are child size, sturdy, free of hazards that pose a threat of serious injury to children while engaged in normal play activities, and in good repair.”

Additionally, the agency points to 45 CFR 98.41 as authority for this rule. This federal regulation covers the requirements of grantees receiving Child Care and Development Funds. The regulation requires a “lead agency” to ensure health and safety standards are met in all child care facilities. It appears that the Governor designated the Child Care Commission as the Lead Agency to administer these funds.

By itself, I would question whether the Governor’s agreement to federal funding could create rulemaking authority under the APA without separate action by the General Assembly. However, in this case, where the statute arguably grants similar authority to the agency, it seems reasonable to use the CFR as evidence supporting that interpretation.

More narrowly, paragraph (a) of this rule deals with testing water for lead. As mentioned above, G.S. 130A-131.7 gives the Commission for Public Health general authority over preventing lead poisoning in children. However, a provision in the 2021 Budget (S.L. 2021-180, 9G.8) provided as part of a lead paint and asbestos abatement program child care facilities should test for lead and asbestos hazards. Those sections directed the “Commission for Public Health, Child Care Commission, and State Board of Education” to “adopt rules as needed to implement this subdivision.” The Session Law is ambiguous as to which of those agencies should adopt what rules, but as discussed above, the testing of family child care homes would arguably fall within the Child Care Commissions authority regarding safety.

10 A NCAC 09 .1707

Item 2 in this rule deals with lead and asbestos hazards in family child care homes. The same ambiguities discussed in 10A NCAC 09 .0601 are present here.

Additionally, there is a small ambiguity on line 12 in item (5) which I believe could be resolved with a technical correction. As written, the rule directs that “heating appliances shall be installed and maintained according to the NC Building Code.” The problem is that different Building Codes could apply to heating appliances, depending on the nature and structure of the building, i.e. the Residential Code, the Building Code, or the Fuel Gas Code. I believe that the intent of the agency could be clearly communicated by substituting “heating appliances shall be installed and maintained according to any North Carolina Building Code provisions governing the building.”

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021**

**SENATE BILL 105
RATIFIED BILL**

AN ACT TO MAKE BASE BUDGET APPROPRIATIONS FOR CURRENT OPERATIONS
OF STATE AGENCIES, DEPARTMENTS, AND INSTITUTIONS AND FOR OTHER
PURPOSES.

The General Assembly of North Carolina enacts:

PART I. TITLE AND INTRODUCTION

TITLE OF ACT

SECTION 1.1. This act shall be known as the "Current Operations Appropriations Act of 2021."

INTRODUCTION

SECTION 1.2. The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget in accordance with the State Budget Act. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes, and the savings shall revert to the appropriate fund at the end of each fiscal year, except as otherwise provided by law.

PART II. CURRENT OPERATIONS AND EXPANSION/GENERAL FUND

GENERAL FUND APPROPRIATIONS

SECTION 2.1.(a) Appropriations from the General Fund for the budgets of the State departments, institutions, and agencies, and for other purposes as enumerated, are made for each year of the 2021-2023 fiscal biennium, according to the following schedule:

Current Operations - General Fund	FY 2021-2022	FY 2022-2023
EDUCATION		
Community College System		
Requirements	1,819,143,571	1,685,373,047
Less: Receipts	502,936,159	345,149,910
Net Appropriation	1,316,207,412	1,340,223,137
Public Instruction		
Requirements	13,493,426,049	13,146,477,032
Less: Receipts	2,890,675,279	2,219,558,462
Net Appropriation	10,602,750,770	10,926,918,570

University of North Carolina
UNC at Asheville



- (f) Removal. – The Governor may remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance, as provided in G.S. 143B-13.
- (g) Compensation. – The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.
- (h) Quorum. – A majority of the membership of the Commission constitutes a quorum for the transaction of business.
- (i) Services. – All clerical and other services required by the Commission shall be supplied by the Secretary.

"§§ 87-99.3 through 87-99.9: Reserved for future codification purposes."

SECTION 9G.7.(c) G.S. 93B-1(3) reads as rewritten:

"(3) State agency licensing board. – Any State agency staffed by full-time State employees, which as part of their regular functions issue licenses. This section does not apply to the North Carolina Criminal Justice Education and Training Standards Commission, the North Carolina Sheriffs' Education and Training Standards Commission, and the North Carolina Department of Revenue. The following is a nonexclusive list of State agency licensing boards and the profession or occupation for which the board, agency, or officer may issue licenses:

...

~~b. The Department of Environmental Quality.~~

~~1. Well Contractors Certification Commission.~~

~~I. Well Contractor. Article 7A of Chapter 87 of the General Statutes.~~

c. The Department of Health and Human Services.

1. North Carolina Medical Care Commission.

I. Ambulance Attendant, Emergency Medical Technician. Article 7 of Chapter 131E of the General Statutes.

2. Well Contractors Certification Commission.

I. Well Contractor. Article 7A of Chapter 87 of the General Statutes.

...."

SECTION 9G.7.(d) G.S. 143B-138.1(d) is amended by adding a new subdivision to read:

"(7) Well Contractors Certification Commission."

LEAD AND ASBESTOS REMEDIATION IN PUBLIC SCHOOL UNITS AND CHILD CARE FACILITIES

SECTION 9G.8.(a) Of the funds appropriated in this act from the State Fiscal Recovery Fund to the Department of Health and Human Services, Division of Public Health, the sum of one hundred fifty million dollars (\$150,000,000) in nonrecurring funds for the 2021-2022 fiscal year shall be allocated as follows for lead and asbestos remediation and abatement programs to benefit public school units and child care facilities:

- (1) \$32,812,500 in nonrecurring funds shall be used to fund a program for the testing and remediation of lead levels in drinking water at public school units and child care facilities. As part of this program, public school units shall be required to test for lead levels in drinking water at their facilities, to the extent feasible and practical, following the same model for testing conducted in child care facilities pursuant to 15A NCAC 18A .2816. In addition, the program shall include at least the following components:

- a. The Department of Health and Human Services (DHHS) and the Department of Public Instruction (DPI) shall develop a mechanism for providing funding for the testing and mitigation of lead in drinking water that meets the lead poisoning hazard level, as set forth in G.S. 130A-131.7, that is identified in public school units and child care facilities, including the replacement of service lines, pipes, and fixtures, as needed, or for the installation of filters at affected faucets within public school units and child care facilities that test positive for lead in drinking water.
 - b. The Commission for Public Health, Child Care Commission, and State Board of Education shall adopt rules as necessary to implement this subdivision.
- (2) \$117,187,500 in nonrecurring funds shall be used to fund a program for lead paint abatement and asbestos abatement in public school units and child care facilities. As part of the program, public school units and child care facilities shall be required to conduct inspections for lead paint and asbestos hazards in their facilities. The program shall include at least the following components:
- a. DHHS and DPI shall develop a mechanism for providing funding for lead paint abatement, asbestos inspection and abatement, or both in public school units and child care facilities; provided, however, that the following conditions are met:
 - 1. A professional accredited in accordance with G.S. 130A-447 or certified in accordance with G.S. 130A-453.03 determines that action must be taken in response to an inspection report.
 - 2. Lead paint, asbestos, or both are detected as part of an inspection or as part of a capital, renovation, or repair project that meets the lead-based paint hazard level, as set forth in G.S. 130A-131.7, or that meets the definition of asbestos containing material, as set forth in G.S. 130A-444. Capital projects may include HVAC, window, or other ventilation projects related to COVID-19 mitigation, or other capital, renovation, or repair projects undertaken during calendar years 2021 through 2024.
 - b. A requirement that public school unit recipients of funds allocated under this subdivision shall provide matching funds in the amount of one dollar (\$1.00) of local funds for every two dollars (\$2.00) of State funds.
 - c. The Commission for Public Health, Child Care Commission, and State Board of Education shall adopt rules as needed to implement this subdivision.

SECTION 9G.8.(b) The Department of Health and Human Services, Division of Public Health (DPH), shall serve as the lead agency responsible for administering the programs authorized by subsection (a) of this section. In serving in this capacity, the DPH shall collaborate with (i) the Department of Public Instruction regarding administration of these programs for the benefit of public school units and charter schools and (ii) its Division of Child Development and Early Education regarding administration of these programs for the benefit of child care facilities. The DPH shall transfer funds to the Department of Public Instruction and to the Division of Child Development and Early Education as necessary to accomplish the goals of these programs in an efficient and cost-effective manner.

SECTION 9G.8.(c) Not later than six months after all funds appropriated in this act for the purposes of this section have been expended, the Department of Health and Human

Services, Division of Public Health, and the Department of Public Instruction shall report to the Joint Legislative Oversight Committee on Health and Human Services, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division on the following lead and asbestos remediation and abatement activities authorized by this section, broken down by county:

- (1) The number of public school units and child care facilities tested for lead in drinking water, for lead paint or asbestos in the buildings or facilities, or a combination of these.
- (2) The number of public school units and child care facilities determined to be in need of remediation for lead in drinking water, for lead paint or asbestos abatement, or a combination of these.
- (3) The number of public school units and child care facilities that have requested assistance from the Department of Health and Human Services or the Department of Public Instruction with remediation for lead in drinking water, for lead paint or asbestos abatement, or for a combination of these.
- (4) The number of remediation or abatement projects completed under the programs authorized by subsection (a) of this section and the total amount of funds expended for each project, broken down by each category of remediation and abatement.

SECTION 9G.8.(d) The funds allocated under this section shall remain available until depleted or on the date federal law requires the funds to be fully expended, whichever is earlier.

USE OF JUUL SETTLEMENT FUNDS

SECTION 9G.10.(a) The Youth Electronic Nicotine Dependence Abatement Fund (Fund) is created within the Department of Health and Human Services, Division of Public Health, as a nonreverting special fund. The Fund shall consist of (i) monies received by the State as a beneficiary of the final consent judgment resolving the case, State of North Carolina, ex rel. Joshua H. Stein, Attorney General v. Juul Labs, Inc., in the General Court of Justice, Superior Court Division, Durham County (JLI Case) and (ii) all interest and investment earnings received on monies in the Fund. Monies in the Fund shall be expended only by an act of appropriation by the General Assembly and in accordance with the final consent judgment resolving the JLI Case.

SECTION 9G.10.(b) There is appropriated from the Youth Electronic Nicotine Dependence Abatement Fund created in subsection (a) of this section to the Department of Health and Human Services, Division of Public Health, the sum of thirteen million dollars (\$13,000,000) in nonrecurring funds for the 2021-2022 fiscal year to be used and allocated as follows:

- (1) \$2,000,000 shall be transferred to the Department of Justice to cover the costs of litigation incurred by the Office of the Attorney General with respect to the JLI Case.
- (2) \$4,400,000 shall be allocated for tobacco cessation media campaigns, resources, and programs to help both youth and young adults who have become addicted to nicotine using e-cigarettes and other tobacco/nicotine products quit.
- (3) \$3,300,000 shall be allocated for evidence-based media and education campaigns to prevent the initiation of tobacco use, especially with respect to e-cigarettes and other new and emerging tobacco/nicotine products.
- (4) \$1,100,000 shall be allocated for data monitoring to track tobacco/nicotine use and exposure among youth and young adults and populations at risk; and for independent evaluation of the reach and effectiveness of the State's tobacco prevention and cessation programs with respect to evidence-based programs designed to help youth addicted to nicotine through e-cigarettes and other new and emerging tobacco and nicotine products quit.

§ 110-91. Mandatory standards for a license.

All child care facilities shall comply with all State laws and federal laws and local ordinances that pertain to child health, safety, and welfare. Except as otherwise provided in this Article, the standards in this section shall be complied with by all child care facilities. However, none of the standards in this section apply to the school-age children of the operator of a child care facility but do apply to the preschool-age children of the operator. Children 13 years of age or older may receive child care on a voluntary basis provided all applicable required standards are met. The standards in this section, along with any other applicable State laws and federal laws or local ordinances, shall be the required standards for the issuance of a license by the Secretary under the policies and procedures of the Commission except that the Commission may, in its discretion, adopt less stringent standards for the licensing of facilities which provide care on a temporary, part-time, drop-in, seasonal, after-school or other than a full-time basis.

- (1) **Medical Care and Sanitation.** - The Commission for Public Health shall adopt rules which establish minimum sanitation standards for child care centers and their personnel. The sanitation rules adopted by the Commission for Public Health shall cover such matters as the cleanliness of floors, walls, ceilings, storage spaces, utensils, and other facilities; adequacy of ventilation; sanitation of water supply, lavatory facilities, toilet facilities, sewage disposal, food protection facilities, bactericidal treatment of eating and drinking utensils, and solid-waste storage and disposal; methods of food preparation and serving; infectious disease control; sleeping facilities; and other items and facilities as are necessary in the interest of the public health. The Commission for Public Health shall allow child care centers to use domestic kitchen equipment, provided appropriate temperature levels for heating, cooling, and storing are maintained. Child care centers that fry foods shall use commercial hoods. These rules shall be developed in consultation with the Department.

The Commission shall adopt rules for child care facilities to establish minimum requirements for child and staff health assessments and medical care procedures. These rules shall be developed in consultation with the Department. Each child shall have a health assessment before being admitted or within 30 days following admission to a child care facility. The assessment shall be done by: (i) a licensed physician, (ii) the physician's authorized agent who is currently approved by the North Carolina Medical Board, or comparable certifying board in any state contiguous to North Carolina, (iii) a certified nurse practitioner, or (iv) a public health nurse meeting the Departments Standards for Early Periodic Screening, Diagnosis, and Treatment Program. However, no health assessment shall be required of any staff or child who is and has been in normal health when the staff, or the child's parent, guardian, or full-time custodian objects in writing to a health assessment on religious grounds which conform to the teachings and practice of any recognized church or religious denomination.

Organizations that provide prepared meals to child care centers only are considered child care centers for purposes of compliance with appropriate sanitation standards.

- (2) **Health-Related Activities.** -
 - a. through f. Repealed by Session Laws 2012-142, s. 10.1(c1), effective July 1, 2012.

- g. Nutrition standards. - The Commission shall adopt rules for child care facilities to ensure that food and beverages provided by a child care facility are nutritious and align with children's developmental needs. The Commission shall consult with the Division of Child Development and Early Education of the Department of Health and Human Services to develop nutrition standards to provide for requirements appropriate for children of different ages. In developing nutrition standards, the Commission shall consider the following recommendations:
 - 1. Limiting or prohibiting the serving of sweetened beverages, other than one hundred percent (100%) fruit juice to children of any age.
 - 2. Limiting or prohibiting the serving of whole milk to children two years of age or older or flavored milk to children of any age.
 - 3. Limiting or prohibiting the serving of more than six ounces of juice per day to children of any age.
 - 4. Limiting or prohibiting the serving of juice from a bottle.
 - h. Parental exceptions. -
 - 1. Parents or guardians of a child enrolled in a child care facility may (i) provide food and beverages to their child that may not meet the nutrition standards adopted by the Commission and (ii) opt out of any supplemental food program provided by the child care facility. The child care facility shall not provide food or beverages to a child whose parent or guardian has opted out of any supplemental food program provided by the child care facility and whose parent or guardian is providing food and beverages for the child.
 - 2. The Commission, the Division of Child Development and Early Education of the Department of Health and Human Services, or any State agency or contracting entity with a State agency shall not evaluate the nutritional value or adequacy of the components of food and beverages provided by a parent or guardian to his or her child enrolled in a child care facility as an indicator of environmental quality ratings.
 - i. Rest time. - Each child care facility shall have a rest period for each child in care after lunch or at some other appropriate time and arrange for each child in care to be out-of-doors each day if weather conditions permit.
- (3) Location. - Each child care facility shall be located in an area which is free from conditions which are considered hazardous to the physical and moral welfare of the children in care in the opinion of the Secretary.
 - (4) Building. - Each child care facility shall be located in a building which meets the appropriate requirements of the North Carolina Building Code under standards which shall be developed by the Building Code Council, subject to adoption by the Commission specifically for child care facilities, including facilities operated in a private residence. These standards shall be consistent with the provisions of this Article. A local

building code enforcement officer shall approve any proposed alternate material, design, or method of construction, provided the building code enforcement officer finds that the alternate, for the purpose intended, is at least the equivalent of that prescribed in the technical building codes in quality, strength, effectiveness, fire resistance, durability, or safety. A local building code enforcement officer shall require that sufficient evidence or proof be submitted to substantiate any claim made regarding the alternate. The Child Care Commission may request changes to the Building Code to suit the special needs of preschool children. Satisfactorily written reports from representatives of building inspection agencies shall be required prior to the issuance of a license and whenever renovations are made to a child care center, or when the operator requests licensure of space not previously approved for child care.

- (5) Fire Prevention. - Each child care facility shall be located in a building that meets appropriate requirements for fire prevention and safe evacuation that apply to child care facilities as established by the Department of Insurance in consultation with the Department. Except for child care centers located on State property, each child care center shall be inspected at least annually by a local fire department or volunteer fire department for compliance with these requirements. Child care centers located on State property shall be inspected at least annually by an official designated by the Department of Insurance.

- (6) Space and Equipment Requirements. - There shall be no less than 25 square feet of indoor space for each child for which a child care center is licensed, exclusive of closets, passageways, kitchens, and bathrooms, and this floor space shall provide during rest periods 200 cubic feet of airspace per child for which the center is licensed. There shall be adequate outdoor play area for each child under rules adopted by the Commission which shall be related to the size of center and the availability and location of outside land area. In no event shall the minimum required exceed 75 square feet per child. The outdoor area shall be protected to assure the safety of the children receiving child care by an adequate fence or other protection. A center operated in a public school shall be deemed to have adequate fencing protection. A center operating exclusively during the evening and early morning hours, between 6:00 P.M. and 6:00 A.M., need not meet the outdoor play area requirements mandated by this subdivision.

Each child care facility shall provide indoor area equipment and furnishings that are child size, sturdy, safe, and in good repair. Each child care facility that provides outdoor area equipment and furnishings shall provide outdoor area equipment and furnishings that are child size, sturdy, free of hazards that pose a threat of serious injury to children while engaged in normal play activities, and in good repair. The Commission shall adopt standards to establish minimum requirements for equipment appropriate for the size of child care facility. Space shall be available for proper storage of beds, cribs, mats, cots, sleeping garments, and linens as well as designated space for each child's personal belongings.

The Division of Child Development of the Department of Health and Human Services shall establish and implement a policy that defines any building which is currently approved for school occupancy and which houses a public or private elementary school to include the playgrounds

and athletic fields as part of the school building when that building is used to serve school-age children in after-school child care programs. Playgrounds and athletic fields referenced in this section that do not meet licensure standards promulgated by the North Carolina Child Care Commission shall be noted on the program's licensure and rating information.

- (7) Staff-Child Ratio and Capacity for Child Care Facilities. - In determining the staff-child ratio in child care facilities, all children younger than 13 years old shall be counted.

a. The Commission shall adopt rules for child care centers regarding staff-child ratios, group sizes and multi-age groupings other than for infants and toddlers, provided that these rules shall be no less stringent than those currently required for staff-child ratios as enacted in Section 156(e) of Chapter 757 of the 1985 Session Laws.

1. Except as otherwise provided in this subdivision, the staff-child ratios and group sizes for infants and toddlers in child care centers shall be no less stringent than as follows:

Age	Ratio Staff/ Children	Group Size
0 to 12 months	1/5	10
12 to 24 months	1/6	12
2 to 3 years	1/10	20.

No child care center shall care for more than 25 children in one group. Child care centers providing care for 26 or more children shall provide for two or more groups according to the ages of children and shall provide separate supervisory personnel and separate identifiable space for each group.

2. When any preschool-aged child is enrolled in a child care center and the licensed capacity of the center is six through 12 children, the staff-child ratios shall be no less stringent than as follows:

Age	Ratio Staff/Children
0 to 12 months	1/5 preschool children plus 3 additional school-aged children
12 to 24 months	1/6 preschool children plus 2 additional school-aged children.

The following shall also apply:

- I. There is no specific group size.
- II. When only one caregiver is required to meet the staff-child ratio, the operator shall make available to parents the name, address, and phone number of an adult who is nearby and available for emergency relief.
- III. Children shall be supervised at all times. All children who are not asleep or resting shall be visually supervised. Children may sleep or rest in another room as long as a caregiver can hear them and respond immediately.

- b. Family Child Care Home Capacity. - Of the children present at any one time in a family child care home, no more than five children shall be preschool-aged, including the operator's own preschool-age children.
- (8) Qualifications for Staff. - All child care center administrators shall be at least 21 years of age. All child care center administrators shall have the North Carolina Early Childhood Administration Credential or its equivalent as determined by the Department. All child care administrators performing administrative duties as of the date this act becomes law and child care administrators who assume administrative duties at any time after this act becomes law and until September 1, 1998, shall obtain the required credential by September 1, 2000. Child care administrators who assume administrative duties after September 1, 1998, shall begin working toward the completion of the North Carolina Early Childhood Administration Credential or its equivalent within six months after assuming administrative duties and shall complete the credential or its equivalent within two years after beginning work to complete the credential. Each child care center shall be under the direction or supervision of a person meeting these requirements. All staff counted toward meeting the required staff-child ratio shall be at least 16 years of age, provided that persons younger than 18 years of age work under the direct supervision of a credentialed staff person who is at least 21 years of age. All lead teachers in a child care center shall have at least a North Carolina Early Childhood Credential or its equivalent as determined by the Department. Lead teachers shall be enrolled in the North Carolina Early Childhood Credential coursework or its equivalent as determined by the Department within six months after becoming employed as a lead teacher or within six months after this act becomes law, whichever is later, and shall complete the credential or its equivalent within 18 months after enrollment.

For child care centers licensed to care for 200 or more children, the Department, in collaboration with the North Carolina Institute for Early Childhood Professional Development, shall establish categories to recognize the levels of education achieved by child care center administrators and teachers who perform administrative functions. The Department shall use these categories to establish appropriate staffing based on the size of the center and the individual staff responsibilities.

Effective January 1, 1998, an operator of a licensed family child care home shall be at least 21 years old and have a high school diploma or its equivalent. Operators of a family child care home licensed prior to January 1, 1998, shall be at least 18 years of age and literate. Literate is defined as understanding licensing requirements and having the ability to communicate with the family and relevant emergency personnel. Any operator of a licensed family child care home shall be the person on-site providing child care.

The Commission shall adopt standards to establish appropriate qualifications for all staff in child care centers. These standards shall reflect training, experience, education and credentialing and shall be appropriate for the size center and the level of individual staff responsibilities. It is the intent of this provision to guarantee that all

children in child care are cared for by qualified people. Pursuant to G.S. 110-106, no requirements may interfere with the teachings or doctrine of any established religious organization. The staff qualification requirements of this subdivision do not apply to religious-sponsored child care facilities pursuant to G.S. 110-106.

(8a) Expired pursuant to Session Laws 2010-178, s. 2, as amended by Session Laws 2011-145, s. 10.4A, effective July 1, 2011.

(9) Records. - Each child care facility shall keep accurate records on each child receiving care in the child care facility and on each staff member or other person delegated responsibility for the care of children in accordance with a form furnished or approved by the Commission, and shall submit records as required by the Department.

All records of any child care facility, except financial records, shall be available for review by the Secretary or by duly authorized representatives of the Department or a cooperating agency who shall be designated by the Secretary and shall be submitted as required by the Department.

(10) Each operator or staff member shall attend to any child in a nurturing and appropriate manner, and in keeping with the child's developmental needs.

Each child care facility shall have a written policy on discipline, describing the methods and practices used to discipline children enrolled in that facility. This written policy shall be discussed with, and a copy given to, each child's parent prior to the first time the child attends the facility. Subsequently, any change in discipline methods or practices shall be communicated in writing to the parents prior to the effective date of the change.

The use of corporal punishment as a form of discipline is prohibited in child care facilities and may not be used by any operator or staff member of any child care facility, except that corporal punishment may be used in religious sponsored child care facilities as defined in G.S. 110-106, only if (i) the religious sponsored child care facility files with the Department a notice stating that corporal punishment is part of the religious training of its program, and (ii) the religious sponsored child care facility clearly states in its written policy of discipline that corporal punishment is part of the religious training of its program. The written policy on discipline of nonreligious sponsored child care facilities shall clearly state the prohibition on corporal punishment.

(11) Staff Development. - The Commission shall adopt minimum standards for ongoing staff development for facilities but limited to the following topic areas:

- a. Planning a safe, healthy learning environment;
- b. Steps to advance children's physical and intellectual development;
- c. Positive ways to support children's social and emotional development;
- d. Strategies to establish productive relationships with families;
- e. Strategies to manage an effective program operation;
- f. Maintaining a commitment to professionalism;
- g. Observing and recording children's behavior;
- h. Principles of child growth and development; and
- i. Learning activities that promote inclusion of children with special needs.

These standards shall include annual requirements for ongoing staff development appropriate to job responsibilities. A person may carry forward in-service training hours that are in excess of the previous year's requirement to meet up to one-half of the current year's required in-service training hours.

(12) **Developmentally Appropriate Activities.** - Each facility shall have developmentally appropriate activities and play materials. The Commission shall establish minimum standards for developmentally appropriate activities for child care facilities. Each child care facility shall have a planned schedule of developmentally appropriate activities displayed in a prominent place for parents to review and the appropriate materials and equipment available to implement the scheduled activities. Each child care center shall make four of the following activity areas available daily: art and other creative play, children's books, blocks and block building, manipulatives, and family living and dramatic play.

(13) **Transportation.** - When a child care facility staff person or a volunteer of a child care facility transports children in a vehicle, each adult and child shall be restrained by an appropriate seat safety belt or restraint device when the vehicle is in motion. Children may never be left unattended in a vehicle.

The ratio of adults to children in child care vehicles may not be less than the staff/child ratios prescribed by G.S. 110-91(7). The Commission shall adopt standards for transporting children under the age of two, including standards addressing this particular age's staff/child ratio during transportation.

(14) Any effort to falsify information provided to the Department shall be considered by the Secretary to be evidence of violation of this Article on the part of the operator or sponsor of the child care facility and shall constitute a cause for revoking or denying a license to such child care facility.

(15) **Safe Sleep Policy.** - Operators of child care facilities that care for children ages 12 months or younger shall develop and maintain a written safe sleep policy, in accordance with rules adopted by the Commission. The safe sleep policy shall address maintaining a safe sleep environment and shall include the following requirements:

a. A caregiver in a child care facility shall place a child age 12 months or younger on the child's back for sleeping, unless: (i) for a child age 6 months or younger, the operator of the child care facility obtains a written waiver of this requirement from a health care professional, as defined in rules adopted by the Commission; or (ii) for a child older than 6 months, the operator of the child care facility obtains a written waiver of this requirement from a health care professional, as defined in rules adopted by the Commission, a parent, or a legal guardian.

b. The operator of the child care facility shall discuss the safe sleep policy with the child's parent or guardian before the child is enrolled in the child care facility. The child's parent or guardian shall sign a statement attesting that the parent or guardian received a copy of the safe sleep policy and that the policy was discussed with the parent or guardian before the child's enrollment.

- c. Any caregiver responsible for the care of children ages 12 months or younger shall receive training in safe sleep practices. (1971, c. 803, s. 1; 1973, c. 476, s. 128; 1975, c. 879, s. 15; 1977, c. 1011, s. 4; c. 1104; 1979, c. 9, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1382, ss. 1, 2; 1983, c. 46, s. 2; cc. 62, 277, 612; 1985, c. 757, ss. 155(h), (i), 156(c)-(h); 1987, c. 543, s. 3; c. 788, s. 6; c. 827, s. 234; 1989 (Reg. Sess., 1990), c. 1004, s. 56; 1991, c. 273, s. 5; c. 640, s. 1; 1993, c. 185, s. 3; c. 321, s. 254(c); c. 513, s. 9; c. 553, s. 32; 1995, c. 94, s. 32; 1997-443, s. 11A.44; 1997-456, s. 43.1(a); 1997-506, s. 8(a); 1998-217, s. 11; 1999-130, s. 2; 2003-407, s. 1; 2007-182, s. 2; 2009-64, s. 1; 2009-244, s. 1; 2010-117, s. 1; 2010-178, s. 1; 2011-145, s. 10.4A; 2012-142, 10.1(c1); 2012-160, s. 2.)

1 10A NCAC 09 .0601 is amended with changes as published as published in 37:24 NCR 2216 as follows:

2
3 SECTION .0600 - SAFETY REQUIREMENTS FOR CHILD CARE CENTERS

4
5 10A NCAC 09 .0601 SAFE ENVIRONMENT

6 (a) All child care centers shall provide a safe indoor and outdoor environment for the children in
7 care, care in accordance with rules in this Section.

8 (b) All equipment and furnishings shall be in good repair. All commercially manufactured equipment and furnishings
9 shall be assembled and installed according to procedures specified by the manufacturer. For equipment and furnishings
10 purchased after September 1, 2017, the manufacturer's instructions shall be kept on file or electronically accessible, if
11 available, that include instructions from the manufacturer, those manufacturer's instructions shall be kept on file at
12 the center, unless they are available electronically for review.

13 (c) Equipment and furnishings shall be sturdy, stable, and free of hazards that may injure children including sharp
14 edges, lead based or peeling paint, rust, loose nails, splinters, protrusions (excluding nuts and bolts on sides of fences),
15 and pinch and crush points.

16 (d) Staff of the center shall immediately remove all equipment and furnishings not meeting that do not meet the
17 requirements of Paragraphs (b) and (c) of this Rule shall be removed from the premises immediately or made make
18 the equipment or furnishings inaccessible to the children.

19 (e) Each child care center shall provide equipment and furnishings that are child-size or that can be adapted for use
20 by children. Chairs and tables shall be of appropriate height for the children who will be using them.

21 (f) Each child care center shall be free of lead poisoning hazards as defined in G.S. ~~130A-131.7(7)~~. 130A-131.7(7)
22 and asbestos hazards.

23
24 *History Note: Authority G.S. 110-91(3),(6); 143B-168.3;*
25 *Eff. January 1, 1986;*
26 *Amended Eff. January 1, 1996; January 1, 1991;*
27 *Readopted Eff. October 1, 2017;*
28 *Amended Eff. November 1, 2023; February 1, 2021.*

1 **10A NCAC 09 .1707 is amended with changes as published in 37:24 NCR 2216-2217 as follows:**

2

3 **10A NCAC 09 .1707 BUILDING REQUIREMENTS**

4 The applicant shall ensure that the family child care home complies with the following requirements:

5 (1) all children are kept on the ground level of exit discharge; ~~with an exit at grade~~;

6 (2) all family child care homes must be free of lead poisoning hazards as defined in G.S. ~~130A-131.7(7)~~;
7 130A-131.7(7) and asbestos hazards;

8 (3) all homes are equipped with an electrically operated (with a battery backup) smoke detector, or one
9 electrically operated and one battery operated smoke detector located next to each other;

10 (4) all homes are provided with at least one five pound 2-A: 10-B: C type extinguisher for every 2,500
11 square feet of floor area;

12 (5) heating appliances shall be installed and maintained according to the NC Building Code;

13 (6) all indoor areas used by children are heated when the **indoor** temperature is below 65 degrees and
14 ventilated when the **indoor** temperature is above 85 degrees;

15 (7) pipes or radiators that are hot enough to be capable of burning children and are accessible to the
16 children are covered or insulated; and

17 (8) children are cared for in space designated as the caregiving area on a floor plan provided by the
18 operator to the Division as specified in 10A NCAC 09 .1709. Changes to the designated caregiving
19 space shall be submitted to the Division 30 days prior to the new space being used by children.

20

21 *History Note: Authority G.S. 110-85; ~~110-86(3)~~; 110-91; 143B-168.3; **S.L. 2021-180; 45 CFR 98.41;***

22 *Eff. October 1, 2017;*

23 *Amended Eff. November 1, 2023; February 1, 2021.*

1 **10A NCAC 09 .1725 is amended with changes as published in 37:24 NCR 2217 as follows:**

2
3 **10A NCAC 09 .1725 SANITATION REQUIREMENTS FOR FAMILY CHILD CARE HOMES**

4 (a) To assure the health of children through proper sanitation, the family child care home operator shall:

5 (1) collect and submit samples of water from each well used for the children's water supply for
6 bacteriological analysis to the local health department or a laboratory certified to analyze drinking
7 water for public water supplies by ~~the North Carolina Division of Laboratory Services~~ the North
8 Carolina State Laboratory of Public Health every two years. Results of the analysis shall be on file
9 in the home;

10 (2) collect and submit samples of water from each water outlet used for drinking or food preparation
11 for lead analysis to the local health department or a laboratory certified to analyze for lead in
12 drinking water by the North Carolina State Laboratory of Public Health. Results of the analysis shall
13 be on file in the home. For operators that submit an application for licensure after the effective date
14 of this Rule, water samples shall be collected by the operator and tested during the application
15 process. For all other family child care homes, water samples shall be collected by the operator and
16 tested within 12 months of the effective date of this Rule;

17 ~~(3)~~ (2) wash his or her hands prior to caring for children each day;

18 ~~(4)~~ (3) ensure that each child's hands are washed upon arrival at the home each day;

19 ~~(5)~~ (4) have sanitary toilet, diaper ~~changing~~ changing, and hand washing facilities as follows:

20 (A) diaper changing areas shall be separate from food preparation areas;

21 (B) toileting areas shall have toilet tissue available at all times;

22 (C) all toilet fixtures shall be cleanable and in good repair;

23 (D) handwashing areas shall have soap and paper towels or other drying devices available at
24 all times;

25 (E) diapering surfaces shall be smooth, intact, ~~nonabsorbent~~ nonabsorbent, and cleanable; and

26 (F) potty chairs and diapering surfaces shall be cleaned after each use.

27 ~~(6)~~ (5) use sanitary diapering procedures. Diapers shall be changed whenever they become soiled or wet.
28 The operator shall:

29 (A) gather all supplies before placing a child on the diapering surface;

30 (B) wash his or her hands before, as well as after, diapering each child;

31 (C) ensure the child's hands are washed after diapering the child; and

32 (D) place soiled diapers in a covered, leak proof container which is emptied and cleaned daily;

33 ~~(7)~~ (6) use sanitary procedures when preparing and serving food. The operator shall:

34 (A) wash his or her hands before and after handling food and feeding the children; and

35 (B) ensure the child's hands are washed before and after the child is fed;

36 ~~(8)~~ (7) wash his or her hands, and ensure the child's hands are washed, after toileting or handling bodily
37 fluids;

1 ~~(9)~~ ~~(8)~~ handwashing procedures shall include:

2 (A) using liquid soap and water;

3 (B) rubbing hands vigorously with soap and water for 15 seconds;

4 (C) washing all surfaces of the hands, to include the backs of hands, palms, wrists, under
5 fingernails and between fingers;

6 (D) rinsing well for 10 seconds;

7 (E) drying hands with a paper towel or other hand drying device; and

8 (F) turning off faucet with a paper towel or other method without recontaminating hands;

9 ~~(10)~~ ~~(9)~~ refrigerate all perishable food and beverages. The refrigerator shall be in good repair and maintain
10 a temperature of 45 degrees Fahrenheit or below. A refrigerator thermometer is required to monitor
11 the temperature;

12 ~~(11)~~ ~~(10)~~ have a house that is free of rodents;

13 ~~(12)~~ ~~(11)~~ screen all windows and doors used for ventilation; and

14 ~~(13)~~ ~~(12)~~ store garbage in waterproof containers with tight fitting covers.

15 (b) If reusable, cloth diapers are used, place soiled cloth diaper, after disposing of feces in toilet without rinsing, in a
16 tightly closed plastic bag or other equivalent container approved by the Division, stored out of reach of children and
17 sent daily to the child's home to be laundered or to a laundry service.

18 (c) The operator shall not force children to use the toilet and the operator shall consider the developmental readiness
19 of each child when toilet training. The operator shall provide assistance to each child to ensure proper hygiene, as
20 needed.

21 (d) The operator shall ensure that clean clothes are available in the event that a child's clothes become wet or soiled.
22 The change of clothing may be provided by the operator or by the child's parents.

23
24 *History Note:* *Authority G.S. 110-85; 110-88; 110-91; ~~143B-168.3;~~ S.L. 2021-180; 45 CFR 98.41;*

25 *Eff. October 1, 2017;*

26 *Amended Eff. November 1, 2023; September 1, 2019.*