

Burgos, Alexander N

Subject: FW: [External] RE: 10A NCAC 09 .2703
Attachments: 10A NCAC 09 .2703 with technical changes 9 14 23.docx

From: Davis, Amber <AIDavis@ncdoj.gov>
Sent: Thursday, September 14, 2023 1:47 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>; Peck, Julie C <julie.peck@dhhs.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] RE: 10A NCAC 09 .2703

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Mr. Peaslee,

Thank you for getting back to me so quickly.

I hope this additional background information is helpful-

A disqualification can be triggered for a number of reasons, but are based on the Division's obligation to prevent certain individuals from being a child care provider pursuant to 110-90.2, 110-105.5, 110-105.6 or 42 USC 9858f. When the Division determines a person is "disqualified," they send a notice informing the person they are prohibited from being a child care provider, as defined in 110-90.2. This "disqualification letter" may be issued at the time of a provider's first criminal background check (prior to the issuance of a qualification letter) or can replace a previously issued qualification letter, depending on what triggered the disqualification. Certain bases for disqualification prohibit the subsequent issuance of a qualification letter. The most common reason a provider is disqualified, though, is a pending criminal charge, which leaves open the possibility of the them being requalified. It is not unusual for the charge to be dismissed or reduced to a charge that does not prevent them from being a child care provider. So, it is possible for a provider to be qualified, then disqualified, and, subsequently, qualified again.

Paragraph (i) is intended to prevent a provider from using a prior qualification letter (which on its face does not expire for five years) for the purposes of employment after being disqualified. The provider must apply for and receive a new qualification letter prior to returning to work after being disqualified. A household member being disqualified is addressed in paragraph (k). When a household member is disqualified, the Division issues a summary suspension of the child care license. In the event a disqualified household member becomes eligible for requalification, the summary suspension stays in place until the household member has applied for and receives a new qualification letter. So, while the consequence of a provider being disqualified depends on their role (provider-employee or household member), a disqualification letter revokes and replaces any prior qualification letter.

Paragraph (t) is intended to reference the issuance of a disqualification letter in the event the person fails to comply with (g), provides false information, etc. As noted, the disqualification letter can be issued prior to the issuance of a qualification letter or can replace a previously issued qualification letter, depending on the trigger and timing of the event that results in them being ineligible to be a child care provider.

I very much appreciate your observations and hope the attached addresses your concerns.
Thank you again for your assistance,

Amber

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 shall not be eligible for employment in child care until a qualification letter has been issued by the 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]~~ is prohibited from issuing a qualification letter and shall revoke any previously issued
3 qualification letter to an individual if they fail to comply with the requirements of Paragraph (g) of this Rule or if the
4 Division determines the applicant has submitted false information in connection with their criminal background check
5 or application to the Division or if information that disqualifies the child care provider pursuant to G.S. 110-90.2 or
6 42 USC 9858f is received from any state during the qualification time period.

7

8 *History Note: Authority G.S. 110-85; 110-86(7); 110-90.2; 110-106; 114-19.5; 143B-168.3;*

9 *Temporary Adoption Eff. January 1, 1996;*

10 *Eff. April 1, 1997;*

11 *Amended Eff. March 1, 2014; November 1, 2007;*

12 *Readopted Eff. January 1, 2019;*

13 *Amended Eff. October 1, 2023; February 1, 2021.*

Burgos, Alexander N

From: Peaslee, William W
Sent: Wednesday, September 13, 2023 12:46 PM
To: Davis, Amber I; Peck, Julie C
Cc: Burgos, Alexander N
Subject: RE: [External] RE: 10A NCAC 09 .2703

Ms. Davis,

Perhaps I have unartfully expressed my concerns with Paragraph (t). Hopefully, this email will add clarity. Here is my problem with Paragraph (t). The Division does not appear to license anyone to be either a child care provider or an uncompensated provider by either rule or statute.

What the Division does is it issues a "qualification letter" which an individual must possess as a prerequisite, see Paragraph (e) "prior to", to being a child care provider.

Pursuant to Paragraph (i) child care providers "found to be disqualified" (presumably by the Division but this too is unclear) shall not "eligible for **employment (emphasis added)**" "until a qualification letter has been issued by the Division." It does not appear that someone needs a qualification letter to anything other than an employee-child care provider.

Paragraph (t) is unclear about whether it is withholding a qualification letter prior to its issuance of the qualification letter or whether it is revoking a previously issued qualification letter.

I think what the commission means to do is prohibit the issuance of a letter or revoke any letter previously issued, upon a determination by the Division that the applicant for or recipient of a qualification letter is determined by the Division to have failed to comply Paragraph (g), submitted false information, etc. However, it should be noted that the revocation of a qualification letter would only impact "employment".

As always if you have any questions or concerns please do not hesitate to contact me.

Please respond by COB Friday September 15.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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From: Davis, Amber <AIDavis@ncdoj.gov>
Sent: Wednesday, September 13, 2023 9:39 AM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>; Peck, Julie C <julie.peck@dhhs.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: [External] RE: 10A NCAC 09 .2703

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Mr. Peaslee,

Attached please find 10A NCAC 09 .2703 with additional changes.

Thank you for your assistance and please let me know if you have any additional questions or concerns.

Amber



Amber I. Davis
Assistant Attorney General
Division of Child Development and Early Education
Phone: 919.814.6376
aidavis@ncdoj.gov
ncdoj.gov Please note messages to or from this address may be public records.

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Friday, September 8, 2023 1:40 PM

To: Peck, Julie C <julie.peck@dhhs.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Davis, Amber <AIDavis@ncdoj.gov>

Subject: RE: 10A NCAC 09 .2703

Thank you for your email.

Please see my note below.

Page 1, Line 19: Add "the" before "state-based".

Page 1, Line 21: Strike everything after "and" as this would be a substantial change pursuant to G.S. 150B-21.2(g)(2).

Page 3, Lines 28 and 29: Move ",as defined by ...0102(40)," to immediately after "resides".

Page 3, Line 31: Strike "through ABCMS". This is an undefined term.

Page 4, Line 3-8: What is the Commission attempting to do in Paragraph (t)? Is it informing an applicant that he/she is not qualified and denying licensure. Or is the Commission revoking someone's license? As stated in the Request for Changes, it is unclear if this Paragraph is in the context of pre or post licensure. Also please beware of G.S. 150B-21.2(g) regarding substantial changes.

Please reply with any additional changes no later than COB Wednesday September 13, 2023.

As always, if you have any questions please feel free to contact me.

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

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From: Peck, Julie C <julie.peck@dhhs.nc.gov>

Sent: Thursday, September 7, 2023 12:06 PM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Davis, Amber I <aidavis@ncdoj.gov>

Subject: RE: 10A NCAC 09 .2703

Hello,

Technical Changes and notes for 10A NCAC 09 .2703 are attached as requested. Please let me know any questions of if you need any additional information.

Thank you,

Julie

Julie Peck

Lead Policy Advisor

Division of Child Development and Early Education, Office of the Director

[NC Department of Health and Human Services](#)

julie.peck@dhhs.nc.gov

Pronouns: she / her / hers

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From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Tuesday, August 22, 2023 11:26 AM
To: Peck, Julie C <julie.peck@dhhs.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: 10A NCAC 09 .2703

Good morning,

I am the attorney assigned to review the above captioned rule which will be before the Rules Review Commission at its next meeting on September 21, 2023. Attached please find a Request for Changes (REC).

Please reply no later than the date set on the REC.

While many of the comments on the REC are in the form of a question, generally answering the question without changing the rule will not suffice.

Also, please note that "consider" means to consider the suggestion. It is not a requirement and is offered to, perhaps, improve the rule if it meets the adopting agency's intention.

Please be advised that it is the agency's responsibility to ensure that any changes to the rule do not substantially differ from the proposed rules pursuant to G.S. 150B-21.2(g).

As always, if you have any questions or concerns please do not hesitate to contact me. Email is preferred and please copy Alex Burgos on all communications.

Thank you.

William W. Peaslee
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