

# ***NORTH CAROLINA REGISTER***

**VOLUME 32 • ISSUE 09 • Pages 791 – 957**

**November 1, 2017**

<b>I. EXECUTIVE ORDERS</b>	
Executive Order No. 23 .....	791 - 792
<b>II. PROPOSED RULES</b>	
<b>Agriculture and Consumer Services, Department of</b>	
Soil and Water Conservation Commission .....	793 – 808
<b>Justice, Department of</b>	
Department .....	808 – 809
<b>Public Safety, Department of</b>	
Alcoholic Beverage Control Commission .....	809 – 810
Alarm Systems Licensing Board .....	810 – 811
<b>Environmental Quality, Department of</b>	
Environmental Management Commission .....	811 – 813
<b>III. APPROVED RULES</b> .....	814 - 951
<b>Health and Human Services, Department of</b>	
Child Care Commission	
Radiation Protection Commission	
Mental Health, Commission for	
Public Health, Commission for	
Social Services Commission	
<b>Justice, Department of</b>	
Criminal Justice Education and Training Standards Commission	
<b>Environmental Quality, Department of</b>	
Wildlife Resources Commission	
Public Health, Commission for	
<b>State Treasurer, Department of</b>	
Local Government Commission	
<b>Occupational Licensing Boards and Commissions</b>	
Chiropractic Examiners, Board of	
Recreational Therapy Licensure, Board of	
Veterinary Medical Board	
<b>IV. RULES REVIEW COMMISSION</b> .....	952 - 955
<b>V. CONTESTED CASE DECISIONS</b>	
Index to ALJ Decisions .....	956 - 957

**PUBLISHED BY**

*The Office of Administrative Hearings  
Rules Division  
6714 Mail Service Center  
Raleigh, NC 27699-6714  
Telephone (919) 431-3000  
Fax (919) 431-3104*

*Julian Mann III, Director  
Molly Masich, Codifier of Rules  
Dana McGhee, Publications Coordinator  
Lindsay Woy, Editorial Assistant*

## **Contact List for Rulemaking Questions or Concerns**

For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address, but are not inclusive.

### **Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.**

Office of Administrative Hearings

Rules Division

1711 New Hope Church Road

Raleigh, North Carolina 27609

(919) 431-3000

(919) 431-3104 FAX

contact: Molly Masich, Codifier of Rules

molly.masich@oah.nc.gov

(919) 431-3071

Dana McGhee, Publications Coordinator

dana.mcgee@oah.nc.gov

(919) 431-3075

Lindsay Woy, Editorial Assistant

lindsay.woy@oah.nc.gov

(919) 431-3078

### **Rule Review and Legal Issues**

Rules Review Commission

1711 New Hope Church Road

Raleigh, North Carolina 27609

(919) 431-3000

(919) 431-3104 FAX

contact: Abigail Hammond, Commission Counsel

abigail.hammond@oah.nc.gov

(919) 431-3076

Amber Cronk May, Commission Counsel

amber.may@oah.nc.gov

(919) 431-3074

Amanda Reeder, Commission Counsel

amanda.reeder@oah.nc.gov

(919) 431-3079

Jason Thomas, Commission Counsel

jason.thomas@oah.nc.gov

(919) 431-3081

Alexander Burgos, Paralegal

alexander.burgos@oah.nc.gov

(919) 431-3080

Julie Brincefield, Administrative Assistant

julie.brincefield@oah.nc.gov

(919) 431-3073

### **Fiscal Notes & Economic Analysis and Governor's Review**

Office of State Budget and Management

116 West Jones Street

Raleigh, North Carolina 27603-8005

(919) 807-4700

(919) 733-0640 FAX

Contact: Anca Grozav, Economic Analyst

osbmruleanalysis@osbm.nc.gov

(919) 807-4740

Carrie Hollis, Economic Analyst

osbmruleanalysis@osbm.nc.gov

(919) 807-4757

NC Association of County Commissioners

215 North Dawson Street

Raleigh, North Carolina 27603

(919) 715-2893

contact: Amy Bason

amy.bason@ncacc.org

NC League of Municipalities

(919) 715-4000

150 Fayetteville St., Suite 300

Raleigh, North Carolina 27601

contact: Sarah Collins

scollins@nclm.org

### **Legislative Process Concerning Rule-making**

545 Legislative Office Building

300 North Salisbury Street

Raleigh, North Carolina 27611

(919) 733-2578

(919) 715-5460 FAX

Karen Cochrane-Brown, Director/Legislative Analysis Division

karen.cochrane-brown@ncleg.net

Jeff Hudson, Staff Attorney

Jeffrey.hudson@ncleg.net

**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2017 – December 2017

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 <sup>th</sup> day from publication in the Register
31:13	01/03/17	12/07/16	01/18/17	03/06/17	03/20/17	05/01/17	05/2018	09/30/17
31:14	01/17/17	12/20/16	02/01/17	03/20/17	04/20/17	06/01/17	05/2018	10/14/17
31:15	02/01/17	01/10/17	02/16/17	04/03/17	04/20/17	06/01/17	05/2018	10/29/17
31:16	02/15/17	01/25/17	03/02/17	04/17/17	04/20/17	06/01/17	05/2018	11/12/17
31:17	03/01/17	02/08/17	03/16/17	05/01/17	05/22/17	07/01/17	05/2018	11/26/17
31:18	03/15/17	02/22/17	03/30/17	05/15/17	05/22/17	07/01/17	05/2018	12/10/17
31:19	04/03/17	03/13/17	04/18/17	06/02/17	06/20/17	08/01/17	05/2018	12/29/17
31:20	04/17/17	03/24/17	05/02/17	06/16/17	06/20/17	08/01/17	05/2018	01/12/18
31:21	05/01/17	04/07/17	05/16/17	06/30/17	07/20/17	09/01/17	05/2018	01/26/18
31:22	05/15/17	04/24/17	05/30/17	07/14/17	07/20/17	09/01/17	05/2018	02/09/18
31:23	06/01/17	05/10/17	06/16/17	07/31/17	08/21/17	10/01/17	05/2018	02/26/18
31:24	06/15/17	05/24/17	06/30/17	08/14/17	08/21/17	10/01/17	05/2018	03/12/18
32:01	07/03/17	06/12/17	07/18/17	09/01/17	09/20/17	11/01/17	05/2018	03/30/18
32:02	07/17/17	06/23/17	08/01/17	09/15/17	09/20/17	11/01/17	05/2018	04/13/18
32:03	08/01/17	07/11/17	08/16/17	10/02/17	10/20/17	12/01/17	05/2018	04/28/18
32:04	08/15/17	07/25/17	08/30/17	10/16/17	10/20/17	12/01/17	05/2018	05/12/18
32:05	09/01/17	08/11/17	09/16/17	10/31/17	11/20/17	01/01/18	05/2018	05/29/18
32:06	09/15/17	08/24/17	09/30/17	11/14/17	11/20/17	01/01/18	05/2018	06/12/18
32:07	10/02/17	09/11/17	10/17/17	12/01/17	12/20/17	02/01/18	05/2018	06/29/18
32:08	10/16/17	09/25/17	10/31/17	12/15/17	12/20/17	02/01/18	05/2018	07/13/18
32:09	11/01/17	10/11/17	11/16/17	01/02/18	01/22/18	03/01/18	05/2018	07/29/18
32:10	11/15/17	10/24/17	11/30/17	01/16/18	01/22/18	03/01/18	05/2018	08/12/18
32:11	12/01/17	11/07/17	12/16/17	01/30/18	02/20/18	04/01/18	05/2018	08/28/18
32:12	12/15/17	11/22/17	12/30/17	02/13/18	02/20/18	04/01/18	05/2018	09/11/18

## **EXPLANATION OF THE PUBLICATION SCHEDULE**

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

### **GENERAL**

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H; and
- (7) other information the Codifier of Rules determines to be helpful to the public.

**COMPUTING TIME:** In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

### **FILING DEADLINES**

**ISSUE DATE:** The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

**LAST DAY FOR FILING:** The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

### **NOTICE OF TEXT**

**EARLIEST DATE FOR PUBLIC HEARING:** The hearing date shall be at least 15 days after the date a notice of the hearing is published.

**END OF REQUIRED COMMENT PERIOD**  
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

**DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION:** The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

**FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY:** This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date.





# State of North Carolina

**ROY COOPER**  
GOVERNOR

October 5, 2017

**EXECUTIVE ORDER NO. 23**

**GOVERNOR'S ADVISORY COUNCIL ON HISPANIC/LATINO AFFAIRS**

**WHEREAS**, the Hispanic/Latino community plays a vital role in the economy and diverse society of North Carolina; and

**WHEREAS**, the Hispanic/Latino population contributes to the economic development and progress of the state by working in different industries and by participating in civic affairs; and

**WHEREAS**, many unique challenges confront the Hispanic/Latino community as they attempt to access housing, education opportunities, health care, and employment services; and

**WHEREAS**, the state should promote collaboration and effective planning and delivery of services among state agencies that serve the Hispanic/Latino population; and

**WHEREAS**, partnership and communication with Hispanic/Latino individuals and organizations allows for greater contributions by the Hispanic/Latino community as part of the fabric of North Carolina;

**NOW THEREFORE**, by the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED**:

**Section 1. Establishment**

The Governor's Advisory Council on Hispanic/Latino Affairs (hereinafter the "Advisory Council") is hereby reestablished.

**Section 2. Membership**

The Governor's Advisory Council on Hispanic/Latino Affairs shall consist of a minimum of twelve (12) voting members. All members shall be appointed by the Governor for a term of two (2) years and serve at the pleasure of the Governor. A member may not be appointed for more than two consecutive terms of two (2) years. A vacancy occurring during a term of appointment shall be filled by the Governor for the balance of the unexpired term. The Governor shall appoint a Chair and Vice-Chair from among the membership of the Advisory Council.

In addition to a minimum of twelve (12) voting members, the following or their designees shall serve as ex-officio, non-voting members:

- a. The Secretary of the Department of Administration;
- b. The Secretary of the Department of Commerce;
- c. The Secretary of the Department of Cultural and Natural Resources;
- d. The Secretary of the Department of Environmental Quality;
- e. The Secretary of the Department of Health and Human Services;
- f. The Secretary of the Department of Information and Technology;
- g. The Secretary of the Department of Military and Veteran Affairs;
- h. The Secretary of the Department of Public Safety;
- i. The Secretary of the Department of Revenue;

- j. The Secretary of the Department of Transportation;
- k. One representative from the Office of the Governor selected by the Governor;
- l. The Director of the Office of State Human Resources

The following individuals or their designees are invited to serve as ex-officio, non-voting members of the Advisory Council:

- a. The Commissioner of the Department of Agriculture and Consumer Services;
- b. The Attorney General;
- c. The Commissioner of Insurance;
- d. The Commissioner of Labor;
- e. The Superintendent of the Department of Public Instruction;
- f. The Secretary of State;

**Section 3. Meetings**

The Advisory Council shall meet quarterly or upon the call of the Governor or the chair. The chair shall set the agenda for the Advisory Council's meetings. The Advisory Council may establish such committees or other working groups as are necessary to assist in performing its duties.

**Section 4. Duties**

The Governor's Advisory Council on Hispanic/Latino Affairs shall advise the Governor on issues related to the Hispanic/Latino community in North Carolina and support State efforts to promote cooperation and understanding between the Hispanic/Latino community, the general public, the state, federal, and local governments.

The Advisory Council shall provide a forum for the discussion of issues concerning the Hispanic/Latino community in North Carolina and support efforts toward the improvement of race and ethnic relations.

The Advisory Council will submit a report annually that details its accomplishments, identifies barriers, and recommends short and long-term state-wide policy initiatives that are specific to the Hispanic/Latino community.

The Advisory Council shall perform other duties as directed by the Governor.

**Section 5. Administration**

The Office of the Governor shall provide all administrative and staff support services required by the Advisory Council. Members shall serve without compensation, but may receive reimbursement, contingent upon the availability of funds, for travel and subsistence in accordance with North Carolina General Statutes 138-6, and 120-3.1.

**Section 6. Duration**

This Executive Order is effective immediately. It supersedes and replaces all other executive orders on this subject and specifically rescinds Executive Order No. 14, dated June 10, 2013. This Executive Order shall remain in effect until October 5, 2021, pursuant to N.C. Gen. Stat. § 147-16.2(b), or until earlier rescinded.

**IN WITNESS WHEREOF**, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 5th day of October, in the year of our Lord two thousand seventeen.

  
\_\_\_\_\_  
Roy Cooper  
Governor

**ATTEST:**

  
\_\_\_\_\_  
Rodney J. Maddox  
Chief Deputy Secretary of State



**Note from the Codifier:** The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days. Statutory reference: G.S. 150B-21.2.

## TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

*Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Soil and Water Conservation Commission intends to adopt the rules cited as 02 NCAC 59D .0109 and .0110 and readopt with substantive changes the rules cited as 02 NCAC 59D .0101-.0108, 59H .0101-.0108.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://www.ncagr.gov/AdministrativeRules/ProposedRules/index.htm>

**Proposed Effective Date:** April 1, 2018

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than November 16, 2017 to Christina Waggett, Rule-making Coordinator, NC Department of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.*

**Reason for Proposed Action:** *The rules in 02 NCAC 59D and H have gone through the Periodic Review and Expiration of Existing Rules review process. They were all classified as "necessary with substantive public interest" and are now being readopted. The rules in 59H are being repealed and being combined with the rules in 59D to streamline the rules and to have all the rules for the Soil and Water Conservation Cost Share Programs in one place. The new adoptions of 59D .0109 and .0110 are necessary as part of combining these two subchapters. The rule in 59D layout the requirements for the cost-share programs.*

**Comments may be submitted to:** Chrissy Waggett, 1001 Mail Service Center, Raleigh, NC 27699-1001, email [christina.waggett@ncagr.gov](mailto:christina.waggett@ncagr.gov)

**Comment period ends:** January 15, 2018

**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
- ☐ Substantial economic impact (≥\$1,000,000)
- ☐ Approved by OSBM
- ☐ No fiscal note required by G.S. 150B-21.4
- ☒ No fiscal note required by G.S. 150B-21.3A(d)(2)

## CHAPTER 59 - SOIL AND WATER CONSERVATION COMMISSION

### SUBCHAPTER 59D - SOIL AND WATER CONSERVATION COST SHARE PROGRAMS

#### SECTION .0100 - SOIL AND WATER CONSERVATION COMMISSION COST SHARE PROGRAMS

#### 02 NCAC 59D .0101 PURPOSE

This Subchapter describes the operating procedures for the ~~division~~ Division under the guidance of the ~~commission~~ Commission implementing the Agriculture Cost Share Program for Nonpoint Source Pollution ~~Control~~, Control, the Community Conservation Assistance Program for Nonpoint Source Pollution Control, and the Agricultural Water Resources Assistance Program. Procedures and guidelines for participating districts are also described. The purpose ~~of for~~ the voluntary program ~~is to reduce the delivery of the agricultural nonpoint source (NPS) pollution into the water courses of the State.~~ are as follows:

- (1) Agriculture Cost Share Program for Nonpoint Source Pollution Control is to reduce the delivery of agricultural nonpoint source (NPS) pollution into the water courses of the state.
- (2) Community Conservation Assistance Program is to reduce the delivery of nonpoint source pollution into the waters of the state.
- (3) Agricultural Water Resources Assistance Program is to assist famers and landowners to:
  - (a) identify opportunities to increase water use efficiency; availability and storage;
  - (b) implement best management practices to conserve and protect water resources;
  - (c) increase water use efficiency; or
  - (d) increase water storage and availability for agricultural purposes.



Authority G.S. 106-840; 106-850; 139-4.

**02 NCAC 59D .0102 DEFINITIONS**

In addition to the definitions found in G.S. 143-215.74, 106-850 through G.S. 106-852, the following terms used in this Subchapter have the following meanings:

- (1) ~~Agriculture~~ "Agricultural Nonpoint Source (NPS) Pollution" means pollution originating from a diffuse source as a result of agricultural activities related to crop production, production and management of poultry and livestock, land application of waste materials, and management of forestland incidental to agricultural production.
- (2) "Agricultural purposes" means agricultural activities related to crop production, production and management of poultry and livestock, land application of waste materials, and management of forestland incidental to agricultural production.
- (2)(3) ~~Allocation~~ "Allocation" means the annual share of the state's appropriation for each program to participating districts.
- (3)(4) ~~Applicant~~ "Application" means a person(s) who applies for best management practice cost sharing monies from the district. An applicant may also be referred to as a ~~cooperator~~. "cooperator." All ~~entities~~, entities with which the applicant is associated, including those in other counties, shall be considered the same applicant.
- (4)(5) ~~Average Costs~~ "Average Costs" means the calculated cost, determined by averaging actual costs and current cost estimates necessary for best management practice implementation. Actual costs include labor, supplies, and other direct costs required for physical installation of a practice.
- (5)(6) ~~Best Management Practice (BMP)~~ "Best Management Practice (BMP)" means a structural or nonstructural management based practice used singularly or in combination to ~~reduce nonpoint source inputs to receiving waters.~~ address natural resource needs.
  - (a) For the Agriculture Cost Share Program and the Community Conservation Assistance Program, BMPs shall reduce nonpoint source inputs to receiving waters.
  - (b) For the Agricultural Water Resources Assistance Program, BMPs shall increase the storage, availability, and use efficiency of water for agricultural purposes.
- (7) "Commission" means the Soil and Water Conservation Commission.
- (6)(8) ~~Conservation Plan of Operation (CPO)~~ "Conservation Plan" means a written plan

~~scheduling~~ documenting the applicant's decisions concerning land use, and both cost shared and non-cost shared BMPs to be installed and maintained on the ~~operating~~ management unit.

- (7)(9) ~~Cost Share Agreement~~ "Cost Share Agreement" means an annual or long term agreement between the applicant and the district which defines the BMPs to be cost shared, rate and amount of payment, minimum practice life, and date of BMP installation. The agreement shall state that the recipient shall maintain and repair the practice(s) for the specified minimum life of the practice. The Cost Share Agreement shall have a maximum contract life of three years for BMP installation. The district shall perform an annual status review during the installation period.
- (8)(10) ~~Cost Share Incentive (CSI)~~ "Cost Share Incentive (CSI)" means a predetermined fixed payment paid to an applicant for implementing a BMP in lieu of cost share.
- (9)(11) ~~Cost Share Rate~~ "Cost Share Rate" means a cost share percentage paid to an applicant for implementing BMPs.
- (12) "Department" means the North Carolina Department of Agriculture and Consumer Services.
- (13) "Design practice" means an engineering practice as defined by the Natural Resources Conservation Service or Soil and Water Conservation Commission in their Program Detailed Implementation Plans.
- (10)(14) ~~Detailed Implementation Plan~~ "Detailed Implementation Plan (DIP)" means the plan approved by the ~~commission~~ Commission that specifies the guidelines for each program for the current ~~program~~, fiscal year ~~including BMPs that will be eligible for cost sharing and the minimum life expectancy of those practices.~~ including:
  - (a) annual program goals;
  - (b) district and statewide allocations;
  - (c) BMPs that will be eligible for cost sharing; and
  - (d) the minimum life expectancy of those practices.
- (15) "District Allocation Pool" means the annual share of the state's appropriation for each program to be allocated to participating districts.
- (14)(16) ~~District BMP~~ "District BMP" means a BMP ~~designated requested by a district and approved by the Division for evaluation purposes, to reduce the delivery of agricultural NPS pollution and which is reviewed and approved by the Division to be technically adequate prior to funding.~~

- (17) "Division" means the Division of Soil and Water Conservation.
- (12)(18) ~~Encumbered Funds~~ "Encumbered Funds" means monies from a district's allocation ~~which that~~ have been ~~committed to an applicant after initial approval of the~~ obligated to an approved cost share agreement.
- (13) ~~Full Time Equivalent (FTE) means 2,080 hours per annum which equals one full time technical position.~~
- (14)(19) ~~In-kind Contribution~~ "In-kind Contribution" means a contribution by the applicant towards the implementation of BMPs. In-kind contributions shall be approved by the district and can include but not be limited to labor, fuel, machinery use, and supplies and materials necessary for implementing the approved BMPs.
- (20) "Job Approval Authority" means the authority granted to individuals who are qualified to plan, design and verify installation or implementation of specific practices per practice standards approved by the Natural Resources Conservation Service or the Commission. This authority is either recognized or granted by the Natural Resources Conservation Service or the Commission.
- (15)(21) ~~Landowner~~ "Landowner" means any natural person or other legal entity, including a governmental agency, who holds either an estate of freehold (such as a fee simple absolute or a life estate) or an estate for years or from year to year in land, but ~~does shall~~ not include an estate at will or by sufferance in land. Furthermore, a governmental or quasi-governmental agency such as a drainage district or a soil and water conservation district, or any such agency, by whatever name called, exercising similar powers for similar purposes, can be a landowner for the purposes of ~~these Rules the rules of this Subchapter~~ if the governmental agency holds an easement in land.
- (22) "Nonpoint source (NPS) Pollution" means pollution originating from a diffuse source.
- (16)(23) ~~Program Year~~ "Fiscal Year" means the period from July 1 through June 30 for which funds are allocated to districts.
- (17)(24) ~~Proper Maintenance~~ "Proper Maintenance" means that a practice(s) is being maintained such that the practice(s) is ~~successfully~~ performing the function for which it was originally implemented.
- (25) "Regional Allocation Pool" means the annual share of the state's appropriation for each program allocated for applications ranked in the Division's three regions as specified in the annual Detailed Implementation Plan.

- (18)(26) ~~Soil Loss Tolerance (t) means the maximum allowable annual soil erosion rate to maintain the soil resource base, depending on soil type.~~ "Statewide Allocation Pool" means the annual share of the state's appropriation for applications ranked at the state level as specified in the annual Detailed Implementation Plan.
- (19)(27) ~~Strategy Plan~~ "Strategic Plan" means the annual plan for the N.C. Agriculture Cost Share Program for Nonpoint Source Pollution Control Soil and Water Conservation Commission Cost Share Programs to be developed by each district. The plan identifies pollution treatment natural resource needs and the level of cost sharing and technical assistance monies required to address those annual needs in the respective district.
- (20)(28) ~~Technical Representative~~ "Technical representative" of the district means a person designated by the district to act on their behalf who participates in the planning, design, implementation and inspection of BMPs. These practices shall be technically reviewed by the Division. The district chairman shall certify that the technical representative has properly planned, designed and inspected the BMPs.
- (21)(29) ~~Unencumbered Funds~~ "Unencumbered funds" means the portion of the allocation to each district which that has not been committed for cost sharing.

*Authority G.S. 106-840; 106-850; 139-3.*

## **02 NCAC 59D .0103 AGRICULTURE COST SHARE PROGRAM FINANCIAL ASSISTANCE ALLOCATION GUIDELINES AND PROCEDURES**

(a) The Commission shall allocate ~~the~~ cost share funds to ~~the~~ districts ~~in the designated program areas.~~ for cost share payments and cost share incentive payments. ~~To In order to receive fund allocations, each district designated eligible by the Commission shall submit an annual strategy plan to the Commission at the beginning of each fiscal year. by June 1 of each year. Funds may be allocated to each district for any or all of the following purposes: cost share payments, cost share incentive payments, technical assistance, or administrative assistance. Use of funds for technical and administrative assistance must follow the guidelines set forth in Rule .0106 of this Subchapter.~~

(b) Funds shall be allocated to the districts at the beginning of the fiscal year and whenever the Commission determines that sufficient funds are available to justify a reallocation. District ~~s~~ allocations shall be ~~allocated monies~~ based on the identified level of ~~agriculture related~~ agricultural nonpoint source pollution problems, the respective district's BMP installation goals as demonstrated in the ~~district~~ district's annual ~~strategy~~ strategic plan, and the district's record of performance to affect BMP installation by cooperating farmers. The allocation method used for disbursement of funds is based on the relative position of each respective district for those parameters approved by the

# PROPOSED RULES

Commission pursuant to Paragraph (g) of this Rule. Each district is assigned points for each parameter, and the points are totaled

and proportioned to the total dollars available under the current program year funding according to the following formula:

(1)	Sum of Parameter Points	=	Total Points	
(2)	Percentage Total Points Each District	x	Total Dollars Available	= Dollars Available to Each District

- (3) The minimum allocated to a particular district shall be twenty thousand dollars (\$20,000) per program year, unless the district requests less than twenty thousand dollars (\$20,000).
- (4) If a district requests less than the dollars available to that district in Subparagraph (b)(2) of this Rule, then the excess funds beyond those requested by the district shall be allocated to the districts who did not receive their full requested allocation using the same methodology described in Subparagraph (b)(2) of this Rule.

(c) ~~In the initial allocation 95 percent of the total program funding annual appropriation shall be allocated to the district accounts in the initial allocation. administered by the Division. The Division shall retain five percent of the total funding in a annual appropriation as a contingency fund to be used to respond to an emergency or natural disaster. If the contingency funds are not needed to respond to an emergency, then the contingency fund they shall be allocated at the March meeting of the Commission. available for allocation after March 1.~~

(d) The Commission may recall funds allocated to a district during a fiscal year that have not been encumbered to an agreement at any time if it determines the recalled funds are needed to respond to an emergency or natural disaster.

(e) At any time a district may submit a revised strategy strategic plan and apply to the Commission for to request additional funds from the Commission.

(f) ~~CPO's Agreements~~ that encumber funds under the current year must shall be submitted to the Division by 5:00 p.m. on the first Wednesday in June. June 30.

(g) ~~Districts For the Agriculture Cost Share Program, districts shall be allocated funds based on their respective data for each of the following parameters:~~

- (1) Percentage of total acres of agricultural land in North Carolina that are in the respective district ~~(including cropland, hayland, pasture land, and orchards/vineyards)~~ as reported in the most recent edition of the North Carolina ~~Agricultural Statistics. Census of Agriculture.~~ The actual percentage shall be normalized to a 1-100 scale. (20%)
- (2) Percentage of total number of animal units in North Carolina that are in the respective district as reported in the most recent edition of the North Carolina ~~Agricultural Statistics. Census of Agriculture~~ and converted to animal units using the conversion factors approved by the USDA-Natural Resources Conservation Service. The actual percentage shall be normalized to a 1-100 scale. (20%)

(3) Relative rank of the ~~percentage of the county outside of municipal boundaries as defined by North Carolina Department of Transportation draining to waters number of miles of stream identified as less than fully supporting due to agricultural nonpoint source pollution as reported in the state's 303(d) list, impaired or impacted on the most recent 305(b) report, and basin plan report produced by the North Carolina Division Water Resources.~~ (20%)

(4) Relative rank of the percentage of the county draining to waters classified as Primary Nursery Areas, Outstanding Resource Waters, High Quality Waters, ~~trout, Trout waters on the current schedule of Water Quality Standards and Classifications, Shellfishing growing areas (open) as determined by the Division of Marine Fisheries, and Drinking Water Assessment Areas as determined by the Division of Water Resources, shellfishing, and Critical Water Supply on the current schedule of Water Quality Standards and Classifications.~~ (10%)

(5) ~~The percentage of cost share funds allocated to a district that are encumbered to contracts in the best three of the most recent four completed program years as reported on the NC Agriculture Cost Share Program Database.~~ (10%)

(6)(5) Percentage of program funds ~~encumbered to contracts allocated to a district that are actually expended for installed BMPs in the best highest three of the most recent four seven -year period for which the allowed time for implementing contracted BMPs has expired as reported on in the NC Agriculture Cost Share Contracting System. Program Database.~~ (10%)(20%)

(7)(6) Relative rank of the ~~average erosion rate for agricultural number of acres of highly erodible land in the county as reported in by the National Resources Inventory, United States Department of Agriculture Farm Service Agency, unless the State Conservationist of the Natural Resources Conservation Service specifies that another information source would be more current and accurate.~~ (10%)

Authority G.S. 106-840; 106-850; 139-4; 139-8.

**02 NCAC 59D .0104 COMMUNITY CONSERVATION ASSISTANCE PROGRAM ALLOCATION GUIDELINES AND PROCEDURES**

(a) ~~BMP's eligible for cost sharing will be restricted to those BMP's listed in the Detailed Implementation Plan approved by the commission for the current program year. BMP's shall meet the following criteria to be listed in the Detailed Implementation Plan:~~

- (1) ~~All eligible BMP's must be designed to reduce the input of agricultural nonpoint source pollution into the water courses of the state or as otherwise authorized by statute.~~
- (2) ~~Information establishing the average cost of the specified BMP must be available. District BMP's may use actual costs as indicated by receipts, if average costs are not available.~~
- (3) ~~Eligible BMP's shall have adequate technical specifications as set forth in Paragraph (b) of this Rule.~~

(b) ~~BMP definitions and specifications are set forth periodically in the USDA Natural Resources Conservation Service Technical Guide, Section IV, Raleigh, North Carolina or by the division for district BMP's. BMP specifications appropriate for the current program year shall be met or exceeded in order for an applicant to qualify for cost sharing. Provisions for exceeding BMP design specifications by an applicant may be considered at the time of application with the district. The applicant shall assume responsibility for all costs associated with exceeding BMP design specifications.~~

(c) ~~The minimum life expectancy of the BMP's shall be listed in the Detailed Implementation Plan. Practices designated by a district shall meet the life expectancy requirement established by the division for that district BMP.~~

(a) The Commission shall consider the total amount of funding available for allocation, relative needs of the program for BMP

implementation, local technical assistance, and education to determine the proportion of available funds to be allocated for each eligible purpose. This determination shall be done prior to allocating funds to statewide, regional, and district allocation pools and the Division. Funds may be allocated for any or all of the following purposes:

- (1) cost share and cost share incentive payments;
- (2) technical and administrative assistance; and
- (3) statewide or local education and outreach activities.

The percentage of funding available for each purpose and each allocation pool shall be specified in the annual Detailed Implementation Plan based upon the recommendation of the Division and the needs expressed by the districts.

(b) District Allocations: Based on the availability of funds, the Commission shall allocate cost share funds from the district allocation pool to the districts. To receive fund allocations, each district shall request funds in their strategic plan.

(c) Funds for cost share and cost share incentive payments shall be allocated to the districts at the beginning of the fiscal year and whenever the Commission determines that funds are available in the district allocation pool to justify a reallocation. Districts shall be allocated monies based on the identified level of nonpoint source pollution problems and the respective district's BMP installation goals as demonstrated in the district's annual strategic plan. The allocation method used for disbursement of funds shall be based upon the score of each respective district for those parameters approved by the Commission pursuant to Subparagraph (7) of this Paragraph. The points each district scores on each parameter shall be totaled and proportioned to the total dollars available for district allocation under the current program year funding according to the following formula:

(1)	<u>Sum of Parameter Points</u>	=	<u>Total Points</u>
(2)	<u>Percentage Total</u>	=	<u>Dollars Available</u>
	<u>x</u>	=	<u>to Each District</u>
	<u>Points Each District</u>		

- (3) 95 percent of the program funding designated for district allocations shall be allocated to the district accounts in the initial allocation. The Division shall retain five percent of the total funding in a contingency fund to respond to an emergency or natural disaster.
- (4) The Commission may recall funds allocated to a district that have not been encumbered to an agreement if it determines the recalled funds are needed to respond to an emergency or natural disaster.
- (5) At any time a district may submit a revised strategic plan and apply to the Commission for additional funds.
- (6) Agreements that encumber funds under the current year must be submitted to the Division by 5:00 p.m. on June 30.
- (7) Districts shall be allocated funds based on their respective data for each of the following parameters:

- (A) Relative rank of the percentage of the county draining to waters identified as impaired or impacted on the most recent Integrated Report produced by the North Carolina Division of Water Resources. This report is incorporated with subsequent amendments and editions, and may be accessed at no charge at <http://ncdenr.maps.arcgis.com/apps/webappviewer/index.html> (20 percent).
- (B) Relative rank of the percentage of the county draining to waters classified as Outstanding Resource Waters, High Quality Waters and Trout Waters or on the current schedule of Water Quality Standards and Classifications, and shellfish growing areas (open) as determined by the Division of Marine Fisheries. The classifications are

incorporated with subsequent amendments and editions, and may be accessed at no charge at <http://ncdenr.maps.arcgis.com/apps/webappviewer/index.html>. The shellfish harvesting areas may be accessed at <http://portal.ncdenr.org/web/mf/shellfish-closure-maps>. (20 percent)

- (C) The percentage of each county covered by Phase I and Phase II requirements. (20 percent)
- (D) Relative rank of population density for the county. (20 percent)
- (E) Relative rank of the percentage of a county's land area that is located within drinking water assessment areas, as delineated by the Public Water Supply Section of the Division of Water Resources. The Public Water Supply assessment areas are incorporated with subsequent amendments and editions, and may be accessed at no charge at <http://deq.nc.gov/about/divisions/water-resources/drinking-water/drinking-water-protection-program/mapping-applications>. (20 percent)
- (F) The Commission may consider additional factors, such as data sources changes to the Subparagraphs in this Paragraph, as recommended by the Division of Soil and Water Conservation when making its allocations.

(d) Statewide and Regional Allocations: Based on the availability of funds, the Commission shall allocate cost share funds from the statewide and regional allocation pools. To receive fund allocations, each district designated eligible by the Commission shall submit applications to respective pools when solicited by the Division. The Division shall rank each application and recommend to the Commission for its approval an amount to allocate to each district corresponding to the highest-ranking applications.

*Authority G.S. 106-850; 139-8.*

## **02 NCAC 59D .0105 AGRICULTURAL WATER RESOURCES ASSISTANCE PROGRAM FINANCIAL ASSISTANCE ALLOCATION GUIDELINES AND PROCEDURES**

- (a) Cost share and incentive payments may be made through Cost Share Agreements between the district and the applicant.
- (b) For all practices except those eligible for CSI, the state shall provide a percentage of the average cost for BMP installation not to exceed the maximum cost share percentages shown in subdivisions (6), (8), and (9) of G.S. 143-215.74(b), and the applicant shall contribute the remainder of the cost. In-kind contributions by the applicant shall be included in the applicants' cost share contribution. In-kind contributions shall be specified in

the agreement for cost sharing and shall be approved by the district.

- ~~(e) CSI payments shall be limited to a maximum of three years per farm.~~
- ~~(d) Average installation costs for each comparative area or region of the state and the amount of cost share incentive payments shall be updated and revised at least triennially by the Division for approval by the Commission.~~
- ~~(e) The total annual cost share payments to an applicant shall not exceed the maximum funding authorized in subdivisions (6) and (9) of G.S. 143-215.74(b).~~
- ~~(f) Cost share payments to implement BMPs under this program may be combined with other funding programs, as long as the combined cost share rate does not exceed the amount and percentages set forth in Paragraphs (b) and (e) of this Rule. For special funding programs where the applicant relinquishes all production capability on his or her agricultural land for at least 10 years, combined funding may equal up to 100 percent. Agriculture Cost Share Program funding shall not exceed the maximum cost share percentages shown in subdivisions (6), (8), and (9) of G.S. 143-215.74(b).~~
- ~~(g) Use of cost share payments is restricted to land located within the county approved for funding by the Commission. However, in the situation where an applicant's farm is not located solely within a county, the entire farm, if contiguous, shall be eligible for cost share payments.~~
- ~~(h) Cost share contracts used on or for local, state or federal government land must be approved by the Commission in order to avoid potential conflicts of interest and to ensure that such contracts are consistent with the purposes of this program.~~
- ~~(i) The district Board of Supervisors may approve Cost Share Agreements with cost share percentages or amounts less than the maximum allowable in subdivisions (6), (8), and (9) of G.S. 143-215.74(b) if:~~
  - ~~(1) The Commission allocates insufficient cost share BMP funding to the district to enable it to award funding to all applicants;~~
  - ~~(2) The district establishes other criteria in its annual strategy plan for cost sharing percentages or amounts less than those allowable in subdivisions (6), (8), and (9) of G.S. 143-215.74(b).~~
- ~~(j) For purposes of determining eligible payments under practice-specific caps described in the detailed implementation plan, the district board shall consider all entities with which the applicant is associated, including those in other counties, as the same applicant.~~

- ~~(a) The Commission shall consider the total amount of funding available for allocation and the relative needs of the program for BMP implementation to determine the proportion of available funds to be allocated to statewide, regional, and district allocation pools and the Division. The percentage of funding available for each purpose and each allocation pool shall be specified in the annual Detailed Implementation Plan based upon the recommendation of the Division and the needs expressed by the districts.~~
- ~~(b) District Allocations: Based on funding availability, the Commission shall allocate cost share funds from the district~~

allocation pool to the districts. To receive fund allocations, each district shall request an allocation in their strategic plan.

(c) Funds for cost share and cost share incentive payments shall be allocated to the districts at the beginning of the fiscal year and whenever the Commission determines that funds are available in the district allocation pool to justify a reallocation. Districts shall be allocated monies based on the identified level of agricultural water use needs and the respective district's BMP installation

goals as demonstrated in the district's annual strategic plan. The allocation method used for disbursement of funds shall be based on the relative position of each respective district for those parameters approved by the Commission pursuant to Paragraph (h) of this Rule. The points each district scores on each parameter shall be totaled and proportioned to the total dollars available for district allocation under the current program year funding according to the following formula:

$$\begin{array}{rclclcl}
 (1) & \text{Sum of Parameter Points} & = & \text{Total Points} & & \\
 (2) & \text{Percentage Total} & & \text{Total} & & \text{Dollars Available} \\
 & \text{Points Each} & \times & \text{Dollars} & = & \text{to} \\
 & \text{District} & & \text{Available} & & \text{Each District}
 \end{array}$$

- (3) The minimum district allocation shall be specified in the Detailed Implementation Plan.
- (4) If a district requests less than the dollars available to that district in Subparagraph (b)(2) of this Rule, then the excess funds beyond those requested by the district shall be allocated to the districts who did not receive their full requested allocation using the same methodology described in Subparagraph (b)(2) of this Rule.

- (6) The Commission may consider additional factors, such as data sources changes to the Subparagraphs in this Paragraph, as recommended by the Division of Soil and Water Conservation when making its allocations.

(d) In the initial allocation 95 percent of the annual appropriation shall be allocated to district accounts administered by the Division. The Division shall retain five percent of the annual appropriation as a contingency to be used to respond to an emergency or natural disaster. If the contingency funds are not needed to respond to an emergency, then they shall be available for allocation after March 1.

(i) Statewide and Regional Allocations: Based upon funding availability, the Commission shall allocate cost share funds from the statewide and regional allocation pools. To receive fund allocations, each district designated eligible by the Commission shall submit applications to respective pools when solicited by the Division. The Division shall rank each application and recommend to the Commission for its approval an amount to allocate to each district corresponding to the highest-ranking applications.

(e) The Commission may recall funds allocated to a district that have not been encumbered to an agreement at any time if it determines the recalled funds are needed to respond to an emergency or natural disaster.

Authority G.S. 106-840; 106-850; 139-4; 139-8.

(f) At any time a district may submit a revised strategic plan to request additional funds from the Commission.

(g) Agreements that encumber funds under the current year must be submitted to the Division by 5:00 p.m. on June 30th.

(h) For the Agricultural Water Resources Assistance Program, districts shall be allocated funds based on their respective data for each of the following parameters:

- (1) Relative rank of the number of farms (total operations) that are in the respective district as reported in the Census of Agriculture (20 percent)
- (2) Relative rank of the total acres of land in farms that are in the respective district as reported in the Census of Agriculture (20 percent)
- (3) Relative rank of the Market Value of Sales that are in the respective district as reported in the Census of Agriculture (15 percent)
- (4) Relative rank of the amount of agricultural water use in the respective district as reported in the North Carolina Agricultural Water Use Survey (25 percent). Data from the most recent three surveys will be averaged to determine each district's rank.
- (5) Relative rank of population density as reported by the state demographer (20 percent)

## 02 NCAC 59D .0106 BEST MANAGEMENT PRACTICES ELIGIBLE FOR COST SHARE PAYMENTS

(a) The funds available for technical assistance shall be allocated by the commission based on the recommendation of the division and the needs as expressed by the district and needs to accelerate the installation of BMP's in the respective district. Each district may use these monies to fund new positions or to accelerate present technical assistance positions. Districts must provide an itemized budget to the division in order to qualify for technical assistance funds. Matching funds for district technical assistance shall be approved by the commission prior to any expenditure of funds. Budget revisions submitted by the districts may be approved by the NPS Section based on Paragraph (b) of this Rule. N. C. Agriculture Cost Share technical assistance funds may be used for each FTE technical position with the district matching at least 50 percent of the total. Priorities for funding positions shall be assigned based as follows:

- (1) Subject to availability of funds and local match, provide support for one FTE technical position for every district.
- (2) Subject to availability of funds and local match, provide support for one additional FTE technical position if the position is needed to further support program implementation. Priority for funding positions beyond one FTE per district shall be based on the following parameters:

- (A) ~~Whether the position is presently funded by program technical assistance funds.~~
- (B) ~~The number of program dollars encumbered to contracts in the highest three of the previous four completed program years, and~~
- (C) ~~The number of program dollars actually expended for installed BMPs in the highest three years of the most recent four year period for which the allowed time for implementing contracted BMPs has expired as reported on the NC Agriculture Cost Share Database.~~

- (3) Subject to availability of funds and local match, provide support for additional FTE technical position if the position is needed to further accelerate treatment of identified critical nonpoint source pollution problem(s).

(b) ~~Technical assistance funds may be used for salary, benefits, social security, field equipment and supplies, office rent, office equipment and supplies, postage, telephone service, travel and mileage. A maximum of two thousand five hundred dollars (\$2,500) per year for each FTE technical position is allowed for mileage charges.~~

(c) ~~Technical assistance funds may not be used to fund technical assistance positions which do not meet the following minimum requirements:~~

- (1) ~~associated degree in engineering, agriculture, forestry or related field; or~~
- (2) ~~high school diploma with two years experience in the fields listed in Rule .0106(c)(1), of this Subchapter.~~

(d) ~~Cost shared positions must be used to accelerate the program activities in the district. A district technician cost shared with program funds may work on other activities as delegated by the field office supervisor but the total hours charged to the program by field office personnel must equal or exceed those hours funded through the program. Also, these hours must be in addition to those hours normally spent in BMP planning and installation by district personnel.~~

(e) ~~District technicians may be jointly funded by more than one district to accelerate the program in each participating district. Each district must be eligible for cost sharing in the program. Requests for funding (salary, FICA, insurance, etc.) of a shared position must be presented to the division by all concerned districts and the division shall cost share to the billing district at a 50-50 rate based on the portion of the FTE provided each respective district. A shared position must be officially housed in one specific district and cost share for support items (office rent, telephone, etc.) shall be paid to one district only.~~

(f) ~~Funds, if available, shall be allocated to each participating district to provide for administrative costs under this program. These funds shall be used for clerical assistance and other related program administrative costs and shall be matched with in-kind funds of an equal amount from the district.~~

(a) BMPs eligible for cost sharing shall be restricted to those BMPs listed in the Detailed Implementation Plan approved by the

Commission for the current fiscal year, except for District BMPs. BMPs shall meet the following criteria to be listed in the Detailed Implementation Plan:

- (1) all eligible BMPs shall be designed to meet the purpose of the program or shall be authorized by statute.
- (2) information establishing the average cost of the specified BMP shall be used, if available. District BMPs may use actual costs as indicated by receipts, if average costs are not available; and
- (3) eligible BMPs shall have adequate technical specifications as set forth in Paragraph (b) of this Rule.

(b) BMP definitions and specifications shall be determined by the Commission using the process outlined in 02 NCAC 59D .0103 through 59D .0105 or by the Division for district BMPs. For a contract to be eligible for payment, all cost shared BMPs shall meet or exceed the specifications in effect at the time the contract was approved. Provisions for exceeding BMP design specifications by an applicant may be considered at the time of application with the district. The applicant shall assume responsibility for all costs associated with exceeding BMP design specifications.

(c) The Division has authority to approve District BMPs for evaluation purposes. The BMP shall be requested by a district and meet the program purpose. The Division shall determine it to be technically adequate prior to funding.

(d) The minimum required maintenance of the BMPs shall be listed in the Detailed Implementation Plan or be established by the Division for District BMPs.

*Authority G.S. 106-840; 106-850; 139-4; 139-8.*

## **02 NCAC 59D .0107 COST SHARE AND INCENTIVE PAYMENTS**

(a) ~~The landowner shall be required to sign the agreement for all practices other than agronomic practices and land application of animal wastes. An applicant who is not the landowner may submit a long term written lease or other legal document, indicating control over the land in lieu of the landowner's signature, provided the control runs the life of the practice as listed in the respective Program Year's Implementation Plan. Signature on the agreement constitutes responsibility for BMP maintenance and continuation.~~

(b) ~~As a condition for receiving cost share or cost share incentive payments for implementing BMP's, the applicant shall agree to continue and maintain those practices for the minimum life as set forth in the Detailed Implementation Plan, effective the date the BMP's are implemented.~~

(c) ~~As a condition for receiving cost share payments, the applicant shall agree to submit a soil test sample for analysis and follow the fertilizer application recommendations as close as reasonably and practically possible. Soil testing shall be required a minimum of every two years on all cropland affected by cost share payments. Failure to soil test shall not constitute noncompliance with the cost share agreement.~~

(d) ~~As a condition for receiving cost share payments for waste management systems, the applicant shall agree to have the waste material analyzed once every year to determine its nutrient~~

content. If the waste is land applied, the applicant shall agree to soil test the area of application and to apply the waste as close as reasonably and practically possible to recommended rates. When waste is land applied, waste analysis and soil testing shall be conducted annually.

(e) The technical representative of the district shall determine if the practice(s) implemented have been installed according to specifications as defined for the respective program year in the USDA Natural Resources Conservation Service Technical Guide, Section IV, Raleigh, North Carolina, according to other specifications approved by the Commission pursuant to 02 NCAC 59G .0103, or according to specifications approved by the Division for district BMP's based on the criteria established in 02 NCAC 59G .0103(e). The district shall be responsible for making an annual spot check of five percent of all the cost share agreements to ensure proper maintenance. Waste management systems shall be included as part of the annual five percent check except for systems on farms without certified waste management plans. In those cases, the districts shall conduct annual status reviews for five years following implementation.

(f) If the technical representative of the district determines that a BMP for which program funds were received has been destroyed or has not been properly maintained, the applicant will be notified that the BMP must be repaired or re-implemented within 30 working days. For vegetative practices, applicants are given one calendar year to re-establish the vegetation. The district may grant a prescribed extension period if it determines compliance can not be met due to circumstances beyond the applicants control.

(g) If the practices are not repaired or reimplemented within the specified time, the applicant shall be required to repay to the Division a prorated refund for cost share BMP's as shown in Table 1 and 100 percent of the cost share incentive payments received.

**Table 1  
PRORATED REFUND SCHEDULE FOR NONCOMPLIANCE  
OF COST SHARE PAYMENTS**

Percent Age of Practice Life	Percent Refund
0	100
10	95
20	89
30	82
40	74
50	65
60	55
70	44
80	31
90	17
100	0

(h) An applicant, who has been found in noncompliance and who does not agree to repair or reimplement the cost shared practices, and a District may jointly request the commission to informally mediate the case. To invoke this method of mediation, both parties must stipulate that the commission mediation is binding.

(i) An applicant shall have 180 days to make repayment to the Division following the final appeals process.

(j) The inability to properly maintain cost shared practices or the destruction of such practices through no fault of the applicant shall not be considered as noncompliance with the cost share agreement.

(k) When land under cost share agreement changes owners the new landowner shall be strongly encouraged by the district to accept the remaining maintenance obligation. If the new landowner does not accept the maintenance requirements in writing, then the original applicant shall be required to refund 100 percent of all CSI payments and a prorated portion of cost share payments in accordance with Table 1 in Paragraph (g) of this Rule.

(a) Cost share and incentive payments may be made through Cost Share Agreements between the district, Division and the applicant.

(b) For all practices except those eligible for Cost Share Incentives (CSI), the State of North Carolina shall provide a percentage of the average cost for BMP installation not to exceed the maximum cost share percentages shown in subdivisions (6), (8), and (9) of G.S. 106-850(b), and the applicant shall provide the remainder of the cost. In-kind contributions by the applicant shall be included in the applicants' cost share contribution. In-kind contributions shall be approved by the district and Division.

(c) CSI payments shall be limited to a maximum of three years per entity.

(d) Average installation costs for each comparative area or region of the state and the amount of cost share incentive payments shall be updated and revised at least triennially by the Division for approval by the Commission.

(e) The total annual cost share payments to an applicant shall not exceed the maximum funding authorized in subdivisions (6) and (9) of G.S. 106-850(b).

(f) Use of cost share payments shall be restricted to land located within the county approved for funding by the Commission. However, in the situation where an applicant's farm is not located solely within a county, the entire farm, if contiguous, shall be eligible for cost share payments.

(g) Agriculture Cost Share Program and Agricultural Water Resources Assistance Program cost share contracts used on or for local, state or federal government land shall be approved by the Commission to avoid potential conflicts of interest and to ensure that such contracts are consistent with the purposes of these programs.

(h) The district Board of Supervisors may approve Cost Share Agreements with cost share percentages or amounts less than the maximum allowable in subdivisions (6), (8), and (9) of G.S. 106-850(b) if:

- (1) the Commission allocates insufficient cost share BMP funding to the district to enable it to award funding to all applicants; or
- (2) the district establishes other criteria in its annual strategic plan for cost sharing percentages or amounts less than those allowable in subdivisions (6), (8), and (9) of G.S. 106-850(b).

(i) For purposes of determining eligible payments under practice-specific caps described in the detailed implementation plan, the district board shall consider all entities with which the applicant is associated, including those in other counties, as the same applicant.

Authority G.S. 106-850; 139-4; 139-8.



**02 NCAC 59D .0108 TECHNICAL ASSISTANCE FUNDS**

~~(a) As a component of the annual strategy plan, the district shall prioritize both cropland and animal operations according to pollution potential. The district shall target technical and financial assistance to facilitate BMP implementation on the identified critical areas.~~

~~(b) Priority by the district may be given to implementing systems of BMP's which provide the most cost effective reduction of nonpoint source pollution.~~

~~(c) All applicants shall apply to the district and complete the necessary forms in order to receive cost share payments.~~

~~(d) The district shall review each application and the feasibility of each application. The district shall review and approve the evaluation and assign priority for cost sharing. All applicants shall be informed of cost share approval or denial.~~

~~(e) Upon approval of the application by the district, the applicant and the district shall enter into a cost share agreement. The cost share agreement shall list the practices to be cost shared with state funds. The agreement shall also include the average cost of the recommended practice(s), cost incentive payment of the practice(s), and the expected implementation date of the practice(s). The District shall develop CPO's, which shall become a part of the cost share agreement.~~

~~(f) Upon completion of practice(s) implementation, the technical representative of the district shall notify the district of compliance with design specifications.~~

~~(g) Upon notification, the district shall review the CPO. Upon approval, the district shall certify the practices in the CPO and notify the Division to make payment to the applicant.~~

~~(h) Upon receipt of a quarterly statement from the district, the Division shall reimburse to the district the appropriate amount for technical and clerical assistance.~~

~~(i) The district shall be responsible for and approve all BMP inspections as set forth in Rule .0107(e) of this Section to insure proper maintenance and continuation under the cost share agreement.~~

~~(j) The district shall keep appropriate records dealing with the program.~~

(a) The funds available for technical assistance shall be allocated by the Commission based on the recommendation of the division, the needs as expressed by the district, and the needs to accelerate the installation of BMPs in the respective district. The district shall provide at least 50 percent of the total matching funds for technical assistance.

(b) The Commission shall allocate technical assistance funds as described in their Detailed Implementation Plan (DIP). This allocation shall be made based on the implementation of conservation practices for which district employees provided technical assistance incorporating the following:

- (1) Commission Cost Share Programs funded practices will be weighted at 100 percent;
- (2) other local, state, federal and grant funded practices that meet the purpose requirements in 02 NCAC 59D .0101 will be weighted at a minimum of 25 percent as specified in the DIP;
- (3) districts shall submit information on funded practices as specified in Subparagraph (2) of

this Paragraph through their annual strategic plan;

(4) this allocation will be calculated using the best three of the most recent seven years; and

(5) this allocation will be calculated once every three years, unless there is a change in technical assistance state appropriations.

(c) Technical assistance funds may be used for salary, benefits, social security, field equipment and supplies, office rent, office equipment and supplies, postage, telephone service, travel, mileage, and any other expense of the district in implementing Soil and Water Conservation Commission Cost Share Programs.

(d) Each district requesting technical assistance funding with the required 50 percent local match shall receive a minimum allocation of twenty thousand dollars (\$20,000) each year.

(e) If a district is not spending more on financial assistance funds on Commission Cost Share Programs than they receive for technical assistance, the district shall appeal to the Commission to receive technical assistance funding.

(f) All technical district employees shall obtain Job Approval Authority for two best management practices from the Commission or the United States Department of Agriculture Natural Resources Conservation Service within three years of being hired or July 1, 2018, whichever is later.

(1) One of the best management practices for which the employee has obtained Job Approval Authority shall be a design practice. Design practice means an engineering practice as defined by the Natural Resources Conservation Service of Soil and Water Conservation Commission in their Program Detailed Implementation Plan(s).

(2) The District Board of Supervisors may request a one-year extension for their employees in meeting the Job Approval Authority requirement for extenuating circumstances.

*Authority G.S. 106-840; 106-850; 139-4; 139-8.*

**02 NCAC 59D .0109 COST SHARE AGREEMENT**

(a) The landowner shall be required to sign the agreement for all practices that affect change to the property. The signature on the agreement constitutes responsibility for BMP maintenance and continuation.

(b) The technical representative of the district shall determine if the practice(s) implemented have been installed according to practice standards as defined for the respective program year in the USDA-Natural Resources Conservation Service Technical Guide for North Carolina, according to other specifications approved by the Commission pursuant to 02 NCAC 59G .0103, or according to standards approved by the Division for district BMPs based on the criteria established in 02 NCAC 59G .0103(c).

(c) The district shall be responsible for making an annual spot check of five percent of all the cost share agreements to ensure proper maintenance. The Commission may specify additional spot check requirements for specific BMPs in the Detailed Implementation Plan.

(d) If the technical representative of the district determines that a BMP for which program funds were received has been destroyed

or has not been properly maintained, the applicant shall be notified that the BMP shall be repaired or re-implemented within 30 working days. For vegetative practices, applicants shall be given one calendar year to re-establish the vegetation. The Division may grant a prescribed extension period if it determines compliance cannot be met due to circumstances beyond the applicants control.

(e) If the practices are not repaired or reimplemented within the specified time, the applicant shall be required to repay to the Division a prorated refund for cost share BMP's as shown in Table 1 and 100 percent of the cost share incentive payments received.

**Table 1  
PRORATED REFUND SCHEDULE FOR NONCOMPLIANCE  
OF COST SHARE PAYMENTS**

Percent Age of Practice Life	Percent Refund
0	100
10	95
20	89
30	82
40	74
50	65
60	55
70	44
80	31
90	17
100	0

(f) In the event that a contract has been found to be noncompliant and the applicant, does not agree to correct the non-compliance, the Division may invoke procedures to achieve resolution to the noncompliance, including any and all remedies available to it under the law.

(g) When land under cost share agreement changes owners the new landowner shall be strongly encouraged by the district to accept the remaining maintenance obligation. If the new landowner does not accept the maintenance requirements in writing, then the original applicant shall be required to refund 100 percent of all CSI payments and a prorated portion of cost share payments in accordance with Table 1 in Paragraph (e) of this Rule.

*Authority G.S. 106-850; 139-4; 139-8.*

**02 NCAC 59D .0110 DISTRICT PROGRAM  
OPERATION**

(a) As a component of the annual strategic plan, the district shall prioritize resource concerns per the program purpose. The district shall target technical and financial assistance to facilitate BMP implementation on the identified critical areas.

(b) The district shall give priority to implementing systems of BMPs that provide the most cost-effective conservation practice for addressing priority resource concerns.

(c) All applicants shall apply to the district in order to receive cost share payments.

(d) The district shall review each application and the feasibility of each application. The district shall review and approve the evaluation and assign priority for cost sharing. All applicants shall be informed of cost share application approval or denial.

(e) Upon approval of the application by the district, the applicant, district, and the Division shall enter into a cost share agreement.

The cost share agreement shall list the practices to be cost shared with state funds. The agreement shall also include the average cost of the recommended practice(s), cost incentive payment of the practice(s), and the expected implementation date of the practice(s). The District shall develop a conservation plan that shall become a part of the cost share agreement.

(f) Upon completion of practice(s) implementation, the technical representative of the district shall notify the district board of compliance with design specifications.

(g) Upon notification, the district shall review the agreement and request for payment. Upon approval, the district shall certify the practices in the agreement and notify the Division to make payment to the applicant. The District Board of Supervisors shall certify that the individual signing the conservation plan and request for payment has proper job approval authority for the respective practice(s) before signing requests for payment for completed BMPs.

(h) The district shall be responsible for and approve all BMP inspections as set forth in Rule .0109(e) of this Section to insure proper maintenance and continuation under the cost share agreement.

(i) The district shall keep records dealing with the program per their district's document retention schedule.

*Authority G.S. 106-840; 106-850; 139-4; 139-8.*

**SUBCHAPTER 59H – COMMUNITY CONSERVATION  
ASSISTANCE PROGRAM FOR NONPOINT SOURCE  
POLLUTION CONTROL**

**SECTION .0100 – COMMUNITY CONSERVATION  
ASSISTANCE PROGRAM**

**02 NCAC 59H .0101 PURPOSE**

~~This Subchapter describes the operating procedures for the division under the guidance of the commission implementing the Community Conservation Assistance Program for Nonpoint Source Pollution Control. Procedures and guidelines for participating districts are also described. The purpose of the voluntary program is to reduce the delivery of nonpoint source (NPS) pollution into the waters of the State.~~

*Authority G.S. 106-840; 106-860; 139-4; 139-8.*

**02 NCAC 59H .0102 DEFINITIONS FOR  
SUBCHAPTER 59H**

~~The following terms used in this Subchapter have the following meanings:~~

- (1) ~~"Applicant" means a person(s) who applies for best management practice cost sharing monies from the district. An applicant may also be referred to as a "cooperator."~~
- (2) ~~"Average Costs" means the calculated cost, determined by averaging actual costs and current cost estimates necessary for best management practice implementation. "Actual costs" include labor, supplies, and other direct costs required for physical installation of a practice.~~

- |   |  |
|---|--|
| <p>(3) <del>"Best Management Practice (BMP)" means a practice used to reduce nonpoint source inputs to receiving waters, including both structural or nonstructural management practices.</del></p> <p>(4) <del>"Conservation Plan of Operation (CPO)" means a written plan scheduling the applicant's decisions concerning land use, and both cost shared and non cost shared BMPs to be installed and maintained on the property.</del></p> <p>(5) <del>"Cost Share Agreement" means an agreement between the applicant and the district that defines the BMPs to be cost shared, rate and amount of payment, minimum practice life, and date of BMP installation. The agreement shall state that the recipient shall maintain and repair the practice(s) for the specified minimum life of the practice. The Cost Share Agreement shall have a maximum contract life of three years for BMP installation. The district shall perform an annual status review during the installation period.</del></p> <p>(6) <del>"Cost Share Incentive (CSI)" means a predetermined fixed payment paid to an applicant for implementing a nonstructural management BMP in lieu of cost share on a structural practice.</del></p> <p>(7) <del>"Cost Share Rate" means a cost share percentage paid to an applicant for implementing BMPs.</del></p> <p>(8) <del>"Detailed Implementation Plan" means the plan approved by the Commission that specifies the guidelines for the current program year including:</del></p> <p style="margin-left: 20px;">(a) <del>annual program goals;</del></p> <p style="margin-left: 20px;">(b) <del>district, statewide, and regional allocations;</del></p> <p style="margin-left: 20px;">(c) <del>BMPs that will be eligible for cost sharing; and</del></p> <p style="margin-left: 20px;">(d) <del>the minimum life expectancy of those practices.</del></p> <p>(9) <del>"District Allocation Pool" means the annual share of the state's appropriation to participating districts.</del></p> <p>(10) <del>"District BMP" means a BMP designated by a district to reduce the delivery of NPS pollution and is approved by the Division as technically adequate prior to funding.</del></p> <p>(11) <del>"Division" means the Division of Soil and Water Conservation.</del></p> <p>(12) <del>"Encumbered Funds" means monies from a district's allocation that have been committed to an applicant after initial approval of the cost share agreement.</del></p> <p>(13) <del>"Full Time Equivalent (FTE)" means 2,080 hours per annum, which equals one full time technical position.</del></p> <p>(14) <del>"In-kind Contribution" means a contribution by the applicant towards the implementation of BMPs. In-kind contributions shall be approved by the district and may include labor, fuel, machinery use, and supplies and materials</del></p> | <p><del>necessary for implementing the approved BMPs.</del></p> <p>(15) <del>"Landowner" means any natural person or other legal entity, including a governmental agency, who holds either an estate of freehold (such as a fee simple absolute or a life estate) or an estate for years or from year to year in land, but does not include an estate at will or by sufferance in land. Any governmental or quasi-governmental agency, such as a drainage district or a soil and water conservation district, exercising similar powers for similar purposes, can be a landowner for the purposes of this Subchapter if the governmental agency holds an easement in land.</del></p> <p>(16) <del>"Nonpoint Source (NPS) Pollution" means pollution originating from a diffuse source.</del></p> <p>(17) <del>"Program Year" means the period from July 1 through June 30 for which funds are allocated to districts.</del></p> <p>(18) <del>"Proper Maintenance" means that a practice(s) is being maintained such that the practice(s) is performing the function for which it was originally implemented.</del></p> <p>(19) <del>"Regional Allocation Pool" means the annual share of the state's appropriation allocated for applications ranked in the Division's three regions as specified in the annual Detailed Implementation Plan.</del></p> <p>(20) <del>"Statewide Allocation Pool" means the annual share of the state's appropriation allocated for applications ranked at the state level as specified in the annual Detailed Implementation Plan.</del></p> <p>(21) <del>"Strategy Plan" means the annual plan for the Community Conservation Assistance Program for Nonpoint Source Pollution Control to be developed by each district. The plan identifies pollution treatment needs and the level of cost sharing and technical assistance monies required to address those annual needs in the respective district.</del></p> <p>(22) <del>"Technical Representative" of the district means a person designated by the district to act on its behalf who participates in the planning, design, implementation, and inspection of BMPs.</del></p> <p>(23) <del>"Unencumbered Funds" means the portion of the allocation to each district that has not been committed for cost sharing.</del></p> |
|---|--|

Authority G.S. 106-840; 106-860; 139-4; 139-8.

**02 NCAC 59H .0103 ALLOCATION GUIDELINES AND PROCEDURES**

- (a) ~~The Commission shall consider the total amount of funding available for allocation, relative needs of the program for BMP implementation, local technical assistance, and education to determine the proportion of available funds to be allocated for~~

each eligible purpose. This determination shall be done prior to allocating funds to statewide, regional, and district allocation pools and the Division. Funds may be allocated for any or all of the following purposes:

- (1) cost share and cost share incentive payments;
- (2) technical and administrative assistance; and
- (3) statewide or local education and outreach activities.

The percentage of funding available for each purpose and each allocation pool shall be specified in the annual Detailed Implementation Plan based upon the recommendation of the Division and the needs expressed by the districts.

(b) ~~District Allocations:~~ The Commission shall allocate cost share funds from the district allocation pool to the districts. To receive fund allocations, each district shall submit a strategy plan to the Commission at the beginning of each program year.

(c) ~~Funds for cost share and cost share incentive payments shall be allocated to the districts at the beginning of the fiscal year and whenever the Commission determines that funds are available in the district allocation pool to justify a reallocation. Districts shall be allocated monies based on the identified level of nonpoint source pollution problems and the respective district's BMP installation goals as demonstrated in the district annual strategy plan. The allocation method used for disbursement of funds shall be based upon the score of each respective district for those parameters approved by the Commission pursuant to Subparagraph (7) of this Paragraph. The points each district scores on each parameter shall be totaled and proportioned to the total dollars available for district allocation under the current program year funding according to the following formula:~~

- (1) ~~Sum of Parameter Points~~  

$$\frac{\text{Sum of Parameter Points}}{\text{Total Points}} = \frac{\text{Percentage Total}}{\text{Total Dollars}}$$

$$\frac{\text{Points Each District}}{\text{Available to Each District}} \times \text{Dollars Available}$$
- (2) ~~95 percent of the program funding designated for district allocations shall be allocated to the district accounts in the initial allocation. The Division shall retain five percent of the total funding in a contingency fund to respond to an emergency or natural disaster.~~
- (3) ~~The Commission may recall funds allocated to a district that have not been encumbered to an agreement if it determines the recalled funds are needed to respond to an emergency or natural disaster.~~
- (4) ~~At any time a district may submit a revised strategy plan and apply to the Commission for additional funds.~~
- (5) ~~CPOs that encumber funds under the current year must be submitted to the Division by 5:00 p.m. on the first Wednesday in June.~~
- (6) ~~Districts shall be allocated funds based on their respective data for each of the following parameters:~~

- (A) Relative rank of the percentage of the county draining to waters identified as impaired or impacted on the most

recent Integrated Report produced by the North Carolina Division of Water Resources. This report is incorporated with subsequent amendments and editions, and may be accessed at no charge

at <http://ncdenr.maps.aregis.com/apps/webappviewer/index.html> (20 percent). Relative rank of the percentage of the county draining to waters classified as Outstanding Resource Waters, High Quality Waters and Trout Waters or on the current schedule of Water Quality Standards and Classifications, and shellfish growing areas (open) as determined by the Division of Marine Fisheries. The classifications are incorporated with subsequent amendments and editions, and may be accessed at no charge at <http://ncdenr.maps.aregis.com/apps/webappviewer/index.html>. The shellfish harvesting areas may be accessed at [http://portal.ncdenr.org/web/mf/shellfish\\_closure\\_maps](http://portal.ncdenr.org/web/mf/shellfish_closure_maps). (20 percent)

(B) The percentage of each county covered by Phase I and Phase II requirements. (20 percent)

(C) Relative rank of population density for the county. (20 percent)

(D) Relative rank of the percentage of a county's land area that is located within drinking water assessment areas, as delineated by the Public Water Supply Section of the Division of Water Resources. The Public Water Supply assessment areas are incorporated with subsequent amendments and editions, and may be accessed at no charge at <http://deq.nc.gov/about/divisions/water-resources/drinking-water/drinking-water-protection-program/mapping-applications>. (20 percent)

(E) The Commission may consider additional factors, such as data sources changes to the Subparagraphs in this Paragraph, as recommended by the Division of Soil and Water Conservation when making its allocations.

(F) ~~Statewide and Regional Allocations:~~ The Commission shall allocate cost share funds from the statewide and regional allocation pools. To receive fund allocations, each district designated eligible by the Commission shall submit applications to respective pools when solicited by the Division. The Division shall rank each application and recommend to the Commission for

its approval an amount to allocate to each district corresponding to the highest ranking applications.

(e) ~~The funds available for technical and administrative assistance shall be allocated by the Commission based upon the needs as expressed by the district and needs to accelerate the installation of BMPs in the respective district. Each district may use these monies to fund new positions or to accelerate present technical assistance. Districts must provide an itemized budget to the Division in order to qualify for technical assistance funds. N.C. Community Conservation Assistance Program technical assistance funds may be used for technical assistance with the district matching at least 50 percent of the total. Each district allocated funds for technical assistance shall demonstrate to the Commission in the itemized budget that matching funds are available prior to any expenditure of funds. The allocation method used for disbursement of funds shall be based on the score of each respective district for those parameters approved by the Commission pursuant to Subparagraph (4) of this Paragraph. The points each district scores for each parameter shall be totaled and proportioned to the total dollars available under the current program year funding according to the following formula:~~

- (1) ~~Sum of Parameter Points~~  
= ~~Total Points~~
- (2) ~~Percentage Total~~ \*  
~~Total Dollars =~~ ~~Dollars~~  
~~Available~~  
~~Points Each District~~  
~~Available~~ to ~~Each~~  
~~District~~
- (3) ~~If a district requests less than the dollars available to that district in Subparagraph (2) of this Paragraph, then the excess funds shall be allocated to the districts who did not receive their full requested allocation using the same methodology described in Subparagraph (2) of this Paragraph.~~
- (4) ~~Priority for funding shall be based upon the following parameters:~~
  - (A) ~~Whether the position is presently funded by Community Conservation Assistance Program technical assistance funds. (25 percent)~~
  - (B) ~~The proportion of Community Conservation Assistance Program funds for cost share and cost share incentive allocated to districts served by this technical assistance request (normalized to 1 to 100 scale by multiplying each district's score by a factor such that the product of the highest score for this parameter is 100). (50 percent)~~
  - (C) ~~The amount of additional funds leveraged by grants and other funds committed to districts served by this technical assistance request (normalized to 1 to 100 scale by multiplying each district's score by a factor such that the product of the~~

~~highest score for this parameter is 100). (25 percent)~~

- (5) ~~Subject to availability of funds and local match, the Commission shall provide support for technical assistance for every district.~~
- (6) ~~District technicians may be jointly funded by more than one district to accelerate the program in each participating district. Each district shall be eligible for cost sharing in the program. Requests for funding (salary, FICA, insurance, etc.) of a shared position must be presented to the Division by all participating districts and the Division shall cost share to the billing district at a 50/50 rate based on the portion of the FTE provided each respective district. A shared position shall be officially housed in one specific district and cost share for support items (office rent, telephone, etc.) shall be paid to one district only.~~
- (7) ~~Funds, if available, shall be allocated to each participating district to provide for administrative costs under this program. These funds shall be used for clerical assistance and other related program administrative costs and shall be matched with in-kind funds of an equal amount from the district.~~

(f) ~~The funds available for the education and outreach purpose shall be allocated by the Commission based upon the needs as expressed by the district and needs to accelerate the installation of BMPs in that respective district. Districts and the Division may use these funds for holding workshops for potential applicants and for developing, duplicating, and distributing outreach materials or signs. Districts shall provide an itemized budget to the Division in order to qualify for education and outreach funds. Education and outreach funds shall be allocated to each district in accordance with the following formula:~~

- (1) ~~Each district shall receive the lesser of one~~  
  

Total	*	Total	÷	Total	=	Education
Educational and Outreach Dollars Available		Education and Outreach Dollars Requested by Each District		Education and Outreach Dollars Requested by All Districts		and Outreach Dollars Available to Each District

~~thousand dollars (\$1,000) or the result of the following equation:~~
- (2) ~~If more Education and Outreach funds are available for allocation than are requested by districts or the Division, then the excess funds shall be added to the funds to be allocated for cost share and cost share incentive payments.~~

Authority G.S. 106-840; 106-860; 139-4; 139-8.

**02 NCAC 59H .0104 BEST MANAGEMENT**

**PRACTICES ELIGIBLE FOR COST SHARE PAYMENTS**

(a) ~~BMPs eligible for cost sharing are restricted to those BMPs listed in the Detailed Implementation Plan approved by the commission for the current program year. BMPs shall meet the following criteria to be listed in the Detailed Implementation Plan:~~

- (1) ~~All eligible BMPs must be designed to reduce the input of nonpoint source pollution into the water courses of the state.~~
- (2) ~~Information establishing the average cost of the specified BMP must be available. District BMPs may use actual costs as indicated by receipts, if average costs are not available.~~
- (3) ~~Eligible BMPs shall have technical specifications as set forth in Paragraph (b) of this Rule.~~

(b) ~~BMP definitions and specifications shall be determined by the Commission using the process outlined in 02 NCAC 59G .0103 Approval of Best Management Practices.~~

*Authority G.S. 106-840; 106-860; 139-4; 139-8.*

**02 NCAC 59H .0105 COST SHARE AND INCENTIVE PAYMENTS**

(a) ~~Cost share and incentive payments shall be made through Cost Share Agreements between the district and the applicant.~~

(b) ~~For all practices except those eligible for CSI, the state shall provide a percentage of the average cost for BMP installation not to exceed the maximum cost share percentages shown in subdivision (4) of G.S. 143-215.74M(b), and the applicant shall contribute the remainder of the cost. In kind contributions by the applicant shall be included in the applicants' cost share contribution. In kind contributions shall be specified in the agreement for cost sharing and shall be approved by the district.~~

(c) ~~CSI payments shall be limited to a maximum of three years per applicant per incentive practice.~~

(d) ~~Average installation costs for each comparative area or region of the state and the amount of cost share incentive payments shall be updated and revised at least triennially by the Division for approval by the Commission.~~

(e) ~~The total annual cost share payments to an applicant shall not exceed the maximum funding authorized in subdivision (4) of G.S. 143-215.74M(b).~~

(f) ~~Cost share payments to implement BMPs under this program may be combined with other funding programs, as long as the combined cost share rate does not exceed the amount and percentages set forth in Paragraphs (b) and (e) of this Rule. Community Conservation Assistance Program funding shall not exceed the maximum cost share percentages shown in subdivision (4) of G.S. 143-215.74M(b).~~

(g) ~~Use of cost share payments is restricted to land located within the county approved for funding by the Commission. However, in the situation where an applicant's land is not located solely within a county, the entire tract, if contiguous, is eligible for cost share payments.~~

(h) ~~The district Board of Supervisors may approve Cost Share Agreements with cost share percentages or cost sharing amounts less than the maximum allowable in subdivision (4) of G.S. 143-215.74M(b) if:~~

- (1) ~~The Commission allocates insufficient cost share BMP funding to the district to enable it to award funding to all applicants; or~~
- (2) ~~The district establishes other criteria in its annual strategy plan for cost sharing percentages or cost sharing amounts less than those allowable in subdivision (4) of G.S. 143-215.74M(b).~~

(i) ~~For purposes of determining eligible payments under practice-specific caps described in the detailed implementation plan, all business entities with which the applicant is associated by ownership or partnership interest, including those in other counties, shall be considered the same applicant for purposes of calculating caps.~~

*Authority G.S. 106-840; 106-860; 139-4; 139-8.*

**02 NCAC 59H .0106 TECHNICAL ASSISTANCE FUNDS**

(a) ~~Technical assistance funds may be used for salary, benefits, social security, field equipment and supplies, office rent, office equipment and supplies, postage, telephone service, travel and mileage or for a contracted technical employee.~~

(b) ~~Technical assistance funds may not be used to fund provision of service by any technical assistance local district personnel who do not meet the following minimum requirements:~~

- (1) ~~associates degree in engineering, agriculture, forestry or related field, or~~
- (2) ~~high school diploma with two years experience in the fields listed in Subparagraph (1) of this Paragraph, or~~

(c) ~~Cost shared positions must be used to accelerate the program activities in the district. A district technician cost shared with program funds may work on other activities as delegated by the field office supervisor but the total hours charged to the program by field office personnel must equal or exceed those hours funded through the program. Also, these hours must be in addition to those hours normally spent in BMP planning and installation by district personnel.~~

*Authority G.S. 106-840; 106-860; 139-4; 139-8.*

**02 NCAC 59H .0107 COST SHARE AGREEMENT**

(a) ~~The landowner shall be required to sign the agreement for all practices. An applicant who is not the landowner may submit a long term written lease or other legal document, indicating control over the land in lieu of the landowner's signature, provided the control runs the life of the practice as listed in the respective Program Year's Implementation Plan. Signature on the agreement constitutes responsibility for BMP maintenance and continuation.~~

(b) ~~As a condition for receiving cost share or cost share incentive payments for implementing BMP's, the applicant shall agree to continue and maintain those practices for the minimum life as set forth in the Detailed Implementation Plan, effective the date the BMP's are implemented.~~

(c) ~~As a condition for receiving cost share payments, the applicant shall agree to submit a soil test sample for analysis and follow the fertilizer application recommendations as close as reasonably and practically possible.~~

~~(d) The technical representative of the district shall determine if the practice(s) implemented have been installed according to specifications approved by the Commission pursuant to 02 NCAC 59G .0103 or by the Division for district BMP's based on the criteria established in 02 NCAC 59G .0103(e). The district shall be responsible for making an annual spot check of five percent of all cost share agreements for which the required BMP maintenance period has not expired.~~

~~(e) If the technical representative of the district determines that a BMP for which program funds were received has been destroyed or has not been properly maintained, the applicant will be notified that the BMP must be repaired or re-implemented within 30 working days. For vegetative practices, applicants are given one calendar year to re-establish the vegetation. The district may grant a prescribed extension period if it determines compliance can not be met due to circumstances beyond the applicants control.~~

~~(f) If the practices are not repaired or reimplemented within the specified time, the applicant shall be required to repay to the Division a prorated refund for cost share BMPs as shown in Table 1 and 100 percent of the cost share incentive payments received.~~

**Table 1  
PRORATED REFUND SCHEDULE FOR NONCOMPLIANCE  
OF COST SHARE PAYMENTS**

Percent Age of Practice Life	Percent Refund
0	100
10	95
20	89
30	82
40	74
50	65
60	55
70	44
80	31
90	17
100	0

~~(g) An applicant, who has been found in noncompliance and who does not agree to repair or reimplement the cost shared practices, and a District may jointly request the commission to informally mediate the case. To invoke this method of mediation, both parties must stipulate that the commission mediation is binding.~~

~~(h) An applicant shall have 180 days to make repayment to the Division following the final appeals process.~~

~~(i) The inability to properly maintain cost shared practices or the destruction of such practices through no fault of the applicant shall not be considered as noncompliance with the cost share agreement.~~

~~(j) When land under cost share agreement changes owners the new landowner shall be strongly encouraged by the district to accept the remaining maintenance obligation. If the new landowner does not accept the maintenance requirements in writing, then the original applicant shall be required to refund 100% of all CSI payments and a prorated portion of cost share payments in accordance with Table 1 in paragraph (f) of this rule.~~

*Authority G.S. 106-860; 139-4; 139-8.*

## **02 NCAC 59H .0108 DISTRICT PROGRAM OPERATION**

~~(a) As a component of the annual strategy plan district shall prioritize all natural resource concerns according to pollution potential. The district shall target technical and financial assistance to facilitate BMP implementation on the identified critical areas.~~

~~(b) Priority by the district may be given to implementing systems of BMP's which provide the most cost effective reduction of nonpoint source pollution.~~

~~(c) All applicants shall apply to the district and complete the necessary forms in order to receive cost share payments.~~

~~(d) The district shall review each application and the feasibility of each application. The district shall review and approve the evaluation and assign priority for cost sharing. All applicants shall be informed of cost share approval or denial.~~

~~(e) Upon approval of the application by the district, the applicant and the district shall enter into a cost share agreement. The cost share agreement shall list the practices to be cost shared with state funds. The agreement shall also include the average cost of the recommended practice(s), cost incentive payment of the practice(s), and the expected implementation date of the practice(s). The district shall develop CPOs, which shall become a part of the cost share agreement.~~

~~(f) Upon completion of practice(s) implementation, the technical representative of the district shall notify the district of compliance with design specifications.~~

~~(g) Upon notification, the district shall review the CPO. Upon approval, the district shall certify the practices in the CPO and notify the Division to make payment to the applicant.~~

~~(h) Upon receipt of a quarterly statement from the district, the Division shall reimburse to the district the appropriate amount for technical and clerical assistance.~~

~~(i) The district shall be responsible for and approve all BMP inspections as set forth in Rule .0107(d) of this Section to insure proper maintenance and continuation under the cost share agreement.~~

~~(j) The district shall keep appropriate records dealing with the program.~~

*Authority G.S. 106-840.*

## **TITLE 12 – DEPARTMENT OF JUSTICE**

*Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Department of Justice intends to readopt without substantive changes the rule cited as 12 NCAC 02I .0306.*

*Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be published. The text of the rules are available on the OAH website: <http://reports.oah.state.nc.us/ncac.asp>.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://www.ncdoj.gov/About-DOJ/Legal-Services>

**Proposed Effective Date:** March 1, 2018

**Public Hearing:**

**Date:** November 16, 2017

**Time:** 9:30 a.m.

**Location:** Wake Technical Community College, Public Safety Training Center, 321 Chapanoke Rd, Raleigh, NC 27603

**Reason for Proposed Action:** This is a readoption of an existing rule based upon its designation as necessary with substantive public interest during the periodic review process.

**Comments may be submitted to:** Whitney Belich, 114 W. Edenton St., Raleigh, NC 27603; email wbelich@ncdoj.gov

**Comment period ends:** January 2, 2018

**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
- ☐ Substantial economic impact (≥\$1,000,000)
- ☐ Approved by OSBM
- ☐ No fiscal note required by G.S. 150B-21.4
- ☒ No fiscal note required by G.S. 150B-21.3A(d)(2)

**CHAPTER 02 - OFFICE OF THE ATTORNEY GENERAL**

**SUBCHAPTER 02I - COMPANY AND RAILROAD POLICE**

**SECTION .0300 - CONDUCT OF COMMISSIONED POLICEMEN**

**12 NCAC 02I .0306 BADGES, UNIFORMS, VEHICLES AND OFFICER IDENTIFICATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Alcoholic Beverage Control Commission intends to adopt the rule cited as 14B NCAC 15C .0505.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** www.abc.nc.gov

**Proposed Effective Date:** March 1, 2018

**Public Hearing:**

**Date:** December 13, 2017

**Time:** 10:00 a.m.

**Location:** ABC Commission Hearing Room, 400 East Tryon Road, Raleigh, NC 27610

**Reason for Proposed Action:** To adopt a permanent rule establishing the process, procedures and requirements for notification of approval by the federal government for off-site storage of alcoholic beverages produced by breweries, wineries and distilleries, as authorized by G.S. 18B-1120, as enacted in Section 6 of S.L 2017-87.

**Comments may be submitted to:** Walker Reagan, 400 East Tryon Road, Raleigh, NC 27610; phone (919) 779-8367; fax (919) 661-6165; email walker.reagan@abc.nc.gov

**Comment period ends:** January 3, 2018

**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
- ☐ Substantial economic impact (≥\$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required by G.S. 150B-21.4

**CHAPTER 15 - ALCOHOLIC BEVERAGE CONTROL COMMISSION**

**SUBCHAPTER 15C - INDUSTRY MEMBERS: RETAIL/INDUSTRY MEMBER RELATIONSHIPS: SHIP**

**TITLE 14B – DEPARTMENT OF PUBLIC SAFETY**



**CHANDLERS: AIR CARRIERS: FUEL ALCOHOL**

**SECTION .0500 - INDUSTRY MEMBERS: GENERAL PROVISIONS**

**14B NCAC 15C .0505 OFF-SITE STORAGE LOCATION**

(a) The holder of a brewery, winery, or distillery permit shall notify the Commission in advance of storing any alcoholic beverages the permittee manufactures under its permit in a noncontiguous storage location as authorized pursuant to G.S. 18B-1120. This notification shall be deemed a part of the original permit application. Notification shall be made on a form approved by the Commission that requires the permittee's name, address, permit number, principal location address, noncontiguous storage location address, a detailed diagram of the premises showing the exact locations of entrances, exits, storage areas for alcoholic beverages, and separate storage areas for any other property or merchandise, and a copy of the Alcohol and Tobacco Tax and Trade Bureau approval of the noncontiguous storage location and the Commission's Inspection/Zoning Compliance form, completed pursuant to G.S. 18B-901(c), applicable to the noncontiguous storage location.

(b) The noncontiguous storage location shall only be used by the permittee for storage of alcoholic beverages manufactured by the permittee and non-alcoholic items owned by the permittee. No alcoholic beverages of the permittee shall be stored in the same storage area with other property or merchandise of the permittee or any other person. The noncontiguous storage location shall be subject to inspection pursuant to G.S. 18B-502 and Rule .0501 of this Section.

*Authority G.S. 18B-100; 18B-207; 18B-502; 18B-901; 18B-1120.*

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Alarm Systems Licensing Board intends to amend the rule cited as 14B NCAC 17 .0204.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://www.ncdps.gov/DPS-Services/Permits-Licenses/Alarm-System-Licensing-Board>

**Proposed Effective Date:** March 1, 2018

**Public Hearing:**

**Date:** November 21, 2017

**Time:** 10:00 a.m.

**Location:** Bailey and Dixon Law Firm, 434 Fayetteville Street, Suite 2500, Raleigh, NC 27601

**Reason for Proposed Action:** *Modify requirement for applicant providing criminal background information.*

**Comments may be submitted to:** Phil Stephenson, 3101 Industrial Drive, Suite 104, Raleigh, NC 27609; phone (919) 788-5320; fax (919) 788-5365; email [phil.stephenson@ncdps.gov](mailto:phil.stephenson@ncdps.gov)

**Comment period ends:** January 2, 2018

**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
- ☐ Substantial economic impact (≥\$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required by G.S. 150B-21.4

**CHAPTER 17 - ALARMS SYSTEMS LICENSING BOARD**

**SECTION .0200 – PROVISIONS FOR LICENSEES**

**14B NCAC 17 .0204 RENEWAL OR RE-ISSUE OF LICENSE**

(a) Each applicant for a license renewal shall complete a renewal form provided by the Board. This form shall be submitted to the administrator not less than 30 days prior to expiration of the applicant's current license and shall be accompanied by:

- (1) two head and shoulders color photographs of the applicant of acceptable quality for identification and made within 90 days of the application one inch by one inch in size;
- (2) statements of the result of a local criminal history records search by the ~~City/County Identification Bureau or Clerk of Superior Court in each county where the applicant has resided within the immediately preceding 24 months;~~ reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for any state where the applicant has resided within the preceding 24 months;
- (3) the applicant's renewal fee; and
- (4) proof of liability insurance pursuant to G.S. Sec. 74D-9.

(b) Applications for renewal shall be submitted not less than 30 days before the expiration date of the license. In no event shall renewal be granted more than 90 days after the date of expiration

of a license. Renewals shall be dated on the next day following expiration of the prior license.

(c) Applications for renewal submitted after the expiration date of the license shall be accompanied by the late renewal fee established by Rule .0203 of this Section and must be submitted not later than 90 days after the expiration date of the license.

(d) The administrator shall approve or deny all applications for renewal. Any denials shall be submitted to the Board for a final board decision.

(e) Members of the armed forces whose licenses are in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted the same extension of time to pay the license renewal fee and to complete the continuing education requirements prescribed by Section .0500 of this Chapter. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue must be furnished to the Board.

*Authority G.S. 74D-2(a); 74D-5; 93B-15.*

## **TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02H .1019.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://deq.nc.gov/about/divisions/energy-mineral-land-resources/events>

**Proposed Effective Date:** *Pending Legislative Review*

**Public Hearing:**

**Date:** *November 28, 2017*

**Time:** *6:00 p.m.*

**Location:** *New Bern-Craven County Public Library, 400 Johnston St, New Bern, NC 28560*

**Reason for Proposed Action:** *This amendment has been proposed by the Environmental Management Commission to correct two substantive inconsistencies with S.L. 2008-211 and to comply with Section 9.(d) of S.L. 2017-211.*

**Comments may be submitted to:** *Annette Lucas, NCDENR-Land Quality Section-Stormwater Permitting Program, 1612 Mail Service Center, Raleigh, NC 27699-1612; phone (919) 807-6381; fax (919) 807-6494; email annette.lucas@ncdenr.gov*

**Comment period ends:** *January 2, 2018*

**Rule is automatically subject to legislative review:** *See S.L. 2017-211.*

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

- ☐ **State funds affected**  
☐ **Environmental permitting of DOT affected**  
**Analysis submitted to Board of Transportation**

- ☐ **Local funds affected**  
☐ **Substantial economic impact (≥\$1,000,000)**  
☒ **Approved by OSBM**  
☒ **No fiscal note required by G.S. 150B-21.4**

## **CHAPTER 02 - ENVIRONMENTAL MANAGEMENT**

### **SUBCHAPTER 02H - PROCEDURES FOR PERMITS: APPROVALS**

#### **SECTION .1000 - STORMWATER MANAGEMENT**

#### **15A NCAC 02H .1019 COASTAL COUNTIES**

The purpose of this Rule is to protect surface waters in the 20 Coastal Counties from the impact of stormwater runoff from new development.

- (1) **Implementing Authority.** This Rule shall be implemented by:
  - (a) local governments and other entities within the 20 Coastal Counties that are required to implement a Post-Construction program as a condition of their NPDES permits;
  - (b) local governments and state agencies that are delegated to implement a stormwater program pursuant to G.S. 143-214.7(c) and (d); and
  - (c) the Division in all other areas where this Rule applies.
- (2) **APPLICABILITY OF THIS RULE.** This Rule shall apply to the following types of developments within the Coastal Counties:
  - (a) projects that require an Erosion and Sedimentation Control Plan pursuant to G.S. 113A-57;
  - (b) projects that require a Coastal Area Management Act (CAMA) Major Development Permit pursuant to G.S. 113A-118; and
  - (c) projects that do not require either an Erosion and Sedimentation Control Plan or a CAMA Major Development Permit, but meet one of the following criteria:
    - (i) nonresidential projects that propose to cumulatively add 10,000 square feet or more of built-upon area; or
    - (ii) residential projects that are within ½ mile of and draining to SA waters, and propose to cumulatively add more than 10,000 square feet of built-upon area, and result in a percentage built-upon area greater than 12 percent. ~~over 12 percent or more of the undeveloped portion of the~~

- ~~property with built-upon area.~~
- (3) **EFFECTIVE DATES.** The effective dates are as follows:
- (a) for prior Rule .1000 of this Section, January 1, 1988;
  - (b) for prior Rule .1005 of this Section, September 1, 1995;
  - (c) for S.L. 2006-264, August 16, 2006; and
  - (d) for S.L. 2008-211, October 1, 2008.

Prior versions of these rules are available for no cost on the Division's website at <http://deq.nc.gov/about/divisions/energy-mineral-land-resources/energy-mineral-land-permits/stormwater-program>.

- (4) **GENERAL REQUIREMENTS FOR ALL PROJECTS.** In addition to the requirements of this Rule, development projects shall also comply with the requirements set forth in Rule .1003 of this Section.
- (5) **DETERMINATION OF WHICH COASTAL STORMWATER PROGRAM APPLIES.**
- (a) **SA WATER.** SA Water requirements shall apply to projects located within one-half mile of and draining to waters classified as SA-HQW or SA-ORW per 15A NCAC 02B .0301.
    - (i) The SA boundary shall be measured from either the landward limit of the top of bank or the normal high water level. In cases where a water is listed on the Schedule of Classifications, but the applicant provides documentation from the Division of Water Resources or the U.S. Army Corps of

Engineers that the water is not present on the ground, the applicant shall not be subject to the SA requirements of this Rule.

- (ii) An SCM with any portion of its drainage area located within the SA waters boundary shall be designed to meet SA water requirements.

- (b) **FRESHWATER ORW.** Freshwater ORW requirements shall apply to projects that drain to waters classified as B-ORW and C-ORW per 15A NCAC 02B .0301.
- (c) **OTHER COASTAL COUNTY WATER.** If a project does not meet the applicability requirements for Sub-Items (5)(a) or (b) of this Rule, then it shall be subject to the [other Coastal County Water requirements set forth in Item (6) of this Rule.
- (d) **PROJECTS THAT ARE SUBJECT TO TWO OR MORE COASTAL STORMWATER PROGRAMS.** Projects with portions that are located within two or more coastal stormwater program boundaries shall meet the applicable requirements of Item (6) inside each of the project's portions.
- (6) **STORMWATER REQUIREMENTS.** Depending on the applicable program pursuant to Item (5) of this Rule, the following stormwater requirements shall apply:
  - (a) **SUMMARY OF COASTAL PROGRAM REQUIREMENTS.** The requirements shall be in accordance with the following table:

Program that Applies	Maximum BUA for Low Density	Required Storm Depth for High Density Projects	Additional Special Provisions
SA <del>Water</del> <del>Water, that is</del> SA HQW	12%	One-year, 24-hour storm	SCMs for High Density SA Projects per Item (7) of this Rule; <u>and the percentage built-upon area shall not exceed 25 percent within 575 feet of an SA-ORW</u>
<del>SA Water,</del> <del>that is SA</del> ORW	12%	<del>One year, 24-hour storm</del>	<del>SCMs for High Density SA Projects per Item (7) of this Rule; and</del> Density Requirements for SA-ORW Projects per Item (8) of this Rule
Freshwater ORW	12%	1.5 inch storm	None

Other Coastal County Water	24%	1.5 inch storm	None
-------------------------------	-----	----------------	------

- (b) **VEGETATED SETBACKS.** For all subject projects within the Coastal Counties, vegetated setbacks from perennial waterbodies, perennial streams, and intermittent streams shall be at least 50 feet in width for new development and at least 30 feet in width for redevelopment and shall comply with Rule .1003(4) of this Section.
- (7) **SCMS FOR SA WATER HIGH DENSITY PROJECTS REQUIREMENTS.** High density projects subject to SA water requirements shall use one of the following approaches for treating and discharging stormwater:
- (a) **RUNOFF VOLUME MATCH.** The project shall achieve runoff volume match, and excess runoff volume shall be released at a non-erosive velocity at the edge of the vegetated setback or to an existing stormwater drainage system.
- (b) **RUNOFF TREATMENT WITH NON-DISCHARGING SCMs.** SCM(s) shall provide runoff treatment without discharging in excess of the pre-development conditions during the one-year, 24-hour storm event. The runoff volume in excess of the one-year, 24-hour runoff volume shall be released at a non-erosive velocity at the edge of the vegetated setback or to an existing stormwater drainage system.
- (c) **RUNOFF TREATMENT WITH DISCHARGING SCMs.** SCM(s) shall provide runoff treatment for the difference between the pre- and post-development runoff volumes for the one-year, 24-hour storm event and meet the following requirements:
- (i) documentation shall be provided that it is not feasible to meet the MDC for infiltrations systems as set forth in Rule .1051 of this Section;
- (ii) the stormwater shall be filtered through a minimum of 18 inches of sand prior to discharge;
- (iii) the discharge from the SCM shall be directed to either a level spreader-filter strip designed as set forth in Rule .1059 of this Section, a swale that fans out at natural grade, or a natural wetland that does not contain a conveyance to SA waters; and
- (iv) the runoff volume in excess of the one-year, 24-hour storm event shall be released at a non-erosive velocity at the edge of the vegetated setback or to an existing stormwater drainage system.
- (8) **DENSITY REQUIREMENTS FOR SA ORW PROJECTS.** The following shall apply:
- (a) ~~For the entire project, the percentage built upon area shall not exceed 25 percent.~~
- (b) ~~For the portion of a project that is within 575 feet of SA ORW waters, the percentage built upon area shall not exceed 25 percent for high density projects and shall not exceed 12 percent for low density projects.~~

*Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1).*

## APPROVED RULES

*This Section includes a listing of rules approved by the Rules Review Commission followed by the full text of those rules. The rules that have been approved by the RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register are identified by an \* in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

Rules approved by the Rules Review Commission at its meeting on September 21, 2017 Meeting.

### REGISTER CITATION TO THE NOTICE OF TEXT

#### CHILD CARE COMMISSION

<u>Definitions</u>	10A NCAC 09 .0102*	31:20 NCR
<u>Inspections</u>	10A NCAC 09 .0201*	31:20 NCR
<u>Changes Requiring Issuance of a New License</u>	10A NCAC 09 .0204*	31:20 NCR
<u>Parental Access</u>	10A NCAC 09 .0205*	31:20 NCR
<u>Pre-Licensing Requirements</u>	10A NCAC 09 .0301*	31:20 NCR
<u>Application for a License for a Child Care Facility</u>	10A NCAC 09 .0302*	31:20 NCR
<u>On-Going Requirements for a License</u>	10A NCAC 09 .0304*	31:20 NCR
<u>Temporary Licenses for Centers</u>	10A NCAC 09 .0403*	31:20 NCR
<u>Activity Schedules and Plans</u>	10A NCAC 09 .0508*	31:20 NCR
<u>Learning Environment</u>	10A NCAC 09 .0509*	31:20 NCR
<u>Activity Areas</u>	10A NCAC 09 .0510*	31:20 NCR
<u>Activities for Children Under Two Years of Age</u>	10A NCAC 09 .0511*	31:20 NCR
<u>Safe Environment</u>	10A NCAC 09 .0601*	31:20 NCR
<u>Condition of Indoor Equipment and Furnishings</u>	10A NCAC 09 .0602	31:20 NCR
<u>Overnight Furnishings</u>	10A NCAC 09 .0603	31:20 NCR
<u>Safety Requirements</u>	10A NCAC 09 .0604*	31:20 NCR
<u>Condition of Outdoor Learning Environment</u>	10A NCAC 09 .0605*	31:20 NCR
<u>Safe Sleep Practices</u>	10A NCAC 09 .0606*	31:20 NCR
<u>Emergency Preparedness and Response</u>	10A NCAC 09 .0607*	31:20 NCR
<u>Prevention of Shaken Baby Syndrome and Abusive Head Trauma</u>	10A NCAC 09 .0608*	31:20 NCR
<u>Health Standards for Child Care Providers, Substitute Pro...</u>	10A NCAC 09 .0701*	31:20 NCR
<u>Standards for Substitutes and Volunteers</u>	10A NCAC 09 .0702	31:20 NCR
<u>General Statutory Requirements</u>	10A NCAC 09 .0703*	31:20 NCR
<u>Preservice Requirements for Child Care Administrators</u>	10A NCAC 09 .0704*	31:20 NCR
<u>Special Training Requirements</u>	10A NCAC 09 .0705	31:20 NCR
<u>In-Service Training Requirements</u>	10A NCAC 09 .0707	31:20 NCR
<u>Preservice Requirements for Lead Teachers, Teachers and A...</u>	10A NCAC 09 .0710*	31:20 NCR
<u>Preservice Requirements for other Staff</u>	10A NCAC 09 .0711*	31:20 NCR
<u>Staff/Child Ratios for Centers With A Licensed Capacity o...</u>	10A NCAC 09 .0712	31:20 NCR
<u>Staff/Child Ratios for Centers</u>	10A NCAC 09 .0713*	31:20 NCR
<u>Other Staffing Requirements</u>	10A NCAC 09 .0714*	31:20 NCR
<u>Application for Enrollment</u>	10A NCAC 09 .0801*	31:20 NCR
<u>Emergency Medical Care</u>	10A NCAC 09 .0802*	31:20 NCR
<u>Administering Medication</u>	10A NCAC 09 .0803*	31:20 NCR
<u>Infectious and Contagious Diseases</u>	10A NCAC 09 .0804*	31:20 NCR
<u>Toileting, Clothing and Linens</u>	10A NCAC 09 .0806*	31:20 NCR
<u>General Nutrition Requirements</u>	10A NCAC 09 .0901*	31:20 NCR
<u>General Nutrition Requirements for Infants</u>	10A NCAC 09 .0902*	31:20 NCR
<u>Requirements for Children Aged 24 Months and Older</u>	10A NCAC 09 .0903*	31:20 NCR

<u>Seat and Child Safety Seats</u>	10A NCAC 09	.1001*	31:20 NCR
<u>Safe Vehicles</u>	10A NCAC 09	.1002*	31:20 NCR
<u>Safe Procedures</u>	10A NCAC 09	.1003*	31:20 NCR
<u>Staff/Child Ratios</u>	10A NCAC 09	.1004*	31:20 NCR
<u>Off Premise Activities</u>	10A NCAC 09	.1005*	31:20 NCR
<u>New Staff Orientation</u>	10A NCAC 09	.1101*	31:20 NCR
<u>Health and Safety Training Requirements</u>	10A NCAC 09	.1102*	31:20 NCR
<u>On-Going Training Requirements</u>	10A NCAC 09	.1103*	31:20 NCR
<u>Professional Development Plan</u>	10A NCAC 09	.1104*	31:20 NCR
<u>Training Approval</u>	10A NCAC 09	.1105*	31:20 NCR
<u>Documentation of In-Service Training</u>	10A NCAC 09	.1106	31:20 NCR
<u>Building Code Requirements for Centers</u>	10A NCAC 09	.1301	31:20 NCR
<u>Building Code Requirements for Child Care Centers</u>	10A NCAC 09	.1302	31:20 NCR
<u>Building Code Requirements for Small Group Facilities Lic...</u>	10A NCAC 09	.1303	31:20 NCR
<u>Requirements for Child Care Centers Licensed in a Residence</u>	10A NCAC 09	.1304	31:20 NCR
<u>Indoor Space</u>	10A NCAC 09	.1401*	31:20 NCR
<u>Outdoor Space</u>	10A NCAC 09	.1402*	31:20 NCR
<u>Aquatic Involving Water</u>	10A NCAC 09	.1403*	31:20 NCR
<u>General Provisions Related to Licensure of Homes</u>	10A NCAC 09	.1701	31:20 NCR
<u>Application for a License for a Family Child Care Home</u>	10A NCAC 09	.1702*	31:20 NCR
<u>On-Going Requirements for Family Child Care Home Operators</u>	10A NCAC 09	.1703*	31:20 NCR
<u>Caregiver Interactions</u>	10A NCAC 09	.1704*	31:20 NCR
<u>Nutrition Standards</u>	10A NCAC 09	.1706*	31:20 NCR
<u>Building Requirements</u>	10A NCAC 09	.1707*	31:20 NCR
<u>Pre-Licensing Requirements</u>	10A NCAC 09	.1708*	31:20 NCR
<u>Inspections</u>	10A NCAC 09	.1709*	31:20 NCR
<u>Access to the Family Child Care Home</u>	10A NCAC 09	.1710*	31:20 NCR
<u>Supervision of Children</u>	10A NCAC 09	.1711*	31:20 NCR
<u>Written Plan of Care</u>	10A NCAC 09	.1712*	31:20 NCR
<u>Emergency Medical Care</u>	10A NCAC 09	.1713*	31:20 NCR
<u>Emergency Preparedness and Response</u>	10A NCAC 09	.1714*	31:20 NCR
<u>Failure to Maintain Requirements</u>	10A NCAC 09	.1716*	31:20 NCR
<u>Requirements for Daily Operations</u>	10A NCAC 09	.1718*	31:20 NCR
<u>Requirements for a Safe Indoor/Outdoor Environment</u>	10A NCAC 09	.1719*	31:20 NCR
<u>Medication Requirements Environment</u>	10A NCAC 09	.1720*	31:20 NCR
<u>Requirements for Records</u>	10A NCAC 09	.1721*	31:20 NCR
<u>Prohibited Discipline</u>	10A NCAC 09	.1722*	31:20 NCR
<u>Transportation Requirements</u>	10A NCAC 09	.1723*	31:20 NCR
<u>Safe Sleep Practices</u>	10A NCAC 09	.1724*	31:20 NCR
<u>Sanitation Requirements for Family Child Care Homes</u>	10A NCAC 09	.1725*	31:20 NCR
<u>Prevention of Shaken Baby Syndrome and Abusive Head Trauma</u>	10A NCAC 09	.1726*	31:20 NCR
<u>Discipline Policy</u>	10A NCAC 09	.1727*	31:20 NCR
<u>Overnight Care</u>	10A NCAC 09	.1728	31:20 NCR
<u>Additional Caregiver and Substitute Provider Qualifications</u>	10A NCAC 09	.1729*	31:20 NCR
<u>Activities Involving Water</u>	10A NCAC 09	.1730*	31:20 NCR
<u>Supervision</u>	10A NCAC 09	.1801*	31:20 NCR
<u>Staff/Child Interactions</u>	10A NCAC 09	.1802	31:20 NCR

<u>Prohibited Discipline</u>	10A NCAC 09	.1803*	31:21 NCR
<u>Discipline Policy</u>	10A NCAC 09	.1804*	31:20 NCR
<u>Notification to County Departments of Social Services</u>	10A NCAC 09	.1901	31:20 NCR
<u>Investigation Procedures</u>	10A NCAC 09	.1903	31:20 NCR
<u>Centers Operating under G.S. 110-106</u>	10A NCAC 09	.2101*	31:20 NCR
<u>Use of Corporal Punishment</u>	10A NCAC 09	.2102*	31:20 NCR
<u>Schedule of Civil Penalties for Family Child Care Homes</u>	10A NCAC 09	.2214*	31:20 NCR
<u>Denial of License</u>	10A NCAC 09	.2215*	31:20 NCR
<u>Care Center Records Retention</u>	10A NCAC 09	.2318*	31:20 NCR
<u>Scope</u>	10A NCAC 09	.2401*	31:20 NCR
<u>Definitions</u>	10A NCAC 09	.2402*	31:20 NCR
<u>Special Provisions for Licensure</u>	10A NCAC 09	.2403*	31:20 NCR
<u>Inclusion/Exclusion Requirements</u>	10A NCAC 09	.2404*	31:20 NCR
<u>Admission Requirements</u>	10A NCAC 09	.2405*	31:20 NCR
<u>Staff/Child Ratios</u>	10A NCAC 09	.2406*	31:20 NCR
<u>Space Requirements</u>	10A NCAC 09	.2407*	31:20 NCR
<u>Staff Qualifications</u>	10A NCAC 09	.2408*	31:20 NCR
<u>Children's Records</u>	10A NCAC 09	.2409*	31:20 NCR
<u>Children's Activities</u>	10A NCAC 09	.2410*	31:20 NCR
<u>Nutrition Requirements</u>	10A NCAC 09	.2411	31:20 NCR
<u>Scope</u>	10A NCAC 09	.2501*	31:20 NCR
<u>Special Provisions for Summer Day Camps</u>	10A NCAC 09	.2502*	31:20 NCR
<u>Building Code Requirements</u>	10A NCAC 09	.2503*	31:20 NCR
<u>Space Requirements</u>	10A NCAC 09	.2504*	31:20 NCR
<u>Health Requirements for Children</u>	10A NCAC 09	.2505*	31:20 NCR
<u>General Safety Requirements</u>	10A NCAC 09	.2506*	31:20 NCR
<u>Operating Policies</u>	10A NCAC 09	.2507	31:20 NCR
<u>Age Appropriate Activities</u>	10A NCAC 09	.2508*	31:20 NCR
<u>Activities: Off Premises</u>	10A NCAC 09	.2509*	31:20 NCR
<u>Staff Qualifications</u>	10A NCAC 09	.2510*	31:20 NCR
<u>Developmental Day Centers</u>	10A NCAC 09	.2512*	31:20 NCR
<u>Scope</u>	10A NCAC 09	.2901*	31:20 NCR
<u>License</u>	10A NCAC 09	.2902*	31:20 NCR
<u>Staff Qualifications</u>	10A NCAC 09	.2903*	31:20 NCR
<u>Program Requirements</u>	10A NCAC 09	.2904	31:20 NCR
<u>Family Services</u>	10A NCAC 09	.2905*	31:20 NCR
<u>Scope</u>	10A NCAC 09	.3001*	31:20 NCR
<u>Facility Requirements</u>	10A NCAC 09	.3002*	31:20 NCR
<u>Program Attendance Policy</u>	10A NCAC 09	.3003*	31:20 NCR
<u>Child Health Assessments</u>	10A NCAC 09	.3005*	31:20 NCR
<u>Developmental Screening</u>	10A NCAC 09	.3006*	31:20 NCR
<u>Early Learning Standards and Curricula</u>	10A NCAC 09	.3007	31:20 NCR
<u>Formative Assessments</u>	10A NCAC 09	.3008*	31:20 NCR
<u>Staff-to-Child Ratio and Class Size</u>	10A NCAC 09	.3009*	31:20 NCR
<u>Family Engagement</u>	10A NCAC 09	.3010*	31:20 NCR
<u>NC Pre-K Site-Level Administrator Qualifications</u>	10A NCAC 09	.3011*	31:20 NCR
<u>NC Pre-K Teacher Education, Licensure and Credentials</u>	10A NCAC 09	.3012*	31:20 NCR

<u>NC Pre-K Teacher Assistant Education and Credentials</u>	10A NCAC 09 .3013*	31:20 NCR
<u>NC Pre-K Substitute Staff</u>	10A NCAC 09 .3014*	31:20 NCR
<u>Instructional Staff Standards</u>	10A NCAC 09 .3015*	31:20 NCR
<u>Professional Development Requirements</u>	10A NCAC 09 .3016*	31:20 NCR
<u>Children with Unique Needs and Challenging Behaviors</u>	10A NCAC 09 .3017*	31:20 NCR

### **RADIATION PROTECTION COMMISSION**

<u>Computed Tomography (CT) X-Ray Systems</u>	10A NCAC 15 .0611*	31:19 NCR
---	--------------------	-----------

### **PUBLIC HEALTH, COMMISSION FOR**

<u>Definitions</u>	10A NCAC 43D .0202*	31:23 NCR
<u>References</u>	10A NCAC 43D .0203*	31:23 NCR
<u>Use of Food Instruments and Cash Value Vouchers</u>	10A NCAC 43D .0703	31:23 NCR
<u>Vendor Applicants</u>	10A NCAC 43D .0707*	31:23 NCR
<u>Authorized Vendors</u>	10A NCAC 43D .0708*	31:23 NCR

### **SOCIAL SERVICES COMMISSION**

<u>Licensing Actions</u>	10A NCAC 70I .0101*	31:20 NCR
<u>Definitions</u>	10A NCAC 70I .0201*	31:20 NCR
<u>Responsibility to Licensing Authority</u>	10A NCAC 70I .0202*	31:20 NCR
<u>Responsibilities of the Governing Body</u>	10A NCAC 70I .0302*	31:20 NCR
<u>Recordkeeping and Reporting</u>	10A NCAC 70I .0305*	31:20 NCR
<u>Client Rights</u>	10A NCAC 70I .0306*	31:20 NCR
<u>Normalcy for Foster Children</u>	10A NCAC 70I .0308*	31:20 NCR
<u>Personnel Positions</u>	10A NCAC 70I .0405*	31:20 NCR
<u>Admission Agreement</u>	10A NCAC 70I .0503*	31:20 NCR
<u>Orientation</u>	10A NCAC 70I .0504*	31:20 NCR
<u>Client Records</u>	10A NCAC 70I .0506*	31:20 NCR
<u>Program Policies and Practices</u>	10A NCAC 70I .0601*	31:20 NCR
<u>Health Services</u>	10A NCAC 70I .0604*	31:20 NCR
<u>Recreation and Leisure Activities</u>	10A NCAC 70I .0609*	31:20 NCR
<u>Discipline and Behavior Management</u>	10A NCAC 70I .0613*	31:20 NCR
<u>Critical Incidents and Critical Incident Reports</u>	10A NCAC 70I .0614*	31:20 NCR

### **CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION**

<u>Summary Suspensions</u>	12 NCAC 09A .0206*	31:24 NCR
<u>Minimum Standards for Criminal Justice Officers</u>	12 NCAC 09B .0101*	31:24 NCR
<u>Medical Examination</u>	12 NCAC 09B .0104*	31:24 NCR
<u>Basic Law Enforcement Training</u>	12 NCAC 09B .0205*	31:24 NCR
<u>Criminal Justice Instructor Training</u>	12 NCAC 09B .0209*	31:24 NCR
<u>Certification of Instructors</u>	12 NCAC 09B .0301*	31:24 NCR
<u>General Instructor Certification</u>	12 NCAC 09B .0302*	31:24 NCR
<u>Evaluation for Training Waiver</u>	12 NCAC 09B .0403*	31:18 NCR
<u>Criminal Justice Instructor Training Course</u>	12 NCAC 09B .0410*	31:24 NCR
<u>Request for Training Course Accreditation</u>	12 NCAC 09C .0210*	31:24 NCR
<u>Lateral Transfer of Law Enforcement Officers</u>	12 NCAC 09C .0306*	31:24 NCR
<u>Minimum Training Specifications: Annual In-Service Training</u>	12 NCAC 09E .0105*	31:18 NCR
<u>Annual In-Service Firearms Qualification Specifications</u>	12 NCAC 09E .0106*	31:24 NCR



<u>Moral Character</u>	12 NCAC 09G .0206*	31:24 NCR
<u>Corrections Instructor Training Course</u>	12 NCAC 09G .0313*	31:24 NCR
<u>Instructor Training</u>	12 NCAC 09G .0414*	31:24 NCR

**WILDLIFE RESOURCES COMMISSION**

<u>Endangered Species Listed</u>	15A NCAC 10I .0103*	31:18 NCR
<u>Threatened Species Listed</u>	15A NCAC 10I .0104	31:18 NCR
<u>Special Concern Species Listed</u>	15A NCAC 10I .0105	31:18 NCR

**PUBLIC HEALTH, COMMISSION FOR**

<u>Definitions</u>	15A NCAC 18A .1801	31:23 NCR
<u>Permits</u>	15A NCAC 18A .1802	31:23 NCR
<u>Public Display of Grade Card</u>	15A NCAC 18A .1803	31:23 NCR
<u>Inspections</u>	15A NCAC 18A .1804	31:23 NCR
<u>Inspection Forms</u>	15A NCAC 18A .1805	31:23 NCR
<u>Grading</u>	15A NCAC 18A .1806	31:23 NCR
<u>Approved Lodging Establishments</u>	15A NCAC 18A .1807	31:23 NCR
<u>Lobby: Halls: Stairs: and Vending Areas</u>	15A NCAC 18A .1808	31:23 NCR
<u>Lavatories and Baths</u>	15A NCAC 18A .1809	31:23 NCR
<u>Water Supply</u>	15A NCAC 18A .1810	31:23 NCR
<u>Drinking Water Facilities</u>	15A NCAC 18A .1811	31:23 NCR
<u>Guestrooms</u>	15A NCAC 18A .1812	31:23 NCR
<u>Storage and Laundry Facilities</u>	15A NCAC 18A .1813	31:23 NCR
<u>Disposal of Garbage and Trash: Premises</u>	15A NCAC 18A .1814	31:23 NCR
<u>Severability</u>	15A NCAC 18A .1815	31:23 NCR
<u>Appeals Procedure</u>	15A NCAC 18A .1817	31:23 NCR
<u>Plan Review</u>	15A NCAC 18A .1818	31:23 NCR
<u>Definitions</u>	15A NCAC 18A .1821*	31:23 NCR
<u>Management and Personnel</u>	15A NCAC 18A .1822*	31:23 NCR
<u>Food</u>	15A NCAC 18A .1823*	31:23 NCR
<u>Equipment and Utensils</u>	15A NCAC 18A .1824*	31:23 NCR
<u>Water, Plumbing, and Waste</u>	15A NCAC 18A .1825*	31:23 NCR
<u>Physical Facilities</u>	15A NCAC 18A .1826*	31:23 NCR
<u>Premises, Storage, Poisonous or Toxic Materials</u>	15A NCAC 18A .1827*	31:18 NCR
<u>Laundry and Linens</u>	15A NCAC 18A .1828*	31:23 NCR
<u>Permits</u>	15A NCAC 18A .1829*	31:23 NCR
<u>Public Display of Grade Card</u>	15A NCAC 18A .1830*	31:23 NCR
<u>Inspections and Reinspections</u>	15A NCAC 18A .1831*	31:23 NCR
<u>Grading</u>	15A NCAC 18A .1832*	31:23 NCR
<u>Application and Plan Review</u>	15A NCAC 18A .1833*	31:23 NCR
<u>Informal Review Process and Appeals Procedure</u>	15A NCAC 18A .1834*	31:23 NCR
<u>Definitions</u>	15A NCAC 18A .2201	31:23 NCR
<u>Permits</u>	15A NCAC 18A .2202	31:23 NCR
<u>Inspections: Visits: Posting of Grade Card</u>	15A NCAC 18A .2203	31:23 NCR
<u>Inspection Forms</u>	15A NCAC 18A .2204	31:23 NCR
<u>Grading</u>	15A NCAC 18A .2205	31:23 NCR
<u>Floors</u>	15A NCAC 18A .2206	31:23 NCR
<u>Walls and Ceilings</u>	15A NCAC 18A .2207	31:23 NCR

---

**APPROVED RULES**

---

<u>Lighting and Ventilation</u>	15A NCAC 18A .2208	31:23 NCR
<u>Toilet: Handwashing: Laundry: and Bathing Facilities</u>	15A NCAC 18A .2209	31:23 NCR
<u>Water Supply</u>	15A NCAC 18A .2210	31:23 NCR
<u>Drinking Water Facilities: Ice Handling</u>	15A NCAC 18A .2211	31:23 NCR
<u>Disposal of Wastes</u>	15A NCAC 18A .2212	31:23 NCR
<u>Vermin Control: Premises</u>	15A NCAC 18A .2213	31:23 NCR
<u>Storage: Miscellaneous</u>	15A NCAC 18A .2214	31:23 NCR
<u>Beds: Linen: Furniture</u>	15A NCAC 18A .2215	31:23 NCR
<u>Food Service Utensils and Equipment</u>	15A NCAC 18A .2216	31:23 NCR
<u>Food Supplies</u>	15A NCAC 18A .2217	31:23 NCR
<u>Food Protection</u>	15A NCAC 18A .2218	31:23 NCR
<u>Food Service Persons</u>	15A NCAC 18A .2219	31:23 NCR
<u>Severability</u>	15A NCAC 18A .2220	31:23 NCR
<u>Appeals Procedure</u>	15A NCAC 18A .2221	31:23 NCR
<u>Definitions</u>	15A NCAC 18A .3001	31:23 NCR
<u>Permits</u>	15A NCAC 18A .3002	31:23 NCR
<u>Inspections: Visits: Posting of Grade Cards</u>	15A NCAC 18A .3003	31:23 NCR
<u>Inspection Forms</u>	15A NCAC 18A .3004	31:23 NCR
<u>Grading</u>	15A NCAC 18A .3005	31:23 NCR
<u>Food Source and Protection</u>	15A NCAC 18A .3006	31:23 NCR
<u>Food Service Persons</u>	15A NCAC 18A .3007	31:23 NCR
<u>Food Service Utensils and Equipment and Their Cleaning</u>	15A NCAC 18A .3008	31:23 NCR
<u>Lavatories and Bathrooms</u>	15A NCAC 18A .3009	31:23 NCR
<u>Water Supply</u>	15A NCAC 18A .3010	31:23 NCR
<u>Drinking Water Facilities</u>	15A NCAC 18A .3011	31:23 NCR
<u>Beds: Linen</u>	15A NCAC 18A .3012	31:23 NCR
<u>Vermin Control: Premises</u>	15A NCAC 18A .3013	31:23 NCR
<u>Storage: Miscellaneous</u>	15A NCAC 18A .3014	31:23 NCR
<u>Floors: Walls: Ceilings: Lighting: Ventilation</u>	15A NCAC 18A .3015	31:23 NCR
<u>Disposal of Garbage and Trash</u>	15A NCAC 18A .3016	31:23 NCR

**LOCAL GOVERNMENT COMMISSION**

<u>Organization and Functions</u>	20 NCAC 03 .0101*	G.S. 150B-21.5(a)(4)
<u>General Information</u>	20 NCAC 03 .0701*	G.S. 150B-21.5(a)(4)
<u>Petition for Hearing</u>	20 NCAC 03 .1003*	G.S. 150B-21.5(a)(4)

**CHIROPRACTIC EXAMINERS, BOARD OF**

<u>Publication of Non-Diplomate Credentials</u>	21 NCAC 10 .0306*	31:17 NCR
---	-------------------	-----------

**RECREATIONAL THERAPY LICENSURE, BOARD OF**

<u>Complaints</u>	21 NCAC 65 .1001*	31:18 NCR
<u>Investigations</u>	21 NCAC 65 .1002*	31:18 NCR
<u>Letter of Notification</u>	21 NCAC 65 .1003*	31:18 NCR
<u>Unauthorized Practice</u>	21 NCAC 65 .1004*	31:18 NCR
<u>Sanctions</u>	21 NCAC 65 .1005*	31:18 NCR
<u>Violations</u>	21 NCAC 65 .1006*	31:18 NCR
<u>Hearings</u>	21 NCAC 65 .1007*	31:18 NCR

**VETERINARY MEDICAL BOARD**

Fees

21 NCAC 66 .0108      31:08 NCR

*The following Rules are subject to the next Legislative Session. (see G.S. 150B-21.3(b1))*

**MENTAL HEALTH, COMMISSION FOR**

Definitions

10A NCAC 27H .0202\*      31:01 NCR

Eligibility for Training

10A NCAC 27H .0203\*      31:01 NCR

Training and Certification

10A NCAC 27H .0204\*      31:01 NCR

**TITLE 10A - DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**10A NCAC 09 .0102      DEFINITIONS**

The terms and phrases used in this Chapter are defined as follows except when the context of the rule requires a different meaning. The definitions prescribed in G.S. 110-86 also apply to these Rules.

- (1) "Activity area" means a space that is accessible to children and where related equipment and materials are kept in accordance with G.S. 110-91(12).
- (2) "Agency" as used in this Chapter means Division of Child Development and Early Education, Department of Health and Human Services located at 820 South Boylan Avenue, Raleigh, North Carolina 27603.
- (3) "Appellant" means the person or persons who request a contested case hearing.
- (4) "Basic School-Age Care" training (BSAC training) means the training on the elements of quality afterschool care for school-age children, developed by the North Carolina State University Department of 4-H Youth Development and subsequently revised by the North Carolina School-age Quality Improvement Project.
- (5) "Biocontaminant" means blood, bodily fluids, or excretions that may spread infectious disease.
- (6) "Child Care Center" means an arrangement where, at any one time, there are three or more preschool-age children or nine or more school-age children receiving child care. This does not include arrangements described in Item (18) of this Rule regarding Family Child Care Homes.
- (7) "Child Care Facility" means child care centers, family child care homes, and any other child care arrangement not excluded by G.S. 110-86(2), that provides child care, regardless of the time of day, wherever operated, and whether or not operated for profit.
- (8) "Child care provider" as defined by G.S. 110-90.2(a)(2) includes the following employees

who have contact with the children in a child care program:

- (a) facility directors;
- (b) child care administrative staff;
- (c) teachers;
- (d) teachers' aides;
- (e) substitute providers;
- (f) uncompensated providers;
- (g) cooks;
- (h) maintenance personnel; and
- (i) drivers.
- (9) "Child Development Associate Credential" means the national early childhood credential administered by the Council for Early Childhood Professional Recognition.
- (10) "Curriculum" means a curriculum that has been approved as set forth in these Rules by the NC Child Care Commission as comprehensive, evidenced-based, and with a reading component.
- (11) "Developmentally appropriate" means suitable to the chronological age range and developmental characteristics of a specific group of children.
- (12) "Division" means the Division of Child Development and Early Education within the Department of Health and Human Services.
- (13) "Domains" means the developmental areas of learning described in the North Carolina Foundations for Early Learning and Development © 2013, available on the Division's website at [http://ncchildcare.nc.gov/providers/pv\\_foundations.asp](http://ncchildcare.nc.gov/providers/pv_foundations.asp). This instrument is incorporated by reference and does not include subsequent editions. The domains address children's emotional and social development, health and physical development, approaches to play and learning, language development, and communication and cognitive development.
- (14) "Drop-in care" means a child care arrangement where children attend on an intermittent, unscheduled basis.
- (15) "Early Childhood Environment Rating Scale - Revised Edition" (Harms, Clifford, and Cryer,

- 2005, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are two and a half years old through five years old, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and does not include subsequent editions. A copy of the scale is available for purchase on the Teachers College Press website at [http://www.teacherscollegepress.com/assessment\\_materials.html](http://www.teacherscollegepress.com/assessment_materials.html). The cost of this scale is twenty-four dollars and ninety-five cents (\$24.95). A copy of this instrument is on file at the Division at the address given in Item (2) of this Rule and is available for public inspection during regular business hours. For the purposes of this Rule, "regular business hours" for the Division means 8 a.m. to 5 p.m. during weekdays, excluding state holidays.
- (16) "Experience working with school-age children" means working with school-age children as a child care administrator, program coordinator, group leader, assistant group leader, lead teacher, teacher or aide.
- (17) "Family Child Care Environment Rating Scale – Revised Edition" (Harms, Cryer and Clifford, 2007, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by children in family child care homes to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and does not include subsequent editions. A copy of the scale is available for purchase on the Teachers College Press website at [http://www.teacherscollegepress.com/assessment\\_materials.html](http://www.teacherscollegepress.com/assessment_materials.html). The cost of this scale is twenty-four dollars and ninety-five cents (\$24.95). A copy of this instrument is on file at the Division at the address given in Item (2) of this Rule and is available for public inspection during regular business hours.
- (18) "Family Child Care Home" means a child care arrangement located in a residence where, at any one time, more than two children, but less than nine children, receive child care. Family child care home operators must reside at the location of the family child care home.
- (19) "First aid kit" is a collection of first aid supplies (such as bandages, tweezers, disposable nonporous gloves, micro shield or face mask, liquid soap, cold pack) for treatment of minor injuries or stabilization of major injuries.
- (20) "Group" means the children assigned to a specific caregiver or caregivers, to meet the staff/child ratios set forth in G.S. 110-91(7) and in this Chapter, using space the Division has identified for each group.
- (21) "Health care professional" means:
- (a) a physician licensed in North Carolina;
  - (b) a nurse practitioner approved to practice in North Carolina; or
  - (c) a licensed physician assistant.
- (22) "Household member" means a person who resides in a family home as evidenced by factors including maintaining clothing and personal effects at the household address, receiving mail at the household address, using identification with the household address, or eating and sleeping at the household address on a regular basis.
- (23) "If weather conditions permit" means:
- (a) temperatures that fall within the guidelines developed by the Iowa Department of Public Health and specified on the Child Care Weather Watch chart. These guidelines shall be used when determining appropriate weather conditions for taking children outside for outdoor learning activities and playtime. This chart may be downloaded free of charge from <http://idph.iowa.gov/Portals/1/Files/HCCI/weatherwatch.pdf>; and is incorporated by reference and includes subsequent editions and amendments;
  - (b) following the air quality standards as set out in 15A NCAC 18A .2832(d). The Air Quality Color Guide can be found on the Division's web site at <https://xapps.ncdenr.org/aq/ForecastCenter> or call 1-888-RU4NCAIR (1-888-784-6224); and
  - (c) no active precipitation. Caregivers may choose to go outdoors when there is active precipitation if children have appropriate clothing such as rain boots and rain coats, or if they are under a covered area.
- (24) "Infant" means any child from birth through 12 months of age.
- (25) "Infant/Toddler Environment Rating Scale - Revised Edition" (Harms, Cryer, and Clifford, 2003, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are younger than 30 months old, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and does not include subsequent editions. A copy of the scale is available for

- purchase on the Teachers College Press website at [http://www.teacherscollegepress.com/assessment\\_materials.html](http://www.teacherscollegepress.com/assessment_materials.html). The cost of this scale is twenty-four dollars and ninety-five cents (\$24.95). A copy of this instrument is on file at the Division at the address given in Item (2) of this Rule and is available for public inspection during regular business hours.
- (26) "ITS-SIDS Training" means the Infant/Toddler Safe Sleep and SIDS Risk Reduction Training developed by the NC Healthy Start Foundation and administered by the North Carolina Child Care Health and Safety Resource Center for the Division of Child Development and Early Education for caregivers of children ages 12 months and younger. Information regarding trainer and training availability can be found on the Division's website at [http://ncchildcare.nc.gov/providers/pv\\_itssidsp roject.asp](http://ncchildcare.nc.gov/providers/pv_itssidsp roject.asp).
- (27) "Lead Teacher" means an individual who is responsible for planning and implementing the daily program of activities for a group of children in a child care facility. A lead teacher is counted in staff/child ratio, has unsupervised contact with children, and is monetarily compensated by the facility.
- (28) "Licensee" means the person or entity that is granted permission by the State of North Carolina to operate a child care facility. The owner of a facility is the licensee.
- (29) "Lockdown drill" means an emergency safety procedure in which occupants of the facility remain in a locked indoor space and is used when emergency personnel or law enforcement determine a dangerous person is in the vicinity.
- (30) "North Carolina Early Educator Certification (certification)" is an acknowledgement of an individual's verified level of educational achievement based on a standardized scale. The North Carolina Institute for Child Development Professionals certifies individuals and assigns a certification level on two scales:
- (a) the Early Care and Education Professional Scale (ECE Scale) in effect as of July 1, 2010; or
  - (b) the School Age Professional Scale (SA Scale) in effect as of May 19, 2010.
- Each scale reflects the amount of education earned in the content area pertinent to the ages of children served. The ECE Scale is designed for individuals working with or on behalf of children ages birth to five. The SA Scale is designed for individuals working with or on behalf of children ages 5 to 12 who are served in school age care settings. Information on the voluntary certification process can be found on the North Carolina Institute for Child Development Professionals website at <http://ncicdp.org/certification- licensure/eec-overview/>.
- (31) "North Carolina Early Childhood Credential" means the state early childhood credential that is based on completion of required early childhood coursework taken at any NC Community College. Other post secondary curriculum coursework shall be approved as equivalent if the Division determines that the content of the other post secondary curriculum coursework offered is substantially equivalent to the NC Early Childhood Credential Coursework. A copy of the North Carolina Early Childhood Credential requirements is on file at the Division at the address given in Item (2) of this Rule and is available for public inspection or copying at no charge during regular business hours. This information can be found on the Division's website at <http://ncchildcare.nc.gov/providers/credent.asp>.
- (32) "Operator" means the owner, director, or other person having responsibility for operation of a child care facility subject to licensing.
- (33) "Owner" means any person with a five percent or greater equity interest in a child care facility; however, stockholders of corporations who own child care facilities shall not be subject to mandatory criminal history checks pursuant to G.S. 110-90.2 unless they are a child care provider.
- (34) "Parent" means a child's parent, legal guardian, or full-time custodian.
- (35) "Passageway" means a hall or corridor.
- (36) "Person" means any individual, trust, estate, partnership, corporation, joint stock company, consortium, or any other group, entity, organization, or association.
- (37) "Premises" means the entire child care building and grounds including natural areas, outbuildings, dwellings, vehicles, parking lots, driveways and other structures located on the property.
- (38) "Preschooler" or "preschool-age child" means any child who is at least three years of age and does not fit the definition of school-age child in this Rule.
- (39) "Reside" refers to any person that lives at a child care facility location. Factors for determining residence include:
- (a) use of the child care facility address as a permanent address for personal identification or mail delivery;

- (b) use of the child care facility to store personal belongings such as furniture, clothing, and toiletry items; and
- (c) names listed on official documents such as criminal records or property tax records.
- (40) "School-Age Care Environment Rating Scale, Updated Edition" (Harms, Jacobs, and White, 2014, published by Teachers College Press) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of the children in the group are older than five years, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and does not include subsequent editions. A copy of the scale is available for purchase on the Teacher College Press website at [http://www.teacherscollegepress.com/assessment\\_materials.html](http://www.teacherscollegepress.com/assessment_materials.html). The cost of this scale is twenty-four dollars and ninety-five cents (\$24.95). A copy of this instrument is on file at the Division at the address given in Item (2) of this Rule and is available for public inspection during regular business hours.
- (41) "School-age child" means any child who is attending or who has attended a public or private grade school or kindergarten and meets age requirements as specified in G.S. 115C-364.
- (42) "Seasonal Program" means a recreational program as set forth in G.S. 110-86(2)(b).
- (43) "Shelter-in-Place drill" means staying in place to take shelter rather than evacuating. It involves selecting a small interior room, with no or few windows, and used when emergency personnel or law enforcement determine there is an environmental or weather related threat.
- (44) "Staff" or "staff member" as used in this Chapter includes child care providers, substitute providers, and uncompensated providers. Volunteers, as defined in this Rule, are not staff members.
- (45) "Substitute provider" means any person who temporarily assumes the duties of a staff person for a time period not to exceed two consecutive months and may or may not be monetarily compensated by the facility. Any substitute provider shall be 18 years of age and literate.
- (46) "Teacher" means an individual who assists the Lead Teacher in planning and implementing the daily program of activities for a group of children in a child care facility. A teacher is counted in staff/child ratio, has unsupervised contact with children, and is monetarily compensated by the facility.
- (47) "Teacher's aide" or "Aide" means a person who assists the lead teacher or the teacher in planning and implementing the daily program, is monetarily compensated, shall be at least 16 years old and less than 18 years old, shall be literate, and shall not be counted in staff/child ratio or have unsupervised contact with children.
- (48) "Toddler" means any child ages 13 months to 3 years of age.
- (49) "Track-Out Program" means any child care provided to school-age children when they are out of school on a year-round school calendar.
- (50) "Uncompensated provider" means a person who works in a child care facility and is counted in staff/child ratio or has unsupervised contact with children, but who is not monetarily compensated by the facility. Any uncompensated provider shall be 18 years of age and literate.
- (51) "Volunteer" means a person who works in a child care facility and is not counted in staff/child ratio, does not have unsupervised contact with children, and is not monetarily compensated by the facility. A person who is at least 13 years of age, but less than 16 years of age, may work on a volunteer basis, as long as he or she is supervised by and works with a staff person who is at least 21 years of age and meets staff qualification requirements.

*History Note: Authority G.S. 110-85; 110-88; 110-90.2; 143B-168.3;  
 Eff. January 1, 1986;  
 Amended Eff. April 1, 1992; October 1, 1991; October 1, 1990;  
 November 1, 1989;  
 Temporary Amendment Eff. January 1, 1996;  
 Amended Eff. March 1, 2015; May 1, 2013; September 1, 2012;  
 July 3, 2012; July 1, 2012; November 1, 2007; May 2006; May 1,  
 2004; April 1, 2003; July 1, 2000; April 1, 1999; July 1, 1998;  
 April 1, 1997;  
 Readopted Eff. October 1, 2017.*

#### **10A NCAC 09 .0201 INSPECTIONS OF CHILD CARE FACILITIES**

The Division shall visit and inspect all child care facilities to ensure compliance with G.S 110, Article 7 and 10A NCAC 09.

- (1) The Division shall make at least one unannounced visit annually to ensure compliance with the licensure statutes and as identified in this Rule.
- (2) The Division shall make an unannounced visit when the Division receives a complaint alleging a violation of licensure statutes or rules or if the Division has cause to believe an emergency exists at the facility in accordance with G.S. 110-105.
- (3) The Division shall conduct an announced visit prior to the initial issuance of a license. The prospective licensee shall be notified in advance about the visit.

- (4) This Rule shall not apply to the investigation of child care facilities that are operating without a license in violation of the statute.

*History Note:* Authority G.S. 110-105; 143B-168.3;  
*Eff. January 1, 1986;*  
*Amended Eff. July 1, 1998;*  
*Readopted Eff. October 1, 2017.*

**10A NCAC 09 .0204 CHANGES REQUIRING  
 ISSUANCE OF A NEW LICENSE FOR A CHILD CARE  
 CENTER**

(a) When the ownership of a child care center changes, the prospective new owner shall apply for a new license in accordance with Rule .0403 of this Chapter at least 30 days before acquiring ownership of the center. A child care center license shall not be bought, sold, or transferred by one person or entity to another.

(b) When a licensed child care center is to be moved from one location to another, the licensee shall apply for and receive a license for the new location before the licensee provides child care services at the new location. A child care center license shall not be transferable from one location to another.

(c) When a licensee desires to change the licensed capacity of a center, the licensee shall notify the Division of the following:

- (1) If the licensee wishes to increase the licensed capacity by using space not currently approved for child care, the licensee shall obtain inspections of the unapproved space by the local health, building, and fire inspectors in accordance with G.S. 110-91(1), (4), and (5). Once the licensee documents that the unlicensed space conforms to all applicable sanitation, building, and fire standards, and if all applicable requirements of G.S. 110, Article 7 and this Chapter are met, the Division shall issue a new license to reflect the increase in licensed capacity.
- (2) If a licensee wishes to increase the center's licensed capacity by using space that is already approved for child care, the Division shall, upon request, issue a new license showing the increase in accordance with applicable requirements of G.S. 110, Article 7 and this Chapter.
- (3) If a licensee wishes to decrease the center's licensed capacity, the Division shall, upon request, issue a new license reflecting the decrease.

(d) When a licensee decides to conform with requirements in order to remove a restriction on the age or number of children who can be served in the center, the licensee shall arrange for inspections of the center by the Division and the local health, building, and fire inspectors in accordance with G.S. 110-91(1), (4), and (5). Once the licensee submits documentation that the center conforms to all applicable sanitation, building, and fire standards, and if all applicable requirements of G.S. 110, Article 7 and this Chapter are met, the Division shall issue a new license without the restriction.

*History Note:* Authority G.S. 110-88(8); 110-93; 143B-168.3;  
*Eff. January 1, 1986;*  
*Amended Eff. July 1, 1998; July 1, 1988; January 1, 1987;*  
*Readopted Eff. October 1, 2017.*

**10A NCAC 09 .0205 ACCESS TO CHILD CARE  
 CENTER**

(a) The parent of a child enrolled in a child care center shall be allowed access to the center during its operating hours for the purposes of contacting the child or evaluating caregiving space at the center and the care provided by the center for the child. The parent shall notify the on-site administrator of his or her presence upon entering the premises.

(b) Parents subject to court orders related to custody of a child enrolled in a child care center shall only be allowed access to the center in accordance with the court order.

(c) The child care operator shall not knowingly permit a person on the premises of a child care center who has been convicted of a "reportable conviction" as defined in G.S. 14-208.6(4).

*History Note:* Authority G.S. 110-85; 110-91; 143B-168.3;  
*Eff. July 1, 1988;*  
*Amended Eff. July 1, 1998; November 1, 1989;*  
*Readopted Eff. October 1, 2017.*

**10A NCAC 09 .0301 PRE-LICENSING  
 REQUIREMENTS FOR CHILD CARE CENTERS**

(a) A prospective licensee who has not previously operated a child care center in North Carolina shall attend a pre-licensing workshop provided by the Division before the Division schedules a pre-licensing visit. This includes persons seeking to operate a child care center pursuant to a Notice of Compliance. A schedule of these workshops provided by the Division may be found online at [http://ncchildcare.dhhs.state.nc.us/pdf\\_forms/prelicworkshop.pdf](http://ncchildcare.dhhs.state.nc.us/pdf_forms/prelicworkshop.pdf).

(b) Prospective licensees shall download, complete, and submit the pre-licensing registration form to the Division. The pre-licensing registration form contains demographic information and workshop location preferences. The pre-licensing registration form may be found online at [http://ncchildcare.dhhs.state.nc.us/pdf\\_forms/prelicworkshop.pdf](http://ncchildcare.dhhs.state.nc.us/pdf_forms/prelicworkshop.pdf).

(c) Upon completion of the pre-licensing workshop the prospective licensee shall submit an application for a license to the Division. The application can be found online at [http://ncchildcare.nc.gov/PDF\\_forms/FacilityProfileApp.pdf](http://ncchildcare.nc.gov/PDF_forms/FacilityProfileApp.pdf).

(d) Upon receipt of the child care application the Division shall contact the prospective licensee to discuss Rule 10A NCAC 09 .0302. A pre-licensing visit will be scheduled with the prospective licensee, when they are ready to demonstrate compliance with G.S. 110, Article 7 and this Chapter.

*History Note:* Authority G.S. 110-88(1); 110-88(5); 143B-168.3;  
*Eff. January 1, 1986;*  
*Amended Eff. January 1, 2006; July 1, 1998;*  
*Readopted Eff. October 1, 2017.*

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

(a) An application for a license for a child care center shall be submitted on the form provided by the Division, which may be found [http://ncchildcare.nc.gov/PDF\\_forms/FacilityProfileApp.pdf](http://ncchildcare.nc.gov/PDF_forms/FacilityProfileApp.pdf) at

The application for a child care center license shall include the following information:

- (1) owner name;
- (2) center name, address, phone number, and location address;
- (3) center contact information;
- (4) requested age range of children in the child care center;
- (5) hours of operation;
- (6) type of care to be provided;
- (7) type of building;
- (8) type of center;
- (9) proposed opening date;
- (10) proposed number of children to be served;
- (11) type of business operation;
- (12) history of operation or licensing of child care care facilities; and
- (13) signature of applicant of either:
  - (A) the individual who will be responsible for the operation of the center and for assuring compliance with G.S. 110, Article 7 and this Chapter; or
  - (B) an officer of an entity who will be responsible for the operation of the center and for ensuring compliance with G.S. 110, Article 7 and this Chapter.

Upon receipt of the application, the Division shall assess the information provided to determine if the prospective licensee may be denied a license for one or more of the reasons set forth in 10A NCAC 09 .2215.

(b) In addition to the application, an applicant shall submit the following documentation:

- (1) the required criminal record check qualification letter as set forth in 10A NCAC 09 .2703;
- (2) inspection reports required by G.S. 110-91(1), (4), and (5). If a center does not conform with a building, fire, or sanitation standard, the Division shall accept an inspector's determination that equivalent, alternative protection is provided;
- (3) measurements of all rooms to be used for child care and a sketch of the center's floor plan, including ceiling height, location of bathrooms, doors, and required exits; and
- (4) written information to verify compliance with G.S. 110, Article 7 and the Rules in this Chapter as follows:
  - (A) emergency medical plan;
  - (B) activity plans;
  - (C) discipline policy;
  - (D) incident reports; and
  - (E) incident logs.

(c) During the pre-licensing visits, the applicant or the operator shall be able to describe the plans for the daily program, including room arrangement, staffing patterns, equipment, and supplies, in sufficient detail to show that the center shall comply with applicable requirements for activities, equipment, and staff-child ratios for the capacity of the center and type of license requested.

(d) During the pre-licensing visit the applicant shall have the following available for review pursuant to 10A NCAC 09 .0304(g):

- (1) staff records that include:
  - (A) an application for employment and date of birth;
  - (B) documentation of education, training, and experience;
  - (C) medical and health records;
  - (D) documentation of staff orientation, participation in training, and staff development activities; and
  - (E) required criminal history records check documentation;
- (2) children's records that include an application for enrollment, medical and immunization records, and permission to seek emergency medical care;
- (3) daily attendance records;
- (4) daily records of arrival and departure times at the center for each child;
- (5) records of monthly fire drills documenting the date and time of each drill, the length of time taken to evacuate the building, and the signature of the person who conducted the drill as required by NC Fire Code 405.5; A copy of the form may be found on the Division's website at [http://ncchildcare.nc.gov/pdf\\_forms/EPR\\_EmergencyDrillLog\\_Centers.pdf](http://ncchildcare.nc.gov/pdf_forms/EPR_EmergencyDrillLog_Centers.pdf);
- (6) records of monthly playground inspections documented on a checklist provided by the Division; A copy of the form may be found on the Division's website at [http://ncchildcare.nc.gov/pdf\\_forms/playground.pdf](http://ncchildcare.nc.gov/pdf_forms/playground.pdf);
- (7) records of administered medications;
- (8) records of lockdown or shelter-in-place drills as defined in 10A NCAC 09 .0102, giving the date each drill was held, the time of day, the length of time taken to get into designated locations and the signature of the person who conducted the drill. A copy of the form may be found on the Division's website at [http://ncchildcare.nc.gov/pdf\\_forms/EPR\\_EmergencyDrillLog\\_Centers.pdf](http://ncchildcare.nc.gov/pdf_forms/EPR_EmergencyDrillLog_Centers.pdf); and
- (9) an electronic mail address for the center.

(e) The Division shall make one or more inspections of the center and premises to assess compliance with all applicable licensure statutes and rules and either:

- (1) issue a single license for the address of the center if all applicable requirements of G.S. 110, Article 7 and this Section are met;



- (2) issue a provisional license pursuant to Rule .0401 of this Chapter; or
- (3) deny the application in accordance with 10A NCAC 09 .2215.

*History Note:* Authority G.S. 110-85; 110-86; 110-88(2); 110-88(5); 110-91; 110-91(1),(4) and (5); 110-92; 110-93; 110-99; 143B-168.3;

*Eff. January 1, 1986;*

*Amended Eff. July 1, 2015; March 1, 2014; August 1, 2011; July 1, 2010; April 1, 2003; April 1, 2001; July 1, 1998; January 1, 1996; November 1, 1989; July 1, 1988; January 1, 1987;*

*Readopted Eff. October 1, 2017.*

#### **10A NCAC 09 .0304 ON-GOING REQUIREMENTS FOR A LICENSE**

(a) Each operator shall schedule and obtain a fire inspection within 12 months of the center's previous fire inspection. The operator shall notify the local fire inspector when it is time for the center's annual fire inspection. The operator shall submit the original of the approved annual fire inspection report to the Division within one week of the inspection visit on the form provided by the Division.

(b) Each center shall be inspected annually by an Environmental Health Specialist and receive an approved or superior rating in accordance with applicable sanitation requirements adopted by the Commission for Public Health as described in 15A NCAC 18A .2800.

(c) A new building inspection shall not be required unless the operator plans to begin using space not previously approved for child care, has made renovations to the building, has added new construction, or wants to remove any restriction related to building codes on the permit.

(d) When the Division documents noncompliance with G.S. 110, Article 7 or this Chapter during a visit, the Division may do any one or more of the following:

- (1) require the operator to notify the Division in writing when the noncompliance has been corrected;
- (2) return to the center for an unannounced visit to determine whether the noncompliance has been corrected; or
- (3) take any administrative action in accordance with G.S. 110, Article 7 or 10A NCAC 09 .2200.

(e) The Division shall calculate the visit compliance score by taking the total possible points for items monitored at a visit and calculating the percentage of compliance based upon the actual points awarded. The compliance history of a center shall be calculated by averaging each visit compliance score over the previous 18 months. Points shall be awarded for compliance with items monitored as follows:

- (1) supervision of children (6 points);
- (2) staff/child ratio (6 points);
- (3) staff qualifications and training (2 to 5 points);
- (4) health and safety practices (3 to 6 points);
- (5) discipline (6 points);
- (6) developmentally appropriate activities (2 to 4 points);

- (7) adequate space (6 points);
- (8) nutrition and feeding practices (1 to 3 points);
- (9) program records (1 to 3 points); and
- (10) transportation (1 to 3 points), if applicable.

(f) A sample of the Division's compliance history score sheet can be viewed online at [http://ncchildcare.nc.gov/PDF\\_forms/Compliance\\_History\\_Sample\\_415.pdf](http://ncchildcare.nc.gov/PDF_forms/Compliance_History_Sample_415.pdf).

(g) Each center shall maintain records as described in 10A NCAC 09 .0302(e) and (f) and shall make them available to the Division for review.

*History Note:* Authority G.S. 110-85; 110-88(5); 110-93; 143B-168.3; 150B-3;

*Eff. July 1, 1998;*

*Amended Eff. July 1, 2010; May 1, 2006;*

*Readopted Eff. October 1, 2017.*

#### **10A NCAC 09 .0403 TEMPORARY LICENSES FOR CENTERS**

(a) When an operator proposes to open a new center or to change the ownership or location of an existing center, the Division shall issue the operator a temporary license upon the receipt of a license application pursuant to 10A NCAC 09 .0204 or .0302 and the documents specified in 10A NCAC 09 .0301 and .0302.

(b) The temporary license shall be posted in a prominent place in the center that parents are able to view daily.

(c) The temporary license shall expire after six months or upon the issuance of a star-rated license, provisional license, or denial of a license to the operator, whichever occurs earlier.

*History Note:* Authority G.S. 110-88(10); 110-99; 143B-168.3;

*Eff. July 1, 1988;*

*Amended Eff. July 1, 1998; April 1, 1992; November 1, 1989;*

*Readopted Eff. October 1, 2017.*

#### **10A NCAC 09 .0508 ACTIVITY SCHEDULES AND PLANS**

(a) All centers shall have a current schedule and activity plan for each group of children posted for reference by parents and by caregivers. The schedule and activity plan may be combined in a single document.

(b) For each group of children in care, the activity plan shall include activities intended to stimulate the following developmental domains, in accordance with North Carolina Foundations for Early Learning and Development, available on the Division's website at [http://ncchildcare.nc.gov/providers/pv\\_foundations.asp](http://ncchildcare.nc.gov/providers/pv_foundations.asp):

- (1) emotional and social development;
- (2) health and physical development;
- (3) approaches to play and learning;
- (4) language development and communication; and
- (5) cognitive development.

(c) When children are in care and weather conditions permit, there shall be outdoor time, either as part of a small group, a whole group, or individual activity, for no less than the following durations:

<b>Program Operating Hours</b>	<b>Ages of Children</b>	<b>Minimum Daily Outdoor Time</b>
<b>All Programs</b>	<b>Under 2 years</b>	<b>30 Minutes</b>
Less than 5 hours	0-12 years	30 Minutes
5 hours or more	2-12 years	60 minutes

(d) When children three years old or older are in care, the schedule shall include the following:

- (1) blocks of time assigned to types of activities, including periods of time for active play, quiet play, or rest;
- (2) times and activities that are developmentally appropriate for the children in care; and
- (3) daily opportunities indoors and outdoors for:
  - (A) free-choice activities; and
  - (B) teacher-directed activities.

(e) For children under two years old, interspersed among the daily events shall be individualized caregiving routines such as eating, napping, and toileting.

(f) When children under three years old are in care, the schedule shall include regular daily events such as the arrival and departure of the children, free-choice times, outside time, and teacher-directed activities.

(g) The activity plan shall:

- (1) identify activities that allow children to choose to participate with the whole group, part of the group, or independent of the group;
- (2) reflect that the children have four different activities daily, at least one of which is outdoors, if weather conditions permit, as listed in G.S. 110-91(12) as follows:
  - (A) art and other creative play;
  - (B) children's books;
  - (C) blocks and block building;
  - (D) manipulatives; and
  - (E) family living and dramatic play; and
- (3) include a daily gross motor activity that may occur indoors or outdoors.

*History Note:* Authority G.S. 110-85; 110-91(2),(12); 143B-168.3;

*Eff.* July 1, 1988;

*Amended Eff.* July 1, 2010; July 1, 1988;

*Readopted Eff.* October 1, 2017.

#### **10A NCAC 09 .0509 LEARNING ENVIRONMENT**

The learning environment consists of the indoor and outdoor area which encourages child initiated and teacher supported activities as follows:

- (1) each center shall have developmentally appropriate equipment and materials accessible on a daily basis;

- (2) the materials and equipment indoors and outdoors shall be sufficient to provide a variety of play experiences that promote the children's emotional and social development, health and physical development, approaches to play and learning, language development, and communication and cognitive development;
- (3) teacher-made and home-made equipment and materials may be used. Materials and equipment that are accessible to children shall not be coated or treated with, nor shall they contain, toxic materials such as creosote, pentachlorophenol, tributyl tin oxide, dislodgeable arsenic, or and any finishes that contain pesticides; and
- (4) developmentally appropriate equipment and materials shall be provided for a variety of outdoor activities that allow for active play and large muscle development. The center shall provide space and time for active indoor activities when children cannot play outdoors.

*History Note:* Authority G.S. 110-85; 110-91(2),(12); 143B-168.3;

*Eff.* July 1, 1988;

*Amended Eff.* July 1, 2010; July 1, 1998; January 1, 1996;

*Readopted Eff.* October 1, 2017.

#### **10A NCAC 09 .0510 ACTIVITY AREAS**

(a) For each group of children in care, the center shall provide daily four of the five activity areas listed in G.S. 110-91(12) as follows:

- (1) Centers with a licensed capacity of 30 or more children shall have at least four activity areas available in the space occupied by a group of children.
- (2) Centers with a licensed capacity of less than 30 children shall have at least four activity areas available. Separate groups of children may share use of the same activity areas.
- (3) Centers with a licensed capacity of 3 to 12 children located in a residence shall have at least four types of activities available.

(b) In addition to the four activity areas that are available each day, each center shall have materials and equipment in sufficient quantity, as described in Subparagraph (d)(1) of this Rule, to ensure that the fifth activity area listed in G.S. 110-91(12) is made available at least once per month.

(c) Each center shall provide materials and opportunities for each group of children at least weekly, indoors or outdoors, for the following:

- (1) music and rhythm;
- (2) science and nature; and
- (3) sand and water play.

(d) When preschool children three years old and older are in care the following shall apply:

- (1) the materials and equipment in an activity area shall be in sufficient quantity to allow at least three children to use the area regardless of

whether the children choose the same or different activities; and

- (2) when screen time is provided on any electronic media device with a visual display, it shall be:
- (A) offered to stimulate a developmental domain in accordance with the North Carolina Foundations for Early Learning and Development as referenced in Rule .0508 of this Section;
  - (B) limited to 30 minutes per day and no more than a total of two and a half hours per week, per child; and
  - (C) documented on a cumulative log or the activity plan that shall be available for review by the Division.

(e) When children under three years old are in care the following apply:

- (1) each center shall have developmentally appropriate toys and activities for each child to promote the child's emotional and social development, health and physical development, approaches to play and learning, language development, and communication and cognitive development, including:
  - (A) books;
  - (B) blocks;
  - (C) dolls;
  - (D) pretend play materials;
  - (E) musical toys;
  - (F) sensory toys; and
  - (G) fine motor toys;
- (2) materials shall be kept in a space where related equipment and materials are kept in accordance with G.S. 110-91(12) and shall be made available to the children on a daily basis;
- (3) materials shall be offered in sufficient quantity to allow all children to use them at some time during the day and to allow for a range of choices,
- (4) on a daily basis caregivers shall provide developmentally appropriate activities that support health and physical development. An open area that allows freedom of movement shall be available, both indoors and outdoors, for infants and for toddlers;
- (5) hands-on experiences, including both familiar and new activities, shall be provided to enable the infant or toddler to learn about himself and the world both indoors and outdoors; and
- (6) each child under the age of 12 months shall be given supervised tummy time positioned on his or her stomach while awake and alert each day.

(f) Screen time, including television, videos, video games, and computer usage, shall be prohibited for children under three years of age.

*History Note:* Authority G.S. 110-85; 110-91(6),(12); 143B-168.3;

*Eff. July 1, 1988;*

*Amended Eff. July 1, 2010; July 1, 1998; October 1, 1991;*

*Readopted Eff. October 1, 2017.*

#### **10A NCAC 09 .0511 DAILY ROUTINES FOR CHILDREN UNDER TWO YEARS OF AGE**

(a) Children under two years of age shall require individualized daily routines based on their specific developmental needs. The center shall provide time and space for sleeping, eating, toileting, diaper changing, and playing according to each child's individual needs.

(b) The caregivers shall interact in a positive manner with each child every day, as follows:

- (1) caregivers shall respond at the earliest opportunity to an infant or toddler's physical and emotional needs, especially when indicated by crying, through actions such as feeding, diapering, holding, positive touching, smiling, talking, and eye contact;
- (2) the caregiver shall recognize the special difficulties of infant and toddler separations and assist families, infants, and toddlers to ease the transition from home to center such as a phased-in orientation process to allow infants and toddlers to experience limited amounts of time at the center before becoming integrated;
- (3) a caregiver or team of caregivers shall be assigned to each infant or toddler as the primary caregiver(s) who is responsible for care the majority of the time; and
- (4) the caregiver shall make provision for constructive guidance and setting limits that the child can understand and that foster the infant's or toddler's ability to be self-disciplined, as appropriate to the child's age and development.

*History Note:* Authority G.S. 110-85; 110-91(2),(12); 143B-168.3;

*Eff. July 1, 1988;*

*Amended Eff. August 1, 2010; May 1, 2004; July 1, 1998; October 1, 1991; January 1, 1991;*

*Readopted Eff. October 1, 2017.*

#### **10A NCAC 09 .0601 SAFE ENVIRONMENT**

(a) A safe indoor and outdoor environment shall be provided for the children in care in accordance with rules in this Section.

(b) All equipment and furnishings shall be in good repair. All commercially manufactured equipment and furnishings shall be assembled and installed according to procedures specified by the manufacturer. For equipment and furnishings purchased after September 1, 2017, the manufacturer's instructions shall be kept on file or electronically accessible, if available.

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

(d) All broken equipment or furnishings referenced in Paragraph (c) of this Rule shall be removed from the premises immediately or made inaccessible to the children.

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

*History Note:* Authority G.S. 110-91(3),(6); 143B-168.3;  
*Eff. January 1, 1986;*  
*Amended Eff. January 1, 1996; January 1, 1991;*  
*Readopted Eff. October 1, 2017.*

**10A NCAC 09 .0602 CONDITION OF INDOOR  
 EQUIPMENT AND FURNISHINGS**  
**10A NCAC 09 .0603 OVERNIGHT FURNISHINGS**

*History Note:* Authority G.S. 110-91(6); 143B-168.3;  
*Eff. January 1, 1986;*  
*Amended Eff. January 1, 1996; January 1, 1991;*  
*Temporary Amendment Eff. October 1, 1997;*  
*Amended Eff. July 1, 1998;*  
*Repealed Eff. October 1, 2017.*

**10A NCAC 09 .0604 SAFETY REQUIREMENTS FOR  
 CHILD CARE CENTERS**

- (a) In child care centers, potentially hazardous items, including 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, removed from the premises, or otherwise inaccessible to children.
- (b) Firearms and ammunition are prohibited in a licensed child care center unless carried by a law enforcement officer.
- (c) When not in use, electrical outlets and power strips located in space used by children shall have safety outlets or 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 appliances with heating elements, such as bottle warmers, crock pots, irons, coffee pots, or curling irons, neither the appliance nor any cord shall be accessible to preschool-age 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, lighters, and accelerants shall be kept in locked storage.
- (h) Children shall be in a smoke free and tobacco free environment. Smoking and the use of any product containing, made or derived from tobacco, including e-cigarettes, cigars, little cigars, smokeless tobacco, and hookah, shall not be permitted on the premises of the child care center, in vehicles used to transport children, or during any off premise activities. All smoking materials shall be kept in locked storage. For child care centers in an occupied residence that are licensed for 3 to 12 children when any preschool-age children are in care, or for 3 to 15 children when only school-age children are in care, the premises shall be smoke free and tobacco free during operating hours.

(i) Signage regarding the smoking and tobacco restriction shall be posted at each entrance to the center and in vehicles used to transport children.

(j) The operator shall notify the parent of each child enrolled in the center, in writing, of the smoking and tobacco restriction.

(k) Fuel burning heaters, fireplaces, and floor furnaces, if applicable, shall be fitted with a protective screen attached to supports to prevent access by children and to prevent objects from being thrown into them.

(l) Toxic plants shall be inaccessible to children. A list of toxic plants may be found on the Division's website at [http://ncchildcare.nc.gov/pdf\\_forms/form16b\\_bb.pdf](http://ncchildcare.nc.gov/pdf_forms/form16b_bb.pdf).

(m) 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.

(n) Gas tanks and gas or charcoal grills shall be inaccessible to children or shall be in a protective enclosure.

(o) 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.

(p) 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 of.

(q) Plastic bags, toys, toy parts small enough to be swallowed, and materials that can be torn apart, such as foam rubber and styrofoam, shall not be accessible to children under three years of age. However, styrofoam plates and larger pieces of foam rubber may be used for supervised art activities and styrofoam plates may be used for food service. Jump ropes and rubber bands shall not be accessible to children under five years of age without adult supervision. Balloons shall be prohibited for children of all ages.

(r) 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 moveable, have a reinforced bottom, and shall be able to fit through the designated fire exit. For centers that do not meet NC Building Code for institutional occupancy as described in 10A NCAC 09 .1301, and have an exit more than eight inches above grade, the center shall develop a written plan to ensure a safe evacuation of the crib or other device. The operator shall submit the plan to the Division for review. The Division shall approve the plan and shall require a demonstration of the center implementing the plan during a drill. During the required fire, lockdown, or shelter-in-place drills, an evacuation crib or other device shall be used in the manner described in the Emergency Preparedness and Response Plan as defined in 10A NCAC 09 .0607(c).

(s) A First Aid kit shall be available on site and accessible to staff. Each staff member shall be aware of the location of the First Aid kit.

(t) Fire drills shall be practiced monthly and records shall be maintained as required by 10A NCAC 09 .0302(d)(5).

(u) A "shelter in place drill" or "lockdown drill" as defined in 10A NCAC 09 .0102 shall be conducted at least every three months and records shall be maintained as required by 10A NCAC 09 .0302(d)(8).

(v) In child care centers, biocontaminants shall be:

- (1) stored in locked areas;
- (2) removed from the premises;
- (3) inaccessible to children; or

- (4) shall be disposed of in a covered, plastic lined receptacle.

*History Note: Authority G.S. 110-88; 143B-168.3;  
Eff. January 1, 1991;  
Amended Eff. January 1, 1996; November 1, 1991;  
Temporary Amendment Eff. October 1, 1997;  
Amended Eff. July 1, 2015; February 1, 2012; July 1, 2010;  
December 1, 2007; April 1, 2001; July 1, 1998;  
Temporary Amendment Eff. September 23, 2016;  
Readopted Eff. October 1, 2017.*

**10A NCAC 09 .0605 OUTDOOR LEARNING  
ENVIRONMENT IN CHILD CARE CENTERS**

- (a) Outdoor play equipment shall be age and developmentally appropriate.
- (b) For outdoor play structures purchased or installed on or after September 1, 2017 the provider shall maintain manufacturer's instructions on file electronically or in paper format.
- (c) Separate play areas or time schedules shall be provided for children under two years of age unless fewer than 15 children of any age are in care.
- (d) If a center shares playground space with another center that serves children, a separate play area or time schedule shall be provided for each center.
- (e) Children shall not be allowed to play on outdoor equipment that is too hot to touch.
- (f) Children shall not be allowed to be bare-footed while outdoors if equipment or surfacing is too hot to touch.
- (g) Any openings in equipment, steps, decks, handrails, and fencing shall be smaller than 3 ½ inches or greater than 9 inches to prevent entrapment.
- (h) All upright angles shall be greater than 55 degrees to prevent entrapment and entanglement.
- (i) The outdoor play area shall be protected by a fence. The height shall be a minimum of four feet and the top of the fence shall be free of protrusions. The requirement disallowing protrusions on the tops of fences shall not apply to fences six feet high or above. The fencing shall exclude fixed bodies of water such as ditches, quarries, canals, excavations, and fish ponds. Gates to the fenced outdoor play area shall remain closed while children occupy the area.
- (j) All stationary outdoor equipment more than 18 inches high shall be installed over protective surfacing. Footings which anchor equipment shall not be exposed. Protective surfacing shall be either:
- (1) loose surfacing material, including wood mulch, double shredded bark mulch, uniform wood chips, fine sand, coarse sand, and pea gravel, except that pea gravel shall not be used if the area will be used by children under three years of age. Loose surfacing material shall not be installed over concrete; or
  - (2) other materials that have been certified by the manufacturer to be shock-absorbing protective material in accordance with the American Society for Testing and Materials (ASTM) Standard F 1292, may be used if installed, maintained, and replaced according to the

manufacturer's instructions. This standard is incorporated by reference and does include subsequent editions. This standard may be found online at <https://www.astm.org/Standards/F1292.htm> for a cost of sixty-five dollars (\$65.00).

- (k) The depth of the loose surfacing material shall be based on the critical height of the equipment, which is defined as the maximum height that a child may climb, sit, or stand, as follows:
- (1) equipment with a critical height of 5 feet or less shall have 6 inches of loose surface materials;
  - (2) equipment with a critical height of more than 5 feet, but less than 7 feet, shall have 6 inches of loose surfacing material, except for sand;
  - (3) equipment with a critical height of 7 feet to 10 feet shall have 9 inches of any of the loose surfacing material, except for sand; and
  - (4) when sand is used as a surfacing material for equipment with a critical height of more than 5 feet, 12 inches shall be required.
- (l) Protective surfacing shall cover the area under and around equipment where a child may fall, referred to as the fall zone. The area for fall zones is as follows:
- (1) for stationary outdoor equipment used by children under two years of age, the protective surfacing shall extend beyond the external limits of the equipment for a minimum of three feet, except that protective surfacing shall be required at all points of entrance and exit for any structure that has a protective barrier; and
  - (2) for stationary outdoor equipment used by children two years of age or older, the protective surfacing shall extend beyond the external limits of the equipment for six feet;
- (m) Exceptions to Paragraph (l) of this Rule are as follows:
- (1) Fall zones may overlap around spring rockers, and around equipment that is more than 18, but less than 30 inches in height. If there are two adjacent structures and one is more than 18, but less than 30 inches in height, the protective surfacing shall extend a minimum of nine feet between the two structures.
  - (2) Swings shall have protective surfacing that extends two times the length of the pivot point to the surface below. The surfacing shall be to the front and rear of the swing.
  - (3) Tot swings shall have protective surfacing that extends two times the length of the pivot point to the bottom of the swing seat. The surfacing shall be to the front and rear of the swing. Tot swings are defined as swings with enclosed seats.
  - (4) Tire swings shall have protective surfacing that extends a distance of six feet plus the measurement from the pivot point to the swing seat and six feet to the side of the support structure.
- (n) Swing seats shall be made of plastic or soft or flexible material.

(o) Elevated platforms shall have a guardrail or a protective barrier, depending upon the height of the platform and the age of children in accordance with this Paragraph that will have access to the piece of equipment. Guardrails shall prevent inadvertent or unintentional falls off the platform. The critical height for a platform with a guardrail is the top of the guardrail. Protective barriers shall prevent children from climbing over or through the barrier. The critical height for a platform with a protective barrier is the platform surface. All sides of platforms shall be protected except for the area which allows entry or exit. Measurements for the guardrails and protective barriers are as follows:

- (1) Equipment used exclusively by children under two years of age:
  - (A) Protective Barriers – an elevated surface that is more than 18 inches above the underlying surface shall have a protective barrier. The minimum height of the top surface of the protective barrier shall be 24 inches.
  - (B) Critical Height – the maximum critical height of a platform or elevated play surface shall be no greater than 32 inches.
- (2) Equipment used exclusively by children two years of age up to school age:
  - (A) Guardrails - an elevated surface that is more than 20 inches and no more than 30 inches above the underlying surface shall have a guardrail. The minimum height of the top surface of the guardrail shall be 29 inches and the lower edge shall be no more than 23 inches above the platform.
  - (B) Protective Barriers - an elevated surface that is more than 30 inches above the underlying surface shall have a protective barrier. The minimum height of the top surface of the protective barrier shall be 29 inches.
- (3) Equipment used by children two years of age and older:
  - (A) Guardrails - an elevated surface that is more than 20 inches and no more than 30 inches above the underlying surface shall have a guardrail. The minimum height of the top surface of the guardrail shall be 38 inches and the lower edge shall be no more than 23 inches above the platform.
  - (B) Protective Barriers - an elevated surface that is more than 30 inches above the underlying surface shall have a protective barrier. The minimum height of the top surface of the protective barrier shall be 38 inches.

- (4) Equipment used exclusively by school-age children:
  - (A) Guardrails - an elevated surface that is more than 30 inches and no more than 48 inches above the underlying surface shall have a guardrail. The minimum height of the top surface of the guardrail shall be 38 inches and the lower edge shall be no more than 26 inches above the platform.
  - (B) Protective Barriers - an elevated surface that is more than 48 inches above the underlying surface shall have a protective barrier. The minimum height of the top surface of the protective barrier shall be 38 inches.

(p) Composite structures that were installed between January 1, 1989 and January 1, 1996 according to manufacturer's instructions that met existing safety standards for playground equipment at the time of installation and received approval from the Division, may continue to be used.

(q) Following completion of playground safety training as required by Rule .1102(e) of this Chapter, a monthly playground inspection shall be conducted by an individual trained in playground safety requirements. A trained administrator or staff person shall make a record of each inspection using a playground inspection checklist provided by the Division. The checklist shall be signed by the person who conducts the inspection and shall be maintained for 12 months in the center's files for review by a representative of the Division. The playground inspection checklist may be found online at [http://ncchildcare.nc.gov/pdf\\_forms/playground.pdf](http://ncchildcare.nc.gov/pdf_forms/playground.pdf). The playground inspection includes a checklist of items related to safety, surfacing, and equipment quality.

(r) Trampolines shall be prohibited, except for supervised use of a mini fitness trampoline for single person use.

(s) Inflatables shall be prohibited except when used during a special event such as a celebration, festival, party, or family engagement event. A staff member shall be able to hear and see all children using inflatables at all times. For purposes of this Rule, an inflatable shall mean an air-filled structure designed to allow users to bounce, slide, or climb in. The inflatable device uses air pressure from one or more blowers to maintain its shape. Examples include bounce houses, moon walkers, giant slides, and bouncers.

*History Note: Authority G.S. 110-85; 110-91(6); 143B-168.3; Temporary Adoption Eff. October 1, 1997; Eff. October 29, 1998; Amended Eff. November 1, 2007; Readopted Eff. October 1, 2017.*

#### **10A NCAC 09 .0606 SAFE SLEEP PRACTICES**

(a) Each center licensed to care for infants aged 12 months or younger shall develop, adopt, and comply with a written safe sleep policy that:

- (1) specifies that caregivers shall place infants aged 12 months or younger on their backs for sleeping, unless:
  - (A) for an infant aged six months or less, the center receives a written waiver of this requirement from a health care professional; or
  - (B) for an infant older than six months, the center receives a written waiver of this requirement from a health care professional, or a parent or a legal guardian;
- (2) specifies no pillows, wedges or other positioners, pillow-like toys, blankets, toys, bumper pads, quilts, sheepskins, loose bedding, towels and washcloths, or other objects may be placed with a sleeping infant aged 12 months or younger;
- (3) specifies that children shall not be swaddled;
- (4) specifies that nothing shall be placed over the head or face of an infant aged 12 months or younger when the infant is laid down to sleep;
- (5) specifies that the temperature in the room where infants aged 12 months or younger are sleeping does not exceed 75° F;
- (6) specifies that caregivers shall visually check, in person, sleeping infants aged 12 months or younger at least every 15 minutes;
- (7) specifies how caregivers shall document compliance with visually checking on sleeping infants aged 12 months or younger;
- (8) specifies that pacifiers that attach to infant clothing shall not be used with sleeping infants;
- (9) specifies that infants aged 12 months or younger sleep alone in a crib, bassinet, mat, or cot;
- (10) specifies that infants aged 12 months or younger are prohibited from sleeping in sitting devices, including car safety seats, strollers, swings, and infant carriers. Infants that fall asleep in sitting devices shall be moved to a crib, bassinet, mat, or cot; and
- (11) specifies any other steps the center shall take to provide a safe sleep environment for infants aged 12 months or younger.

(b) The center shall post a copy of its safe sleep policy about infant safe sleep practices in the infant room where it can be easily seen by parents and caregivers.

(c) A copy of the center's safe sleep policy shall be given and explained to the parents of an infant aged 12 months or younger on or before the first day the infant attends the center. The parent shall sign a statement acknowledging the receipt and explanation of the policy. The acknowledgement shall contain:

- (1) the infant's name;
- (2) the date the infant first attended the center;
- (3) the date the center's safe sleep policy was given and explained to the parent; and
- (4) the date the parent signed the acknowledgement.

The center shall retain the acknowledgement in the child's record as long as the child is enrolled at the center.

(d) If a center amends its safe sleep policy, it shall give written notice of the amendment to the parents of all enrolled infants aged 12 months or younger at least 14 days before the amended policy is implemented. Each parent shall sign a statement acknowledging the receipt and explanation of the amendment. The center shall retain the acknowledgement in the child's record as long as the child is enrolled at the center.

(e) A caregiver shall place a child age 12 months or younger on the child's back for sleeping, unless for a child age 6 months or younger, the operator obtains a written waiver from a health care professional; or for a child older than 6 months, the operator obtains a written waiver from a health care professional or parent. Waivers shall include the following:

- (1) the infant's name and birth date;
- (2) the signature and date of the infant's health care professional or parent;
- (3) if a wedge is needed specify why it is needed and how it is to be used; and
- (4) the infant's authorized sleep positions.

The center shall retain the waiver in the child's record as long as the child is enrolled at the center.

(f) For each infant with a waiver on file at the center as specified in Paragraph (e) of this Rule, a notice shall be posted for quick reference near the infant's crib, bassinet, play pen, cot or mat that shall include:

- (1) the infant's name;
- (2) the infant's authorized sleep position; and
- (3) the location of the signed waiver.

No confidential medical information, including an infant's medical diagnosis, shall be shown on the notice.

(g) Documents that verify staff member's compliance with visual checks on infants shall be maintained for a minimum of one month.

(h) A bed, crib, or cot, equipped with a firm waterproof mattress at least four inches thick and a fitted sheet shall be provided for each child who remains in the center after midnight. The top of bunk beds shall be used by school-age children only.

*History Note: Authority G.S. 110-85; 110-91(15); 143B-168.3;*

*Eff. May 1, 2004;*

*Amended Eff. July 1, 2010;*

*Readopted Eff. October 1, 2017.*

#### **10A NCAC 09 .0607 EMERGENCY PREPAREDNESS AND RESPONSE IN CHILD CARE CENTERS**

(a) For the purposes of this Rule, the Emergency Preparedness and Response in Child Care is a session training developed by the Division of Public Health for child care operators and providers on creating an Emergency Preparedness and Response Plan and practicing, responding to and recovering from emergencies in child care centers.

(b) Existing child care centers shall have one person on staff who has completed the Emergency Preparedness and Response in Child Care training. New centers shall have one person on staff who has completed the Emergency Preparedness and Response in Child Care training within one year of the effective date of the

initial license. When the trained staff member leaves employment, the center shall ensure that another staff member completes the required training within four months of the vacancy. Documentation of completion of the training shall be maintained in the individual's personnel file or in a file designated for emergency preparedness and response plan documents.

(c) Upon completion of the Emergency Preparedness and Response in Child Care training, the trained staff shall develop the Emergency Preparedness and Response Plan. The Emergency Preparedness and Response Plan means a written plan that addresses how a child care center will respond to both natural and man-made disasters, such as fire, tornado, flood, power failures, chemical spills, bomb threats, earthquakes, blizzards, nuclear disasters, or a dangerous person or persons in the vicinity, to ensure the safety and protection of the children and staff. This Plan must be on a template provided by the Division available at <https://rmp.nc.gov/portal/#>, and completed within four months of completion of the Emergency Preparedness and Response in Child Care training.

(d) The Emergency Preparedness and Response Plan shall include:

- (1) written procedures for accounting for all in attendance including:
  - (A) the location of the children, staff, volunteer and visitor attendance lists; and
  - (B) the name of the person(s) responsible for bringing the children, staff, volunteer and visitor attendance lists in the event of an emergency.
- (2) a description for how and when children shall be transported;
- (3) methods for communicating with parents and emergency personnel or law enforcement;
- (4) a description of how children's nutritional and health needs will be met;
- (5) the relocation and reunification process;
- (6) emergency telephone numbers;
- (7) evacuation diagrams showing how the staff, children, and any other individuals who may be present will evacuate during an emergency;
- (8) the date of the last revision of the plan;
- (9) specific considerations for non-mobile children and children with special needs; and
- (10) the location of a Ready to Go File. A Ready to Go File means a collection of information on children, staff and the facility, to utilize, if an evacuation occurs. The file shall include, a copy of the Emergency Preparedness and Response Plan, contact information for individuals to pick-up children, each child's Application for Child Care, medication authorizations and instructions, any action plans for children with special health care needs, a list of any known food allergies of children and staff, staff contact information, Incident Report forms, an area map, and emergency telephone numbers.

(e) The trained staff shall review the Emergency Preparedness and Response Plan annually, or when information in the plan changes, to ensure all information is current.

(f) All staff shall review the center's Emergency Preparedness and Response Plan during orientation and on an annual basis with the trained staff. Documentation of the review shall be maintained at the center in the individual's personnel file or in a file designated for emergency preparedness and response plan documents.

(g) All substitutes and volunteers counted in ratio shall be informed of the child care center's Emergency Preparedness and Response Plan and its location. Documentation of this notice shall be maintained in the individual personnel files or in a file designated for emergency preparedness and response plan documents.

(h) Centers operated by a Local Education Agency that have completed critical incident training and a School Risk Management Plan as set forth by the Department of Public Instruction shall be exempt from Paragraphs (a) through (e) of this Rule. When a School Risk Management Plan has been completed, the requirements of Paragraphs (f) and (g) of this Rule shall be applicable. The School Risk Management Plan shall be available for review by the Division. More information regarding the School Risk Management Plan is located online at <https://sera.nc.gov/srmp/>.

*History Note: Authority G.S. 110-85; 143B-168.3;*

*Eff. July 1, 2015;*

*Amended Eff. August 1, 2015;*

*Readopted Eff. October 1, 2017.*

#### **10A NCAC 09 .0608 PREVENTION OF SHAKEN BABY SYNDROME AND ABUSIVE HEAD TRAUMA**

(a) Each child care center licensed to care for children up to five years of age shall develop and adopt policies to prevent shaken baby syndrome and abusive head trauma prior to licensure. The policy shall include the following:

- (1) How to recognize, respond to, and report the signs and symptoms of shaken baby syndrome and abusive head trauma. Signs and symptoms include: irritability, difficulty staying awake, difficulty breathing, inability to lift the head, seizures, lack of appetite, vomiting, and bruises;
- (2) Strategies to assist staff members in coping with a crying, fussing, or distraught child;
- (3) Strategies to assist staff members in understanding how to care for infants;
- (4) Strategies to ensure staff members understand the brain development of children up to five years of age;
- (5) A list of prohibited behaviors that shall include, but not be limited to, shaking a child, tossing a child into the air or into a crib, chair, or car seat, and pushing a child into walls, doors, and furniture; and
- (6) Resources to assist staff members and families in preventing shaken baby syndrome and abusive head trauma.



(b) Within 30 days of adopting the policy, the child care center shall review the policy with parents of currently enrolled children up to five years of age. A copy of the policy shall be given and explained to the parents of newly enrolled children up to five years of age on or before the first day the child receives care at the center. The center shall obtain the parent's signature on the statement acknowledging the receipt and explanation of the policy. The acknowledgement shall contain the following and be maintained in the child's file for review by the Division:

- (1) The child's name;
- (2) The date the child first attended the center;
- (3) The date the operator's policy was given and explained to the parent;
- (4) The parent's name;
- (5) The parent's signature; and
- (6) The date the parent signed the acknowledgment.

(c) If a child care center changes the policy at any time, the child care center shall give written notice of the change to the child's parent 14 days prior to the implementation of the new policy and the parent shall sign a statement that attests that a copy of the new policy was given to and discussed with him or her. The center shall obtain the parent's signature acknowledging the receipt of the new policy and this statement shall be maintained in the child's file for review by the Division.

(d) Within 30 days of adopting the policy, the child care center shall review the policy with existing staff members who provide care for children up to five years of age. Each child care center shall review the policy with new staff members prior to the individual providing care to children. The acknowledgement of this review shall contain:

- (1) the individual's name;
- (2) the date the center's policy was given and explained to the individual;
- (3) the individual's signature; and
- (4) the date the individual signed the acknowledgment.

The child care center shall retain the acknowledgement in the staff member's file.

(e) If a child care center changes the policy at any time, the child care center shall review the revised policy with staff members 14 days prior to the implementation of the new policy. The individual shall sign a statement that attests that a copy of the new policy was given to and discussed with him or her. This statement shall be kept in the staff member's file.

*History Note: Authority G.S. 143B-168.3;  
Temporary Adoption Eff. September 23, 2016;  
Eff. October 1, 2017.*

## **SECTION .0700 - STAFF QUALIFICATIONS**

### **10A NCAC 09 .0701 HEALTH STANDARDS FOR CHILD CARE PROVIDERS, SUBSTITUTE PROVIDERS, VOLUNTEERS, AND UNCOMPENSATED PROVIDERS**

(a) Health and emergency information shall be obtained for staff members as specified in the chart below:

<b>Required for:</b>	<b>Item Requirements:</b>	<b>Due Date:</b>
Child care providers and uncompensated providers who are not substitute providers or volunteers as defined in 10A NCAC 09 .0102, including the director.	Medical Report  A statement signed by a health care professional that indicates that the person is emotionally and physically fit to care for children.	Within 60 days of employment.  When submitted, the medical statement shall not be older than 12 months.
All staff, including the director and individuals who volunteer more than once per week.	Tuberculin (TB) Test or Screening  The results indicating the individual is free of active tuberculosis shall be obtained within the 12 months prior to the date of employment.	On or before first day of work.
Child care providers, including the director, uncompensated providers, substitute providers, and volunteers.	Emergency Information Form, including the name, address, and telephone number of the person to be contacted in case of an emergency, the responsible party's choice of health care professional, any chronic illness, any medication taken for that illness, and any other information that has a direct bearing on ensuring safe medical treatment for the individual.	On or before the first day of work.  The emergency information shall be updated as changes occur and at least annually.
All staff, including the director.	Health Questionnaire  A statement signed by the staff member that indicates that the person is emotionally and physically fit to care for children.	Annually following the initial medical statement.
Substitute providers and volunteers.	Health Questionnaire	On or before first day of work and

	A statement signed by the substitute provider or volunteer that indicates that the person is emotionally and physically fit to care for children.	annually thereafter.
--	---	----------------------

(b) The Division, or the director of the child care center, may request an evaluation of a staff member's emotional and physical fitness to care for children when there is reason to believe that there has been deterioration in the staff member's emotional or physical fitness to care for children. This request may be based upon factors such as observations by the director or center staff, reports of concern from family, reports from law enforcement or reports from medical personnel.

(c) A copy of the forms in the chart in Paragraph (a) of this Rule may be found on the Division's website at [http://ncchildcare.nc.gov/providers/pv\\_provideforms.asp](http://ncchildcare.nc.gov/providers/pv_provideforms.asp).

(d) Staff medical statements, proof of a tuberculosis test or screening, and completed health questionnaires shall be included in the staff member's individual personnel file in the center.

*History Note:* Authority G.S. 110-85; 110-91(1),(8),(9); 143B-168.3;

*Eff.* January 1, 1986;

*Amended Eff.* July 1, 2010; July 1, 1998;

*Readopted Eff.* October 1, 2017.

## **10A NCAC 09 .0702 STANDARDS FOR SUBSTITUTES, VOLUNTEERS**

*History Note:* Authority G.S. 110-85; 110-91(1),(8),(9); 143B-168.3;

*Eff.* January 1, 1986;

*Amended Eff.* July 1, 2010; July 1, 1998; October 1, 1991;

*Repealed Eff.* October 1, 2017.

## **10A NCAC 09 .0703 GENERAL STATUTORY REQUIREMENTS**

(a) Child care providers, substitute providers, and uncompensated providers counted toward meeting the staff/child ratio requirements set forth in Rule .0713 of this Section shall meet the requirements of G.S. 110-91(8). No one under 18 years of age shall have responsibility for or be left in charge of a group of children.

(b) On or before the first day of work, the operator shall verify the age of substitute providers and volunteers and documentation of the substitute provider or volunteer's date of birth shall be maintained in the individual's personnel file in the center. Age shall be verified with any official document that provides a date of birth, such as a driver's license or birth certificate.

(c) Within six months of an individual assuming lead teacher or child care administrator duties, each center shall maintain the following information in the individual's staff record:

- (1) a copy of the credential certificate;

- (2) a copy of notification from the Division that the individual meets the equivalency or that the individual does not meet the equivalency and must enroll in coursework;
- (3) a dated copy of the request submitted by the individual to the Division for the assessment of equivalency status; or
- (4) documentation of enrollment in credential coursework.

(e) If the individual does not yet meet the staff qualifications required by G.S. 110-91(8) when assuming lead teacher or administrative duties, the individual shall submit to the Division documentation of completion of the coursework or credential to be considered for equivalency within six months of assuming the duties.

(f) For child care centers in an occupied residence that are licensed for 3 to 12 children when any preschool-age children are in care, or for 3 to 15 children when only school-age children are in care, when an individual has responsibility both for administering the child care program and for planning and implementing the daily activities of a group of children, the requirements for lead teacher in Rule .0710 of this Section shall apply to this individual. If the program has more than one group of children, the requirement regarding lead teacher shall apply to each group of children.

(g) Equivalency standards in this Section may be found online at <http://ncchildcare.nc.gov/providers/credent.asp>.

*History Note:* Authority G.S. 110-85; 110-91(8); 143B-168.3; *Eff.* January 1, 1986;

*Amended Eff.* May 1, 2013; October 29, 1998; January 1, 1990; July 1, 1988; January 1, 1987;

*Readoption Eff.* October 1, 2017.

## **10A NCAC 09 .0704 PRESERVICE REQUIREMENTS FOR CHILD CARE ADMINISTRATORS**

(a) A child care administrator who has not met the staff qualifications required by G.S. 110-91(8) shall meet the requirements in this Rule prior to exercising any child caring responsibilities as follows:

- (1) have either a high school diploma or its equivalent;
- (2) have two years of full-time work experience in a child care center or early childhood work experience; or an undergraduate, graduate, or associate degree, with 12 semester hours in child development, child psychology, early childhood education or directly related field; or a Child Development Associate Credential; or completion of a community or technical college curriculum program in the area of child care or early childhood; or one year of full-time child care or early childhood work experience and a North Carolina Early Childhood Credential; and
- (3) have verification of having completed, or be currently enrolled in, two semester credit hours, or 32 clock hours, of training in the area of early childhood program administration; or, have one

year experience performing administrative responsibilities.

(b) A child care administrator who does not meet the requirements of Paragraph (a) of this Rule may share the requirements in Paragraph (a) of this Rule with another individual, provided that prior to exercising child caring responsibilities, the individual who is responsible for planning and implementing the daily program at the center to comply with Sections .0500 and .0600 of this Chapter shall be a full-time staff member on-site who meets Subparagraphs (a)(1) and (2) of this Rule, and the other individual shall meet Subparagraph (a)(3) of this Rule and be either on-site or off-site.

(c) Any person who is at least 21 years old and literate who was employed as an on-site child care administrator in a child care program on or before September 1, 1986, shall be exempt from the provisions of Paragraphs (a) and (b) of this Rule, as long as the person is employed by the same operator.

*History Note: Authority G.S. 110-85; 110-91(8); 143B-168.3; Eff. January 1, 1986; Amended Eff. October 29, 1998; April 1, 1997; November 1, 1989; July 1, 1988; January 1, 1987; Readopted Eff. October 1, 2017.*

#### **10A NCAC 09 .0705 SPECIAL TRAINING REQUIREMENTS**

*History Note: Authority G.S. 110-88; 110-91(1),(8); 143B-168.3; Eff. January 1, 1986; Amended Eff. January 1, 1996; January 1, 1992; January 1, 1991; January 1, 1987; Temporary Amendment Eff. October 1, 1997; Amended Eff. July 1, 2008; November 1, 2005; May 1, 2004; July 1, 1998; Temporary Amendment Eff. September 23, 2016; Repealed Eff. October 1, 2017.*

#### **10A NCAC 09 .0707 IN-SERVICE AND ORIENTATION TRAINING REQUIREMENTS**

*History Note: Authority G.S. 110-88; 110-91(11); 143B-168.3; Eff. January 1, 1986; Amended Eff. July 1, 2015; January 1, 2006; May 1, 2004; October 29, 1998; October 1, 1991; November 1, 1989; July 1, 1988; January 1, 1987; Temporary Amendment Eff. September 23, 2016; Repealed Eff. October 1, 2017.*

#### **10A NCAC 09 .0710 PRESERVICE REQUIREMENTS FOR LEAD TEACHERS AND TEACHERS**

(a) If an individual already has a North Carolina Early Childhood Credential or its equivalent, none of the requirements of this Rule shall apply. If an individual does not have a North Carolina Early Childhood Credential or its equivalent, the requirements of this Rule shall be met.

(b) A lead teacher or a teacher shall be 18 years of age, have a high school diploma or its equivalent, and have one of the following:

- (1) One year of child care experience working in a child care center or two years of verifiable experience as a licensed family child care home operator; or
- (2) Completion of a two year high school program of Early Childhood Education in Family and Consumer Sciences Education; or
- (3) Twenty hours of training in child development, which shall include the North Carolina Early Childhood Credential coursework, within the first six months of employment in addition to the number of on-going training hours required in Rule .1103 of this Chapter.

(c) Individuals employed prior to July 1, 1998 are exempted from the requirements of this Rule, as long as they remain employed by the same operator.

*History Note: Authority G.S. 110-85; 110-91(8); 143B-168.3; Eff. July 1, 1988; Amended Eff. January 1, 2005; October 29, 1998; April 1, 1997; October 1, 1991; November 1, 1989; Readopted Eff. October 1, 2017.*

#### **10A NCAC 09 .0711 PRESERVICE REQUIREMENTS FOR OTHER STAFF**

(a) Any person whose job responsibility includes driving a vehicle to transport children, including any substitute driver, shall meet the requirements in Rule .1003 of this Chapter.

(b) Non-care giving staff or any person providing support to the operation of the program such as cooks, or office staff, shall be at least 16 years of age and meet the requirements of the local health department for food handlers when duties are related to food preparation or food service.

*History Note: Authority G.S. 110-85; 110-91(8); 143B-168.3; Eff. July 1, 1988; Amended Eff. July 1, 1998; October 1, 1991; November 1, 1989; Readopted Eff. October 1, 2017.*

#### **10A NCAC 09 .0712 STAFF/CHILD RATIOS FOR CENTERS WITH A LICENSED CAPACITY OF LESS THAN 30 CHILDREN**

*History Note: Authority G.S. 110-91(7); 143B-168.3; Eff. December 1, 1988; Amended Eff. January 1, 2006; July 1, 1998; July 1, 1994; January 1, 1992; August 1, 1990; Repealed Eff. October 1, 2017.*

#### **10A NCAC 09 .0713 STAFF/CHILD RATIOS FOR CENTERS**

(a) The staff/child ratios and group sizes for single-age groups of children in centers shall be as follows:

Age of Children	Ratio Staff/Children	Maximum Group Size
0 to 12 Months	1/5	10
12 to 24 Months	1/6	12
2 to 3 Years	1/10	20
3 to 4 Years	1/15	25
4 to 5 Years	1/20	25
5 Years and Older	1/25	25

- (1) in any multi-age group situation, the staff/child ratio for the youngest child in the group shall be maintained for the entire group;
- (2) children younger than two years old 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;
- (3) a child two years of age and older may be placed with children under one year of age when a physician certifies that the developmental age of the child makes this placement appropriate;
- (4) when determined to be developmentally appropriate by the operator and parent, a child age two or older may be placed one age level above his or her chronological age without affecting the staff/child ratio for that group. This provision shall be limited to one child per group;
- (5) except as provided in Subparagraphs (2) and (3) of this Paragraph, children under one year of age shall be kept separate from children two years of age and over;
- (6) when only one caregiver is required to meet the staff/child ratio and no children under two years of age are in care, that caregiver may concurrently perform food preparation or other duties that are not direct child care responsibilities as long as supervision of the children as specified in 10A NCAC 09 .1801 is maintained;
- (7) except as provided in Subparagraph (6) of this Paragraph, staff members and child care administrators who are counted in meeting the staff/child ratios as stated in this Rule shall not concurrently perform food preparation or other duties that are not direct child care responsibilities; and
- (8) when only one caregiver is required to meet the staff/child ratio, the operator shall select one of the following options for emergency relief:
  - (A) the center shall post the name, address, and telephone number of an adult who has agreed in writing to be available to provide emergency relief; or
  - (B) there shall be a second adult on the premises who is available to provide emergency relief.

(b) The staff/child ratios for a center located in a residence with a licensed capacity of 3 to 12 children when any preschool-age child is enrolled, or with a licensed capacity of 3 to 15 children when only school-age children are enrolled, are as follows:

Age of Children	Ratio Staff/Children
0 to 12 Months	1/5 preschool children plus three additional school-age children
12 to 24 Months	1/6 preschool children plus two additional school-age children
2 to 13 Years	1/10
3 to 13 Years	1/12
All school-age	1/15

(c) The staff/child ratio applicable to a classroom for a center located in a residence as described in Paragraph (b) of this Rule shall be posted in that classroom in an area that parents are able to view at all times.

(d) When only one caregiver is required to meet the staff/child ratio for a center located in a residence, as described in Paragraph (b) of this Rule and children under two years of age are in care, that person shall not concurrently perform food preparation or other duties that are not direct child care responsibilities.

(e) When only one caregiver is required to meet the staff/child ratio for a center located in a residence, as described in Paragraph (b) of this Rule the operator shall select one of the following options for emergency relief:

- (1) the center shall post the name, address, and telephone number of an adult who has agreed in writing to be available to provide emergency relief and who can respond within a reasonable period of time; or
- (2) there shall be a second adult on the premises who is available to provide emergency relief.

*History Note: Authority G.S. 110-85; 110-91(7); 143B-168.3; Eff. December 1, 1988; Amended Eff. January 1, 2006; July 1, 1998; July 1, 1994; January 1, 1992; August 1, 1990; November 1, 1989; Readopted Eff. October 1, 2017.*

#### **10A NCAC 09 .0714 OTHER STAFFING REQUIREMENTS**

(a) Each child care center shall have a child care administrator who shall be responsible for monitoring the program and overseeing administrative duties of the center. This requirement may be met by having one or more persons on site who meet the requirements for a child care administrator as set forth in G.S. 110-91(8) and according to the licensed capacity of the center. The child care administrator shall be on-site in accordance with the following chart:

Licensed Capacity	Weekly On-Site Hours
Less than 30 children	20
30-79 children	25
80-199 children	30

200 or more children	40
----------------------	----

The child care administrator's required weekly hours may include those hours that he or she is off-site due to administrative duties, illness or vacation.

(b) One person who meets the requirements for a child care administrator or lead teacher as set forth in G.S. 110-91(8) shall be on site during the center's operating hours, except that a person who is at least 18 years old with at least a high school diploma or its equivalent and who has a minimum of one year's experience working with children in a child care center may be on duty at the beginning or end of the operating day provided that:

- (1) no more than 10 children are present;
- (2) the staff person has worked in that center for three months; and
- (3) the staff person has completed the orientation training required in Rule .1101 of this Section.

(c) One person who meets the requirements for a lead teacher shall be responsible for each group of children except as provided in Paragraph (b) of this Rule. This requirement may be met by having one or more persons who meet the requirements for a lead teacher responsible for the same group of children. Each lead teacher shall be responsible for only one group of children at a time. Each group of children shall have a lead teacher in attendance for at least two-thirds of the total daily hours of operation, based on a normal working schedule, and may include times when the lead teacher may not be in attendance due to circumstances such as illness or vacation.

(d) No aide shall have responsibility for a group of children except as provided in Paragraph (b) of this Rule.

(e) Nothing contained in this Chapter shall be construed to preclude a "qualified person with a disability," as defined by G.S. 168A-3(9), or a "qualified individual with a disability," as defined by the Americans With Disabilities Act at 42 U.S.C. 12111(8), from working in a licensed child care facility.

*History Note:* Authority G.S. 110-85(1); 110-91(7),(8); 143B-168.3;

*Eff.* July 1, 1988;

*Amended Eff.* July 1, 2012; May 1, 2004; July 1, 1998; January 1, 1996; October 1, 1991; November 1, 1989;

*Readopted Eff.* October 1, 2017.

#### **10A NCAC 09 .0801 APPLICATION FOR ENROLLMENT**

(a) Each child in care shall have an individual application for enrollment completed and signed by the child's parent, as defined in 10A NCAC 09 .0102. The completed, signed application shall be on file in the center on the first day the child attends and shall include the following information:

- (1) emergency medical information as set forth in Rule .0802(b) of this Section;
- (2) the child's full name and the name the child is to be called;
- (3) the child's date of birth;
- (4) any allergies and the symptoms and type of response required for allergic reactions;

- (5) any health care needs or concerns, symptoms of and the type of response required for these health care needs or concerns;
- (6) fears or behavior characteristics that the child has; and
- (7) the names of individuals to whom the center may release the child, as authorized by the person who signs the application.

(b) For any child with health care needs such as allergies, asthma, or other chronic conditions that require specialized health services, a medical action plan shall be attached to the application. The medical action plan shall be completed by the child's parent or a health care professional and may include the following:

- (1) a list of the child's diagnosis or diagnoses including dietary, environmental, and activity considerations that are applicable;
- (2) contact information for the child's health care professional(s);
- (3) medications to be administered on a scheduled basis; and
- (4) medications to be administered on an emergency basis with symptoms, and instructions.

The medical action plan shall be updated on an annual basis.

Sample medical action plans may be found on the Division's website at

[http://ncchildcare.nc.gov/providers/pv\\_provideforms.asp](http://ncchildcare.nc.gov/providers/pv_provideforms.asp);

(c) Center administrators and staff shall release a child only to an individual listed on the application.

(d) The information contained in Subparagraphs (a)(1) through (a)(7) and Paragraph (b) of this Rule, shall be accessible to caregiving staff during the time the child is in care.

(e) Center administrators and staff shall use the information provided on the application to ensure that each individual child's needs are met during the time the child is in care.

*History Note:* Authority G.S. 110-88; 143B-168.3;

*Eff.* January 1, 1986;

*Amended Eff.* November 1, 1989;

*Temporary Amendment Eff.* September 23, 2016;

*Readopted Eff.* October 1, 2017.

#### **10A NCAC 09 .0802 EMERGENCY MEDICAL CARE IN CHILD CARE CENTERS**

(a) Each child care center shall have a written plan that sets forth the steps to follow in the event of a child medical emergency. The plan shall be reviewed with all staff annually and whenever the plan is revised. This plan shall give the procedures to be followed to ensure that any child who becomes ill or is injured and requires medical attention while in care at the center receives appropriate medical attention. The following information shall be included in the center's emergency medical care plan:

- (1) The name of the person and at least one alternate, responsible for carrying out that plan of action, ensuring that appropriate medical care is given, and determining which of the following is needed:

- (A) first aid given at the center for an injury or illness needing only minimal attention; and
- (B) calling 911 in accordance with CPR or First Aid training recommendations.
- (2) The name of the person and one alternate, at the center responsible for:
  - (A) ensuring that the signed authorization described in Paragraph (d) of this Rule is taken with the ill or injured child to the medical facility;
  - (B) accompanying the ill or injured child to the medical facility;
  - (C) notifying a child's parents or emergency contact person about the illness or injury and where the child has been taken for treatment;
  - (D) obtaining substitute staff, if needed, to maintain required staff/child ratio and adequate supervision of children who remain in the center; and
- (3) A statement giving the location of the telephone located on the premises available for use in case of emergency. A telephone located in an office in the center that is sometimes locked during the time the children are present shall not be designated for use in an emergency.
- (b) One person identified as the person or alternate responsible for carrying out the emergency medical care plan and ensuring that appropriate medical care is given shall:
  - (1) be on the premises at all times; and
  - (2) accompany children for off premise activities.
- (c) Emergency medical care information shall be on file for each child. That information shall include:
  - (1) the name, address, and telephone number of the parent or other person to be contacted in case of an emergency;
  - (2) the responsible party's choice of health care professional;
  - (3) any chronic illness and any medication taken for that illness; and
  - (4) any other information that has a direct bearing on ensuring safe medical treatment for the child.

This emergency medical care information shall be on file in the center on the child's first day of attendance and shall be updated as changes occur and at least annually.

(d) Each child's parent, legal guardian, or full-time custodian shall sign a statement authorizing the center to obtain medical attention for the child in an emergency. That statement shall be on file on the first day the child attends the center. It shall be easily accessible to staff so that it can be taken with the child whenever emergency medical treatment is necessary.

(e) The child care provider shall complete an incident report each time a child is injured as a result of an incident occurring while the child is in care. This incident report shall include:

- (1) the child's name, date and time of incident, part of body injured, type of injury;
- (2) the names of adult witnesses to incident;

- (3) a description of how and where incident occurred;
- (4) the piece of equipment involved (if any);
- (5) any treatment received; and
- (6) the steps taken to prevent reoccurrence.

This report shall be signed by the person completing it and by the parent, and maintained in the child's file. A copy of the form may be found on the Division's website at [http://ncchildcare.nc.gov/pdf\\_forms/DCDEE-0058.pdf](http://ncchildcare.nc.gov/pdf_forms/DCDEE-0058.pdf).

(f) When medical treatment is required by a health care professional, community clinic, or local health department as a result of an incident occurring while the child is in care, a copy of the incident report shall be mailed to a representative of the Division within seven calendar days after the incident.

(g) An incident log shall be completed any time an incident report is completed. This log shall:

- (1) include the name of the child;
- (2) include the date of the incident;
- (3) include the date the incident report was submitted to the Division, if applicable;
- (4) include the name of the staff member who complete the incident report;
- (5) be cumulative and maintained in a separate file; and
- (6) be available for review by a representative of the Division.

This log shall be completed on a form provided by the Division. A copy of the log may be found on the Division's website at [http://ncchildcare.nc.gov/pdf\\_forms/incident\\_log\\_i.pdf](http://ncchildcare.nc.gov/pdf_forms/incident_log_i.pdf).

(g) A First Aid information sheet shall be posted in a place for referral. The information sheet shall include first aid guidance regarding burns, scalds, fractures, sprains, head injuries, poisons, skin wounds, stings and bites. An information sheet may be requested free of charge from the North Carolina Child Care Health and Safety Resource Center at 1-800-367-2229.

*History Note: Authority G.S. 110-85; 110-91(1),(9); 143B-168.3; Eff. January 1, 1986; Amended Eff. July 1, 2010; July 1, 1998; January 1, 1996; October 1, 1991; November 1, 1989; Readopted Eff. October 1, 2017.*

### **10A NCAC 09 .0803 ADMINISTERING MEDICATION IN CHILD CARE CENTERS**

The following provisions apply to the administration of medication in child care centers:

- (1) No prescription or over-the-counter medication and no topical, non-medical ointment, repellent, lotion, cream, fluoridated toothpaste, or powder shall be administered to any child:
  - (a) without written authorization from the child's parent;
  - (b) without written instructions from the child's parent, physician or other health professional;
  - (c) in any manner not authorized by the child's parent, physician or other health professional;

- (d) after its expiration date;
  - (e) for non-medical reasons, such as to induce sleep; or
  - (f) with a known allergy to the medication.
- (2) Prescribed medications:
- (a) shall be stored in the original containers in which they were dispensed with the pharmacy labels;
  - (b) if pharmaceutical samples, shall be stored in the manufacturer's original packaging, shall be labeled with the child's name, and shall be accompanied by written instructions specifying:
    - (i) the child's name;
    - (ii) the names of the medication;
    - (iii) the amount and frequency of dosage;
    - (iv) the signature of the prescribing physician or other health professional; and
    - (v) the date the instructions were signed by the physician or other health professional;
  - (c) shall be administered only to the child for whom they were prescribed; and
  - (d) shall be administered according to the prescription, using amount and frequency of dosage specified on the label.
- (3) A parent's written authorization for the administration of a prescription medication described in Item (2) of this Rule shall be valid for the length of time the medication is prescribed to be taken.
- (4) Over-the-counter medications, such as cough syrup, decongestant, acetaminophen, ibuprofen, topical antibiotic cream for abrasions, or medication for intestinal disorders shall be stored in the manufacturer's original packaging on which the child's name is written or labeled and shall be accompanied by written instructions specifying:
- (a) the child's name;
  - (b) the names of the authorized over-the-counter medication;
  - (c) the amount and frequency of the dosages, which shall not exceed the amount and frequency of the dosages on the manufacturer's label;
  - (d) the signature of the parent, physician or other health professional; and
  - (e) the date the instructions were signed by the parent, physician or other health professional.
- The permission to administer over-the-counter medications is valid for up to 30 days at a time, except as allowed in Items (6), (7), (8) and (9)
- of this Rule. Over-the-counter medications shall not be administered on an "as needed" basis, other than as allowed in Items (6), (7), (8) and (9) of this Rule.
- (5) When questions arise concerning whether any medication should be administered to a child, the caregiver may decline to administer that medication without signed, written dosage instructions from a licensed physician or authorized health professional.
- (6) A parent may give a caregiver standing authorization for up to six months to administer prescription or over-the-counter medication to a child, when needed, for chronic medical conditions, such as asthma, and for allergic reactions. The authorization shall be in writing and shall contain:
- (a) the child's name;
  - (b) the subject medical conditions or allergic reactions;
  - (c) the names of the authorized over-the-counter medications;
  - (d) the criteria for the administration of the medication;
  - (e) the amount and frequency of the dosages;
  - (f) the manner in which the medication shall be administered;
  - (g) the signature of the parent;
  - (h) the date the authorization was signed by the parent; and
  - (i) the length of time the authorization is valid, if less than six months.
- (7) A parent may give a caregiver standing authorization for up to 12 months to apply over-the-counter, topical ointments, topical teething ointment or gel, insect repellents, lotions, creams, fluoridated toothpaste, and powders, such as sunscreen, diapering creams, baby lotion, and baby powder, to a child, when needed. The authorization shall be in writing and shall contain:
- (a) the child's name;
  - (b) the names of the authorized ointments, repellents, lotions, creams, fluoridated toothpaste, and powders;
  - (c) the criteria for the administration of the ointments, repellents, lotions, creams, fluoridated toothpaste, and powders;
  - (d) the manner in which the ointments, repellents, lotions, creams, fluoridated toothpaste, and powders shall be applied;
  - (e) the signature of the parent;
  - (f) the date the authorization was signed by the parent; and
  - (g) the length of time the authorization is valid, if less than 12 months.

- (8) A parent may give a caregiver standing authorization to administer a single weight-appropriate dose of acetaminophen to a child in the event the child has a fever and a parent cannot be reached. The authorization shall be in writing and shall contain:
- (a) the child's name;
  - (b) the signature of the parent;
  - (c) the date the authorization was signed by the parent; and
  - (d) the date that the authorization ends or a statement that the authorization is valid until withdrawn by the parent in writing.
- (9) A parent may give a caregiver standing authorization to administer an over-the-counter medication as directed by the North Carolina State Health Director or designee, when there is a public health emergency as identified by the North Carolina State Health Director or designee. The authorization shall be in writing, may be valid for as long as the child is enrolled, and shall contain:
- (a) the child's name;
  - (b) the signature of the parent;
  - (c) the date the authorization was signed by the parent; and
  - (d) the date that the authorization ends or a statement that the authorization is valid until withdrawn by the parent in writing.
- (10) Pursuant to G.S. 110-102.1A, a caregiver may administer medication to a child without parental authorization in the event of an emergency medical condition when the child's parent is unavailable, and providing the medication is administered with the authorization and in accordance with instructions from a bona fide medical care provider.
- (11) A parent may withdraw written authorization for the administration of medications at any time in writing.
- (12) Any medication remaining after the course of treatment is completed, after authorization is withdrawn or after authorization has expired shall be returned to the child's parents. Any medication the parent fails to retrieve within 72 hours of completion of treatment, or withdrawal of authorization, shall be discarded.
- (13) Any time prescription or over-the-counter medication is administered by center personnel to children receiving care, the following information shall be recorded:
- (a) the child's name;
  - (b) the date the medication was given;
  - (c) the time the medication was given;
  - (d) the amount and the type of medication given; and

- (e) the name and signature of the person administering the medication.

This information shall be noted on a medication permission slip, or on a separate form developed by the provider which includes the required information. This information shall be available for review by a representative of the Division during the time period the medication is being administered and for six months after the medication is administered. No documentation shall be required when items listed in Item (7) of this Rule are applied to children.

- (14) If medication is administered in error, whether administering the wrong dosage, giving to the wrong child, or giving the incorrect type of medicine, the child care center shall:

- (a) call 911 in accordance with CPR or First Aid training recommendations;
- (b) notify the center director;
- (c) contact the child's parent;
- (d) observe the child; and
- (e) document the medication error in writing, including:
  - (i) the child's name and date of birth;
  - (ii) the type and dosage of medication administered;
  - (iii) the name of the person who administered the medication;
  - (iv) the date and time of the error;
  - (v) the signature of the child care administrator, the parent and the staff member who administered the medication;
  - (vi) the actions taken by the center following the error; and
  - (vii) the actions that will be taken by the center to prevent a future error.

This documentation shall be maintained in the child's file.

*History Note: Authority G.S. 110-85; 110-91(1),(9); 110-102.1A; 143B-168.3;*  
*Eff. January 1, 1986;*  
*Amended Eff. May 1, 2004; April 1, 2001; July 1, 1998; January 1, 1996;*  
*Readopted Eff. October 1, 2017.*

#### **10A NCAC 09 .0804 INFECTIOUS AND CONTAGIOUS DISEASES**

- (a) Centers may provide care for a mildly ill infant or child older than two months who has a Fahrenheit temperature less than 101 degrees and for infants younger than two months who have a Fahrenheit temperature of less than 100.4 by any method including axillary or orally, so long as the child does not have any of the following:



- (1) more than two stools above the child's normal pattern and diarrhea is not contained by a diaper or when toilet-trained children are having accidents;
- (2) two or more episodes of vomiting within a 12 hour period;
- (3) lice, until completion of first treatment;
- (4) scabies;
- (5) chicken pox or a rash suggestive of chicken pox;
- (6) tuberculosis, until a health professional provides a written statement that the child is not infectious;
- (7) strep throat, until 12 hours after antibiotic treatment has started and no fever is present;
- (8) pertussis, until five days after treatment has started;
- (9) hepatitis A virus infection, until one week after onset of illness or jaundice;
- (10) impetigo, until 24 hours after treatment has started;
- (11) a physician's or other health professional's written order that the child be separated from other children; or
- (12) exclusion for symptoms not included in this list shall be required if the symptoms prevent the child from participating comfortably in activities as determined by staff members of the program or the symptoms result in a need for care that is greater than the staff members can provide without compromising the health and safety of other children.

(b) Centers that choose to provide care for mildly ill children shall:

- (1) follow all procedures to prevent the spread of communicable diseases described in 15A NCAC 18A .2800, "Sanitation of Child Care Centers", as adopted by the Commission for Public Health;
- (2) separate from the other children any child who becomes ill while in care or who is suspected of having a communicable disease or condition other than as described in Paragraph (a) of this Rule until the child leaves the center;
- (3) notify all parents at enrollment that the center will be providing care for mildly ill children;
- (4) notify the parent of any child who becomes ill or who is suspected of being ill with a communicable condition other than as described in Paragraph (a) of this Rule that the child is ill and shall leave the center;
- (5) notify the parent of any mildly ill child in care if the child's condition worsens while the child is in care.

*History Note: Authority G.S. 110-85; 110-91(1); 143B-168.3; Eff. January 1, 1986;*  
*Amended Eff. December 1, 2014; July 1, 1998; November 1, 1991; November 1, 1989;*

*Readopted Eff. October 1, 2017.*

#### **10A NCAC 09 .0806 TOILETING, CLOTHING AND LINENS**

- (a) Diapers shall be changed whenever they become soiled or wet and not on a shift basis.
- (b) The center shall ensure that clean clothes are available in the event that a child's clothes become wet or soiled. The change of clothing may be provided by the center or by the child's parents.
- (c) A supply of clean linens must be on hand so that linens can be changed whenever they become soiled or wet.
- (d) Staff shall not force children to use the toilet and staff shall consider the developmental readiness of each child when toilet training.
- (e) Staff shall provide assistance to each child to ensure good hygiene.

*History Note: Authority G.S. 110-85; 110-91(1); 143B-168.3; Eff. January 1, 1986;*  
*Amended Eff. July 1, 1998; November 1, 1989;*  
*Readopted Eff. October 1, 2017.*

### **SECTION .0900 - NUTRITION STANDARDS**

#### **10A NCAC 09 .0901 GENERAL NUTRITION REQUIREMENTS**

- (a) Meals and snacks served to children in a child care center shall comply with the Meal Patterns for Children in Child Care Programs from the United States Department of Agriculture (USDA) which are based on the recommended nutrient intake judged by the National Research Council to be adequate for maintaining good nutrition. The types of food, number and size of servings shall be appropriate for the ages and developmental levels of the children in care. The Meal Patterns for Children in Child Care Programs are incorporated by reference and include subsequent amendments. A copy of the Meal Patterns for Children in Child Care Programs is available online at <https://www.fns.usda.gov/cacfp/meals-and-snacks>.
- (b) When food is prepared by or provided by the center, menus for nutritious meals and snacks shall be planned at least one week in advance. At least one dated copy of the current week's menu shall be posted where it can be seen by parents and food preparation staff when food is prepared or provided by the center. A variety of food shall be included in meals and snacks. Any substitution shall be of comparable food value and shall be recorded on the menu prior to the meal or snack being served.
- (c) When children bring their own food for meals or snacks to the center, if the food does not meet the nutritional requirements specified in Paragraph (a) of this Rule, the center must provide additional food necessary to meet those requirements.
- (d) A child's parent may opt out of the supplemental food provided by the center as set forth in G.S. 110-91(2)h.1. When a child's parent opts out of the supplemental food provided by the center, the parent shall sign a statement acknowledging the parental decision shall be kept in the child's file at the center and a copy provided to the parent. A child's parent may opt out of the supplemental food provided by the center, subject to the following:

- (1) the center shall not provide any food or drink so long as the child's parent or guardian provides all meals, snacks, and drinks scheduled to be served at the center's designated times;
- (2) the ability to opt out of specific meals or days based on menu options is not available;
- (3) if a child requests specific foods being served to other children, but the parent has opted out, the center shall not serve supplemental food; and
- (4) if the child's parent or guardian has opted out, but does not provide all meals and snacks for the child, the center shall replace the missing meal or snack as if the child's parent or guardian had not opted out of the supplemental food program.

(e) Drinking water shall be freely available to children of all ages. Drinking fountains or individual drinking utensils shall be provided. When a private water supply is used, it must be tested by and meet the requirements of the Commission for Public Health as set forth in 15A NCAC 18A .2800.

(f) The child care provider shall serve only the following beverages:

- (1) breast milk, as specified in Paragraph (k) of this Rule;
- (2) formula;
- (3) water;
- (4) unflavored whole milk, for children ages 12-23 months;
- (5) unflavored skim or lowfat milk for children 24 months through five years;
- (6) unflavored skim milk, unflavored low-fat milk, or flavored skim milk for children six years and older; or
- (7) 100 percent fruit juice, limited to 6 ounces per day, for all ages.

(g) Children's special diets or food allergies shall be posted where they can be seen in the food preparation area and in the child's eating area.

(h) The food required by special diets for medical, religious, or cultural reasons, or parental preferences, may be provided by the center or may be brought to the center by the parents. If the diet is prescribed by a health care professional, a statement signed by the health care professional shall be on file at the center and written instructions shall be provided by the child's parent, health care professional, or a licensed dietitian/nutritionist. If the diet is not prescribed by a health care professional, written instructions shall be provided by the child's parent and shall be on file at the center.

(i) Food that does not meet the nutritional requirements specified in Paragraph (a) of this Rule, such as cupcakes, cakes, and donuts shall only be offered for special occasions such as holidays and birthdays.

(j) Staff shall role model appropriate eating behaviors by consuming only food or beverages that meet the nutritional requirements specified in Paragraph (a) of this Rule in the presence of children in care.

(k) Parents shall be allowed to provide breast milk for their children. Accommodations for breastfeeding mothers shall be provided that include seating and an electrical outlet in a place other than a bathroom that is shielded from view by staff and the

public which may be used by mothers while they are breastfeeding or expressing milk.

*History Note: Authority G.S. 110-85; 110-91(2); 143B-168.3; Eff. January 1, 1986; Amended Eff. December 1, 2012; July 1, 2010; July 1, 1998; October 1, 1991; November 1, 1989; Readopted Eff. October 1, 2017.*

#### **10A NCAC 09 .0902 REQUIREMENTS FOR INFANTS**

(a) The parent or health care provider of each child under 15 months of age shall provide the center an individual written feeding plan for the child. This plan shall be followed at the center. This plan shall include the child's name, be signed by the parent or health care provider, and be dated when received by the center. Each infant's plan shall be modified in consultation with the child's parent or health care provider to reflect changes in the child's needs as he or she develops. The feeding instructions for each infant shall include the type and amount of milk, formula and food, the frequency of feedings and be posted for reference by the caregivers.

(b) Each infant shall be held for bottle feeding until able to hold his or her own bottle. Bottles shall not be propped. Each child shall be held or placed in feeding chairs or other age-appropriate seating apparatus to be fed. The feeding chair or other seating apparatus shall be disassembled for cleaning purposes.

(c) Infants shall not be served juice in a bottle without a prescription or written statement on file from a health care professional or licensed dietitian/nutritionist.

(d) Each infant shall be served only bottles labeled with their individual name.

*History Note: Authority G.S. 110-85; 110-91(2); 143B-168.3; Eff. January 1, 1986; Amended Eff. December 1, 2012; July 1, 1998; October 1, 1991; November 1, 1989; Readopted Eff. October 1, 2017.*

#### **10A NCAC 09 .0903 REQUIREMENTS FOR CHILDREN AGED 15 MONTHS AND OLDER**

Meals and snacks shall be planned according to the number of hours a child is in the center. Children shall be provided a meal or snack a minimum of every four hours. These rules apply in all situations except during sleeping hours and nighttime care:

<b>Hours Child Is In Care</b>	<b>Age of Child</b>	<b>Snack and Meal Requirement</b>
At least 2 hours but less than 4 hours	Preschool-age children	1 snack, unless child is present during the time a meal is being served
Any hours in care	School-age children	1 snack, unless child is present during the time a meal is being served

At least 4 hours but less than 6 hours	All Children	1 meal equal to 1/3 of the child's daily food needs
At least 6 hours but less than 12 hours	All Children	2 meals and 1 snack OR 2 snacks and 1 meal equal to ½ of the child's daily food needs
More than 12 hours	All Children	2 snacks and 2 meals equal to 2/3 of the child's daily food needs
Second Shift (approximately 3:00 p.m. to 11:00 p.m.)	All Children	1 meal

*History Note:* Authority G.S. 110-85; 110-91(2); 143B-168.3;  
*Eff. January 1, 1986;*  
*Amended Eff. November 1, 1989; January 1, 1987;*  
*Readopted Eff. October 1, 2017.*

**10A NCAC 09 .1001 SEAT AND CHILD SAFETY SEATS IN CHILD CARE CENTERS**

- (a) When children enrolled in a child care center are being transported, each adult and child shall be restrained with an individual seat belt or child safety seat appropriate to the child's age or weight in accordance with G.S. 20-135.2A located at <http://www.buckleupnc.org/occupant-restraint-laws/seat-belt-law-summary/>.
- (b) Only one person shall occupy each seat belt or child safety seat.

*History Note:* Authority G.S. 110-85; 110-91(13); 143B-168.3;  
*Eff. January 1, 1986;*  
*Amended Eff. July 1, 1998; July 1, 1995; November 1, 1989; July 1, 1988; January 1, 1987;*  
*Readopted Eff. October 1, 2017.*

**10A NCAC 09 .1002 SAFE VEHICLES**

- (a) Vehicles used to transport children enrolled in child care centers shall be free of hazards such as, but not limited to, torn upholstery that allows children to remove the interior padding, broken windows, holes in the floor or roof, or tire treads of less than 2/32 of an inch.
- (b) Vehicles used to transport children enrolled in child care centers shall comply with all applicable State and federal laws and regulations.
- (c) Vehicles shall be insured for liability as required by State laws governing transportation of passengers pursuant to G.S. 20-279.21.
- (d) Vehicles used to transport children in snowy, icy, and other hazardous weather conditions must be equipped with snow tires or chains as appropriate.

*History Note:* Authority G.S. 110-85; 110-91(13); 143B-168.3;

*Eff. January 1, 1986;*  
*Amended Eff. July 1, 1998;*  
*Readopted Eff. October 1, 2017.*

**10A NCAC 09 .1003 SAFE PROCEDURES**

- (a) The driver or other staff member in the vehicle shall ensure that all children are transferred to an individual who is indicated on the child's application as specified in Rule .0801(a)(7) of this Chapter or as authorized by the parent.
- (b) Each center shall establish procedures for pick-up and delivery of children to ensure children are protected from danger and not exposed to risk of harm. These procedures shall be communicated to parents, and a copy shall be posted in the center where they can be seen by the parents.
- (c) A First Aid kit and fire extinguisher shall be located in each vehicle used to transport children. The First Aid kit and fire extinguisher shall be mounted or secured if kept in the passenger compartment.
- (d) For each child being transported, identifying information, including the child's name, photograph, emergency contact information, and a copy of the emergency medical care information form required by Rule .0802(c) of this Chapter, shall be in the vehicle.
- (e) The driver shall:
- (1) be 21 years old or a licensed bus driver;
  - (2) have a valid driver's license of the type required under North Carolina Motor Vehicle Law for the vehicle being driven or comparable license from the state in which the driver resides; and
  - (3) have no convictions of Driving While Impaired (DWI) or any other impaired driving offense within the previous three years.
- (f) Each person in the vehicle shall be seated in the manufacturer's designated areas. No child shall ride in the load carrying area or floor of a vehicle.
- (g) Children shall not be left in a vehicle unattended by an adult.
- (h) Children shall be loaded and unloaded from curbside or in a safe, off-street area, out of the flow of traffic, so that they are protected from all traffic hazards.
- (i) Before children are transported, written permission from a parent shall be obtained that shall include when and where the child is to be transported, expected time of departure and arrival, and the transportation provider.
- (j) Parents may give standing permission, valid for up to 12 months, for transport of children to and from the center not including off premise activities as described in Rule .1005 of this Section.
- (k) When children are transported, staff in each vehicle shall have a functioning cellular telephone or other functioning two-way voice communication device. Staff shall not use cellular telephones or other functioning two-way voice communication devices except in the case of an emergency and only when the vehicle is parked in a safe location.
- (l) For routine transport of children to and from the center, staff shall have a list of the children being transported. Staff members shall use this list to document attendance as children board the vehicle and as they depart the vehicle. A list of all children being transported shall also be available at the center.

*History Note:* Authority G.S. 110-85; 110-91(13); 143B-168.3;  
*Eff. January 1, 1986;*  
*Amended Eff. December 1, 2014; November 1, 2007; July 1, 1998; October 1, 1991; January 1, 1987;*  
*Readopted Eff. October 1, 2017.*

**10A NCAC 09 .1004 STAFF/CHILD RATIOS**

- (a) When children aged two years and older are being transported, the staff/child ratios required for compliance with child care center rules as set forth in Rule .0713 of this Chapter shall apply. The driver may be counted in the staff/child ratio.
- (b) When three or more children under the age of two years are being transported, the staff/child ratio requirements for child care centers set forth in Rule .0713 of this Chapter for children under age two shall be maintained. The driver shall not be counted in the staff/child ratio.
- (c) When less than three children under the age of two years are being transported, the staff/child ratio requirements for child care centers set forth in Rule .0713 of this Chapter for children under age two shall be maintained. The driver may be counted in the staff/child ratio.

*History Note:* Authority G.S. 110-85; 110-91(13); 143B-168.3;  
*Eff. January 1, 1986;*  
*Amended Eff. July 1, 1998; July 1, 1988;*  
*Readopted Eff. October 1, 2017.*

**10A NCAC 09 .1005 OFF PREMISE ACTIVITIES IN CHILD CARE CENTERS**

- (a) Off premise activities refer to any activity that takes place away from a child care center's licensed and approved space. Licensed and approved space includes "primary space" as described in 10A NCAC 09 .1401(a), outdoor space as described in 10A NCAC 09 .1402, single use rooms, or other administrative areas.
- (b) When children participate in off premise activities the following shall apply:
- (1) Children under the age of three shall not participate in off premise activities that involve children being transported in a motor vehicle.
  - (2) When children are transported in a motor vehicle for off premise activities, the provisions in Rule .1003(c) through (i) and (k) of this Chapter shall apply.
  - (3) Before staff members walk children off premises for play or outings, the center shall obtain written permission from the parent of each child to be included in such activities.

- (4) Parents may provide a written statement giving standing permission which may be valid for up to 12 months for participation in off premise activities that occur on a regular basis.
- (5) The center shall post a schedule of off premise activities in each participating classroom where it can be viewed by parents, and a copy shall be given to parents. The schedule shall be current and shall include the:
  - (A) location of the activity;
  - (B) purpose of the activity;
  - (C) time the activity will take place;
  - (D) date of the activity; and
  - (E) name of the person(s) to be contacted in the event of an emergency.
- (6) Each time that children are taken off the premises, staff shall take a list of the children participating in the activity with them. Staff members shall use this list to check attendance when leaving the center, periodically when the children are involved in the activity, before leaving the activity to return to the child care center, and upon return to the center. A list of all children participating in the off premise activity shall also be available at the center.
- (c) The provisions of Subparagraphs (b)(1) and (5) of this Rule shall be waived to implement any child's Individualized Family Service Plan (IFSP) or Individualized Education Program (IEP).

*History Note:* Authority G.S. 110-85; 110-91(9),(12); 143B-168.3;  
*Eff. November 1, 2007;*  
*Readopted Eff. October 1, 2017 (Transferred from 10A NCAC 09 .0512).*

**SECTION .1100 – CONTINUING EDUCATION AND PROFESSIONAL DEVELOPMENT**

**10A NCAC 09 .1101 NEW STAFF ORIENTATION REQUIREMENTS**

- (a) Each center shall ensure that each new employee who is expected to have contact with children receives 16 clock hours of on-site orientation within the first six weeks of employment. As part of this orientation, each new employee shall complete six clock hours of orientation within the first two weeks of employment.
- (b) New staff orientation shall include an overview of the following topics, focusing on the operation of the center:

<b>Within first two weeks of employment</b>	<b>Within first six weeks of employment</b>
Information regarding recognizing, responding to, and reporting child abuse, neglect, or maltreatment pursuant to G.S. 110-105.4 and G.S. 7B-301	Firsthand observation of the center's daily operations
Review of the center's operational policies, including the center's safe sleep policy for infants, the center's policy for transportation, the center's identification of building and premises safety issues, the	Instruction in the employee's assigned duties

Emergency Preparedness and Response Plan, and the emergency medical care plan	
Adequate supervision of children in accordance with 10A NCAC 09 .1801	Instruction in the maintenance of a safe and healthy environment
Information regarding prevention of shaken baby syndrome and abusive head trauma and child maltreatment	Instruction in the administration of medication to children in accordance with 10A NCAC 09 .0803
Prevention and control of infectious diseases, including immunization	Review of the center's purposes and goals
	Review of the child care licensing law and rules
	An explanation of the role of State and local government agencies in the regulation of child care, their impact on the operation of the center, and their availability as a resource
	An explanation of the employee's obligation to cooperate with representatives of State and local government agencies during visits and investigations
	Prevention of and response to emergencies due to food and allergic reactions
	Review of the center's handling and storage of hazardous materials and the appropriate disposal of biocontaminants

*History Note: Authority G.S. 110-85; 110-91(11); 143B-168.3; Eff. October 1, 2017.*

**10A NCAC 09 .1102 HEALTH AND SAFETY TRAINING REQUIREMENTS**

(a) Child care administrators and staff members shall complete health and safety training within one year of employment, unless the staff member has completed the training within the year prior to beginning employment. Health and safety training shall be in addition to the new staff orientation requirements set forth in Rule .1101 of this Section. The following persons shall be exempt from this requirement:

- (1) staff members that do not have caregiving responsibilities for a child or group of children;
- (2) service providers such as speech therapists, occupational therapists, and physical therapists; and
- (3) substitute providers who provide services for less than 10 days in a 12-month period.

(b) The health and safety training shall include the following topic areas:

- (1) Prevention and control of infectious diseases, including immunization;
- (2) Administration of medication, with standards for parental consent;
- (3) Prevention of and response to emergencies due to food and allergic reactions;
- (4) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;
- (5) Emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused event;

- (6) Handling and storage of hazardous materials and the appropriate disposal of biocontaminants;
- (7) Precautions in transporting children, if applicable;
- (8) Prevention of shaken baby syndrome, abusive head trauma, and child maltreatment;
- (9) CPR and First Aid training as required in Paragraphs (c) and (d) of this Rule;
- (10) Recognizing and reporting child abuse, child neglect, and child maltreatment; and
- (11) Prevention of sudden infant death syndrome and use of safe sleeping practices.

(c) All staff who provide direct care or accompany children when they are off premises shall successfully complete certification in First Aid appropriate to the ages of children in care. The training shall be completed by June 30, 2018, or for new staff hired on or after September 1, 2017, training must be completed within 90 days of employment. Distance learning shall not be permitted for First Aid training. At all times when children are in care at least one staff member present must have successfully completed First Aid training, as evidenced by a certificate or card from an approved training organization. First Aid training shall be renewed on or before expiration of the certification. "Successfully completed" is defined as demonstrating competency, as evaluated by the instructor. Verification of each required staff member's completion of this course from an approved training organization shall be maintained in the staff member's file in the center. The Division shall post a list of approved training organizations on its website at [http://ncchildcare.nc.gov/providers/pv\\_sn2\\_ov\\_pd.asp](http://ncchildcare.nc.gov/providers/pv_sn2_ov_pd.asp).

(d) All staff who provide direct care or accompany children when they are off premises shall successfully complete certification in a cardiopulmonary resuscitation (CPR) course appropriate to the ages of children in care. At all times when

children are in care one staff member present must have successfully completed CPR training. The training shall be completed by June 30, 2018 or for new staff hired on or after September 1, 2017 training must be completed within 90 days of employment. Distance learning shall not be permitted for CPR training. CPR training shall be renewed on or before the expiration of the certification. Verification of each staff member's completion of this course from an approved training organization shall be maintained in the staff member's file in the center. The Division shall post a list of approved training organizations on its website at [http://ncchildcare.nc.gov/providers/pv\\_sn2\\_ov\\_pd.asp](http://ncchildcare.nc.gov/providers/pv_sn2_ov_pd.asp).

(e) One staff member shall complete training in playground safety. This training shall address playground safety hazards, playground supervision, maintenance and general upkeep of the outdoor learning environment, and age and developmentally appropriate playground materials and equipment. Distance learning shall not be permitted for playground safety training. Completion of playground safety training shall be included in the number of hours needed to meet annual on-going training requirements in this Section. Staff counted to comply with this Rule shall have six months from the date of employment, or from the date a vacancy occurs, to complete the required safety training. A certificate of each designated staff member's completion of this course shall be maintained in the staff member's file in the center.

(f) In centers that are licensed to care for infants, the child care administrator and any child care provider scheduled to work in the infant room shall complete ITS-SIDS training. ITS-SIDS training shall be completed within two months of an individual assuming responsibilities in the infant room and every three years thereafter. Child care administrators, as defined in G.S. 110-86(2a), shall complete ITS-SIDS training within 90 days of employment and every three years thereafter. Completion of ITS-SIDS training shall be included once every three years in the number of hours needed to meet on-going training requirements in this Section. At all times, one child care provider who has completed ITS-SIDS training shall be present in the infant room while children are in care. A certificate of each staff member's completion of this course shall be maintained in the staff member's file in the center.

(g) The child care administrator and all staff members shall complete Recognizing and Responding to Suspicions of Child Maltreatment training within 90 days of employment. This training shall count toward requirements set forth in Rule .1103 of this Section. Recognizing and Responding to Suspicions of Child Maltreatment training is available at <https://www.preventchildabusenc.org/services/trainings-and-professional-development/rrcourse>. A certificate of each staff member's completion of this course shall be maintained in the staff member's file in the center.

*History Note:* Authority G.S. 110-85; 110-91(1),(8), (11); 143B-168.3;  
*Eff. October 1, 2017.*

**10A NCAC 09 .1103 ON-GOING TRAINING REQUIREMENTS**

(a) After the first year of employment, the child care administrator and any staff who have responsibility for planning and supervising a child care center, and staff who work with children, shall participate in on-going training activities annually, as follows:

Education and Experience	Required Training
Four-year degree or higher advanced degree in a child care related field of study from a regionally accredited college or university	5 clock hours
Two-year degree in a child care related field of study from a regionally accredited college or university, or persons with a North Carolina Early Childhood Administration Credential	8 clock hours
Certificate or diploma in a child care related field of study from a regionally accredited college or university, or persons with a North Carolina Early Childhood Credential	10 clock hours
10 years documented experience as a teacher, director, or caregiver in a licensed child care arrangement	15 clock hours
If none of the other criteria in this chart apply	20 clock hours

(b) Health and safety training shall be completed as part of on-going training so that every five years, all of the topic areas set forth in 10A NCAC 09 .1102(b) will have been covered.

(c) Completion of cardiopulmonary resuscitation (CPR) and First Aid training shall not be counted toward meeting annual on-going training requirements.

(d) A combination of college coursework, Continuing Education Units (CEU's) or clock hours shall be used to complete the requirements in Paragraph (a) of this Rule.

(e) Any staff working less than 40 hours per week may choose to complete on-going training requirements as outlined in Paragraph (a) of this Rule, or the training requirement may be prorated as follows:

WORKING HOURS PER WEEK	CLOCK HOURS REQUIRED
0-10	5
11-20	10
21-30	15
31-40	20

(f) For purposes of this Rule, "regionally accredited" means a college or university accredited by one of the following accrediting bodies:

- (1) Middle States Association of Colleges and Schools;
- (2) New England Association of School and Colleges;
- (3) North Central Association of Colleges and Schools;
- (4) Northwest Accreditation Commission;
- (5) Southern Association of Colleges and Schools; or
- (6) Western Association of Schools and Colleges.

*History Note:* Authority G.S. 110-85; 110-91(11); 143B-168.3;

*Eff. October 1, 2017.*

#### **10A NCAC 09 .1104 PROFESSIONAL DEVELOPMENT PLAN**

All center administrators and staff members shall complete a professional development plan within one year of employment and review the plan annually. The plan shall:

- (1) document the individual's professional development goals;
- (2) be appropriate for the ages of children in their care;
- (3) include the continuing education, coursework, or training needed to meet the individual's planned goals;
- (4) be completed by the administrator and staff member in a collaborative manner; and
- (5) be maintained in their personnel file.

Sample professional development plan templates may be found on the Division's website at [http://ncchildcare.nc.gov/providers/pv\\_provideforms.asp](http://ncchildcare.nc.gov/providers/pv_provideforms.asp).

Another form may be used other than the sample templates provided by the Division as long as the form includes the information set forth in this Rule.

*History Note:* Authority G.S. 110-85; 110-91(9); 110-91(11);  
*Eff. October 1, 2017.*

#### **10A NCAC 09 .1105 TRAINING APPROVAL**

Staff may meet the on-going training requirements by attending child-care workshops, conferences, seminars, or courses, provided each training activity satisfies the following criteria:

- (1) Prior approval from the Division shall not be required for training offered by a college or university with nationally recognized regional accreditation, a government agency, or a state, or international professional organization or its affiliates, provided the content complies with G.S. 110-91(11). Government agencies or state or national professional organizations who provide training shall submit an annual training plan for review by the Division. The plan shall not be required for any state,

national, or international conferences sponsored by a professional child care organization.

- (2) Prior approval from the Division shall be required for any agencies, organizations, or individuals not specified in Item (1) of this Rule who wish to provide training for child care operators and staff. To obtain such approval, the agency, organization, or individual shall:

- (a) complete and submit on-going training approval forms provided by the Division 15 business days prior to the training event that includes the name and qualifications of the trainer, name of training, target audience and content of the training;
- (b) submit a training roster, to the Division, listing the attendees' name, the county of employment, and day time phone number no later than 15 days after the training event;
- (c) provide training evaluations to be completed by attendees; and
- (d) keep the training rosters and evaluations on file for two years.

- (3) Distance learning shall be permitted from trainers approved by the Division or offered by an accredited post-secondary institution, as listed on the United States Department of Education's Database of Accredited Post-Secondary Institutions and Programs at <http://ope.ed.gov/accreditation/>. Distance learning shall not be permitted for Cardiopulmonary Resuscitation (CPR), First Aid, and playground safety training.

- (4) The Division shall approve training based upon the following factors:

- (a) The trainer's education, training, and experience relevant to the training topic;
- (b) Content that is in compliance with G.S. 110-91(11); and
- (c) Contact hours for the proposed content and scope of the training session.

- (5) The Division shall deny approval of training to:

- (a) Agencies, organizations, or individuals not meeting the standards listed in this Rule and in G.S. 110-91(11); and
- (b) Agencies, organizations, or individuals who intentionally falsify any information submitted to the Division.

- (6) Agencies, organizations, or individuals who intentionally falsify any information submitted to the Division pursuant to this Rule

shall be permanently ineligible to apply for approval of training.

- (7) Denial of approval of training or a determination of falsification is appealable pursuant to G.S. 110-94 and the North Carolina Administrative Procedure Act, G.S. 150B-23.

*History Note:* Authority G.S. 110-85; 110-91(11); 143B-168.3;  
*Eff. January 1, 1986;*  
*Amended Eff. November 1, 2007; October 29, 1998; November 1, 1989; July 1, 2008; January 1, 1987;*  
*Readopted October 1, 2017 (Transferred from 10A NCAC 09 .0708).*

**10A NCAC 09 .1106 DOCUMENTATION OF TRAINING**

Each center shall have a record of training activities in which each staff member participates, including copies of training certificates or official documentation provided by the trainer. That record shall include the subject matter, topic area in G.S. 110-91(11), training provider, date provided, hours, and name of staff who completed the training. This documentation shall be on file and current.

*History Note:* Authority G.S. 110-85; 110-91(9),(11); 143B-168.3;  
*Eff. January 1, 1986;*  
*Amended Eff. July 1, 1998; July 1, 1988;*  
*Readopted Eff. October 1, 2017 (Transferred from 10A NCAC 09 .0709).*

**10A NCAC 09 .1301 BUILDING CODE REQUIREMENTS FOR CENTERS**

The North Carolina State Building Code standards for child care facilities is hereby incorporated by reference, including subsequent amendments and editions. The current Code may be found online at [http://www.ncdoi.com/OSFM/Engineering\\_and\\_Codes/Default.aspx?field1=Codes\\_-\\_Current\\_and\\_Past&user=State\\_Building\\_Codes](http://www.ncdoi.com/OSFM/Engineering_and_Codes/Default.aspx?field1=Codes_-_Current_and_Past&user=State_Building_Codes).

*History Note:* Authority G.S. 110-91(4); 143B-168.3;  
*Eff. January 1, 1986;*  
*Amended Eff. July 1, 1998;*  
*Readopted Eff. October 1, 2017.*

**10A NCAC 09 .1302 BUILDING CODE REQUIREMENTS FOR CHILD CARE CENTERS**

**10A NCAC 09 .1303 BUILDING CODE REQUIREMENTS FOR SMALL GROUP FACILITIES LICENSED PRIOR TO 7/1/88**

*History Note:* Authority G.S. 110-91(4); 143B-168.3;  
*Eff. January 1, 1986;*  
*Amended Eff. July 1, 1998; January 1, 1987;*  
*Repealed Eff. October 1, 2017.*

**10A NCAC 09 .1304 REQUIREMENTS FOR CHILD CARE CENTERS LICENSED IN A RESIDENCE**

*History Note:* Authority G.S. 110-91(4); 143B-168.3;  
*Eff. July 1, 1998;*  
*Amended Eff. April 1, 2001;*  
*Repealed Eff. October 1, 2017.*

**10A NCAC 09 .1401 INDOOR SPACE**

(a) As used in this Rule, the term "Primary Space" means the indoor space designated by the operator that will be used by children who attend the center. It shall be used to calculate a center's licensed capacity.

(b) The Division shall calculate the total area of the Primary Space by measuring the Primary Space or by reviewing current drawings of the space that have been signed and sealed by an architect or engineer licensed to practice in the State of North Carolina.

(c) All measurements of the Primary Space shall be rounded to the nearest inch.

(d) For child care centers in an occupied residence that are licensed for 3 to 12 children when any preschool-age children are in care, or for 3 to 15 children when only school-age children are in care the dining area of a kitchen may be counted as Primary Space if it is used for children's activities in addition to eating.

(e) The following spaces shall not be included in the designation or measurement of Primary Space:

- (1) closets;
- (2) hallways;
- (3) storage areas;
- (4) kitchens;
- (5) bathrooms;
- (6) utility areas;
- (7) thresholds;
- (8) foyers;
- (9) space used for administrative activities;
- (10) space occupied by adult-sized desks, cabinets, file cabinets, and other office equipment;
- (11) any floor space occupied by or located under structures, equipment, and furniture not used by children; and
- (12) any floor space occupied by or located under built-in equipment or furniture.

(f) No room may be occupied by more than one child per 25 square feet of floor space, provided that a room may be occupied by a larger group of children for special activities so long as such occupancy does not violate the State fire code.

(g) During rest periods any room used by children shall have no less than 200 cubic feet of air space per child.

(h) Paragraphs (a) through (c) and (e) through (g) of this Rule shall only apply to centers initially licensed on or after February 1, 1985.

*History Note:* Authority G.S. 110-91(6); 143B-168.3;  
*Eff. January 1, 1986;*  
*Amended Eff. July 1, 1998; November 1, 1989;*  
*Readopted Eff. October 1, 2017.*



**10A NCAC 09 .1402 OUTDOOR SPACE**

- (a) When a center is licensed for 6 to 29 children, the outdoor play area shall be no smaller than 75 square feet times the total number of children for which the center is licensed.
- (b) When a center is licensed for 30 or more children, the outdoor play area shall be no smaller than 75 square feet times one-half of the total number of children for which the center is licensed or shall be 2,250 square feet, whichever is larger.
- (c) Paragraphs (a) and (b) of this Rule apply only to child care centers initially licensed after April 1, 1984.
- (d) The outdoor play area shall provide an area that is shaded by a building, awnings, trees, or other methods.
- (e) The outdoor area shall be designed so that staff is able to adequately supervise the entire area in accordance with 10A NCAC 09 .1801(a).

*History Note: Authority G.S. 110-85(1),(2); 110-91(6); 143B-168.3;*

*Eff. January 1, 1986;*

*Amended Eff. January 1, 1996;*

*Readopted Eff. October 1, 2017.*

**10A NCAC 09 .1403 ACTIVITIES INVOLVING WATER IN CHILD CARE CENTERS**

- (a) The requirements in this Rule apply to child care center "aquatic activities," which are defined as activities that take place in or around a body of water such as swimming, swimming instruction, wading, and visits to water parks. Aquatic activities do not include water play activities such as water table play, slip and slide activities, or playing in sprinklers.
- (b) Aquatic activities involving the following are prohibited:
- (1) hot tubs;
  - (2) spas;
  - (3) saunas or steam rooms;
  - (4) portable wading pools; and
  - (5) natural bodies of water and other unfiltered, nondisinfected containments of water.
- (c) For every 25 children in care participating in aquatic activities, there shall be at least one person who has a life guard training certificate issued by the Red Cross or other training determined by the Division to be equivalent to the Red Cross training, appropriate for both the type of body of water and type of aquatic activity. These lifeguards shall not be counted in the required staff/child ratios referenced in Paragraph (e) of this Rule.
- (d) Children under the age of three shall not participate in aquatic activities except to the extent necessary to implement any child's Individualized Family Service Plan (IFSP) or Individualized Education Program (IEP).
- (e) The following staff/child ratios shall be maintained whenever children participate in aquatic activities:
- | Age of Children   | Ratio Staff/Children |
|-------------------|----------------------|
| 3 to 4 Years      | 1/8                  |
| 4 to 5 Years      | 1/10                 |
| 5 Years and Older | 1/13                 |
- Notwithstanding the staff/child ratios, at no time shall there be fewer than two staff members supervising the aquatic activity.
- (f) Children shall be adequately supervised by center staff at all times while participating in aquatic activities. For purposes of

this Rule, "Adequate supervision" means that half of the center staff needed to meet the staff/child ratios in Paragraph (e) of this Rule is in the water and the other half is out of the water. If an uneven number of staff are needed to meet the required staff/child ratios, the majority shall be in the water. Staff shall be stationed in pre-assigned areas that will enable them at all times to hear, see, and respond to the children whether in or out of the water. Children shall not enter the water before center staff are stationed in their pre-assigned areas. Center staff shall devote their full attention to supervising the children in their pre-assigned areas of coverage and shall communicate with one another about children moving from one area to another area.

(g) Prior to children participating in aquatic activities, the center shall develop policies that address the following:

- (1) aquatic safety hazards;
- (2) pool and aquatic activity area supervision including restroom or changing room use;
- (3) how discipline will be handled during aquatic activities;
- (4) the facility's field trip and transportation policies and procedures; and
- (5) that children shall be directed to exit the water during an emergency.

(h) Before staff first supervise children on an aquatic activity, and annually thereafter, staff shall sign and date statements that they have reviewed:

- (1) the center policies as specified in Paragraph (g) of this Rule;
- (2) any guidelines provided by the pool operator or other off-site aquatic facility; and
- (3) the requirements of this Rule.

The statement shall be maintained in the staff person's personnel file for one year or until it is superseded by a new statement.

(i) Centers shall obtain written permission from parents for participation in aquatic activities. The written permission shall include a statement that parents are aware of the center's aquatic policies specified in Paragraph (g) of this Rule. The center shall maintain copies of written parental permission in each child's file.

(j) Any outdoor swimming pool located on the child care center premises shall be enclosed by a fence that is at least four feet high, separated from the remaining outdoor play area by that fence, and locked and inaccessible to children when not in use.

(k) Swimming pool safety rules shall be posted and visible to children and staff for any swimming pool located on the child care center premises. These rules shall state:

- (1) the location of a First Aid kit;
- (2) that only water toys are permitted;
- (3) that children are not allowed to run or push one another;
- (4) that swimming is allowed only when at least two adults are present; and
- (5) that glass objects are not allowed.

(l) All swimming pools used by children shall meet the "Rules Governing Public Swimming Pools" in accordance with 15A NCAC 18A .2500 which are incorporated by reference, including subsequent amendments. A copy of these Rules can be found at <http://ehs.ncpublichealth.com/docs/rules/294306-9-2500.pdf> and is available at no charge.

(m) Educational activities, such as observing tadpoles, exploring mud, or learning about rocks and vegetation shall be permitted.

(n) Boating, rafting, and canoeing activities are permitted. Prior to participating in recreational activities conducted on the water, children shall wear an age or size appropriate personal floatation device approved by the United States Coast Guard. This personal floatation device shall be worn for the duration of the activity.

*History Note:* Authority G.S. 110-85; 110-88(5); 110-91(1),(6); 143B-168.3;  
*Eff. January 1, 1986;*  
*Amended Eff. July 1, 2010; November 1, 2007; January 1, 1996;*  
*January 1, 1992; January 1, 1987;*  
*Readopted Eff. October 1, 2017.*

**10A NCAC 09 .1701 GENERAL PROVISIONS  
 RELATED TO LICENSURE OF HOMES**

*History Note:* Authority G.S. 110-85; 110-86(3); 110-88(1); 110-91; 110-99; 110-105; 143B-168.3;  
*Eff. January 1, 1986;*  
*Amended Eff. July 1, 2015; May 1, 2013; November 1, 2006;*  
*April 1, 2003; April 1, 1999; July 1, 1998; January 1, 1991;*  
*January 1, 1990; July 1, 1988; January 1, 1987;*  
*Temporary Amendment Eff. September 23, 2016;*  
*Repealed Eff. October 1, 2017.*

**10A NCAC 09 .1702 APPLICATION FOR A  
 LICENSE FOR A FAMILY CHILD CARE HOME**

(a) Any person who plans to operate a family child care home (FCCH) shall apply for a license using a form provided by the Division. Only one licensed family child care home shall operate at the location address of any home. The form can be found on the Division's website at [http://ncchildcare.nc.gov/pdf\\_forms/FacilityProfileApp.pdf](http://ncchildcare.nc.gov/pdf_forms/FacilityProfileApp.pdf). The application for a family child care home license shall include the following information:

- (1) owner name;
- (2) facility name, address, phone number, and location address;
- (3) facility contact information;
- (4) requested age range of children in the child care center;
- (5) hours of operation;
- (6) type of care to be provided;
- (7) type of building;
- (8) type of family child care home;
- (9) proposed opening date;
- (10) proposed number of children to be served;
- (11) type of business operation;
- (12) history of operation or licensing of child care facilities; and
- (13) signature of applicant of either:
  - (A) the individual who will be responsible for the operation of the family child care home and for assuring compliance with G.S. 110, Article 7 and this Chapter; or

- (B) an officer of an entity who will be responsible for the operation of the family child care home and for ensuring compliance with G.S. 110, Article 7 and this Chapter.

Upon receipt of the application, the Division shall assess the information provided to determine if the prospective licensee may be denied a license for one or more of the reasons set forth in 10A NCAC 09 .2215.

(b) The applicant for a family child care home license shall also submit supporting documentation with the application for a license to the Division. The supporting documentation shall include:

- (1) a copy of a non-expired qualification letter in accordance with 10A NCAC 09 .2702;
- (2) a copy of documentation of completion of a First Aid and cardiopulmonary resuscitation (CPR) course within 12 months prior to applying for a license;
- (3) a copy of documentation of completion of ITS-SIDS training within 12 months prior to applying for a license, if requesting a license to care for infants ages 12 months and younger;
- (4) proof of negative results of the applicant's tuberculosis test completed within the past 12 months;
- (5) a completed health questionnaire; a copy of the health questions can be found on the Division's website, [http://ncchildcare.nc.gov/pdf\\_forms/emergency\\_information\\_health\\_questionnaire\\_i.pdf](http://ncchildcare.nc.gov/pdf_forms/emergency_information_health_questionnaire_i.pdf) and includes a statement signed by the staff member that indicates that the person is emotionally and physically fit to care for children;
- (6) a copy of non-expired pet vaccinations for any pet in the home;
- (7) if a home has a private well, a negative well water bacteriological analysis;
- (8) copies of any inspections required by local ordinances; and
- (9) any other documentation required by the Division according to the rules in this Section to support the issuance of a license.

(c) Upon receipt of a complete application for a family child care home and supporting documentation, a Division representative shall make an announced visit to each home. An announced visit shall not be required by a Division representative if the applicant is subject to the circumstances in 10A NCAC 09 .2214. The issuance of a license applies as follows:

- (1) if all applicable requirements of G.S. 110, Article 7 and this Section are met, a six month temporary license shall be issued;
- (2) a one- star rated license shall be issued to a family child care home operator who complies with the minimum standards for a license contained in this Section and G.S. 110-91 at

the end of the six month temporary time period;

- (3) a two- through five- star rated license shall be issued to a family child care home operator who complies with minimum and voluntary standards for a license contained in this Section, Section .2800 of this Chapter and G.S. 110-91, at the end of the six month temporary time period;
- (4) if the applicable requirements of G.S. 110, Article 7 and this Section are not met, the Division representative shall establish with the applicant a time period for the home to achieve compliance. If the Division representative determines that all applicable requirements of G.S. 110, Article 7 and this Section are met within the established time period, a license shall be issued; or
- (5) if all applicable requirements of G.S. 110, Article 7 and this Section are not met or cannot be met within the established time, the Division shall deny the application.

(d) A family child care home operator shall notify the Division no later than 30 calendar days prior to relocation of a family child care home. The operator must apply for a license for the new physical location as described in Paragraph (a) of this Rule. An operator requesting relocation of the family child care home shall not operate until he or she has received a license from the Division for the new location.

(e) The family child care home license shall not be bought, sold, or transferred from one individual to another.

(f) The family child care home license shall be valid only for the location address listed on it.

(g) The family child care home license shall be returned to the Division in the event of termination, revocation, suspension, or summary suspension.

(h) A family child care home licensee shall notify the Division in writing if a change occurs that affects the information shown on the license. The Division shall issue a new license upon verification of the operator's compliance with all applicable requirements in this Section for the change. This includes the following:

- (1) decreasing the capacity of the family child care home;
- (2) increasing the capacity of the family child care home;
- (3) changes to shifts of care;
- (4) requests to change the age range of the family child care home;
- (5) requests to remove a restriction from the license, including documentation of steps taken by the operator to comply with requirements which resulted in the licensure restriction; and
- (6) changes to the operator's legal name.

(i) The family child care home license shall be posted in a place in the home that parents are able to view daily.

*History Note: Authority G.S. 110-88(5); 110-86; 110-91; 110-93; 110-99; 143B-168.3;*

*Eff. January 1, 1986;*

*Amended Eff. March 1, 2014; December 1, 2012; August 1, 2011; July 1, 2010; April 1, 2003; April 1, 2001; July 1, 1998;*

*January 1, 1991; November 1, 1989; January 1, 1987;*

*Temporary Amendment Eff. September 23, 2016;*

*Readopted Eff. October 1, 2017.*

### **10A NCAC 09 .1703 ON-GOING REQUIREMENTS FOR FAMILY CHILD CARE HOME OPERATORS**

(a) After receiving a license, family child care home operator shall:

- (1) Update the health questionnaire annually. The Division may request an evaluation of the operator's emotional and physical fitness to care for children when there is reason to believe that there has been a deterioration in the operator's emotional or physical fitness to care for children. This request may be based upon factors such as observations by the director or center staff, reports of concern from family, reports from law enforcement or reports from medical personnel. The Division may require the operator to obtain written proof that he or she is free of active tuberculosis when the Division determines that the operator was exposed to a person with active tuberculosis;
- (2) Renew First Aid training on or before expiration of the certification appropriate for the ages of children in care;
- (3) Renew CPR course on or before the expiration of the certification appropriate for the ages of children in care;
- (4) Renew ITS-SIDS training every three years from the completion of previous ITS-SIDS training; and
- (5) Complete Recognizing and Responding to Suspicions of Child Maltreatment training within 90 days of licensure. This training shall count toward requirements set forth in Paragraph (d) of this Rule. Recognizing and Responding to Suspicions of Child Maltreatment training is available at <https://www.preventchildabusenc.org/>.

(b) Family child care home operators and staff members shall complete health and safety training within one year of employment, unless the operator or staff member has completed the training within the year prior to beginning employment or within the year prior to receiving a license. Health and safety training shall be in addition to the pre-licensing visit and new staff orientation requirements set forth in Rules .1702(d) and .1729(c) of this Section. The following persons shall be exempt from this requirement:

- (1) service providers such as speech therapists, occupational therapists, and physical therapists; and

- (2) substitutes who provide services for less than 10 days in a 12-month period.
- (c) The health and safety training shall include the following topic areas:
- (1) Prevention and control of infectious diseases, including immunization;
  - (2) Administration of medication, with standards for parental consent;
  - (3) Prevention of and response to emergencies due to food and allergic reactions;
  - (4) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;
  - (5) Emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused event;
  - (6) Handling and storage of hazardous materials and the appropriate disposal of biocontaminants;
  - (7) Precautions in transporting children, if applicable;
  - (8) Prevention of shaken baby syndrome, abusive head trauma, and child maltreatment;
  - (9) CPR and First Aid training as required in Rule .1102(c) and (d) of this Chapter;
  - (10) Recognizing and reporting child abuse, child neglect, and child maltreatment; and
  - (11) Prevention of sudden infant death syndrome and use of safe sleeping practices.

(d) After the first year of employment, the family child care home operator, and staff who work with children shall complete on-going training activities as follows:

Education and Experience	Required Training
Four-year degree or higher advanced degree in a child care related field of study from a regionally accredited college or university	5 clock hours
Two-year degree in a child care related field of study from a regionally accredited college or university, or persons with a North Carolina Early Childhood Administration Credential	8 clock hours
Certificate or diploma in a child care related field of study from a regionally accredited college or university, or persons with a North Carolina Early Childhood Credential	10 clock hours
10 years documented experience as a teacher, director, or caregiver in a licensed child care arrangement	15 clock hours

If none of the other criteria in this chart apply	20 clock hours
---	----------------

- (2) complete health and safety training as part of on-going training so that every five years, all the topic areas set forth in Paragraph (c) of this Rule will have been covered;
- (3) cardiopulmonary resuscitation (CPR) and First Aid training shall not be counted toward meeting annual on-going training activities in Subparagraph (d)(1) of this Rule;
- (4) a combination of college coursework, Continuing Education Units (CEU's) or clock hours shall be used to complete the requirements in Subparagraph (d)(1) of this Rule; and
- (5) any staff working less than 40 hours per week may choose to complete on-going training requirements as outlined in Paragraph (d)(1) of this Rule or the training requirement may be prorated as follows:

WORKING HOURS PER WEEK	CLOCK HOURS REQUIRED
0-10	5
11-20	10
21-30	15
31-40	20

(e) For purposes of this Rule, "regionally accredited" means a college or university accredited by one of the following accrediting bodies:

- (1) Middle States Association of Colleges and Schools;
- (2) New England Association of School and Colleges;
- (3) North Central Association of Colleges and Schools;
- (4) Northwest Accreditation Commission;
- (5) Southern Association of Colleges and Schools; or
- (6) Western Association of Schools and Colleges.

(f) The family child care home operator and staff members shall complete a professional development plan within one year of employment and at least thereafter. The plan shall:

- (1) document the individual's professional development goals;
- (2) be appropriate for the ages of children in their care;
- (3) include the continuing education, coursework or training needed to meet the individual's planned goals;
- (4) be completed by the operator and staff member in a collaborative manner; and
- (5) be maintained in their personnel file.

Sample professional development plan templates may be found on the Division's website at

[http://ncchildcare.nc.gov/providers/pv\\_provideforms.asp](http://ncchildcare.nc.gov/providers/pv_provideforms.asp).

Another form may be used other than the sample templates provided by the Division as long as the form includes the information set forth in this Rule.

(g) Each family child care home operator shall have a record of training activities in which each staff member participates, including copies of training certificates or official documentation provided by the trainer. That record shall include the subject matter, topic area in G.S. 110-91(11), training provider, date provided, hours, and name of staff who completed the training. This documentation shall be on file and current.

(h) The family child care home operator and staff members may meet on-going training requirements by attending child-care workshops, conferences, seminars, or courses, provided each training activity satisfies the following criteria:

- (1) Prior approval from the Division shall not be required for training offered by a college or university with nationally recognized regional accreditation, a government agency, or a state, or international professional organization or its affiliates, provided the content complies with G.S. 110-91(11). Government agencies or state or national professional organizations who provide training shall submit an annual training plan for review by the Division. The plan is not required for any state, national, or international conferences sponsored by a professional child care organization.
- (2) Prior approval from the Division shall be required for any agencies, organizations, or individuals not specified in Subparagraph (1) of this Paragraph who wish to provide training for child care operators and staff. To obtain such approval, the agency, organization, or individual shall:
  - (A) complete and submit on-going training approval forms provided by the Division 15 business days prior to the training event that includes the name and qualifications of the trainer, name of training, target audience and content of the training;
  - (B) submit a training roster, to the Division, listing the attendees' name, the county of employment, and day time phone number no later than 15 days after the training event;
  - (C) provide training evaluations to be completed by attendees; and
  - (D) keep the training rosters and evaluations on file for two years.
- (3) Distance learning shall be permitted from trainers approved by the Division or offered by an accredited post-secondary institution, as listed on the United States Department of Education's Database of Accredited Post-Secondary Institutions and Programs at <http://ope.ed.gov/accreditation/>. Distance learning shall not be permitted for

Cardiopulmonary Resuscitation (CPR) and First Aid.

(i) The Division shall approve training based upon the following factors:

- (1) the trainer's education, training, and experience relevant to the training topic;
- (2) content that is in compliance with G.S. 110-91(11); and
- (3) contact hours for the proposed content and scope of the training session.

(j) The Division shall deny approval of training to:

- (1) Agencies, organizations, or individuals not meeting the standards listed in this Rule and in G.S. 110-91(11); and
- (2) Agencies, organizations, or individuals who intentionally falsify any information submitted to the Division.

(k) Agencies, organizations, or individuals who intentionally falsify any information submitted to the Division pursuant to this Rule shall be permanently ineligible to apply for approval of training.

(l) Denial of approval of training or a determination of falsification is appealable pursuant to G.S. 110-94 and the North Carolina Administrative Procedure Act, G.S. 150B-23.

*History Note:* Authority G.S. 110-85; 110-88; 110-91; 143B-168.3;

*Eff. January 1, 1986;*

*Amended Eff. July 1, 2015; July 1, 2008; May 1, 2004; July 1, 1998; November 1, 1989; January 1, 1987;*

*Temporary Amendment Eff. September 23, 2016;*

*Readopted Eff. October 1, 2017 (Transferred from 10A NCAC 09.1705).*

#### **10A NCAC 09.1704 CAREGIVER INTERACTIONS IN A FAMILY CHILD CARE HOME**

(a) Family child care home operators shall interact with children in positive ways by helping them feel welcome and comfortable, treating them with respect, listening to what they say, responding to them with acceptance and appreciation and participating in activities with the children. For example, family child care home operators shall:

- (1) make eye contact when speaking to a child;
- (2) engage children in conversation to share experiences, ideas and opinions;
- (3) help children develop problem-solving skills; and
- (4) facilitate learning by providing positive reinforcement, encouraging efforts and recognizing accomplishments.

(b) Family child care home operators shall respond to an infant or toddler's physical and emotional needs, especially when indicated by crying through actions such as feeding, diapering, holding, positive touching, smiling, talking and eye contact.

(c) The family child care home operator shall recognize the special difficulties of infant and toddler separations and assist families, infants, and toddlers to make the transition from home to the program as gently as possible.

*History Note:* Authority G.S. 110-85; 110-91(8),(11); 143B-168.3;  
*Eff. July 1, 2010;*  
*Readopted Eff. October 1, 2017 (Transferred from 10A NCAC 09 .1703).*

**10A NCAC 09 .1706 NUTRITION STANDARDS**

(a) Meals and snacks served to children in a Family Child Care Home shall comply with the Meal Patterns for Children in Child Care Programs from the United States Department of Agriculture (USDA) which are based on the recommended nutrient intake judged by the National Research Council to be adequate for maintaining good nutrition. The types of food, number and size of servings shall be appropriate for the ages and developmental levels of the children in care. The Meal Patterns for Children in Child Care Programs are incorporated by reference and include subsequent amendments. A copy of the Meal Patterns for Children in Child Care Programs is available online at <https://www.fns.usda.gov/cacfp/meals-and-snacks>.

(b) When children bring their own food for meals and snacks to the program, if the food does not meet the nutritional requirements specified in Paragraph (a) of this Rule, the operator must provide additional food necessary to meet those requirements.

(c) A child's parent may opt out of the supplemental food provided by the operator as set forth in G.S. 110-91(2) h.1. When a child's parent opts out of the supplemental food provided by the center, the operator shall obtain the parents signature acknowledging the parental decision and shall maintain the acknowledgment in the child's file at the home and provide a copy to the parent. A child's parent may opt out of the supplemental food provided by the center, subject to the following:

- (1) the operator shall not provide any food or drink so long as the child's parent or guardian provides all meals, snacks, and drinks scheduled to be served at the program's designated times;
- (2) the opt out ability is not available for specific meals or days based on menu options;
- (3) if a child requests specific foods being served to other children, but the parent has opted out, the operator shall not serve supplemental food; and
- (4) If the child's parent has opted out, but does not provide all meals and snacks for the child, the operator shall replace the missing meal or snack as if the child's parent or guardian had not opted out of the supplemental food program.

(d) The food required by special diets for medical, religious or cultural reasons, or parental preferences, may be provided by the operator or may be brought to the program by the parents. If the diet is prescribed by a health care professional, a statement signed by the health care professional shall be on file at the program and written instructions must be provided by the child's parent, health care professional or a licensed dietitian/nutritionist. If the diet is not prescribed by a health care

professional, written instructions shall be provided by the child's parent and shall be on file at the program.

(e) Children's special diets or food allergies shall be posted in the food preparation area and in the child's eating area.

(f) Food that does not meet the nutritional requirements specified in Paragraph (a) of this Rule, such as cupcakes, cakes, and donuts shall only be offered for special occasions such as holidays and birthdays.

(g) The operator, additional caregivers, and substitute providers shall role model appropriate eating behaviors by consuming only food or beverages that meet the nutritional requirements specified in Paragraph (a) of this Rule in the presence of children in care.

(h) Meals and snacks shall be planned according to the number of hours a child is in care. For children ages 15 months and older a meal or snack must be provided at least every four hours. These Rules shall apply in all situations except during sleeping hours and nighttime care:

<b>Hours Child Is In Care</b>	<b>Age of Child</b>	<b>Snack and Meal Requirement</b>
At least 2 hours but less than 4 hours	Preschool-age children	1 snack, unless child is present during the time a meal is being served
Any hours in care	School-age children	1 snack, unless child is present during the time a meal is being served
At least 4 hours but less than 6 hours	All Children	1 meal equal to 1/3 of the child's daily food needs
At least 6 hours but less than 12 hours	All Children	2 meals and 1 snack OR 2 snacks and 1 meal equal to 1/2 of the child's daily food needs
More than 12 hours	All Children	2 snacks and 2 meals equal to 2/3 of the child's daily food needs
Second Shift (approximately 3:00 p.m. to 11:00 p.m.)	All Children	1 meal

(i) The parent or health care professional of each child under 15 months of age shall provide the operator an individual written feeding plan for the child. This plan shall be followed at the home. This plan shall include the child's name, be signed by the parent or health care professional, and be dated when received by the operator. Each infant's plan shall be modified in consultation with the child's parent or health care professional to reflect changes in the child's needs as he or she develops. The feeding plans for each infant shall include the type and amount

of milk, formula and food, the frequency of feedings and be available for reference by the operator.

(j) Parents shall be allowed to provide breast milk for their children. Accommodations for breastfeeding mothers shall be provided that include seating and an electrical outlet, in a place other than a bathroom, that is shielded from view by staff and the public, which may be used by mothers while they are breastfeeding or expressing milk.

(k) Each infant shall be held for bottle feeding until able to hold his or her own bottle. Bottles shall not be propped. Each child shall be held or placed in feeding chairs or other age-appropriate seating apparatus to be fed. The feeding chair or other seating apparatus shall be disassembled for cleaning purposes.

(l) Breast milk, formula and other bottled beverages sent from home shall be fully prepared, dated, and labeled with individual child names. All beverages shall be returned to the child's parent or discarded at the end of each day.

(m) Frozen breast milk that is sent from home may be stored frozen for up to seven days. Frozen breast milk shall be labeled with the date received, date thawed for use and individual child name. Once thawed, the breast milk shall be refrigerated for no more than 24 hours. Thawed breast milk shall not be refrozen. The thawed breast milk shall be returned to the child's parent or discarded at the end of each day.

(n) Any formula which is prepared by the operator shall be prepared according to the instructions on the formula package or label, or according to written instructions from the child's health care professional.

(o) Baby food, snack items and meal items sent from home shall be dated and labeled with individual child names.

(p) Microwaves shall not be used to thaw or warm breast milk, baby food, formula or other bottled beverages. Bottle warming equipment and power cords shall be inaccessible to children when in use. Bottle warming equipment shall be emptied and cleaned daily.

(q) Infants shall not be served juice in a bottle without a prescription or written statement on file from a health care professional or licensed dietitian/nutritionist.

(r) Each infant shall be served only formula, breast milk and bottles labeled with their individual name.

(s) Drinking water shall be freely available and offered to children on a frequent basis. Individual drinking utensils shall be provided by the parent or operator.

(t) When milk, milk products, or fruit juices are provided by the operator, only pasteurized products or products which have undergone an equivalent process to pasteurization shall be used.

(u) The operator shall serve only the following beverages:

- (1) breast milk, as specified in Paragraph (k) of this Rule;
- (2) formula;
- (3) water;
- (4) unflavored whole milk, for children ages 12-23 months;
- (5) unflavored skim or lowfat milk for children 24 months through five years;
- (6) unflavored skim milk, unflavored low-fat milk, or flavored skim milk for children six years and older; or

- (7) 100 percent fruit juice, limited to 6 ounces per day, for all ages.

*History Note:* Authority G.S. 110-85; 110-91(2); 143B-168.3;

*Eff. December 1, 2012;*

*Temporary Amendment Eff. September 23, 2016;*

*Readopted Eff. October 1, 2017.*

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

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

- (1) all children are kept on the ground level with an exit at grade;
- (2) all homes are equipped with an electrically operated (with a battery backup) smoke detector, or one electrically operated and one battery operated smoke detector located next to each other;
- (3) all homes are provided with at least one five pound 2-A: 10-B: C type extinguisher for every 2,500 square feet of floor area;
- (4) heating appliances shall be installed and maintained according to the NC Building Code;
- (5) all indoor areas used by children are heated when the temperature is below 65 degrees and ventilated when the temperature is above 85 degrees;
- (6) pipes or radiators that are hot enough to be capable of burning children and are accessible to the children are covered or insulated; and
- (7) children are cared for in space designated as the caregiving area on a floor plan provided by the operator to the Division as specified in 10A NCAC 09 .1709. Changes to the designated caregiving space shall be submitted to the Division 30 days prior to the new space being used by children. For family child care homes licensed prior to October 1, 2017, the floor plan showing designated caregiving space shall be submitted to the Division by November 30, 2017 or the next annual inspection, whichever is sooner. For family child care homes licensed after October 1, 2017, the floor plan showing designated caregiving space shall be submitted to the Division prior to licensure.

*History Note:* Authority G.S. 110-85; 110-86(3); 110-91; 143B-168.3;

*Eff. October 1, 2017.*

#### **10A NCAC 09 .1708 PRE-LICENSING REQUIREMENTS FOR FAMILY CHILD CARE HOMES**

(a) The prospective operator of the family child care home shall complete the pre-licensing workshop provided by the Division prior to the Division issuing an initial license. The Division shall provide workshops for new family child care home applicants.

Prospective licensees shall download, complete, and submit the pre-licensing registration form to the Division. The pre-licensing registration form contains demographic information and workshop location preferences. A schedule of these workshops and the pre-licensing registration form may be obtained from the Division at

[http://ncchildcare.nc.gov/pdf\\_forms/prelicworkshop.pdf](http://ncchildcare.nc.gov/pdf_forms/prelicworkshop.pdf).

(b) After completing the pre-licensing workshop, the prospective family child care home operator shall submit an application for a family child care home license and all supporting documentation as specified in 10A NCAC 09 .1702.

*History Note:* Authority G.S. 110-85; 110-88; 110-91; 143B-168.3;  
Eff. October 1, 2017.

#### **10A NCAC 09 .1709 INSPECTIONS**

(a) To ensure compliance with G.S. 110, Article 7 and this Chapter, inspections shall be conducted as follows:

- (1) The Division shall conduct at least one announced visit prior to the initial issuance of license.
- (2) The Division shall make at least one unannounced visit annually to ensure compliance with the licensure statutes and rules.
- (3) The Division shall make at least one unannounced visit when the Division receives a complaint alleging a violation of licensure statutes or rules, or if the Division has cause to believe an emergency exists at the facility.

(b) After initial issuance of the license the Division shall inspect additional caregiving space specified in Rule .1708 of this Section. The Division may only inspect the entire premises of the family child care home as follows:

- (1) Prior to issuance of the initial license;
- (2) If the Division has cause to believe an emergency exists at the facility in accordance with G.S. 110-105(a);
- (3) During an unannounced visit when the Division receives a complaint alleging a violation of licensure statute or rules in accordance with G.S. 110-105(a);
- (4) During an unannounced visit when the Division receives a complaint alleging possible child maltreatment in accordance with G.S. 110-105(a);
- (5) When there is evidence that children are being cared for in an undesignated space in accordance with G.S. 110-105(a1); or
- (6) When the Division has cause to believe conditions in undesignated spaces pose a risk to the health, safety, or well-being of children in care in accordance with G.S. 110-105(a1) such as hear a child cry in an undesignated space or observing a child going into an undesignated space.

*History Note:* Authority G.S. 110-85; 110-105; 143B-168.3  
Eff. October 1, 2017.

#### **10A NCAC 09 .1710 PARENTAL ACCESS TO THE FAMILY CHILD CARE HOME**

(a) The family child care home operator shall not knowingly permit a person on the premises of a family child care home who has been convicted of a "reportable conviction" as defined in G.S. 14-208.6(4).

(b) The parent of a child enrolled in a family child care home shall be allowed access to the home during its operating hours for the purposes of contacting the child or evaluating caregiving space at the home and the care provided by the operator for the child. The parent shall notify the operator of his or her presence upon entering the premises.

(c) Parents subject to court orders related to custody of a child enrolled in a family child care home shall only be allowed access to the home in accordance with the court order.

*History Note:* Authority 110-85; 110-90.2; 110-91; 143B-168.3;  
Eff. October 1, 2017.

#### **10A NCAC 09 .1711 SUPERVISION OF CHILDREN IN A FAMILY CHILD CARE HOME**

(a) Children shall be adequately supervised at all times in a family child care home. "Adequate supervision" shall mean that:

- (1) For pre-school age children, the family child care home operator shall be positioned in the indoor and outdoor environment to maximize his or her ability to hear and see the children at all times and render immediate assistance;
- (2) For school-age children, the operator shall be positioned in the indoor and outdoor environment to maximize his or her ability to hear or see the children at all times and render immediate assistance;
- (3) The operator shall interact with the children while moving about the indoor or outdoor area; and
- (4) For children of all ages:
  - (A) the operator shall know where each child is located and be aware of children's activities at all times;
  - (B) the operator shall provide supervision according to the individual age, needs, and capabilities of each child;
  - (C) all of the conditions in this Paragraph shall apply except when emergencies necessitate that adequate supervision is impossible. Written documentation of emergencies stating the date, time, and reason shall be maintained and available for review by Division representatives upon request; and
  - (D) for children who are sleeping or napping, the operator shall not be required to visually supervise them,



but shall be able to hear and respond without delay to them. Children shall not sleep or nap in a room with a closed door between the children and the operator. The operator shall be on the same level of the home where children are sleeping or napping.

(b) Nothing contained in this Rule shall be construed to preclude a "qualified person with a disability," as defined by G.S. 168A-3(9), or a "qualified individual," as defined by the Americans With Disabilities Act at 42 U.S.C. 12111(8), from working in a licensed child care facility.

*History Note:* Authority 110-85; 110-88; 143B-168.3;  
Eff. October 1, 2017.

**10A NCAC 09 .1712 WRITTEN PLAN OF CARE**

(a) Each family child care home operator (operator or operators) who intends to complete routine tasks while children are in care shall develop and adopt a written plan of care for completing routine tasks. For purposes of this Rule, routine tasks includes running errands, meeting personal and family demands, attending classes, and attending medical appointments.

(b) Operators who complete routine tasks with enrolled children shall limit these tasks to no more than two hours per week.

(c) Children shall not attend classes or medical appointments, with the family child care home operator, as described in Paragraph (a) of this Rule.

(d) Operators who attend classes, medical appointments, or who must complete routine tasks in excess of two hours per week, shall ensure that a qualified additional caregiver or substitute provider who meets the requirements of 10A NCAC 09 .1729, cares for enrolled children during these times.

(e) The written plan of care shall:

- (1) specify times for completing routine tasks and include those times on the written schedule;
- (2) specify the names of any individuals, such as additional caregivers or substitute providers, who will be responsible for the care of children when the operator is attending to routine tasks;
- (3) specify how the operator shall maintain compliance with transportation requirements specified in 10A NCAC 09 .1723 if children are transported;
- (4) specify how parents will be notified when children accompany the operator off premises for routine tasks not specified on the written schedule;
- (5) specify any other steps the operator shall take to ensure routine tasks will not interfere with the care of children; and
- (6) be provided and explained to parents of children in care on or before the first day the child attends the home. Parents shall sign a statement acknowledging the receipt and explanation of the plan. Parents shall also give written permission for their child to be transported by the operator for specific routine tasks that are included on the written schedule.

The acknowledgment and written parental permission shall be retained in the child's record as long as the child is enrolled at the home and a copy of each document shall be maintained on file for review by the Division.

(f) If the operator amends the written plan, the operator shall give written notice of the amendment to parents of all enrolled children at least 30 days before the amended plan is implemented. Each parent shall sign a statement acknowledging the receipt and explanation of the amendment. The operator shall retain the acknowledgement in the child's records as long as the child is enrolled in the home and a copy shall be maintained on file for review by the Division.

*History Note:* Authority G.S. 110-85; 110-86(3); 110-91;  
143B-168.3;  
Eff. October 1, 2017.

**10A NCAC 09 .1713 EMERGENCY MEDICAL CARE**

The family child care home operator (operator) shall have a written plan that sets forth the steps to follow in the event of a child medical emergency. This plan shall give the procedures to be followed to ensure that any child who becomes ill or is injured and requires medical attention while in care receives appropriate medical attention. The operator shall be responsible for:

- (1) ensuring appropriate medical care is given, and determining which of the following is needed:
  - (a) First Aid for an injury or illness needing only minimal attention; or
  - (b) calling 911 in accordance with CPR or First Aid training recommendations.
- (2) ensuring that the signed authorization described in 10A NCAC 09 .1721(a)(3) is taken with the ill or injured child to the medical facility;
- (3) notifying a child's parents or emergency contact person about the illness or injury and where the child has been taken for treatment; and
- (4) obtaining substitute providers, if needed, to maintain adequate supervision of children who remain in care.

This plan shall be reviewed with all additional caregivers and substitute providers prior to caring for children and whenever the plan is revised. The plan shall be available for review by the Division during the Family Child Care Home's operating hours.

*History Note:* Authority 110-85; 110-91; 143B-168.3;  
Eff. October 1, 2017.

**10A NCAC 09 .1714 EMERGENCY PREPAREDNESS AND RESPONSE**

(a) For purposes of this Rule, the Emergency Preparedness and Response in Child Care is a training developed by the Division of Public Health for child care operators and providers on creating an Emergency Preparedness and Response Plan and

practicing, responding to, and recovering from emergencies in child care facilities.

(b) Existing family child care home operators (operator or operators) shall complete the Emergency Preparedness and Response in Child Care training. Within one year of the effective date of a new license, the operator of a new family child care home shall have completed the Emergency Preparedness and Response in Child Care training. When the trained staff member leaves employment, the center shall ensure that another staff member completes the required training within four months of the vacancy. Documentation of completion of the training shall be maintained in the operator's personnel file.

(c) Upon completion of the Emergency Preparedness and Response in Child Care training, the operator shall develop the Emergency Preparedness and Response Plan. The Emergency Preparedness and Response Plan means a written plan that addresses how a child care facility will respond to both natural and man-made disasters, such as fire, tornado, flood, power failures, chemical spills, bomb threats, earthquakes, blizzards, nuclear disaster, or a dangerous person in the vicinity, to ensure the safety and protection of the children and additional caregivers. This Plan shall be on a template provided by the Division available at <https://rmp.nc.gov/portal/#>, completed within four months of completion of the Emergency Preparedness and Response in Child Care training, and available for review.

(d) The Emergency Preparedness and Response Plan shall include the following:

- (1) written procedures for accounting for all in attendance, including:
  - (A) the location of the children, staff, volunteer and visitor attendance lists; and
  - (B) the name of the person(s) responsible for bringing the children, staff, volunteer and visitor attendance lists in the event of an emergency.
- (2) a description for how and when children shall be transported;
- (3) methods for communicating with parents and emergency personnel or law enforcement;
- (4) a description of how children's nutritional and health needs will be met;
- (5) the relocation and reunification process;
- (6) emergency telephone numbers;
- (7) evacuation diagrams showing how the operator, family members, children and any other individuals who may be present will evacuate during an emergency;
- (8) the date of the last revision of the plan;
- (9) specific considerations for non-mobile children and children with special needs; and
- (10) the location of the Ready to Go File. A Ready to Go File means a collection of information on children, additional caregivers and the facility, to utilize, if an evacuation occurs. The file shall include a copy of the Emergency Preparedness and Response Plan, contact information for individuals to pick-up

children, each child's Application for Child Care, medication authorizations and instructions, any action plans for children with special health care needs, a list of any known food allergies of children and additional caregiver, additional caregiver contact information, Incident Report forms, an area map, and emergency telephone numbers.

(e) The operator shall review the Emergency Preparedness and Response Plan annually, or when information in the plan changes, to ensure all information is current.

(f) The operator shall review the Family Child Care Home's Emergency Preparedness and Response Plan with additional caregivers prior to the individual caring for children and on an annual basis.

(g) All substitute providers and volunteers who provide care to children shall be informed of the Emergency Preparedness and Response Plan and its location. Documentation of this notice shall be maintained in the individual personnel files.

*History Note:* Authority 110-85; 110-88; 110-91; 143B-168.3;

*Eff. October 1, 2017.*

#### **10A NCAC 09 .1716 FAILURE TO MAINTAIN REQUIREMENTS**

If the Division determines that a family child care home operator (operator) fails to maintain compliance with the requirements for licensure, the Division may establish a time period to allow the operator to achieve compliance or recommend issuance of an administrative action and civil penalty in accordance with 10A NCAC 09 .2200.

*History Note:* Authority G.S. 110-85; 110-86(3); 110-88(1),(5),(6a); 110-91; 110-98; 110-103.1; 110-105; 110-105.2; 110-106; 143B-168.3; 150B-23;

*Eff. January 1, 1986;*

*Amended Eff. July 1, 1998; January 1, 1991; January 1, 1987; Readopted October 1, 2017.*

#### **10A NCAC 09 .1718 REQUIREMENTS FOR DAILY OPERATIONS**

(a) The family child care home operator (operator or operators) shall provide the following on a daily basis for all children in care:

- (1) Developmentally appropriate equipment and materials for a variety of outdoor activities that allow for vigorous play, large and small muscle development, and social, emotional, and intellectual development. For purposes of this Rule "vigorous" means done with force and energy. Each child shall have the opportunity for a minimum of one hour of outdoor play each day that weather conditions permit. The operator shall provide space and time for vigorous indoor activities when children cannot play outdoors;
- (2) Individual sleep requirements for infants aged 12 months or younger shall be provided for as

- specified in 10A NCAC 09 .1724(a)(2). A supply of clean linens must be on hand so that linens can be changed whenever they become soiled or wet. Linens shall be changed weekly or whenever they become soiled or wet;
- (3) A safe sleep environment by ensuring that when a child is sleeping or napping, bedding or other objects shall not be placed in a manner that covers the child's face;
- (4) A separate area that can be supervised pursuant to 10A NCAC 09 .1720(a) for children who become ill to the extent that they can no longer participate in group activities. Parents shall be notified if their child becomes too sick to remain in care;
- (5) The opportunity each day for each child under the age of 12 months for supervised play while awake and alert while positioned on his or her stomach;
- (6) Developmentally appropriate activities as planned on a written schedule and activity plan. The schedule and activity plan may be combined as one document. Materials or equipment shall be available indoors and outdoors to support the activities listed on the written schedule and activity plan;
- (7) A written schedule that shall:
- (A) Show blocks of time assigned to types of activities and include periods of time for both active play and quiet play or rest;
- (B) Show times and activities that are developmentally appropriate for the ages of children in care;
- (C) Reflect daily opportunities for both free choice and guided activities;
- (D) Include a minimum of one hour of outdoor play throughout the day, if weather conditions permit;
- (E) Include a daily gross motor activity that may occur indoors or outdoors; and
- (F) For children under two years old, interspersed among the daily events shall be individualized caregiving routines such as eating, napping, and toileting;
- (8) A written activity plan that shall:
- (A) Include activities intended to stimulate the following developmental domains, in accordance with North Carolina Foundations for Early Learning and Development, available on the Division's website at [http://ncchildcare.nc.gov/providers/pv\\_foundations.asp](http://ncchildcare.nc.gov/providers/pv_foundations.asp):
- (i) emotional and social development;
- (ii) health and physical development;
- (iii) approaches to play and learning;
- (iv) language development and communication; and
- (iv) cognitive development.
- (B) Identify activities that allow children to choose to participate with the whole group, part of the group, or independent of the group;
- (C) Reflect that children have at least four different activities daily, at least one of which is outdoors, if weather conditions permit, as specified in G.S. 110-91(12) as follows:
- (i) art and other creative play;
- (ii) children's books;
- (iii) blocks and block building;
- (iv) manipulatives; and
- (v) family living and dramatic play.
- (D) Provide materials and opportunities at least weekly, indoors or outdoors, for the following:
- (i) music and rhythm;
- (ii) science and nature; and
- (iii) sand and water play.
- (9) A clean and open area that allows freedom of movement shall be available, both indoors and outdoors; and
- (10) Operators who provide care to school-age children shall provide a balance of activities appropriate to the age, needs and interests of the school-age children.
- (b) When screen time is provided on any electronic media device with a visual display, it shall be:
- (1) offered to stimulate a developmental domain in accordance with the North Carolina Foundations for Early Learning and Development as referenced in this Section;
- (2) limited to a maximum of 30 minutes per day and no more than a total of two and a half hours per week per child; and
- (3) documented on a cumulative log or activity plan, and shall be available for review by the Division.
- (c) Screen time is prohibited for children under the age of three years. The operator shall offer alternate activities for children under the age of three years.

*History Note:* Authority G.S. 110-85; 110-88; 110-91(12); 143B-168.3;  
*Eff.* July 1, 1998;  
*Amended Eff.* May 1, 2016; December 1, 2012; July 1, 2010; March 1, 2006; May 1, 2004;  
*Readopted* October 1, 2017.

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

(a) The operator of a family child care home (operator) shall provide a physically safe and healthy indoor and outdoor environment that meets the developmental needs of children in care, including but not limited to the following:

- (1) keep all areas used by the children, both indoors and outdoors, clean and orderly and free of items that are potentially hazardous to children. Potentially hazardous items including but not limited to, 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, removed from the premises, or otherwise inaccessible to children. This includes the removal of items that a child can swallow. In addition, loose nails or screws and splinters shall be removed on inside and outside equipment;
- (2) empty firearms of ammunition and keep both in separate, locked storage;
- (3) keep all materials used for starting fires, such as matches, lighters, and accelerants in locked storage;
- (4) store all combustible materials that may create a fire hazard according to the instructions on the product label;
- (5) medications including prescription and non-prescription items shall be stored in a locked cabinet or other locked container. Designated emergency medications shall be stored out of reach of children at least five feet high, but are not required to be in locked storage. For purposes of this Rule, designated emergency medications are those that are used or needed for the immediate recovery from a life-threatening event and include Glucagon, epinephrine auto-injector, diazepam rectal installation and albuterol;
- (6) keep hazardous cleaning supplies and other items that might be poisonous, e.g., toxic plants, out of reach or in locked storage when children are in care; A list of toxic plants may be found on the Division's website at [http://ncchildcare.nc.gov/pdf\\_forms.form16b\\_bb.pdf](http://ncchildcare.nc.gov/pdf_forms.form16b_bb.pdf);
- (7) keep all corrosive agents, pesticides, bleaches, detergents, cleansers, polishes, any product that is under pressure in an aerosol dispenser, and any substance which may be hazardous to a child if ingested, inhaled, or handled shall be kept in its original container or in another labeled container, used according to the manufacturer's instructions, and stored in a locked area when not in use. Locked areas shall include those that are unlocked with a combination, electronic, or magnetic device, key, or equivalent locking device. These unlocking devices shall be kept out of the reach of a child and shall not be stored in the lock. Toxic substances shall be stored below or separate from medications and food. Any product not listed in this Paragraph that is labeled "keep out of reach of children" without any other warnings shall be kept inaccessible to children when not in use, but is not required to be kept in locked storage. The product shall be considered inaccessible to children when stored on a shelf or in an unlocked cabinet that is mounted a minimum vertical distance of five feet above the finished floor;
- (8) ensure potential biocontaminants are stored in locked areas, or removed from the premises or otherwise inaccessible to children, or disposed of in a covered, plastic-lined receptacle;
- (9) keep First Aid supplies in a place accessible to the operator;
- (10) keep tobacco products in locked storage when children are in care. Children shall be in a smoke free and tobacco free environment. The operator and staff shall not smoke or use any product containing, made or derived from tobacco, including cigarettes, e-cigarettes, cigars, little cigars, smokeless tobacco, and any device used to inhale or ingest tobacco products at any time during operating hours on the premises of the family child care home, on vehicles used to transport children, or during any off premise activities;
- (11) notify the parent of each child enrolled in the facility, in writing, of the smoking and tobacco restriction;
- (12) have a working telephone within the family child care home. A telephone located in an area of the family child care home that is sometimes locked during the time the children are present shall not be the only phone available during operating hours. Telephone numbers for the fire department, law enforcement office, emergency medical service, and poison control center shall be posted in a location visible in the home;
- (13) have access to a means of transportation that is available for emergency situations;
- (14) have a First Aid information sheet posted in a place for quick referral by staff members. The information sheet shall include First Aid guidance regarding burns, scalds, fractures, sprains, head injuries, poisons, skin wounds, stings and bites. A child care operator may request a First Aid information sheet from the North Carolina Child Care Health and Safety Resource Center at 1-800-367-2229;
- (15) conduct a monthly fire drill;
- (16) conduct a "shelter-in-place drill" or "lockdown drill" as defined in 10A NCAC 09 .0102 every

- three months and records shall be maintained as required by 10A NCAC 09 .0302(f)(8);
- (17) check the indoor and outdoor environment daily for debris, vandalism, broken equipment and animal waste. The operator shall 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 items that a child can swallow and use of outdoor play equipment that is too hot to touch. In addition, loose nails or screws and splinters shall be removed on inside and outside equipment;
- (18) not have plastic bags, toys, and toy parts small enough to be swallowed accessible to children under three years of age. This includes materials that can be easily torn apart such as foam rubber and Styrofoam, except that Styrofoam plates may be used for food service and larger pieces of foam rubber may be used for supervised art activities;
- (19) ensure that jump ropes and rubber bands are not accessible to children under five years of age without adult supervision. Balloons shall be prohibited for children of all ages;
- (20) teacher-made and home-made equipment and materials may be used if they are safe and functional. Materials and equipment that are accessible to children shall not be coated or treated with, nor shall they contain, toxic materials such as creosote, pentachlorophenol, tributyl tin oxide, dislodgeable arsenic and any finishes which contain pesticides;
- (21) ensure the equipment and toys are in good repair and are developmentally appropriate for the children in care;
- (22) ensure that all stationary outdoor equipment is anchored and is not installed over concrete or asphalt. Footings that anchor the equipment shall not be exposed;
- (23) ensure that any openings in equipment, steps, decks, and handrails shall be smaller than 3½ inches or greater than 9 inches to prevent entrapment;
- (24) ensure that all commercially manufactured equipment and furnishings shall be assembled and installed according to procedures specified by the manufacturer;
- (25) ensure that a shaded area is available to children in the outdoor learning environment. The shade may be provided by a building, awnings, trees, or other methods;
- (26) mount electric fans out of the reach of children or have a mesh guard on each fan;
- (27) cover all electrical outlets not in use and remove cracked, or frayed cords in occupied outlets;
- (28) ensure that, for appliances with heating elements, such as bottle warmers, crock pots,

irons, coffee pots, or curling irons, neither the appliance nor any cord, is accessible to children;

- (29) indoor and outdoor stairs with more than two steps that 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; and
- (b) When animals are on the premises, the following shall apply:
  - (1) all household pets shall be vaccinated with up-to-date vaccinations as required by North Carolina law and local ordinances. Rabies vaccinations are required for cats and dogs;
  - (2) animal cages shall be kept free of animal waste; and
  - (3) prior to enrollment of children in a family child care home, and before new animals come into the family child care home, the family child care home operator shall obtain each parent's signature on a form acknowledging the type of animal located on the premises and where the animal will be kept during operating hours. This documentation shall be maintained in each child's file.

*History Note: Authority G.S. 110-85; 110-88; 110-91(3),(4),(5),(6);  
 Eff. July 1, 1998;  
 Amended Eff. May 1, 2012; April 1, 2001;  
 Temporary Amendment Eff. September 23, 2016;  
 Readopted Eff. October 1, 2017.*

**10A NCAC 09 .1720 MEDICATION REQUIREMENTS**

(a) The family child care home operator may provide care for a mildly sick infant or child older than two months who has a Fahrenheit temperature less than 101 degrees and for infants younger than two months who have a Fahrenheit temperature of less than 100.4 any method including axillary or orally, and who remains capable of participating in routine group activities; so long as the child does not have any of the following:

- (1) more than two stools above the child's normal pattern and diarrhea is not contained by a diaper or when toilet-trained children are having accidents;
- (2) two or more episodes of vomiting within a 12 hour period;
- (3) lice, exclusion shall begin immediately upon identification until completion of first treatment;
- (4) scabies;
- (5) known chicken pox or a rash suggestive of chicken pox;
- (6) tuberculosis, until a health professional provides a written statement that the child is not infectious;
- (7) strep throat, until 12 hours after antibiotic treatment has started and no fever is present;

- (8) pertussis, until five days after appropriate antibiotic treatment;
  - (9) hepatitis A virus infection, until one week after onset of illness or jaundice;
  - (10) impetigo, exclusion may begin at the end of the program day until treatment has started;
  - (11) a physician's or other health professional's written order that the child be separated from other children; or
  - (12) exclusion for symptoms not included in this list shall be required if the symptoms prevent the child from participating comfortably in activities as determined by staff members of the program or the symptoms result in a need for care that is greater than the staff members can provide without compromising the health and safety of other children.
- (b) The following provisions apply to the administration of medication in family child care homes:
- (1) No prescription or over-the-counter medication and no topical, non-medical ointment, repellent, lotion, cream, fluoridated toothpaste or powder shall be administered to any child:
    - (A) without written authorization from the child's parent;
    - (B) without written instructions from the child's parent, physician or other health professional;
    - (C) in any manner not authorized by the child's parent, physician or other health professional;
    - (D) after its expiration date;
    - (E) for non-medical reasons, such as to induce sleep; or
    - (F) with a known allergy to the medication.
  - (2) Prescribed medications:
    - (A) shall be stored in the original containers in which they were dispensed with the pharmacy labels;
    - (B) if pharmaceutical samples, shall be stored in the manufacturer's original packaging, shall be labeled with the child's name, and shall be accompanied by written instructions specifying:
      - (i) the child's name;
      - (ii) the names of the medication;
      - (iii) the amount and frequency of dosage;
      - (iv) the signature of the prescribing physician or other health professional;
      - (v) the date the instructions were signed by the physician or other health professional; and
  - (vi) shall be administered according to the prescription, using amount and frequency of dosage specified on the label; and
  - (C) shall be administered only to the child for whom they were prescribed.
  - (3) A parent's written authorization for the administration of a prescription medication described in Subparagraph (b)(2) of this Rule shall be valid for the length of time the medication is prescribed to be taken.
  - (4) Over-the-counter medications, such as cough syrup, decongestant, acetaminophen, ibuprofen, topical antibiotic cream for abrasions, or medication for intestinal disorders shall be stored in the manufacturer's original packaging on which the child's name is written or labeled and shall be accompanied by written instructions specifying:
    - (A) the child's name;
    - (B) the names of the authorized over-the-counter medication;
    - (C) the amount and frequency of the dosages, which shall not exceed the amount and frequency of the dosages on the manufacturer's label;
    - (D) the signature of the parent, physician or other health professional; and
    - (E) the date the instructions were signed by the parent, physician or other health professional.
- The permission to administer over-the-counter medications is valid for up to 30 days at a time, except as allowed in Subparagraphs (b)(6), (7), (8), and (9) of this Rule. Over-the-counter medications shall not be administered on an "as needed" basis, other than as allowed in Subparagraphs (b)(6), (7), (8), and (9) of this Rule.
- (5) When questions arise concerning whether any medication should be administered to a child, the caregiver may decline to administer the medication without signed, written dosage instructions from a licensed physician or authorized health professional.
  - (6) A parent may give a caregiver standing authorization for up to six months to administer prescription or over-the-counter medication to a child, when needed, for chronic medical conditions such as asthma, and for allergic reactions. The authorization shall be in writing and shall contain:
    - (A) the child's name;
    - (B) the subject medical conditions or allergic reactions;
    - (C) the names of the authorized over-the-counter medications;

- (D) the criteria for the administration of the medication;
  - (E) the amount and frequency of the dosages;
  - (F) the manner in which the medication shall be administered;
  - (G) the signature of the parent;
  - (H) the date the authorization was signed by the parent; and
  - (I) the length of time the authorization is valid, if less than six months.
- (7) A parent may give a caregiver standing authorization for up to 12 months to apply over-the-counter, topical ointments, topical teething ointment or gel, insect repellents, lotions, creams, fluoridated toothpaste, and powders, such as sunscreen, diapering creams, baby lotion, and baby powder, to a child, when needed. The authorization shall be in writing and shall contain:
- (A) the child's name;
  - (B) the names of the authorized ointments, repellents, lotions, creams, fluoridated toothpaste, and powders;
  - (C) the criteria for the administration of the ointments, repellents, lotions, creams, fluoridated toothpaste, and powders;
  - (D) the manner in which the ointments, repellents, lotions, creams, fluoridated toothpaste, and powders shall be applied;
  - (E) the signature of the parent;
  - (F) the date the authorization was signed by the parent; and
  - (G) the length of time the authorization is valid, if less than 12 months.
- (8) A parent may give a caregiver standing authorization to administer a single weight-appropriate dose of acetaminophen to a child in the event the child has a fever and a parent cannot be reached. The authorization shall be in writing and shall contain:
- (A) the child's name;
  - (B) the signature of the parent;
  - (C) the date the authorization was signed by the parent;
  - (D) the date that the authorization ends or a statement that the authorization is valid until withdrawn by the parent in writing.
- (9) A parent may give a caregiver standing authorization to administer an over-the-counter medication as directed by the North Carolina State Health Director or designee, when there is a public health emergency as identified by the North Carolina State Health Director or designee. The authorization shall be in writing, may be valid for as long as the child is enrolled, and shall contain:
- (A) the child's name;
  - (B) the signature of the parent;
  - (C) the date the authorization was signed by the parent; and
  - (D) the date that the authorization ends or a statement that the authorization is valid until withdrawn by the parent in writing.
- (10) Pursuant to G.S. 110-102.1A, a caregiver may administer medication to a child without parental authorization in the event of an emergency medical condition when the child's parent is unavailable, and providing the medication is administered with the authorization and in accordance with instructions from a health care professional as defined in Rule .0102(21) of this Chapter.
- (11) A parent may withdraw written authorization for the administration of medications at any time in writing.
- (12) Any medication remaining after the course of treatment is completed, after authorization is withdrawn or after authorization has expired shall be returned to the child's parents. Any medication the parent fails to retrieve within 72 hours of completion of treatment, or withdrawal of authorization, shall be discarded.
- (13) Any time prescription or over-the-counter medication is administered by a caregiver to children receiving care, the following information shall be recorded:
- (A) the child's name;
  - (B) the date medication given;
  - (C) the time medication given;
  - (D) the amount and type of medication given; and
  - (E) the name and signature of the person administering the medication.
- This information shall be noted on a medication permission slip, or on a separate form developed by the operator which includes the required information. This information shall be available for review by the Division during the time period the medication is being administered and for six months after the medication is administered. No documentation shall be required when items listed in Subparagraph (b)(7) of this Rule are applied to children.
- (14) if medication is administered in error, whether administering the wrong dosage, giving to the wrong child, or giving the incorrect type of medicine, the operator shall:
- (A) call 911 in accordance with CPR or First Aid training recommendations;
  - (B) contact the child's parent;

- (C) observe the child; and
- (D) document the medication error in writing, including:
  - (i) the child's name and date of birth;
  - (ii) the type and dosage of medication administered;
  - (iii) the name of the person who administered the medication;
  - (iv) the date and time of the error;
  - (v) the signature of the operator and the parent;
  - (vi) the actions taken by the operator following the error; and
  - (vii) the actions that will be taken by the operator to prevent a future error.

This documentation shall be maintained in the child's file.

*History Note: Authority G.S. 110-85; 110-88; 110-91(6); 110-102.1A; 143B-168.3; Eff. July 1, 1998; Amended Eff. July 1, 2015; May 1, 2004; April 1, 2003; April 1, 2001; Temporary Amendment Eff. September 23, 2016; Readopted Eff. October 1, 2017.*

#### **10A NCAC 09 .1721 REQUIREMENTS FOR RECORDS**

(a) The family child care home operator shall maintain the following health records for each enrolled child, including his or her own preschool child(ren):

- (1) a copy of the child's health assessment as required by G.S. 110-91(1);
- (2) a copy of the child's immunization record;
- (3) an application for enrollment that includes information set forth in this Subparagraph provided by the Division that is completed and signed by a child's parent, as defined in 10A NCAC 09 .0102. A copy of the form may be found on the Division's website at [http://ncchildcare.nc.gov/pdf\\_forms/DCD-0377.pdf](http://ncchildcare.nc.gov/pdf_forms/DCD-0377.pdf). The completed form shall be on file the first day the child attends. An operator may use another form other than the one provided by the Division, as long as the form includes the following information:
  - (A) the child's full name and the name the child is to be called;
  - (B) the child's date of birth;
  - (C) any allergies and the symptoms and type of response required for allergic reactions;
  - (D) any health care needs or concerns, symptoms of and the type of response

- required for these health care needs or concerns;
- (E) fears or behavior characteristics that the child has;
- (F) the names of individuals to whom the operator may release the child as authorized by the person who signs the application;
- (G) the names and phone numbers of persons to be contacted in an emergency situation;
- (H) the name and phone number of the child's physician; and
- (J) authorization for the operator to seek emergency medical care in the parent's absence.

(4) For any child with health care needs such as allergies, asthma, or other chronic conditions that require specialized health services, a medical action plan shall be attached to the application. The medical action plan shall be completed by the child's parent or a health care professional and may include the following:

- (A) a list of the child's diagnosis or diagnoses including dietary, environmental, and activity considerations that are applicable;
- (B) contact information for the health care professional(s);
- (C) medications to be administered on a scheduled basis; and
- (D) medications to be administered on an emergency basis with symptoms, and instructions.

The medical action plan shall be updated on an annual basis. Sample medical action plans may be found on the Division's website at [http://ncchildcare.nc.gov/providers/pv\\_provideforms.asp](http://ncchildcare.nc.gov/providers/pv_provideforms.asp);

- (5) when medication is administered, authorization for the operator to administer the specific medication according to the parent's or physician's instructions.
- (b) The family child care home operator and staff shall release a child only to an individual listed on the application.
- (c) The information contained in Parts (a)(3)(A) through (a)(3)(J) and Subparagraph (a)(4) of this Rule, shall be accessible to caregiving staff during the time the child is in care at the family child care home.
- (d) The family child care home operator and staff shall use the information provided on the application to ensure that individual child's needs are met during the time the child is in care.
- (e) The family child care home operator shall complete and maintain other records that include:
  - (1) documentation of the operator's Emergency Preparedness and Response Plan on a template provided by the Division of Emergency Management at <http://rmp.nc.gov/portal/#>;



- (2) documentation that monthly fire drills are practiced. The documentation shall include the date each drill is held, the time of day, the length of time taken to evacuate the home, and the operator's signature;
- (3) incident reports that are completed each time a child is injured or when a child receives medical treatment by a health care professional, community clinic, or local health department as a result of an incident occurring while the child is in care. The form shall contain the following information:
  - (A) facility identifying information;
  - (B) date and time of the incident;
  - (C) witness to the incident;
  - (D) time the parent is notified of the incident and by who;
  - (E) piece of equipment involved;
  - (F) cause of injury;
  - (G) type of injury;
  - (H) body part injured;
  - (I) where the child received medical treatment;
  - (J) description of how and where the incident occurred and pediatric First Aid received;
  - (K) steps taken to prevent reoccurrence;
  - (L) signature of staff member and date form completed; and
  - (M) signature of parent and date.

This report shall be signed by the person completing it and by the parent, and maintained in the child's file. When medical treatment is required, a copy of the incident report shall be mailed to a representative of the Division within seven calendar days after the incident. A copy of the form can be found on the Division's website at [http://ncchildcare.nc.gov/pdf\\_forms/DCDEE-0058.pdf](http://ncchildcare.nc.gov/pdf_forms/DCDEE-0058.pdf);
- (4) an incident log that is filled out any time an incident report is completed. This log shall be cumulative and maintained in a separate file and shall be available for review by the Division. This log shall be completed on a form supplied by the Division. A copy of the form can be found on the Division's website at [http://ncchildcare.nc.gov/pdf\\_forms/incident\\_log\\_i.pdf](http://ncchildcare.nc.gov/pdf_forms/incident_log_i.pdf);
- (5) documentation that a monthly check for hazards on the outdoor play area is completed. This form shall be supplied by the Division and shall be maintained in the family child care home for review by the Division. The form shall include the following information:
  - (A) Name of facility, time and date the form was completed;
  - (B) Signature of individual completing form;

- (C) General inspection items;
- (D) Surfacing;
- (E) General hazard items; and
- (F) Deterioration of equipment.

For items on the checklist the operator has to check if pass or fail, if fail identify the problem and solution. A copy of the form can be found of the Division's website at [http://ncchildcare.nc.gov/pdf\\_forms/fcch\\_outdoor\\_inspection\\_checklist.pdf](http://ncchildcare.nc.gov/pdf_forms/fcch_outdoor_inspection_checklist.pdf);

- (6) daily attendance records for all children in care, including the operator's own preschool children. The attendance record shall indicate the date and time of arrival and departure for each child; and
  - (7) documentation of lockdown or shelter-in-place drills giving the date each drill is held, the time of day, the length of time taken to get into designated locations and the signature of the person who conducted the drill.
- (f) Written records shall be maintained as follows in a family child care home:
- (1) All children's records as required in this Section, except medication permission slips as required in Rule .1720(b)(13) of this Section, shall be kept on file as long as the child is enrolled and for one year from the date the child is no longer enrolled.
  - (2) Records regarding administration of medications required by Rule .1720(b)(13) of this Section shall be maintained during the time period the medication is being administered and for six months after the medication is administered.
  - (3) Additional caregiver and substitute provider records as required in this Section shall be maintained on file for as long as the individual is employed and for one year from the employee's last date of employment.
  - (4) All program records, including documentation of operator qualifications, as required in this Section shall be maintained on file for as long as the license remains valid except as follows:
    - (A) A minimum of 30 days from the revision or replacement date:

Record	Rule
Daily Schedule	.1718(a)(6)
Activity Plan	.1718(a)(6)
Infant Feeding Plan	.1706(j)
Menu	.1706(b)
Allergy Posting	.1706(f)
SIDS Sleep Chart/Visual Check	.1724(a)(8)

- (B) A minimum of one year from the revision or replacement date:

Record	Rule
Attendance	.1721(e)(6)
Emergency Numbers	.1719(a)(14)
Safe Sleep Policy	.1724(c) and (d)
Written Plan of Care	.1712
Emergency Medical Care Plan	.1713
Emergency Preparedness and Response Plan	.1721(e)(1)
Field Trip/Transportation Permission	.1723(5)
List and Identifying Information for Children being Transported	.1723(14)
Fire Drill Log	.1721(e)(2)
Lockdown or Shelter-in-Place Drill Log	.1721(e)(7)
Incident Log	.1721(e)(4)
Playground Inspection	.1721(e)(5)
Pet Vaccinations	.1719(b)(1)
Medication Error Log	.1720(14)

- (5) Well-water analysis, pool inspection and inspections for local ordinances as referenced in Rules .1702(b)(7), .1730(j), and .1725(a)(1), of this Section and G.S. 110-91 shall remain on file at the family child care home for as long as the license remains valid.
- (6) Records may be maintained in a paper format or an electronic format, provided that all required signatures are preserved in a paper format, PDF, or other graphic format.
- (7) All records required in this Chapter shall be available at the family child care home for review by the Division during the hours of operation listed on the child care license.

*History Note:* Authority G.S. 110-88; 110-91(1),(9); Eff. July 1, 1998;  
Amended Eff. July 1, 2015; July 1, 2010; July 1, 2008; April 1, 2003; April 1, 2001;  
Temporary Amendment Eff. September 23, 2016;  
Readopted Eff. October 1, 2017.

#### **10A NCAC 09 .1722 PROHIBITED DISCIPLINE**

- (a) No child shall be subjected to any form of corporal punishment by the family child care home operator, additional

caregiver, substitute provider, or any other person in the home, whether or not these persons reside in the home as follows:

- (1) No child shall be handled roughly in any way, including shaking, pushing, shoving, pinching, slapping, biting, kicking, or spanking;
- (2) No child shall ever be placed in a locked room, closet, or box, or be left alone in a room separated from staff;
- (3) No discipline shall ever be delegated to another child;
- (4) No food shall be withheld or given as a means of punishment or reward;
- (5) No child shall ever be disciplined for toileting accidents;
- (6) No child shall ever be disciplined for not sleeping during rest period;
- (7) No child shall be disciplined by assigning chores that require contact with or use of hazardous materials, such as cleaning bathrooms or floors, or emptying diaper pails;
- (8) Physical activity, such as running laps and doing push-ups, shall not be withheld or required as punishment;
- (9) No child shall ever be yelled at, shamed, humiliated, frightened, threatened, or bullied; and
- (10) No child shall be restrained as a form of discipline unless the child's safety or the safety of others is at risk. For purposes of this Rule, "restraining" shall mean that a caregiver physically holds a child in a manner that restricts the child's movement, for a minimum amount of time necessary to ensure a safe environment. Children shall not be restrained through the use of heavy objects, including a caregiver's body, or any device such as straps, blankets, car seats, or cribs.

- (b) Discipline practices shall be age and developmentally appropriate.

*History Note:* Authority G.S. 110-85; 110-91(10); 143B-168.3;

*Eff. July 1, 1998;*

*Amended Eff. April 1, 2003; April 1, 2001;*

*Readopted Eff. October 1, 2017.*

#### **10A NCAC 09 .1723 TRANSPORTATION REQUIREMENTS**

To assure the safety of children whenever they are transported, the operator, or any other transportation provider, shall:

- (1) ensure that vehicles used to transport children are free of hazards such as but not limited to, torn upholstery that allows children to remove the interior padding, broken windows, holes in the floor or roof, or tire treads of less than 2/32 of an inch;

- (2) ensure that vehicles used to transport children comply with all applicable State and federal laws and regulations;
- (3) ensure that vehicles are insured for liability as required by State laws governing transportation of passengers pursuant to G.S. 20-279.21;
- (4) ensure that vehicles used to transport children in snowy, icy, and other hazardous weather conditions are equipped with snow tires, or chains;
- (5) have written permission from a parent to transport his or her child and notify the parent when and where the child is to be transported, and the name of the transportation provider. Parents may give standing permission, valid for up to 12 months, for transport of children to and from the home;
- (6) ensure that all children are transferred to an individual who is indicated on the child's application for enrollment as specified in Rule .1721(a)(3) of this Section or as authorized by the parent;
- (7) load and unload children from curbside or in a safe, off-street area, out of the flow of traffic, so that they are protected from all traffic hazards;
- (8) ensure that all children regardless of age or location in the vehicle shall be restrained with an individual seat belt or child safety seat appropriate to the child's age or weight in accordance with G.S. 20-135.2A located at <http://www.buckleupnc.org/occupant-restraint-laws/seat-belt-law-summary/>. Only one person shall occupy each seat belt or child safety seat;
- (9) be at least 21 years old, and have a valid driver's license of the type required under the North Carolina Motor Vehicle Law for the vehicle being driven, or comparable license from the state in which the driver resides, and no convictions of Driving While Impaired (DWI), or any other impaired driving offense, within the last three years;
- (10) ensure that each child is seated in a manufacturer's designated area. No child shall ride in the load carrying area or floor of a vehicle;
- (11) have a First Aid kit and fire extinguisher located in the vehicle used to transport children;
- (12) never leave children in a vehicle unattended by an adult;
- (13) have identifying information in the vehicle about each child being transported, including the child's name, photograph, emergency contact information, and a copy of the emergency medical care information form

- required by Rule .1721(a)(3) of this Section; and
- (14) have a functioning cellular telephone or other functioning two-way voice communication device with them for use in an emergency. The transportation provider shall not use cellular telephones or other functioning two-way communication devices except in the case of an emergency and only when the vehicle is parked in a safe location; and
- (15) conduct off-premise activities as follows:
  - (a) before the operator walks children off premises for play or outings, the parent of each child shall give written permission for the child to participate in such activities;
  - (b) parents may provide a written statement giving standing permission which may be valid for up to 12 months for participation in off premise activities that occur on a regular basis; and
  - (c) each time the children are taken off premises, the operator shall take identifying information about each child including the child's name, photograph, emergency contact information, a copy of the emergency medical care information form required by 10A NCAC 09 .1721(a)(3) of this Section.

*History Note:* Authority G.S. 110-91; 110-91(13); 143B-168.3;  
*Eff.* July 1, 1998;  
*Amended Eff.* December 1, 2014; April 1, 2003;  
*Readopted Eff.* October 1, 2017.

**10A NCAC 09 .1724 SAFE SLEEP PRACTICES**

- (a) Each operator licensed to care for infants aged 12 months or younger shall develop, adopt, and comply with a written safe sleep policy that:
  - (1) specifies that the operator shall place infants aged 12 months or younger on their backs for sleeping, unless:
    - (A) for an infant aged six months or less, the operator receives a written waiver of this requirement from a health care professional; or
    - (B) for an infant older than six months, the operator receives a written waiver of this requirement from a health care professional, or a parent or a legal guardian;
  - (2) specifies that infants aged 12 months or younger shall be placed in a crib, bassinet or play pen with a firm padded surface when sleeping;

- (3) specifies no pillows, wedges or other positioners, pillow-like toys, blankets, toys, bumper pads, quilts, sheepskins, loose bedding, towels and washcloths, or other objects may be placed in a crib with a sleeping infant aged 12 months or younger;
- (4) specifies that children shall not be swaddled;
- (5) specifies that nothing shall be placed over the head or face of an infant aged 12 months or younger when the infant is laid down to sleep;
- (6) specifies that the temperature in the room where infants aged 12 months or younger are sleeping does not exceed 75°F;
- (7) specifies the operator shall visually check sleeping infants aged 12 months or younger at least every 15 minutes;
- (8) specifies how the operator shall document compliance with visually checking on sleeping infants aged 12 months or younger;
- (9) specifies that pacifiers that attach to infant clothing shall not be used with sleeping infants;
- (10) specifies that infants aged 12 months or younger sleep alone in a crib, bassinet, mat, or cot;
- (11) specifies that infants aged 12 months or younger shall be prohibited from sleeping in sitting devices, including car safety seats, strollers, swings, and infant carriers. Infants that fall asleep in sitting devices shall be moved to a crib, bassinet, mat, or cot; and
- (12) specifies any other steps the operator shall take to provide a safe sleep environment for infants aged 12 months or younger.

(b) The operator shall post a copy of the safe sleep policy and poster about safe sleep practices in the infant room where it can be easily seen by parents and caregivers.

(c) A copy of the operator's safe sleep policy shall be given and explained to the parents of an infant aged 12 months or younger on or before the first day the infant attends the home. The parent shall sign a statement acknowledging the receipt and explanation of the policy. The acknowledgement shall contain:

- (1) the infant's name;
- (2) the date the infant first attended the home;
- (3) the date the operator's safe sleep policy was given and explained to the parent; and
- (4) the date the parent signed the acknowledgement.

The operator shall retain the acknowledgement in the child's record as long as the child is enrolled at the home.

(d) If an operator amends a home's safe sleep policy, the operator shall give written notice of the amendment to the parents of all enrolled infants aged 12 months or younger at least 14 days before the amended policy is implemented. Each parent shall sign a statement acknowledging the receipt and explanation of the amendment. The operator shall retain the acknowledgement in the child's record as long as the child is enrolled at the home.

(e) The operator shall place a child aged 12 months or younger on the child's back for sleeping, unless for a child aged 6 months

or younger, the operator obtains a written waiver from a health care professional; or for a child older than 6 months, the operator obtains a written waiver from a health care professional or parent. Waivers shall include the following:

- (1) the infant's name and birth date;
- (2) be signed and dated by the infant's health care professional or parent;
- (3) if a wedge is needed, specify why it is needed and how it should be used; and
- (4) the infant's authorized sleep positions.

The operator shall retain the waiver in the child's record as long as the child is enrolled at the home.

(f) Documents that verify staff member's compliance with visual checks on infants shall be maintained for a minimum of one month.

(g) For each infant with a waiver on file at the home as specified in Paragraph (e) of this Rule, a notice shall be posted for quick reference near the infant's crib, bassinet, play pen, or mat that shall include:

- (1) the infant's name;
- (2) the infant's authorized sleep position; and
- (3) the location of the signed waiver.

No confidential medical information, including an infant's medical diagnosis, shall be shown on the notice.

*History Note:* Authority G.S. 110-85; 110-91(15); 143B-168.3;

*Eff. May 1, 2004;*

*Amended Eff. July 1, 2010;*

*Readopted Eff. October 1, 2017.*

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

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

- (1) collect and submit samples of water from each well used for the children's water supply for bacteriological analysis to the local health department or a laboratory certified to analyze drinking water for public water supplies by the North Carolina Division of Laboratory Services every two years. Results of the analysis shall be on file in the home;
- (2) wash his or her hands prior to caring for children each day;
- (3) ensure that each child's hands are washed upon arrival at the home each day;
- (4) have sanitary toilet, diaper changing and hand washing facilities as follows:
  - (A) diaper changing areas shall be separate from food preparation areas;
  - (B) toileting areas shall have toilet tissue available at all times;
  - (C) all toilet fixtures shall be cleanable and in good repair;
  - (D) handwashing areas shall have soap and paper towels or other drying devices available at all times;

- (E) diapering surfaces shall be smooth, intact, nonabsorbent and cleanable; and
- (F) potty chairs and diapering surfaces shall be cleaned after each use.
- (5) use sanitary diapering procedures. Diapers shall be changed whenever they become soiled or wet. The operator shall:
  - (A) gather all supplies before placing a child on the diapering surface;
  - (B) wash his or her hands before, as well as after, diapering each child;
  - (C) ensure the child's hands are washed after diapering the child; and
  - (D) place soiled diapers in a covered, leak proof container which is emptied and cleaned daily;
- (6) use sanitary procedures when preparing and serving food. The operator shall:
  - (A) wash his or her hands before and after handling food and feeding the children; and
  - (B) ensure the child's hands are washed before and after the child is fed;
- (7) wash his or her hands, and ensure the child's hands are washed, after toileting or handling bodily fluids;
- (8) handwashing procedures shall include:
  - (A) using liquid soap and water;
  - (B) rubbing hands vigorously with soap and water for 15 seconds;
  - (C) washing all surfaces of the hands, to include the backs of hands, palms, wrists, under fingernails and between fingers;
  - (D) rinsing well for 10 seconds;
  - (E) drying hands with a paper towel or other hand drying device; and
  - (F) turning off faucet with a paper towel or other method without recontaminating hands;
- (9) refrigerate all perishable food and beverages. The refrigerator shall be in good repair and maintain a temperature of 45 degrees Fahrenheit or below. A refrigerator thermometer is required to monitor the temperature;
- (10) have a house that is free of rodents;
- (11) screen all windows and doors used for ventilation; and
- (12) store garbage in waterproof containers with tight fitting covers.

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

(c) The operator shall not force children to use the toilet and the operator shall consider the developmental readiness of each child

when toilet training. The operator shall provide assistance to each child to ensure proper hygiene, as needed.

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

*History Note: Authority G.S. 110-85; 110-88; 110-91; 143B-168.3;*

*Eff. October 1, 2017.*

**10A NCAC 09 .1726 PREVENTION OF SHAKEN BABY SYNDROME AND ABUSIVE HEAD TRAUMA**

(a) The operator of a family child care home licensed to care for children up to five years of age shall develop and adopt policies to assist staff in preventing shaken baby syndrome and abusive head trauma. For purposes of this Rule, "staff" includes the operator, additional caregivers, substitute providers, and uncompensated providers. The policy shall include:

- (1) how to recognize, respond to, and report the signs and symptoms of shaken baby syndrome and abusive head trauma. Signs and symptoms include: irritability, difficulty staying awake, difficulty breathing, inability to lift the head, seizures, lack of appetite, vomiting, and bruises;
- (2) strategies to assist staff in coping with a crying, fussing, or distraught child;
- (3) strategies to ensure staff members in understanding how to care for infants;
- (4) strategies to ensure staff understand the brain development of children up to five years of age;
- (5) a list of prohibited behaviors shall include, but not be limited to, shaking a child, tossing a child into the air or into a crib, chair, or care seat, and pushing a child into walls, doors, and furniture; and
- (6) resources to assist staff and families in preventing shaken baby syndrome and abusive head trauma.

(b) A copy of the policy shall be given and explained to the parents of children up to five years of age on or before the first day the child receives care at the home. The operator shall obtain the parent's signature. The acknowledgement shall contain the following and be maintained in the child's file for review by the Division:

- (1) the child's name;
- (2) the date the child first attended the home;
- (3) the date the operator's policy was given and explained to the parent;
- (4) the parent's name;
- (5) the parent's signature; and
- (6) the date the parent signed the acknowledgment.

(c) If an operator changes the policy at any time, the operator shall give written notice of the change to the child's parent 14 days prior to the implementation of the new policy and the parent shall sign a statement that attests that a copy of the new policy

was given to and discussed with him or her. The operator shall obtain the parent's signature and this statement shall be maintained in the child's file for review by the Division.

(d) The operator shall review the policy with staff prior to the individual providing care to children. The acknowledgement of this review shall contain the following:

- (1) the individual's name;
- (2) the date the operator's policy was given and explained to the individual;
- (3) the individual's signature; and
- (4) the date the individual signed the acknowledgment.

The operator shall retain the acknowledgement in the staff member's file.

(e) If an operator changes the policy at any time, the operator shall review the revised policy with staff 14 days prior to the implementation of the new policy. The individual shall sign a statement that attests that a copy of the new policy was given to and discussed with him or her. This statement shall be kept in the staff member's file.

*History Note: Authority G.S. 143B-168.3; Temporary Adoption Eff. September 23, 2016; Eff. October 1, 2017.*

#### **10A NCAC 09 .1727 DISCIPLINE POLICY**

(a) The family child care home operator shall provide a written copy of and explain the operator's discipline practices to each child's parent at the time of enrollment.

(b) The operator shall obtain a statement signed and dated by the parent that attests that a copy of the written discipline policy was given to, and discussed with him or her.

(c) That statement shall include the following:

- (1) the child's name;
- (2) the date of enrollment; and
- (3) if different, the date the parent signs the statement.

The signed, dated statement must be in the child's record and must remain on file as long as the child is enrolled.

(d) If an operator changes the discipline policy at any time, the operator must give written notice of such a change to the child's parent, guardian, or full-time custodian 14 days prior to the implementation of the new policy and the parent, guardian or full-time custodian must sign a statement that attests that a copy of the new policy was given to and discussed with him or her. This statement shall be kept in the child's file.

*History Note: Authority G.S. 110-85; 110-91(8), (11); 143B-168.3; Eff. October 1, 2017.*

#### **10A NCAC 09 .1728 OVERNIGHT CARE**

(a) A safe and comfortable bed, crib, or cot, equipped with a firm waterproof mattress at least four inches thick and a fitted sheet shall be provided for each child who remains in the home after midnight. The top of bunk beds shall be used by school-age children only.

(b) A supply of clean linen must be on hand so that linens can be changed whenever they become soiled or wet. Linens shall be changed weekly or whenever they become soiled or wet.

(c) An operator licensed to care for children overnight may sleep during the nighttime hours

when all the children are asleep, provided:

- (1) the operator and the children in care, excluding the operator's own children, are on ground level;
- (2) the operator can hear and respond to the children; and
- (3) a battery operated smoke detector or an electrically operated (with a battery backup) smoke detector is located in each room where children are sleeping.

*History Note: Authority G.S. 110-85; 110-88; 110-91(6); Eff. October 1, 2017.*

#### **10A NCAC 09 .1729 ADDITIONAL CAREGIVER AND SUBSTITUTE PROVIDER QUALIFICATIONS**

(a) An individual who provides care for five hours or more in a week during planned absences of the family child care home operator shall:

- (1) be 21 years old;
- (2) have a high school diploma or GED;
- (3) have completed a First Aid and cardiopulmonary resuscitation (CPR) course as described in Rule .1708(b)(3) and (4) of this Section;
- (4) have completed a health questionnaire;
- (5) have proof of negative results of a tuberculosis test completed within 12 months prior to the first day of providing care;
- (6) have submitted criminal records check forms as required in Rule .2703 of this Chapter;
- (7) have documentation of annual on-going training as described in Rule .1703(d) of this Section after the first year of employment;
- (8) have completed ITS-SIDS training, if licensed to care for infants;
- (9) have completed Recognizing and Responding to Suspensions of Child Maltreatment training; and
- (10) have documentation that the operator reviewed requirements found in this Chapter, including the Emergency Preparedness and Response Plan, and in G.S. Chapter 110, Article 7.

While the individual provides care at a family child care home, copies of required information in Subparagraphs (1) through (10) of this Paragraph shall be on file in the home available for review by the Division.

(b) An individual who provides care for less than five hours in a week during planned absences of the operator shall be literate and meet all requirements listed in Paragraph (a) of this Rule, except the requirements for annual training and a high school diploma or GED.

(c) The operator shall conduct 16 hours of orientation with any caregivers, including substitute providers, and volunteers who are providing care prior to the individual caring for children. The orientation shall include an overview of the following topics, specifically focusing on the operation of the facility:

- (1) recognizing, responding to, and reporting child abuse, neglect, or maltreatment pursuant to G.S. 110-105.4 and G.S. 7B-301;
- (2) review of the home's operational policies, including the written plan of care, safe sleep policy, transportation policy, identification of building and premises safety issues, the emergency medical care plan and the Emergency Preparedness and Response Plan;
- (3) adequate supervision of children in accordance with Rule .1711(a) of this Section;
- (4) information regarding prevention of shaken baby syndrome, abusive head trauma, and child maltreatment;
- (5) prevention and control of infectious diseases, including immunization;
- (6) firsthand observation of the home's daily operations;
- (7) instruction regarding assigned duties;
- (8) instruction in the maintenance of a safe and healthy environment;
- (9) instruction in the administration of medication to children in accordance with Rule .1720(b) of this Section;
- (10) review of the home's purposes and goals;
- (11) review of G.S. 110, Article 7 and 10A NCAC 09;
- (12) an explanation of the role of State and local government agencies in the regulation of child care, their impact on the operation of the center, and their availability as a resource;
- (13) an explanation of the individual's obligation to cooperate with representatives of State and local government agencies during visits and investigations; and
- (14) prevention of and response to emergencies due to food and allergic reactions.

The operator and individual providing care shall sign and date a statement that attests that this review was completed. This statement shall be kept on file in the home available for review by the Division.

(d) An individual who provides care during unplanned absences of the operator, such as medical emergencies, shall be 18 years old and submit criminal records check forms as required in Rule .2703(j) of this Chapter. The children of an emergency caregiver shall not be counted in the licensed capacity for the first day of the emergency caregiver's service.

*History Note:* Authority G.S. 110-85; 110-88; 110-91; 143B-168.3;  
Eff. October 1, 2017.

## 10A NCAC 09 .1730 ACTIVITIES INVOLVING WATER

(a) The requirements in this Rule apply to "aquatic activities," which are defined as activities that take place in a body of water such as swimming, swimming instruction, wading, and visits to water parks. Aquatic activities do not include water play activities such as water table play, slip and slide activities, or playing in sprinklers.

(b) Aquatic activities involving the following are prohibited:

- (1) hot tubs;
- (2) spas;
- (3) saunas or steam rooms;
- (4) portable wading pools; and
- (5) natural bodies of water and other unfiltered, nondisinfected containments of water.

(c) When children enrolled in a family child care home participate in aquatic activities, there shall be at least one person who has a life guard training certificate issued by the Red Cross or other training determined by the Division to be equivalent to the Red Cross training, appropriate for both the type of body of water and type of aquatic activity. Verification of the operator's completion of this course from an approved training organization shall be maintained in their personnel file in the family child care home. The Division shall post a list of approved training organizations on its website at [http://ncchildcare.nc.gov/providers/pv\\_sn2\\_ov\\_pd.asp](http://ncchildcare.nc.gov/providers/pv_sn2_ov_pd.asp).

(d) The family child care home operator shall be responsible for adequately supervising the aquatic activity for the duration of the activity. For purposes of this Rule, "Adequate supervision" means that the operator shall be able to hear, see, and respond to the children whether in or out of the water.

(e) Prior to children participating in aquatic activities, the operator shall develop policies that address the following:

- (1) aquatic safety hazards;
- (2) pool and aquatic activity area supervision, including restroom or changing room use;
- (3) how discipline will be handled during aquatic activities;
- (4) the operator's field trip and transportation policies; and
- (5) that children shall be directed to exit the water during an emergency.

(f) Family child care home operators shall obtain written permission from parents for participation in aquatic activities. The written permission shall include a statement that parents are aware of the operator's aquatic policies specified in Paragraph (f) of this Rule. The operator shall maintain copies of written parental permission in each child's file.

(g) Any outdoor swimming pool located on the family child care home premises shall be enclosed by a fence that is at least four feet high, separated from the remaining outdoor play area by that fence, and locked and inaccessible to children when not in use.

(h) Swimming pool safety rules shall be posted and visible to children and staff for any swimming pool located on the child care facility premises. These rules shall state:

- (1) the location of a First Aid kit;
- (2) that only water toys are permitted;
- (3) that children are not allowed to run or push one another;

- (4) that swimming is allowed only when the operator is present; and
- (5) that glass objects are not allowed.

(i) All swimming pools used by children in care shall meet the "Rules Governing Public Swimming Pools" in accordance with 15A NCAC 18A .2500 which are incorporated by reference, including subsequent amendments. A copy of these Rules can be found at <http://ehs.ncpublichealth.com/docs/rules/294306-9-2500.pdf> and is available at no charge.

(j) Educational activities, such as observing tadpoles, exploring mud, or learning about rocks and vegetation shall be permitted.

(k) Boating, rafting, and canoeing activities are permitted. Prior to participating in recreational activities conducted on the water, children shall wear an age or size appropriate personal floatation device approved by the United States Coast Guard. This personal floatation device shall be worn for the duration of the activity.

*History Note:* Authority G.S. 110-88; 110-91(1),(3),(6); 143B-168.3;

*Temporary Adoption Eff. September 23, 2016;*  
*Eff. October 1, 2017.*

## **SECTION .1800 - STAFF/CHILD INTERACTIONS AND BEHAVIOR MANAGEMENT**

### **10A NCAC 09 .1801 SUPERVISION IN CHILD CARE CENTERS**

(a) Children shall be adequately supervised at all times in child care centers. Adequate supervision shall mean that:

- (1) staff must be positioned in the indoor and outdoor environment to maximize their ability to hear or see the children at all times and render assistance;
- (2) staff must interact with the children while moving about the indoor or outdoor area;
- (3) staff must know where each child is located and be aware of the children's activities at all times;
- (4) staff must provide supervision appropriate to the individual age, needs, and capabilities of each child; and
- (5) staff must be able to see and hear children aged birth to five years old while the children are eating.

All of the conditions in this Paragraph shall apply except when emergencies necessitate that adequate supervision is impossible. Documentation of emergencies shall be maintained and available for review by Division representatives upon request.

(b) For groups of children aged two years or older, the staff/child ratio during nap time shall comply with the requirements of this Chapter if at least one person remains in the room, all children are visible to that person, and the total number of required staff are on the premises and within calling distance of the rooms occupied by children.

*History Note:* Authority G.S. 110-85; 110-91(7); 143B-168.3;

*Eff. October 1, 2017.*

### **10A NCAC 09 .1802 STAFF/CHILD INTERACTIONS**

Staff shall interact with children in positive ways by helping them feel welcome and comfortable, treating them with respect, listening to what they say, responding to them with acceptance and appreciation, and participating in activities with the children. For example, staff shall:

- (1) make eye contact when speaking to a child;
- (2) engage children in conversation to share experiences, ideas, and opinions;
- (3) help children develop problem-solving skills; and
- (4) facilitate learning by providing positive reinforcement, encouraging efforts, and recognizing accomplishments.

*History Note:* Authority G.S. 110-85; 110-91(8),(11); 143B-168.3;

*Eff. July 1, 2010;*

*Readopted Eff. October 1, 2017 (Transferred from 10A NCAC 09 .0501).*

### **10A NCAC 09 .1803 PROHIBITED DISCIPLINE IN CHILD CARE CENTERS**

(a) No child shall be subjected to any form of corporal punishment by the owner, operator, director, or staff of any child care center. For purposes of this Rule, "staff" shall mean any regular or substitute caregiver, any volunteer, and any auxiliary personnel, including cooks, secretaries, janitors, maids, or vehicle drivers. The following shall apply at all child care centers:

- (1) no child shall be handled roughly in any way, including shaking, pushing, shoving, pinching, slapping, biting, kicking, or spanking;
- (2) no child shall be placed in a locked room, closet, or box or be left alone in a room separated from staff;
- (3) no discipline shall be delegated to another child;
- (4) no food shall be withheld as punishment or given as a means of reward;
- (5) no child shall be disciplined for toileting accidents;
- (6) no child shall be disciplined for not sleeping during rest period;
- (7) no child shall be disciplined by assigning chores that require contact with or use of hazardous materials, such as cleaning bathrooms, floors, or emptying diaper pails;
- (8) physical activity, such as running laps and doing push-ups, shall not be withheld as punishment or required as punishment;
- (9) no child shall be yelled at, shamed, humiliated, frightened, threatened, or bullied; and
- (10) no child shall be restrained as a form of discipline unless the child's safety or the safety of others is at risk. For purposes of this Rule, "restraining" shall mean that a caregiver physically holds a child in a manner that



restricts the child's movement, for a minimum amount of time necessary to ensure a safe environment. Notwithstanding any other provision of this Rule, no child shall be restrained through the use of heavy objects, including a caregiver's body, or any device such as straps, blankets, car seats, or cribs.

(b) Discipline practices shall be age and developmentally appropriate.

*History Note:* Authority G.S. 110-85; 110-91(10); 143B-168.3;  
*Eff. January 1, 1986;*  
*Amended Eff. April 1, 2001; November 1, 1989;*  
*Readopted Eff. October 1, 2017 (Transferred from 10A NCAC 09 .1801).*

**10A NCAC 09 .1804 DISCIPLINE POLICY FOR CHILD CARE CENTERS**

(a) The person who conducts the enrollment conference shall provide a written copy of and explain the center's discipline policies to each child's parents at the time of enrollment.

(b) The child care center shall obtain from each parent, legal guardian, or full-time custodian a statement that attests that a copy of the center's written discipline policies was given to and discussed with him or her. That statement shall include the following:

- (1) the child's name;
- (2) the date of enrollment; and
- (3) if different, from the enrollment date the date the parent, legal guardian, or full-time custodian signed the statement.

(c) The signed, dated statement must be in the child's record and shall remain on file in the center as long as the child is enrolled. If a center changes its discipline policy at any time, it must give written notice of such a change to the child's parent, guardian, or full-time custodian 14 days prior to the implementation of the new policy. The center shall obtain the parent's signature on a statement that attests that a copy of the new policy was given to and discussed with him or her. This statement shall be kept in the child's file as long as the child is enrolled.

*History Note:* Authority G.S. 110-85; 110-91(8),(11); 143B-168.3;  
*Eff. October 1, 2017.*

**SECTION .1900 - SPECIAL PROCEDURES CONCERNING ABUSE/NEGLECT IN CHILD CARE**

**10A NCAC 09 .1901 NOTIFICATION TO COUNTY DEPARTMENTS OF SOCIAL SERVICES**

*History Note:* Authority G.S. 110-88(5); 143B-168.3;  
*Eff. January 1, 1986;*  
*Amended Eff. April 1, 2001; November 1, 1989;*  
*Repealed Eff. October 1, 2017.*

**10A NCAC 09 .1903 INVESTIGATION PROCEDURES**

*History Note:* Authority G.S. 7B-301; 110-88(5); 110-105; 143B-168.3;  
*Eff. January 1, 1986;*  
*Amended Eff. April 1, 2001; October 1, 1991; July 1, 1988;*  
*January 1, 1987;*  
*Repealed Eff. October 1, 2017.*

**SECTION .2100 - RELIGIOUS-SPONSORED CHILD CARE CENTER REQUIREMENTS**

**10A NCAC 09 .2101 CENTERS OPERATING UNDER G.S. 110-106**

(a) At least 30 days prior to the first day of operation of a new religious-sponsored child care center, the prospective operator shall send a "Letter of Intent to Operate" to the Division. That letter shall include the following:

- (1) the name, address, and telephone number of the operator and the center, if known;
- (2) the proposed number and age range of children to be served;
- (3) the center's scheduled opening date; and
- (4) required criminal history records check documentation for the prospective operator and all known staff members as set forth in G.S. 110-90.2.

A representative of the Division shall contact the prospective operator no later than seven calendar days after the Letter of Intent is received to advise the prospective operator of the applicable requirements and procedures in G.S. 110, Article 7 and this Chapter.

(b) A prospective operator who has not previously operated a religious-sponsored child care center in North Carolina shall attend a pre-licensing workshop provided by the Division before the center's opening date. Prospective operators shall download, complete, and submit the pre-licensing registration form to the Division. The Division provides regularly scheduled pre-licensing workshops for potential operators. A schedule of these workshops may be found online at [http://ncchildcare.dhhs.state.nc.us/pdf\\_forms/prelicworkshop.pdf](http://ncchildcare.dhhs.state.nc.us/pdf_forms/prelicworkshop.pdf). The pre-licensing registration form contains demographic information and workshop location preferences. The pre-licensing registration form can be found online at [http://ncchildcare.dhhs.state.nc.us/pdf\\_forms/prelicworkshop.pdf](http://ncchildcare.dhhs.state.nc.us/pdf_forms/prelicworkshop.pdf).

(c) The Division shall conduct an announced pre-licensing visit prior to the opening of the center, an unannounced visit within 30 days after the facility opens, and unannounced visits annually thereafter in order to ensure compliance with applicable requirements in G.S. 110, Article 7 and this Section.

(d) Within 30 days of opening, the prospective operator shall submit reports indicating that the facility meets the minimum standards for facilities as specified in G.S. 110-91 regarding local ordinances, including a building inspection, a fire inspection, and a sanitation inspection.

(e) The Division shall send a Notice of Compliance letter to the prospective operator when compliance with minimum standards

for facilities as specified in G.S. 110, Article 7 has been determined. The Notice of Compliance letter shall be issued instead of a star rated license. The Notice of Compliance is not required to be posted at the child care facility.

(f) Religious-sponsored child care centers shall comply with all child care center requirements in this Chapter except as follows:

Age Appropriate Activities	Rules .2512, .0508, through .0510 and .2508
Staff Qualifications and Training Requirements	Rules .0703(d) through (f), .0704, .0714(a) through (d) and .1101, .1102(a), (b), (e), and (g), and .1103 through .1106.
Staff Qualifications if working with school aged children only	Rule .2510

Compliance shall be documented annually using the same forms and in the same manner as for all other centers.

(g) The Division shall notify the prospective operator in writing as to whether the facility complies or does not comply with the requirements.

*History Note: Authority G.S. 110-85; 110-88; 110-106; 143B-168.3;*

*Eff. January 1, 1986;*

*Amended Eff. August 1, 2011; April 1, 2001; April 1, 1992; January 1, 1991; November 1, 1989; July 1, 1988;*

*Readopted Eff. October 1, 2017.*

#### **10A NCAC 09 .2102 USE OF CORPORAL PUNISHMENT**

(a) Corporal punishment may be used in religious-sponsored child care facilities in accordance with G.S. 110-91(10), if:

- (1) the religious-sponsored child care facility files a notice with the Division stating that corporal punishment is part of the religious training of its program; and
- (2) the religious-sponsored child care facility states in its written policy of discipline that corporal punishment is part of the religious training of its program.

(b) The discipline policy shall state when corporal punishment is used, what type of punishment is used, and who will be administering the punishment.

(c) The discipline policy shall be shared with all parents that have children enrolled at the facility and the facility shall provide parents a copy of the policy for their records.

(d) If the facility's discipline policy changes, the new policy shall be shared with parents 14 days prior to the change becoming effective. A copy of the revised discipline policy shall be submitted to the Division within 30 days of the effective date of the revised policy.

(e) A discipline policy that meets the requirements of this Rule shall not preclude the investigation of a complaint alleging inappropriate discipline of a child or child maltreatment as specified in G.S 110-105.3.

*History Note: Authority G.S. 110-91(10); 110-106;*

*Eff. October 1, 2017.*

#### **10A NCAC 09 .2214 SCHEDULE OF CIVIL PENALTIES FOR FAMILY CHILD CARE HOMES**

Penalties may be assessed against family child care homes as defined in G.S. 110-86(3)(b) as follows:

- (1) A civil penalty in an amount up to one thousand dollars (\$1,000) may be imposed for the following violations:
  - (a) When the Division has determined that child maltreatment occurred while a child was in care at the family child care home; or
  - (b) Willful, repeated pattern of non-compliance with any requirement.
- (2) A civil penalty in an amount up to two hundred dollars (\$200.00) may be imposed for the following violations:
  - (a) Non-compliance with the standards of G.S. 110, Article 7 and this Chapter for:
    - (i) Licensed capacity;
    - (ii) Supervision of children;
    - (iii) Administration of medication to children;
    - (iv) Emergency medical care plan;
    - (v) Discipline of children;
    - (vi) Transportation of children; or
    - (vii) Use of swimming pools and other swim areas;
  - (b) Disapproved fire safety, building or sanitation inspection reports;
  - (c) Relocation of the family child care home without prior notification to the Division;
- (3) A civil penalty in an amount up to one hundred dollars (\$100.00) may be imposed for the following violations:
  - (a) Non-compliance with the standards of G.S. 110, Article 7 and this Chapter for:
    - (i) Staff health requirements;
    - (ii) Staff qualifications;
    - (iii) Staff training;
    - (iv) Children's health requirements;
    - (v) Proper nutrition;
    - (vi) Sanitation and personal hygiene practices;
    - (vii) Age-appropriate activities;
    - (viii) Posting current license;
    - (ix) Maintaining accurate records; or
    - (x) Safe environment;
  - (b) Failure to comply with a corrective action plan; and

- (c) Denial of entry to a representative of the Department or Division.
- (4) Violation of other standards of G.S. 110, Article 7 and this Chapter that are not specifically referenced elsewhere in this Rule may result in the assessment of a penalty according to the effect or potential effect of the violation on the safety and well-being of the child.

*History Note: Authority G.S. 110-85; 110-86(3); 110-88(1),(5),(6a); 110-91; 110-98; 110-103.1; 110-105; 110-105.2; 110-105.6; 143B-168.3; 150B-23; Eff. October 1, 2017.*

**10A NCAC 09 .2215 DENIAL OF A LICENSE**

(a) The Secretary may deny an application for a child care facility license or the issuance of any permit to operate a child care facility under the following circumstances:

- (1) if the applicant owned or operated a licensed child care facility that was issued a denial, revocation, or summary suspension by the Division;
- (2) if the applicant owned or operated a licensed child care facility against which the Division initiated denial, revocation, or summary suspension proceedings and the applicant voluntarily relinquished the license prior to the issuance of a final action;
- (3) during the pendency of an appeal of a denial, revocation, or summary suspension of any other licensed child care facility license owned or operated by the applicant;
- (4) if the applicant owned or operated a facility that received a sanction for fraudulent misrepresentation pursuant to 10A NCAC 10 .0308 of the Subsidized Child Care Rules;
- (5) if the applicant owned or operated a facility that was issued a Notice of Termination and Disqualification by the Child and Adult Care Food Program (CACFP);
- (6) if the Division determines that the applicant has a relationship with an operator or former operator who owned or operated a regulated child care facility as described in Subparagraphs (1) through (5) of this Paragraph. As used in this Rule, an applicant has a relationship with a former operator if the former owner or operator would be involved with the applicant's child care facility in one or more of the following ways:
  - (A) would participate in the administration or operation of the facility;
  - (B) has a financial interest in the operation of the facility, as evidenced by, among other things, a familial relationship with the former owner or operator, employment at the new

facility, and ownership of the building or property where the facility is located; or entering into a lease for the building;

- (C) provides care to children at the facility, even as a volunteer;
- (D) resides in the facility;
- (E) has an ownership interest in the facility as defined in 10A NCAC 09 .0102(33); or
- (F) would serve on the facility's board of directors, be a partner of the corporation, or otherwise have responsibility for the administration of the business;

- (7) based on the applicant's previous non-compliance as an operator with the requirements of G.S. 110, Article 7, 10A NCAC 10, or this Chapter;
- (8) based on the operator's non-compliance with the requirements of G.S. 110, Article 7, 10A NCAC 10, or this Chapter, during a temporary licensure period;
- (9) if abuse or neglect or child maltreatment has been substantiated against the applicant pursuant to G.S. 7B-101 or G.S. 110-105.5; or
- (10) if the applicant is a disqualified child care provider or has a disqualified household member residing in the child care facility pursuant to G.S. 110-90.2.

(b) In determining whether denial of the application for a license is warranted pursuant to Paragraph (a) of this Rule, the Division shall consider:

- (1) any documentation provided by the applicant that describes the steps the applicant will take to prevent reoccurrence of noncompliance with the requirements of G.S. 110, Article 7, 10A NCAC 10, or this Chapter;
- (2) training certificates or original transcripts for any coursework from a nationally recognized regionally accredited institution of higher learning related to providing quality child care, and that was taken subsequent to any prior administrative action against a license previously held by the applicant. "Nationally recognized" means that every state in this nation acknowledges the validity of the coursework taken at higher education institutions that meet the requirements of one of the accrediting bodies;
- (3) proof of employment in a licensed child care facility and references from the administrator or licensee of the child care facility regarding work performance;
- (4) documentation of collaboration or mentorship with a licensed child care provider to obtain additional knowledge and experience related to operation of a child care facility; or

- (5) documentation explaining relationships with persons meeting the criteria listed in Subparagraph (a)(6) of this Rule.

(c) Operators who held a child care facility license or permit that was denied, revoked, subject to a cease operation order, or summarily suspended within the past five years shall be ineligible to apply for a new child care license.

*History Note: Authority G.S. 110-85; 110-86; 110-88; 110-91; 110-92; 110-93; 110-99; Eff. October 1, 2017.*

**10A NCAC 09 .2318 CHILD CARE CENTER  
RECORD RETENTION**

All records required in this Chapter shall be maintained for review by representatives of the Division as specified in G.S. 110-91(9), Rule .0304(g) of this Chapter, and as follows:

- (1) The records shall be available at the center during the hours of operation listed on the child care license.
- (2) Records may be maintained in a paper format or an electronic format, provided that all required signatures are preserved in a paper format, PDF or other used graphic format.
- (3) Records regarding administration of medications required by Rules .0302(f)(7) and .0803(13) of this Chapter shall be maintained during the time period the medication is being administered and for six months after the medication is administered.
- (4) All building inspections as referenced in G.S. 110-91, and in Rule .0302 of this Chapter shall remain on file at the center for as long as the license remains valid.
- (5) All fire, sanitation, and pool, inspections as referenced in G.S. 110-91, and Rules .0302 and .1403 of this Chapter shall remain on file at the center for a minimum of three years.
- (6) Each child care center shall retain records for children as follows:

Type of Child Record	In each child's file, for as long as the child is enrolled	For 1 year after the child is no longer enrolled
Child Medical Report Rule .0302(f)(2)	X	X

Type of Child Record	In each child's file, for as long as the child is enrolled	For 1 year after the child is no longer enrolled
Immunization Record Rule .0302(f)(2)	X	X
Child Application Rules .0302(f)(2) and .0801(a)	X	X
Child Emergency Medical Care Information Rules .0302(f)(2), .0801(a)(1) and .0802(c) through (d)	X	X
Safe Sleep Policy Rule .0606(c)	X	X
Notice of Amendment to Safe Sleep Policy Rule .0606(d)	X	X
Safe Sleep Waiver Rule .0606(e)	X	X
Child Medical Action Plan Rule .0801(b)	X	X
Incident Report Rule .0802(e)	X	X
Parental Permission for Administration of Medication Rules .0803(3), (4), (6) through (9) and (11)	X	X
Supplemental Food "Opt Out" Statement Rule .0901(d)	X	X
Parental Permission for Transportation Rules .1003(i) and (j), .1005(b)(3) and (4)	X	X
Parental Permission for Aquatic Activities Rule .1403(i)	X	X
Discipline Policies Rule .1804(a)	X	X
Notice of Change to Discipline Policies Rule .1804(b)	X	X

- (7) Each child care center shall retain records for personnel as follows:

Type of Personnel Record	For at least 1 year after employee is no longer employed	For 1 Year After Record Created	Until the record is superseded by a new statement	In each personnel file or designated emergency preparedness file
Application for Employment Rule .0302(d)(1)(A)	X			

**APPROVED RULES**

<b>Type of Personnel Record</b>	<b>For at least 1 year after employee is no longer employed</b>	<b>For 1 Year After Record Created</b>	<b>Until the record is superseded by a new statement</b>	<b>In each personnel file or designated emergency preparedness file</b>
Staff Medical Report Rules .0302(d)(1)(C) and .0701(a)	X			
Health Questionnaire Rules .0302(d)(1)(C) and .0701(a)	X			
Proof of Tuberculosis Test Rules .0302(d)(1)(C) and .0701(a)	X			
Staff Emergency Medical Care Information Rules .0302(d)(1)(C) and .0701(a)	X			
Evaluation of Emotional and Physical Fitness (as applicable) Rule .0701(b)	X			
Verification of Age Rules .0302(d)(1)(A), .0703, and .0704	X			
Criminal Record Check Information Rules .0302(d)(1)(E);	X			
Education and Equivalency Forms Rules .0302(d)(1)(B), .0703, .0704 and .2510	X			
Record of On-going Training Rules .0302(d)(1)(D), and .1103(a)	X			
Documentation of Staff Orientation Rules .0302(d)(1)(D), and .1101(a)	X			
Documentation of Emergency Preparedness and Response in Child Care Training Rule .0607(b)				X
Documentation of Review of Emergency Preparedness and Response Plan Rules .0607(e), (f) and (g)				X
Documentation of First Aid training Rule .1102(c)	X			
Documentation of CPR training Rule .1102(d)	X			

**APPROVED RULES**

<b>Type of Personnel Record</b>	<b>For at least 1 year after employee is no longer employed</b>	<b>For 1 Year After Record Created</b>	<b>Until the record is superseded by a new statement</b>	<b>In each personnel file or designated emergency preparedness file</b>
Documentation of Playground Safety Training if applicable Rule .1102(e)	X			
Documentation of ITS-SIDS Safe Sleep Training if applicable Rule .1102(f)	X			
Documentation of Aquatic Activities Policy Receipt Rule .1403(h)		X	X	
Documentation of BSAC training if applicable Rule .2510	X			

(8) Each child care center shall retain records for the program as follows:

<b>Type of Program Record</b>	<b>As long as the license remains valid</b>	<b>A minimum of 30 days after record revised or replaced</b>	<b>A minimum of 1 year after record created, revised or replaced</b>
Attendance Rule .0302(d)(3)			X
Daily record of arrival and departure times for children Rule .0302(d)(4)			X
Fire Drill Log .0604(t) Rule .0302(d)(5)			X
Playground Inspection Rules .0302(d)(6) and .0605(q)			X
Lockdown or Shelter-In-Place Drill Record Rules .0302(d)(8) and .0604(u)			X
Daily Schedule Rule .0508(a)			X
Activity Plan Rule .0508(a)		X	
Manufacturer's Instructions for equipment and furnishings Rules .0601(b) and .0605(b)	X		
Fire Evacuation Procedures Rule .0604(r)	X		
Written plan for evacuation in centers that do not meet institutional building code Rule .0604(r)			X
Safe Pick-Up and Delivery Procedures Rule .1003			X
Safe Sleep Policy Rule .0606(a)	X		
SIDS Sleep Chart/Visual Check Rule .0606(a)(7)		X	
Emergency Preparedness and Response Plan			X

Type of Program Record	As long as the license remains valid	A minimum of 30 days after record revised or replaced	A minimum of 1 year after record created, revised or replaced
Rules .0607(c) and (d)			
Emergency Medical Care Plan Rule .0802(a)			X
Incident Log Rule .0802(f)			X
Menu Rule .0901(b)		X	
Allergy Postings Rule .0901(g)		X	
Infant Feeding Plan Rule .0902(a)		X	
Identifying Information for Children being Transported Rule .1003(d)			X
List of children being transported Rules .1003(l) and .1005(b)(6)			X
Schedule of Off Premise Activities Rule .1005(b)(5)			X
Aquatic Activity Policies Rule .1403(g)	X		
Documentation of emergency situation that necessitated a lack of direct supervision Rule .1801(a)	X		
Discipline Practices Rules .1803 and .1804	X		

*History Note:* Authority G.S. 110-85; 110-91(9); 143B-168.3;  
*Eff. January 1, 1986;*  
*Amended Eff. July 1, 2015; July 1, 2010; July 1, 2008;*  
*Readopted Eff. October 1, 2017.*

**10A NCAC 09 .2401 SCOPE**

The rules in this Section apply to all child care centers offering short term care to children who are mildly sick and who would otherwise be excluded from care as required by Rule .0804(a) of this Chapter. Care may be provided as a component of a child care center that provides child care to well children, or may be provided as a separate stand alone program. All rules in this Chapter shall apply except as provided in this Section.

*History Note:* Authority G.S. 110-88(11); 143B-168.3;  
*Eff. July 1, 1988;*  
*Amended Eff. April 1, 2003; November 1, 1989;*  
*Readopted Eff. October 1, 2017.*

**10A NCAC 09 .2402 DEFINITIONS**

(a) "Child care for mildly sick children" is defined as the care of children who are not able to attend their regular school or child care arrangement due to inability to participate in activities and requirements set forth in 10A NCAC 09 .0804.

(b) "Health care professional" is defined as:

- (1) a licensed physician;

- (2) 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;
- (3) a certified nurse practitioner;
- (4) a nurse rostered with the Office of Public Health Nursing and Professional Development as required by the Division of Medical Assistance;
- (5) a registered nurse (RN); or
- (6) a certified physician assistant.

(c) "Short term care" is defined as attending for no more than three consecutive days, or for more than three consecutive days with written permission from a physician which was obtained prior to the fourth consecutive day of attendance.

*History Note:* Authority G.S. 110-88(11); 143B-168.3;  
*Eff. April 1, 2003;*  
*Readopted Eff. October 1, 2017.*

**10A NCAC 09 .2403 SPECIAL PROVISIONS FOR LICENSURE**

(a) A center that enrolls mildly sick children as a component of a child care center shall have approval for short term care for mildly sick children indicated on their license. A copy of the license shall be posted in the area used by mildly sick children so that it is seen by the public.

(b) A center that enrolls mildly sick children as a component of a child care center may admit mildly sick children only who otherwise attend the center.

(c) A child care center operated as a separate stand alone program shall be issued a license restricting services to short term care for mildly sick children.

(d) Any center that enrolls mildly sick children shall develop written policies that contain the following:

- (1) admission requirements;
- (2) inclusion and exclusion criteria;
- (3) preadmission health assessment procedures as set forth in 10A NCAC 09 .2409(a)(1); and
- (4) plans for staff training and communication with parents and health care professionals.

These policies shall be reviewed by a child care health consultant or other health care professional prior to licensure to ensure compliance with health care practices for mildly sick children.

*History Note: Authority G.S. 110-88(11); 143B-168.3; Eff. April 1, 2003; Readopted Eff. October 1, 2017.*

**10A NCAC 09 .2404 INCLUSION AND EXCLUSION REQUIREMENTS**

(a) Centers may provide care for mildly sick children over three months of age who meet the following inclusion criteria and staff qualifications described in Rule .2408 of this Section:

- (1) Centers may provide care for children with Level One symptoms as follows:
  - (A) children who meet the guidelines for attendance in 10A NCAC 09 .0804, except that they are unable to participate in group activities and are in need of increased rest time or less vigorous activities; or
  - (B) children with fever controlled with medication of 101° or less axillary or 102° or less orally;
- (2) Centers may provide care for children with Level Two symptoms as follows:
  - (A) inability to participate in group activity while requiring extra sleep, clear liquids, light meals, and passive activities such as stories, videos or music, as determined by a health care professional;
  - (B) fever controlled with medication of 103° maximum orally, or 102° maximum axillary, with a health care professional's written screening;

- (C) vomiting fewer than three times in any eight hour period, without signs of dehydration;
- (D) diarrhea without signs of dehydration and without blood or mucus in the stool, fewer than five times in any eight hour period; or
- (E) with written approval from a child's physician and preadmission screening by an on-site health care professional prior to the current day's attendance unless excluded by Subparagraphs (b)(1), (2), (3), (4), (6), or (7) of this Rule.

(b) Any child exhibiting the following symptoms shall be excluded from any care by the on-site administrator or the on-site health care professional:

- (1) temperature unresponsive to control measures;
- (2) undiagnosed or unidentified rash;
- (3) respiratory distress as evidenced by an increased respiratory rate and unresponsiveness to treatment, flaring nostrils, labored breathing, or intercostal retractions;
- (4) major change in condition requiring further care or evaluation;
- (5) contagious diseases required to be reported to the health department, except as provided in Part (a)(2)(E) of this Rule;
- (6) other conditions as determined by a health care professional or on-site administrator; or
- (7) mental status such as decreased awareness or change in mood.

(c) Once admitted, children shall be assessed and evaluated every four hours, or more frequently if warranted based on medication administration or medical treatment, to determine if symptoms continue to meet inclusion criteria as set forth in this Rule.

*History Note: Authority G.S. 110-88(11); 143B-168.3; Eff. April 1, 2003; Amended Eff. December 1, 2014; Readopted Eff. October 1, 2017.*

**10A NCAC 09 .2405 ADMISSION REQUIREMENTS**

(a) Written permission from a parent is required for admission of a mildly sick child. If a child is assessed to need care because he or she is mildly sick, permission may be given by telephone and documented if a child is to be moved from the well child component of the center to the mildly sick area, as long as written permission is received prior to the second day of attendance.

(b) Each parent shall sign a statement that attests that a copy of the policies described in Rule .2403(d) of this Section were given to and discussed with him or her prior to a mildly sick child's attendance.

(c) The on-site administrator or on-site health care professional may require a written medical evaluation for a child to include diagnosis, treatment and prognosis, if the evaluation is necessary to determine the appropriateness of a child's attendance prior to admission or upon worsening of the child's symptoms.



(d) A parent shall remain on the premises until the preadmission health assessment and individualized plan of care has been completed by center staff who have completed the training described in Rule .2408(a)(3), and the child has been approved for attendance.

(e) No child shall be admitted unless staff who meet the qualifications in Rule .2408 of this Section are on site and available to provide care.

*History Note: Authority G.S. 110-88(11); 143B-168.3;  
Eff. April 1, 2003;  
Readopted Eff. October 1, 2017.*

**10A NCAC 09 .2406 STAFF/CHILD RATIOS**

The staff to child ratio and group size of mildly sick children shall be determined based on the age of the youngest child in the group and shall be as follows:

Age of Child	No. of Children	No. of Staff	Max. Group Size	No. of Staff
3 Months to 2 Years	3	1	6	2
2 to 5 Years	4	1	8	2
5 Years and older	5	1	10	2

*History Note: Authority G.S. 110-88(11); 143B-168.3;  
Eff. April 1, 2003;  
Readopted Eff. October 1, 2017.*

**10A NCAC 09 .2407 SPACE REQUIREMENTS FOR MILDLY SICK CHILDREN**

(a) There shall be at least 45 square feet of inside space per child present. When space is measured the following shall not be included: closets, hallways, storage areas, kitchens, bathrooms, utility areas, thresholds, foyers, space or rooms used for administrative activities or space occupied by adult-sized desks, cabinets, file cabinets, etc.; any floor space occupied by or located under equipment, furniture, or materials not used by children; and any floor space occupied by or located under built-in equipment or furniture.

(b) A center that enrolls mildly sick children as a component of a child care center shall:

- (1) ensure that if the outdoor play area is shared by both well and mildly sick children, ensure that there are separate areas of play; and
- (2) ensure that the indoor area used by the mildly sick children is separated by an interior or exterior entrance.

(c) An outdoor play area shall not be required for children who are mildly sick. If a child is in care for more than three consecutive days, however, he or she must have the opportunity to go outside for play or leisure activities.

*History Note: Authority G.S. 110-88(11); 143B-168.3;  
Eff. April 1, 2003;  
Readopted Eff. October 1, 2017.*

**10A NCAC 09 .2408 STAFF QUALIFICATIONS**

(a) All staff working with the mildly sick children shall complete all requirements in this Chapter pertaining to preservice training in 10A NCAC 09 .0704, .0701 and .0711, orientation in 10A NCAC 09 .1101, on-going training in 10A NCAC 09 .1103, and staff records in 10A NCAC 09 .0701. In addition, the requirements for staff who care for children with Level One symptoms as described in Rule .2404, Paragraphs (a)(1)(A) and (B) of this Section shall be as follows:

- (1) Each group of children shall have a lead teacher present who has the North Carolina Early Childhood Credential or its equivalent prior to assuming care giving responsibilities.
- (2) Each group of children shall have a staff person present who meets the requirements in 10A NCAC 09 .0705(a), (b), and (d). This may be the same individual referenced in Subparagraph (a)(1) of this Rule.
- (3) In addition to staff orientation requirements in Rule .1103 of this Chapter prior to assuming care giving duties all caregivers shall complete 10 hours of training on the following:
  - (A) storage and administration of medication;
  - (B) infection control procedures;
  - (C) aspiration of nasal secretions;
  - (D) positioning for sleeping and eating;
  - (E) temperature and respiratory rate taking;
  - (F) documentation of signs, symptoms, physical appearance, intake and output, and communication with family and physicians;
  - (G) recognizing when to stop, increase, or decrease oral intake of fluids;
  - (H) recognizing signs and symptoms associated with the increased severity of illness including behavioral changes, changes in bowel movements, increased sluggishness, etc.;
  - (I) developing individualized plans of care;
  - (J) special dietary requirements and maintaining hydration; and
  - (K) emergency procedures, including notification of a parent, should a child's condition worsen.
- (4) Any caregiver caring for a child whose illness requires special knowledge, skills, or equipment shall have training and equipment prior to caring for the child.
- (5) Completion of the training required by Subparagraph (a)(3) of this Rule shall count toward meeting one year's annual on-going training requirements in Section .0700 of this Chapter.
- (6) When a center cares for mildly sick children as a component of a child care center, the

administrator shall meet the education requirements for administrators as required by G.S. 110-91(8).

(b) In addition to the staffing requirements listed in Subparagraphs (a)(1) through (a)(5) of this Rule, if children with Level Two symptoms as described in Parts (a)(2)(A) through (a)(2)(E) of Rule .2404 of this Section are in care, the following number of medical staff shall be on site based upon the total number of children in care:

<u>No. of Children</u>	<u>Type of Medical Staff</u>
1 to 10	an RN, or a LPN with a health care professional in the immediate vicinity
10 to 20	an RN
20 to 40	an RN and an additional LPN

Each medical staff shall have one year of full-time pediatric nursing experience, and may count in staff/child ratio. Medical staff may also act as lead teachers if they have the North Carolina Early Childhood Credential or equivalent.

*History Note: Authority G.S. 110-88(11); 143B-168.3; Eff. April 1, 2003; Readopted Eff. October 1, 2017.*

#### **10A NCAC 09 .2409 CHILDREN'S RECORDS**

(a) In addition to all other children's records required in G.S. 110 and this Chapter, the following shall be completed for the children admitted to the mildly sick area:

- (1) Preadmission health assessment which includes documentation of health status, current symptoms, baseline temperature and respiratory rate, and any medications administered in the last 24 hours;
- (2) General admission information which includes information about the child's typical behavior, activity level, patterns of eating, sleeping, and toileting;
- (3) An individualized plan of care describing how the child's needs shall be met, based upon Subparagraphs (a)(1) and (a)(2) of this Rule, shall be developed by the parent and a staff member who has completed training described in Subparagraph (a)(3) of Rule .2408 of this Section; and
- (4) A daily written record shall be maintained and a copy given to parents of the child's eating, sleeping, and toileting patterns; medications administered; activity levels; changes in symptoms; and any additional information that the provider deems relevant such as child's temperament.

(b) All records shall be on file in the mildly sick area prior to admittance of the mildly sick child to the mildly sick area. If a child is enrolled in the well child care component of a child care center, records may be maintained in the well child care area, along with a copy of the child's enrollment application as required in Rule .0801 of this Chapter. The records specified in Subparagraphs (a)(1) through (a)(4) of this Rule shall be kept in the mildly sick area.

*History Note: Authority G.S. 110-88(11); 143B-168.3; Eff. April 1, 2003; Readopted Eff. October 1, 2017.*

#### **10A NCAC 09 .2410 CHILDREN'S ACTIVITIES**

(a) Daily activities shall be provided in accordance with Section .0500 of these Rules and in accordance with each child's individualized plan of care. Activity areas shall not be required, but developmentally appropriate equipment and materials must be available daily for mildly sick children in care.

(b) Eating, toileting, sleeping, resting, and playing shall be individually determined and flexible to allow each child to decide when and whether to participate in available activities, and to nap or rest at any time.

(c) Daily outdoor time shall be available for children with Level One symptoms who are present more than three consecutive days unless deemed inappropriate by the child's attending health care professional.

*History Note: Authority G.S. 110-88(11); 143B-168.3; Eff. April 1, 2003; Readopted Eff. October 1, 2017.*

#### **10A NCAC 09 .2411 NUTRITION REQUIREMENTS**

Meals and snacks shall be provided in accordance with Section .0900 of this Chapter unless a child's individualized plan of care specifies otherwise.

*History Note: Authority G.S. 110-88(11); 143B-168.3; Eff. April 1, 2003; Readopted Eff. October 1, 2017.*

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

#### **10A NCAC 09 .2501 SCOPE**

The rules in this Section apply to all child care centers offering care to three or more school-age children exclusively or as a component of any other program. All rules in this Chapter pertaining to care for school-age children apply except as provided in this Section.

*History Note: Authority G.S. 110-85; 110-86(3); 110-91; 143B-168.3; Eff. July 1, 1988; Amended Eff. July 1, 2010; July 1, 2000; September 1, 1990; Readopted Eff. October 1, 2017.*

#### **10A NCAC 09 .2502 SPECIAL PROVISIONS FOR SUMMER DAY CAMPS**

(a) A center providing care for school-age children exclusively on a seasonal basis between May 15 and September 15 shall be licensed as a summer day camp.

(b) A facility licensed as a summer day camp shall have a permanent structure located at the home base, which is the primary site of the summer day camp activities. The permanent structure may be a building or permanent roofed shelter with overhang. The summer day camp shall meet one of the following space requirements:

- (1) when activities for children are conducted outdoors or off the premises for at least 75 percent of each day, a minimum of 10 square feet per child of indoor space, exclusive of kitchens, hallways, restrooms, closets, and storage areas, shall be provided; or
  - (2) when the camp's home base does not provide 10 square feet of primary space indoors, the camp shall provide notarized copies of all letters, agreements, or contracts with other facilities to the Division which guarantee that children will be accommodated comfortably indoors in the event of inclement weather.
- (c) For the purpose of carrying out the provisions of G.S. 110-91(4) for summer day camps not covered by 10A NCAC 09 .2503(a)(1), the following North Carolina Building Codes apply to the structure described in Paragraph (b) of this Rule shall apply;
- (1) when the authorized capacity of the facility is less than 30 children, the structure shall meet the requirements for residential occupancy as prescribed in the North Carolina Building Code. Children may use only those floors which have one grade level exit;
  - (2) when the authorized capacity of the facility is more than 29 children, but less than 100 children, the structure shall meet the North Carolina Building Code requirements for business occupancy; or
  - (3) when the authorized capacity of the facility is more than 99 children, the structure shall meet the North Carolina Building Code requirements for assembly occupancy, or educational occupancy or institutional occupancy.
- (d) If a summer day camp maintains its master records for children and staff in a central location, emergency information for each staff person and child shall always be on site. The emergency information on site shall include the name and telephone numbers of the child's parent or other responsible person, the child's or staff person's health care professional or preferred hospital, any chronic illnesses and medication taken for that illness, any allergy and recommended treatment for that allergy, and any other information that has a direct bearing on medical treatment and safe care. The parent's signed permission to obtain medical attention must also be on site with the child.
- (e) If food is prepared at the summer day camp, the rules regarding sanitary facilities, food preparation and service for summer camps as adopted by the Commission for Public Health and codified in 15A NCAC 18A .1000 apply.
- (f) Staff in summer day camp programs required to complete Basic School-Age Care (BSAC) training as defined in Rule .0102 of this Chapter shall do so within four weeks of becoming employed.

*History Note: Authority G.S. 110-85; 110-88(1); 110-91; 143B-168.3;*  
*Eff. July 1, 1988;*  
*Amended Eff. July 1, 2010; July 1, 2000; September 1, 1990;*  
*Readopted Eff. October 1, 2017.*

**10A NCAC 09 .2503 BUILDING CODE REQUIREMENTS**

- (a) Building code requirements incorporated by reference in Section .1300 of this Chapter apply for a facility providing care to school-age children except that any building that is approved for school occupancy and which houses a public or private school during the school year shall be considered an approved building to house a facility serving school-age children exclusively. The operator shall obtain and submit copies of all applicable inspection reports to the Division.
- (b) The North Carolina State Building Code is hereby incorporated by reference, inclusive of subsequent amendments. The current Code can be found online at [http://www.doi.com/OSFM/Engineering\\_and\\_Codes/Default.aspx?field1=Codes\\_-\\_Current\\_and\\_Past&user=State\\_Building\\_Codes](http://www.doi.com/OSFM/Engineering_and_Codes/Default.aspx?field1=Codes_-_Current_and_Past&user=State_Building_Codes) at no cost.

*History Note: Authority G.S. 110-85; 110-88(2); 110-91(4); 143B-168.3;*  
*Eff. July 1, 1988;*  
*Amended Eff. July 1, 2010; September 1, 1990;*  
*Readopted Eff. October 1, 2017.*

**10A NCAC 09 .2504 SPACE REQUIREMENTS**

All space requirements specified in Section .1400 shall apply when a facility provides care for school-age children and any preschool child is also in care, or when a program that provides care exclusively for school-age children operates indoors in a permanent structure for more than 25 percent of each day. A gymnasium or other single use room may be included in the space measured for licensed capacity when used as primary space.

*History Note: Authority G.S. 110-85; 110-91(3),(6); 143B-168.3;*  
*Eff. July 1, 1988;*  
*Amended Eff. July 1, 2010; September 1, 1990;*  
*Readopted Eff. October 1, 2017.*

**10A NCAC 09 .2505 HEALTH REQUIREMENTS FOR CHILDREN**

- (a) All requirements of Section .0800 of this Chapter shall apply to school-age child care arrangements with the following exceptions:
  - (1) a medical examination report shall not be required for any child enrolled in a public school or private school as described in G.S. 110-86(2)f; and
  - (2) Rule .0806 of this Chapter shall not apply.
- (b) All requirements specified in Section .0900 of this Chapter shall apply.
- (c) If food is brought from home by children or catered, the following requirements shall apply:
  - (1) sanitary cold storage shall be provided for perishable snacks or lunches brought from home.
  - (2) safe drinking water shall be available at all times regardless of where activities are provided.

*History Note:* Authority G.S. 110-85; 110-91(1),(2); 143B-168.3;  
*Eff. July 1, 1988;*  
*Amended Eff. July 1, 2010; September 1, 1990;*  
*Readopted Eff. October 1, 2017.*

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

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

*History Note:* Authority G.S. 110-85; 110-91; 143B-168.3;  
*Eff. July 1, 1988;*  
*Amended Eff. March 1, 2014; July 1, 2010; July 1, 1998;*  
*September 1, 1990;*  
*Readopted Eff. October 1, 2017.*

**10A NCAC 09 .2507 OPERATING POLICIES**

*History Note:* Authority G.S. 110.91; 143B-168.3;  
*Eff. July 1, 1988;*

*Repealed Eff. October 1, 2017.*

**10A NCAC 09 .2508 AGE APPROPRIATE ACTIVITIES**

- (a) Child care facilities that provide care to school-age children shall provide a balance of teacher directed and free choice activities appropriate to the age, needs, and interests of the children.
- (b) Opportunities must be provided for children to participate in the planning and the implementation of activities.
- (c) Facilities that operate a school-age component for three or fewer hours per day shall make three of the following activities available daily; those that operate a school-age component for more than three hours per day shall make four of the following activities available daily:
  - (1) career development activities;
  - (2) community awareness activities;
  - (3) creative arts activities;
  - (4) cultural activities;
  - (5) games or manipulatives;
  - (6) hands-on academic enrichment activities including language, math, science, social studies, or foreign language activities;
  - (7) health education or wellness activities;
  - (8) homework with assistance available as needed from center personnel;
  - (9) reading activities;
  - (10) sand or water play;
  - (11) social skills, life skills or problem-solving activities;
  - (12) structured or unstructured physical activities; or
  - (13) technology skill-building activities.
- (d) All equipment and materials used by school-age children shall be appropriate for the age and size of the children using the items.
- (e) When screen time is provided on any electronic device with a visual display, it shall be:
  - (1) offered as a free choice activity;
  - (2) used to meet a developmental goal;
  - (3) limited to a maximum of 30 minutes per day and no more than two and a half hours per week, per child;
  - (4) documented on a cumulative log or activity plan, available for review by a representative of the Division; and
  - (5) usage time periods may be extended for school assigned homework.
- (f) Cots, beds, or mats with linens shall not be required for school-age children. However, provision shall be made for children who wish to rest or who are sick to rest in a comfortable place.

*History Note:* Authority G.S. 110-85; 110-91(6),(12); 143B-168.3;  
*Eff. July 1, 1988;*  
*Amended Eff. July 1, 2010; October 1, 1991; September 1, 1990;*  
*Readopted Eff. October 1, 2017.*

**10A NCAC 09 .2509 ACTIVITIES: OFF PREMISES**

- (a) The requirements of this Rule and Section .1000 of this Chapter shall apply when activities for school-age children are conducted outdoors or off the premises for 75 percent of each day.
- (b) The facility shall develop a plan of activities which is posted in a place in the home base or given to the parents. The plan shall include the location, purpose, time and date, person in charge, and telephone number or method for contacting the person in charge.
- (c) Activities shall be planned to accommodate a variety of individual interests and shall provide opportunities for choice.
- (d) Written permission from parents shall be obtained before transporting children on field trips or leaving the premises.
- (e) Blanket permissions from parents for field trips or leaving the premises shall be acceptable only when a plan of activities to be conducted off the premises is posted in a place for review by parents and staff in advance on a weekly basis.

*History Note: Authority G.S. 110-91(6),(12); 143B-168.3; Eff. July 1, 1988;*  
*Amended Eff. September 1, 1990;*  
*Readopted Eff. October 1, 2017.*

**10A NCAC 09 .2510 STAFF QUALIFICATIONS**

- (a) The individual who is responsible for ensuring the administration of the program, whether on-site or off-site, shall:

- (1) Prior to employment, have at least:
  - (A) 400 hours of experience working with school-age children in a licensed child care program;
  - (B) 600 hours of verifiable experience working with school-age children in an unlicensed school-age care or camp setting; or
  - (C) have an undergraduate, graduate, or associate degree, with at least 12 semester hours in school-age care related coursework; and
- (2) Meet the requirements for a child care administrator in G.S. 110-91(8).

- (b) At least one individual who is responsible for planning and ensuring the implementation of daily activities for a school-age program (program coordinator) shall:

- (1) Be at least 18 years old and have a high school diploma or its equivalent prior to employment;
- (2) Have completed two semester credit hours in child and youth development and two semester credit hours in school-age programming. Each individual who does not meet this requirement shall enroll in coursework within six months after becoming employed and shall complete this coursework within 18 months of enrollment. An individual who meets the staff requirements for administrator or lead teacher shall be considered as meeting the requirements for program coordinator, provided the individual completes Basic School-Age Care (BSAC) training as defined in 10A NCAC 09 .0102(4) of this Chapter, and

- (3) Be on site when children are in care for programs offering before and after school care only. For a full day program, the program coordinator shall be on site for two thirds of the hours of operation. This includes times when the individual is off site due to illness or vacation.

- (c) Staff who are responsible for supervising groups of school-age children (group leaders) shall be at least 18 years of age and have a high school diploma or its equivalent prior to employment, and shall complete the BSAC training.
- (d) Staff who assist group leaders (assistant group leaders) shall be at least 16 years of age and shall complete the BSAC training.

- (e) The individual who is on-site and responsible for the administration of the school-age component of a center which also provides care to preschool-age children, shall meet the requirements for child care administrator in G.S. 110-91(8) and Rule .0704 of this Chapter.

- (f) When an individual has responsibility for both administering the program and planning and ensuring the implementation of the daily activities of a school-age program, the individual shall meet the staff requirements for an administrator and shall complete the BSAC training.

- (g) Completion of the BSAC training course, shall count toward meeting five hours of one year's annual on-going training requirements in Rule .1103 of this Chapter.

- (h) As used in this Rule, the term "experience working with school-age children" means experience working with school-age children as an administrator, program coordinator, group leader, assistant group leader, lead teacher, teacher, or aide.

- (i) All staff shall receive on-site training and orientation as follows:

- (1) Within the first two weeks of assuming responsibility for supervising a group of children, each employee shall complete at least six clock hours of training on:
  - (A) recognizing, responding to, and reporting child abuse, neglect or maltreatment pursuant to G.S. 110-105.4 and G.S. 7B-301;
  - (B) the center's operational policies, including the transportation policy, identification of building and premises safety issues, Emergency Preparedness and Response Plan and the emergency medical care plan;
  - (C) adequate supervision of children, taking into account their age, emotional, physical, and cognitive development; and
  - (D) prevention and control of infectious diseases, including immunization; and
- (2) Within the first six weeks of assuming responsibility for supervising a group of children, each employee shall complete at least three additional clock hours of training on:
  - (A) maintaining a safe and healthy environment and developmentally

- appropriate activities for school-age children;
- (B) firsthand observations of the program's daily operations and instruction in the employee's assigned duties;
- (C) instruction in the administration of medication to children in accordance with 10A NCAC 09 .0803;
- (D) successfully complete CPR and First Aid training appropriate for the ages of children in care;
- (E) prevention of and response to emergencies due to food and allergic reactions;
- (F) review of the program's handling and storage of hazardous materials and the appropriate disposal of biocontaminants; and
- (G) review of child care licensing law and rules, including an explanation of the role of State and local government agencies in the regulation of child care and the employee's obligation to cooperate with representatives of State and local government agencies during visits and investigations.

(j) Staff in part-time, full day, or track-out school-age care programs required to complete BSAC training shall do so within three months of becoming employed.

*History Note:* Authority G.S. 110-85; 110-91(8),(11); 143B-168.3;  
*Eff.* July 1, 1988;  
*Amended Eff.* August 1, 2010; November 1, 2007; July 1, 2000;  
 July 1, 1998; January 1, 1992; September 1, 1990;  
*Readopted Eff.* October 1, 2017.

#### **10A NCAC 09 .2512 DEVELOPMENTAL DAY CENTERS**

Child care centers which meet the criteria for developmental day centers, as defined in 10A NCAC 09 .2901, shall be in compliance with the provisions of Rules. 0508 through .0511 of this Chapter by complying with the requirements for activities for developmental day centers set forth in 10A NCAC 09 .2904.

*History Note:* Authority G.S. 110-85; 110-88(14); 110-91(2),(12); 143B-168.3;  
*Eff.* January 1, 1987;  
*Amended Eff.* July 1, 2010; July 1, 1998; July 1, 1988;  
*Readopted Eff.* October 1, 2017 (*Transferred from 10A NCAC 09 .0505*).

### **SECTION .2900 - DEVELOPMENTAL DAY SERVICES**

#### **10A NCAC 09 .2901 SCOPE**

(a) The rules in this Section apply to all certified Developmental Day Centers, or to all child care centers requesting to be certified

as a Developmental Day Center. A Developmental Day Center offers specialized developmental day services to children who:

- (1) are diagnosed with developmental delays or developmental disabilities; or
- (2) have been identified with a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay as defined in 10A NCAC 43G .0110(b).

(b) The diagnosis or identification shall be completed by a licensed professional through a comprehensive clinical assessment. Developmental day services are designed to meet individualized needs of children in the following skill areas:

- (1) Self-help;
- (2) Physical (gross/fine motor);
- (3) Language and speech; and
- (4) Cognitive and psychosocial skills.

(c) A team of health and education professionals shall put together a plan of care in place for each child who is diagnosed with, or at risk for, a developmental delay, developmental disabilities, or atypical development. The goal is to assist exceptional children in preparing for on-going growth and learning in less restrictive, inclusive environments.

(d) All rules in this Chapter apply except as provided in this Section.

(e) Nothing in this Section precludes the enrollment of typically developing children in a Developmental Day Center.

*History Note:* Authority G.S. 110-85; 110-88(14);  
*Eff.* July 1, 2010;  
*Readopted Eff.* October 1, 2017.

#### **10A NCAC 09 .2902 LICENSE**

(a) Developmental Day services shall be available for preschool children for a minimum of 8 hours per day, 5 days per week, Monday through Friday, and 12 months per year except in the following circumstances:

- (1) in counties where no Community-Based Developmental Day Center operates, a Developmental Day program operated by the Local Education Agency may provide services for the 10 month school year (as defined by the State Board of Education); or
- (2) if a Community-Based Developmental Day center opens in a county where Developmental Day services are only provided by a Developmental Day program operated by the Local Education Agency, the Developmental Day program operated by the Local Education Agency shall continue to provide services for the 10 month school year until the end of the following school year. At the end of the following school year, all Developmental Day services in the county shall be available as described in Paragraph (a) of this Rule.

(b) For purposes of this Rule, a "Community-Based Developmental Day Center" means a Developmental Day Center not operated by the Local Education Agency.

(c) Developmental Day Centers shall maintain a four or five star rated license with an average score of 5.0 on the appropriate

environment rating scale in each classroom evaluated as defined in 10A NCAC 09 .0102(15), (25) and (40).

(d) A child care center with a temporary license may receive certification status if all rules in this Section are met, except for Paragraph (c) of this Rule, and an application for a two to five star rated licensed has been submitted in accordance with Section .2800 of this Chapter. At the end of the temporary license period the child care center shall obtain a four or five star rated license

**MAXIMUM**

AGE	RATIO STAFF/CHILDREN	GROUP SIZE
0-12 Months	1/4	8
1 to 2 Years	1/5	10
2 Years and Older	1/6	18

(g) A minimum of two staff members shall be on site at all times while children are in attendance at the facility.

(h) A child care center may appeal the removal of certification status in accordance with G.S. 110-94; however, an appeal shall not preclude a Local Education Agency from removing contracted children from the program before a final decision on the appeal is reached.

*History Note: Authority G.S. 110-85; 110-88(5); 110-88(10); 110-88(14);  
Eff. July 1, 2010;  
Amended Eff. August 1, 2016;  
Readopted Eff. October 1, 2017.*

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

(a) Each center serving children ages birth to three years shall have:

- (1) one staff who holds a NC Birth-through-Kindergarten (B-K) Continuing or Initial License issued by the North Carolina Department of Public Instruction;
- (2) a NC Provisional Preschool Add-on License issued by the North Carolina Department of Public Instruction; or
- (3) a NC Lateral Entry B-K License issued by the North Carolina Department of Public Instruction.

This staff shall provide program oversight and supervision for any caregivers in classrooms with children ages birth to three years.

(b) In accordance with G.S. 115C-84.2(a)(1), during the [185 day] school year (as defined by the State Board of Education), each child aged three-years-old and older on or before the initial school entry date specified in G.S. 115C-364 (school entry date) shall be served in a classroom with at least one lead teacher who holds a B-K Standard Professional I licensure or provisional licensure in B-K, or Preschool Add-on licensure issued from the Department of Public Instruction.

(c) Children who turn three-years-old after the school entry date who are identified as a child with a disability as evidenced by an Individualized Education Program (IEP), shall be served in a classroom by a teacher who holds a NC B-K Continuing or Initial License; or a NC Provisional Preschool Add-on License; or a NC Lateral Entry B-K License.

as specified in Paragraph (c) of this Rule. Failure to receive and maintain a four or five star rated license shall result in the removal of certification status as a Developmental Day Center.

(e) The child care center license shall indicate certification as a Developmental Day Center.

(f) The center shall comply with the staff-child ratio and maximum group size as follows:

(d) Teachers who are required to hold a NC B-K Continuing or Initial License issued by the North Carolina Department of Public Instruction as specified in Paragraph (a) of this Rule shall be enrolled with the Early Educator Support, Licensure & Professional Development Unit of the Division of Child Development and Early Education. Enrollment procedures may be found online at [http://ncchildcare.dhhs.state.nc.us/general/mb\\_eeslpd.asp](http://ncchildcare.dhhs.state.nc.us/general/mb_eeslpd.asp).

(e) For centers operating for 12 months as specified by Rule .2902(a) of this Section, during the two additional months of operation each group of preschool children shall have at least one lead teacher with a minimum of an A.A.S. degree in early childhood education or child development, or an A.A.S. degree in any major with 12 semester hours in early childhood education or child development.

(f) For centers operating for 10 months as specified by Rule .2902(a) of this Section, during the 10-month school year, (as defined by the State Board of Education), each group of school-age children shall have at least one teacher who holds State certification as a Special Education Teacher. For centers operating for 12 months as specified by Rule .2902(a) of this Section, during the two additional months of operation each group of school-age children shall have at least one teacher who has completed at least two semester hours of school-age care related coursework and has completed or is enrolled in at least two additional semester hours of school-age related coursework.

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

*History Note: Authority G.S. 110-85; 110-88(5); 110-88(14);  
Eff. July 1, 2010;  
Amended Eff. August 1, 2016; March 1, 2014;  
Readopted Eff. October 1, 2017.*

**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) 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 for inclusion with children who are typically developing.

*History Note: Authority G.S. 110-85; 110-88(14); Eff. July 1, 2010; Amended Eff. July 1, 2012; Readopted Eff. October 1, 2017.*

**10A NCAC 09 .2905 FAMILY SERVICES**

The center shall facilitate family involvement as evidenced by meeting at least four of the following six activities:

- (1) Providing quarterly parent education sessions;
- (2) Holding parent/teacher conferences at least twice a year;
- (3) Communicating on an individual basis with parents via daily notes, progress reports, or surveys;
- (4) Having parents as members of a center advisory board;
- (5) Providing opportunities for parent volunteers to assist with special classroom activities, field trips, and other learning experiences for children; or
- (6) Providing parents with referral information about other community programs and resources serving young children.

*History Note: Authority G.S. 110-85; 110-88(14); Eff. July 1, 2010; Readopted Eff. October 1, 2017.*

**SECTION .3000 NC PRE-KINDERGARTEN SERVICES**

**10A NCAC 09 .3001 SCOPE**

The Rules in this Section apply to all licensed programs that serve children in the North Carolina Pre-Kindergarten (NC Pre-K) Program. The NC Pre-Kindergarten Program Rules in G.S. 110, Article 7 and this Chapter shall apply except as provided in this Section. The NC Pre-K Program is intended to provide high-quality educational experiences to enhance school readiness for at-risk-four-year olds.

*History Note: Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a)-(f); Eff. November 1, 2012; Readopted Eff. October 1, 2017.*

**10A NCAC 09 .3002 FACILITY REQUIREMENTS**

(a) Programs serving NC Pre-K children shall maintain a four-or five-star rated license in accordance with G.S. 110-90(4) and Section .2800 of this Chapter.

(b) All NC Pre-K licensed programs shall have an assessment completed every three years using the Early Childhood Environment Rating Scale-Revised Edition assessment tool as a part of the rated license reassessment process as defined in Rule .0102(15), (25) and (40) of this Chapter. Classrooms that score below 5.0, shall be reassessed the following year and a minimum score of 5.0 must be achieved in order to continue to be approved as a NC Pre-K site. At least one NC Pre-K classroom shall be selected for an assessment during the reassessment process.

(c) During the NC Pre-K day, classrooms serving NC Pre-K children shall provide outdoor time, either as part of a small group, whole group, or individual activity, for no less than 45 minutes per day when weather conditions permit as defined in Rule .0102 of this Chapter.

*History Note: Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a); Eff. November 1, 2012; Readopted Eff. October 1, 2017.*

**10A NCAC 09 .3003 PROGRAM ATTENDANCE POLICY**

When a child is absent for more than three consecutive days, the site-level administrator shall contact the child's parent to discuss the absences and determine whether the parent wishes the child to remain in the NC Pre-K Program. The site-level administrator shall document each attempt to contact the family and include decisions the child's parent makes regarding the child's continued participation in the program. The site-level administrator shall contact the local NC Pre-K contractor to share information related to the child's absence and to collaboratively determine what further actions may be necessary to maintain the child's attendance in the program. The site-level administrator shall not terminate a child's participation in the NC Pre-K program before determining if barriers to the child's attendance exist and can be remedied through assistance such as access to transportation or additional educational activities in the case of a child's illness or disability.

*History Note: Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a); Eff. November 1, 2012; Readopted Eff. October 1, 2017.*

**10A NCAC 09 .3005 CHILD HEALTH ASSESSMENTS**

(a) A health assessment shall be on file at the NC Pre-K site within 30 days after a child enters the NC Pre-K program and the assessment may be no more than 12 months old at the time of program entry. The health assessment shall include the following:

- (1) physical examination;
- (2) updated immunizations;
- (3) vision screening;
- (4) hearing screening; and
- (5) dental screening.



(b) Site-level administrators shall review all health assessment results at the time of the child's entry into the program to determine whether the assessment includes specific instructions for identified health needs that may require physical or occupational or other therapies to support the child's development and learning goals.

*History Note:* Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a);  
*Eff. November 1, 2012;*  
*Readopted Eff. October 1, 2017.*

**10A NCAC 09 .3006 DEVELOPMENTAL SCREENING**

(a) All children enrolled in the NC Pre-K program shall receive a screening assessing the development of each child, across all domains, to ensure the child is growing and developing according to developmental milestones, unless the child has an existing Individualized Education Program (IEP). The developmental screening shall be conducted by a health care, community or school professional trained in administering the screening tool. Children shall be screened within 90 days after the first day of attendance in the program or within six months prior to the first day of attendance. The screenings shall be used for the purpose of identifying children to be referred for further evaluation and testing based on concerns in one or more developmental domains.

(b) Site-level administrators shall review all developmental screening results and shall share results with families when results indicate a need for further evaluation of the child in one of the domains of development: health and physical, emotional and social, cognitive, language/communication and approaches to play and learning. The site-level administrator will work with the family to contact the local school system's Exceptional Children Program or other qualified resources to determine if a child is eligible for special education, related services or other supports for modifications in the classroom.

*History Note:* Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a);  
*Eff. November 1, 2012;*  
*Readopted Eff. October 1, 2017.*

**10A NCAC 09 .3007 EARLY LEARNING STANDARDS AND CURRICULA**

(a) NC Pre-K programs shall use North Carolina's Early Learning and Development Standards (and subsequent editions), as developed by a group of state and national early childhood experts. The Early Learning and Development Standards can be found on the Division of Child Development and Early Education's website at [http://ncchildcare.dhhs.state.nc.us/providers/pv\\_foundations.asp](http://ncchildcare.dhhs.state.nc.us/providers/pv_foundations.asp).

(b) Each NC Pre-K classroom shall use a curriculum as defined in 10A NCAC 09 .0102.

*History Note:* Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a);  
*Eff. January 1, 2013;*  
*Readopted Eff. October 1, 2017.*

**10A NCAC 09 .3008 FORMATIVE ASSESSMENTS**

Classroom staff shall be required to conduct on-going formative assessments to gather information about each child's growth and skill development, and how each child processes information and solves problems during the learning process. Classroom staff shall use this information to plan and deliver instruction, and review each child's progress with his or her family, based on each child's development and learning needs. All formative assessments used by the NC Pre-K Program must be approved by the NC Child Care Commission.

*History Note:* Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a),(b);  
*Eff. March 1, 2013;*  
*Readopted Eff. October 1, 2017.*

**10A NCAC 09 .3009 STAFF-TO-CHILD RATIO AND CLASS SIZE**

The classroom shall not exceed a maximum staff-to-child ratio of one to nine with a maximum class size of 18 children, with at least one teacher and one teacher assistant per classroom. A classroom of nine children or less shall have at least one teacher.

*History Note:* Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a);  
*Eff. November 1, 2012;*  
*Readopted Eff. October 1, 2017.*

**10A NCAC 09 .3010 FAMILY ENGAGEMENT**

NC Pre-K programs shall develop a plan for family engagement consisting of strategies designed to develop partnerships with families that promote shared decision-making opportunities. These opportunities include:

- (1) Allowing Pre-K program teachers the opportunity for home visits;
- (2) Formal and informal parent/teacher conferences;
- (3) Classroom visits and options for parents and families to participate in classroom activities;
- (4) Parent education;
- (5) Allowing family members the opportunity for involvement in decision making about their own child and about their child's early childhood program; and
- (6) Opportunities to engage families outside of the regular school day.

*History Note:* Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a);  
*Eff. November 1, 2012;*  
*Readopted Eff. October 1, 2017.*

**10A NCAC 09 .3011 NC PRE-K SITE-LEVEL ADMINISTRATOR QUALIFICATIONS**

(a) Administrators of NC Pre-K sites shall have:

- (1) A NC Principal's License, or
- (2) A North Carolina Early Childhood Administrator Credential (NCECAC) Level III, or

- (3) hold a Bachelor's Degree in any field with 18 semester hours in early childhood education and child development, and complete six semester hours in child care administration or nine semester hours in business administration or a combination of child care administration and business administration.

- (4) If the site-level administrator does not meet Subparagraphs (a)(1), (2), or (3) of this Rule, the following shall apply:

- (A) provisional approval shall be given for four years from the time the site began participation with the NC Pre-K program for the administrator to attain a NC Principal's License, or a NCECAC III, or complete a Bachelor's Degree in any field with 18 semester hours in early childhood education and child development, and complete six semester hours in child care administration or nine semester hours in business administration or a combination of child care administration and business administration; and
- (B) progress toward this requirement shall be considered a minimum of six documented semester hours per year in early childhood education, child development, child care administration and business administration course work.

(b) When the site administrator is unable to work due to illness, other health related conditions, disability, death, or natural or man-made disasters, the interim site-level administrator shall be employed not to exceed 12 weeks and have the following:

- (1) NCECAC I Credential; or
- (2) the equivalent as follows:
- (A) NC Early Childhood Credential plus three years of experience as a director, co-director, or assistant director; and
- (B) Early Childhood Administration I (EDU 261) and Early Childhood Administration II (EDU 262); or
- (C) six semester hours of child care administration coursework; or
- (D) nine semester hours of business administration coursework; or
- (E) a combination of Parts (2)(B), (C), or (D) of this Paragraph that equals nine semester hours.
- (3) NC Principal's License.

(c) In determining whether to approve an extension request, the Division shall consider the following:

- (1) the number of children and families who may lose services if the classroom is not approved for the extension;
- (2) the effect upon children and families if children are relocated to another Pre-K site;

- (3) documentation of the Pre-K program's efforts to secure a permanent site-level administrator for the vacancy;
- (4) availability of funding sources other than Pre-K funds to support affected children;
- (5) reasons for the vacancy, including:
- (A) maternity leave;
- (B) death, disability, or illness; and
- (C) natural or man-made disasters.

(d) Administrators of NC Pre-K sites shall not serve as the NC Pre-K teacher or teacher assistant.

*History Note: Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a);*

*Eff. November 1, 2012;*

*Readopted Eff. October 1, 2017.*

### **10A NCAC 09 .3012 NC PRE-K TEACHER EDUCATION, LICENSURE AND CREDENTIALS**

(a) All teachers shall hold, or be working toward a North Carolina (NC) Birth through Kindergarten (B-K) Continuing License or B-K or Preschool Add-on License issued by the North Carolina Department of Public Instruction. Teachers working toward the required education and license shall meet one of the following requirements:

- (1) a North Carolina B-K Initial License; or
- (2) a North Carolina K-6 license and a Provisional Preschool Add-on license;
- (3) another North Carolina or another state's license and a NC Provisional B-K license; or
- (4) a BA/BS degree in B-K, child development, early childhood education, or an early childhood education related field, and be eligible for a NC Lateral Entry B-K License.

(b) Pre-K teachers with a NC Lateral Entry B-K License as specified in Subparagraph (a)(4) of this Rule shall make progress toward the B-K Continuing License by:

- (1) obtaining a Plan of Study issued by an accredited college or university with a North Carolina Department of Public Instruction approved teacher education program;
- (2) submitting to the Division college or university transcripts verifying the completion of a minimum of six semester credit hours per year in accordance with Subparagraph (1) of this Paragraph;
- (3) completing the three-year North Carolina State Board of Education Beginning Teacher Support Program in accordance with G.S. 115C-296(e) and North Carolina State Board of Education Policy LICN-004; and
- (4) achieving the NC B-K Initial or Continuing License issued by the North Carolina Department of Public Instruction within three years.

(c) Pre-K teachers with a NC Provisional B-K or Preschool Add-on License shall make progress toward the B-K Continuing License by:

- (1) obtaining a Plan of Study issued by an accredited college or university with a North Carolina Department of Public Instruction approved teacher education program;
- (2) submitting to the Division college or university transcripts verifying the completion of a minimum of six semester credit hours per year in accordance with Subparagraph (1) of this Paragraph;
- (3) completing the three-year North Carolina State Board of Education Beginning Teacher Support Program in accordance with G.S. 115C-296(e) and North Carolina State Board of Education Policy LICN-004; and
- (4) achieving the NC B-K Initial or Continuing License issued by the North Carolina Department of Public Instruction within five years.

(d) Teachers not meeting the annual minimum semester hours as set forth in Subparagraphs (b)(2) and (b)(3) of this Rule shall submit a written request to the Division of Child Development and Early Education Early Educator Support, Licensure and Professional Development Unit requesting an extension to complete the requirement. Teachers shall submit a written request to the Division of Child Development and Early Education Early Educator Support, Licensure and Professional Development Unit. The written request shall include the reason for not meeting the provisions of this Rule, a list of the required coursework and semesters hours to be completed as prescribed by the Plan of Study, a timeline for completing the required semester hours, and documentation supporting course enrollment and expected completion dates.

(e) In determining whether to approve less than the annual minimum required semester hours, the Division shall consider reasons, including:

- (1) maternity or family leave;
- (2) death, disability, or illness; and
- (3) natural or man-made disasters.

(f) Teachers shall maintain the B-K or Preschool Add-on Continuing License in accordance with G.S. 115C-296(b)(1)b.4. and NC State Board of Education Policy LICN-005. These policies can be found at [http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_115C/GS\\_115C-296.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_115C/GS_115C-296.html)

(g) Teachers with expired B-K Continuing licenses shall meet the provisions set forth in G.S. 115C-296(b)(1)b.4. which can be found at

[http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_115C/GS\\_115C-296.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_115C/GS_115C-296.html)

and North Carolina State Board of Education Policy LICN-005.

These policies can be found at

[https://stateboard.ncpublicschools.gov/policy-manual/licensure/copy2\\_of\\_licensure-renewal-requirements](https://stateboard.ncpublicschools.gov/policy-manual/licensure/copy2_of_licensure-renewal-requirements).

(h) The site-level administrator shall maintain documentation available for review by the Division, of the progress toward the required standard as specified in this Rule.

(i) All NC Pre-K lead teachers employed by nonpublic schools must be enrolled with the Early Educator Support, Licensure & Professional Development Unit of the Division of Child

Development and Early Education. Enrollment requirements may be found on the Division of Child Development and Early Education website at [http://ncchildcare.dhhs.state.nc.us/general/mb\\_eeslpd.asp](http://ncchildcare.dhhs.state.nc.us/general/mb_eeslpd.asp).

*History Note:* Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a);

*Eff. November 1, 2012;*

*Readopted Eff. October 1, 2017.*

#### **10A NCAC 09 .3013 NC PRE-K TEACHER ASSISTANT EDUCATION AND CREDENTIALS**

All teacher assistants shall:

- (1) have a high school diploma or GED and shall hold, or be working toward, an Associate Degree in birth-through-kindergarten, child development, early childhood education, or an early childhood education related field or a Child Development Associate (CDA) credential. Teacher assistants working toward the minimum of an Associate Degree or CDA shall make progress by completing a minimum of six documented semester hours per year; or
- (2) meet the employment requirements outlined by the Every Student Succeeds Act (ESSA), Pub.L. 114-95, and have one of the following:
  - (a) six documented semester hours of coursework in early childhood education, or
  - (b) two years of work experience in an early childhood setting.

The site-level administrator shall maintain documentation available for review by the Division of the progress in accordance with this Rule.

*History Note:* Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a);

*Eff. November 1, 2012;*

*Readopted Eff. October 1, 2017.*

#### **10A NCAC 09 .3014 NC PRE-K SUBSTITUTE STAFF**

(a) When a member of the NC Pre-K teaching staff is unable to work, due to illness, other health related conditions, disability, death or natural or man-made disasters, a substitute staff person shall be provided to maintain the staff-to-child ratio as specified in Rule .3009 of this Section and shall be able to implement the curriculum and formative assessments in accordance with Rules .3007 and .3008 of this Section. Substitute staff shall be at least 18 years of age and meet the following minimum qualifications:

- (1) When teachers are absent from the Pre-K classroom for 15 or fewer days, substitute staff shall meet one of the following:
  - (A) Nonpublic Schools (Private Child Care/Pre-K Settings): Substitutes in private settings shall have a high school diploma or a GED, and completed one course in early childhood education or child development, such as the North

- Carolina Early Childhood Credential;  
or
- (B) Public School Settings: Substitutes shall meet the requirements of the substitute policy consistent with the local education agency (LEA).
- (2) when teachers are absent from the Pre-K classroom for 16 or more attendance days, substitute staff hold an Associate Degree in birth-through-kindergarten, child development, early childhood education or an early childhood education related field.
- (b) Substitutes for teacher assistants shall be at least 18 years of age and have a high school diploma or a GED.
- (c) Substitute staff shall not exceed 12 weeks without approval from the Division of Child Development and Early Education NC Pre-K Unit. Upon written request of the NC Pre-K Contract Administrator, the Division may grant an extension of the 12-week vacancy. The request shall include why an extension beyond 12 weeks is needed and a timeline for employing a permanent teacher or assistant teacher. In determining whether to approve substitute staff to work beyond 12 weeks, the Division shall consider the following:
- (1) the number of children and families who may lose services if the classroom is not approved for the extension;
  - (2) the effect upon children and families if children are relocated to another Pre-K site;
  - (3) documentation of the Pre-K program's efforts to secure a permanent teacher for the vacancy;
  - (4) availability of funding sources other than Pre-K funds to support affected children;
  - (5) reasons for the vacancy, including:
    - (A) maternity leave;
    - (B) death, disability, or illness; and
    - (C) natural or man-made disasters.

*History Note:* Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a);  
Eff. November 1, 2012;  
Readopted Eff. October 1, 2017.

#### **10A NCAC 09 .3015 NC PRE-K TEACHER AND TEACHER ASSISTANT STANDARDS**

NC Pre-K teachers and teacher assistants shall provide child-directed and teacher-directed instructional day-to-day learning activities for children enrolled in the NC Pre-K program for at least 32.5-hours a week. In addition to these day-to-day instructional experiences, the Pre-K program shall provide adequate additional time for the teacher and teacher assistant staff for planning, scheduling and conducting home visits, meeting with children's families, or attending required professional development activities as set forth in Rule .3016 of this Section. These related activities shall take place outside of the 32.5-hour work week of direct teacher-child contact.

*History Note:* Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a);  
Eff. November 1, 2012;

*Readopted Eff. October 1, 2017.*

#### **10A NCAC 09 .3016 PROFESSIONAL DEVELOPMENT REQUIREMENTS**

North Carolina licensed administrators, teachers, and teacher assistants employed by public and nonpublic schools shall participate in professional development consistent with the level of education and type of educator licensure required for employment in accordance with 10A NCAC 09 .3011, .3012, and .3013. The policy can be found on the North Carolina Department of Public Instruction's website at <http://www.ncpublicschools.org/profdev/>.

*History Note:* Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a);

*Eff. November 1, 2012;*

*Readopted Eff. October 1, 2017.*

#### **10A NCAC 09 .3017 CHILDREN WITH UNIQUE NEEDS AND CHALLENGING BEHAVIORS**

(a) For purposes of this Rule, "challenging behavior" shall mean any repeated pattern of behavior, or perception of behavior, that interferes with or is at risk of interfering with optimal learning or engagement in pro-social interactions with peers and adults that interferes with children's learning, development, and success at play, is harmful to the child, other children, or adults, that put a child at high risk for later social problems or school failure (<http://challengingbehavior.fmhi.usf.edu/explore/glossary.htm>).

(b) When a child demonstrates challenging behaviors that prevent his or her progress in any developmental domain as referenced in the "North Carolina Foundations for Early Learning and Development" impeding the child's access to and participation in the assigned NC Pre-K classroom learning activities, the following shall apply:

- (1) The Site Administrator shall notify the NC Pre-K Contract Administrator and the local school system's Preschool Exceptional Children Program for assistance if a child's cognitive, language and communication, emotional, social, health and physical needs exceed the program's capacity to address as indicated by one or more of the following:
  - (A) developmental needs assessments;
  - (B) home visits;
  - (C) consultations with the family members;
  - (D) daily recorded classroom teacher observations; and
  - (E) modified instructional plans and differentiated lessons based on the child's individual goals.
- (2) The NC Pre-K Contract Administrator, Site Administrator, teacher, and family members in consultation with the school system's Preschool Exceptional Children Program and other available community and state resources, such as Birth-through-Kindergarten licensed mentors, evaluators, Healthy Social Behavioral specialists, child care health consultants, mental

- health specialists, social workers, and other local child developmental experts, shall develop a coordinated support plan to support the NC Pre-K child's placement and participation in the NC Pre-K Program.
- (3) The Division of Child Development and Early Education shall be notified when support plans recommended by the local school system's Exceptional Children Program require an alternative placement and support services for a child.
- (4) A site administrator shall not suspend or expel a child from a NC Pre-K Program until the site administrator has completed the requirements of Subparagraphs (1), (2), and (3) of this Paragraph.
- (5) Unless the operator determines the child poses a risk of harm to himself or herself or others, and has completed the requirements of Subparagraphs (1), (2), and (3) of this Paragraph, no child shall receive less than the 6.5-hour NC Pre-K day. Risk of harm to oneself or others includes:
- (A) physical aggression such as hitting, kicking, punching, spitting, throwing objects pinching, pushing, and biting;
  - (B) destroying property;
  - (C) tantrum behaviors that might include behaviors such as kicking, screaming, pushing an object or person, stomping feet, or head banging;
  - (D) verbal aggression including yelling, threats, and screaming;
  - (E) persistent or prolonged crying that is loud or disruptive or crying that interferes with the child's engagement in activities; and
  - (F) touching other children's private areas, and removing clothing from themselves or others.

*History Note:* Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a); Eff. October 1, 2017.

\*\*\*\*\*

#### **10A NCAC 15 .0611 COMPUTED TOMOGRAPHY (CT) X-RAY SYSTEMS**

(a) This Rule provides special requirements for human diagnostic use of computed tomography (CT) x-ray equipment. The uses of Cone Beam CT, Veterinary CT, CT Simulation, and CT attenuation correction shall be exempt from this Rule. The provisions of this Rule are in addition to, and not in substitution for, the Rules in Sections .0100, .0200, .0600, .0900, .1000, and .1600 of this Chapter.

(b) The following definitions shall apply to this Rule:

- (1) "CT qualified expert (CT QE)" means an individual who is registered or is providing

service for a registered facility where they are employed, as required by Section .0200 of this Chapter. The individual shall have the following education and experience:

- (A) a master's or doctoral degree in physics, medical physics, biophysics, radiological physics, medical health physics, or equivalent disciplines from a college or university accredited by an agency recognized by the U.S. Department of Education, and three years work experience in a clinical CT environment. The work experience shall be supervised and documented by a medical physicist certified in the specialty area of diagnostic medical physics by the American Board of Radiology, the Canadian College of Physicists in Medicine, or the American Board of Medical Physics; or
  - (B) certification in the specialty area of diagnostic medical physics by the American Board of Radiology, the Canadian College of Physicists in Medicine, or the American Board of Medical Physics and shall abide by the certifying body's requirements for continuing education.
- (2) "general supervision" means the activity is performed under the qualified supervisor's overall direction and control but the qualified supervisor's physical presence shall not be required during the activity.
- (3) "personal supervision" means overall direction, control, and training of an individual by a qualified supervisor who shall be physically present during the activities performed by the supervised individual.
- (c) Equipment and Installation Requirements
- (1) CT x-ray systems shall meet the requirements of 21 CFR 1020.33 as incorporated by reference in Rule .0117(a)(3) of this Chapter.
  - (2) The operator of a CT scanner shall be able to maintain aural communication with the patient from a shielded position at the control panel.
- (d) Personnel Requirements. Individuals who operate CT x-ray systems shall be specifically trained on the operational features of the unit and:
- (1) hold (CT) registration with the American Registry of Radiologic Technologists (ARRT); or
  - (2) be a Registered Technologist (R.T.) by the ARRT with registration in radiography (R) or a Certified Nuclear Medicine Technologist by the Nuclear Medicine Technology Certification Board; these individuals shall document training and experience that is equivalent to that

required to attain (CT) registration with the ARRT; or

- (3) be in training under the personal supervision of an individual that meets the requirements of Subparagraph (d)(1) or (d)(2) of this Rule.

**(e) System Performance Evaluations**

- (1) Performance evaluations of the CT x-ray system shall be performed by, or under the general supervision of, a CT QE who assumes the responsibility for the evaluation.
- (2) The performance evaluation of a CT x-ray system shall be performed within 30 days of installation and at least every 14 months.
- (3) Performance evaluation standards and tolerances shall meet manufacturer's specifications or standards and tolerances for the CT x-ray system from the American College of Radiology (ACR) and the American Association of Physicists in Medicine (AAPM) incorporated herein by reference including subsequent amendments and editions. These standards and tolerances may be found at no charge on the ACR website at <https://www.acr.org> and the AAPM website at [www.aapm.org](http://www.aapm.org).
- (4) The performance evaluation shall include the following as applicable to the design of the scanner:
  - (A) geometric factors and alignment including alignment light accuracy, and table increment accuracy;
  - (B) image localization from a scanned projection radiograph (localization image);
  - (C) radiation beam width;
  - (D) image quality including high-contrast (spatial) resolution, low-contrast resolution, image uniformity, noise, and artifact evaluation;
  - (E) CT number accuracy;
  - (F) image quality for acquisition workstation display devices; and
  - (G) a review of the results of the routine QC, as set forth in Paragraph (f) of this Rule;
- (5) The performance evaluation shall also include the evaluation of radiation output and patient dose indices for the following clinical protocols if performed:
  - (A) pediatric head;
  - (B) pediatric abdomen;
  - (C) adult head;
  - (D) adult abdomen; and
  - (E) brain perfusion.
- (6) Evaluation of radiation output shall be performed with a dosimetry system that is calibrated. The dosimetry system shall have been calibrated within the preceding two years

by persons registered to provide such services pursuant to Rule .0205 of this Chapter.

- (7) The performance evaluation shall be documented and maintained for inspection by the Agency. The documentation shall include the name of the CT QE performing or supervising the evaluation, as well as any other individuals participating in the evaluation under the general supervision of the CT QE. The documentation shall be retained for 14 months.

**(f) Routine Quality Control (QC)**

- (1) A routine QC program for the CT system shall be developed by or have written approval by a CT QE and include:
  - (A) instructions for the routine QC;
  - (B) intervals for QC testing;
  - (C) acceptable tolerances for the QC tests;
  - (D) use of a water equivalent phantom to evaluate each day of clinical use: noise, CT number accuracy, and artifacts; and
  - (E) routine QC tests that may be performed in place of system performance evaluations after equipment repairs or maintenance. This shall include the process for obtaining approval from the CT QE prior to conducting testing.
- (2) The duties in the routine QC program, as described in Subparagraph (f)(1) of this Rule, shall be conducted by individuals that meet the requirements of Paragraph (d) of this Rule or individuals approved by the CT QE.
- (3) The routine QC shall be documented and maintained for inspection by the Agency. The records shall be retained for 14 months.

**(g) Operating Requirements.** The following information shall be accessible to the CT operator during use of the machine and while performing routine QC:

- (1) instructions on performing routine QC;
- (2) a schedule of routine QC;
- (3) any allowable variations set by the CT QE for the indicated parameters;
- (4) the results of the most recent routine QC completed on the system; and
- (5) established scanning protocols.

*History Note: Authority G.S. 104E-7; 104E-11; 104E-12; Eff. October 1, 2017.*

\*\*\*\*\*

**10A NCAC 27H .0202 DEFINITIONS**

For the purposes of Rules .0201 through .0207 of this Section, when a capacity evaluation is ordered by a Court to be conducted through the Local Management Entity-Managed Care Organization LME-MCO, the following terms shall have the meanings indicated:

- (1) "Forensic Evaluation" means an examination ordered by the court through the LME-MCO to determine the defendant's current mental state and whether the defendant has the capacity to proceed to trial.
- (2) "Licensed Clinician" means the same as defined in Rule 10A NCAC 27G .0104.
- (3) "Local Certified Forensic Evaluator" means a Licensed Clinician who:
  - (a) has completed the training for certification and annual training seminars described in Rule .0204 of this Section;
  - (b) is employed by an LME-MCO, if permitted pursuant to 122C-141(a), or under contract with, an LME-MCO as a Forensic Evaluator; and
  - (c) is paid by the LME-MCO with public funds.
- (4) "Pre-Trial Evaluation Center" means the Forensic Services Unit located at Central Regional Hospital.

*History Note:* Authority G.S. 15A-1002; 122C-54; 122C-115.4(a); 122C-191(b); 143B-147;  
 Eff. July 1, 1982;  
 Amended Eff. January 1, 1996; May 1, 1990;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 26, 2017;  
 Amended Eff. Pending Legislative Review.

#### **10A NCAC 27H .0203 ELIGIBILITY FOR TRAINING**

To be eligible for training as a local certified forensic evaluator the individual shall:

- (1) be a Licensed Clinician;
- (2) be an employee of the LME-MCO, if permitted pursuant to G.S. 122C-141(a), or work under contract with, an LME-MCO;
- (3) provide documentation of current licensure status to the LME-MCO;
- (4) provide documentation of training and expertise with the mental health, developmental disabilities, or substance abuse (mh/dd/sa) services population; and
- (5) have his or her name submitted to the Pre-Trial Evaluation Center for the training and certification program by the LME-MCO director.

*History Note:* Authority G.S. 15A-1002; 122C-114; 122C-115.4(a); 122C-141; 122C-191(b); 143B-147;  
 Eff. July 1, 1982;  
 Amended Eff. October 1, 2017; January 1, 1996; May 1, 1990;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 26, 2017;  
 Amended Eff. Pending Legislative Review.

#### **10A NCAC 27H .0204 TRAINING AND CERTIFICATION**

(a) The individual seeking certification as a forensic evaluator shall complete six hours of initial training provided by the Division in order to be certified as a local certified forensic evaluator. The initial training shall include:

- (1) current laws and practices including the role of the local certified forensic evaluator in the capacity to proceed evaluation process;
- (2) procedures for conducting interviews including evaluation for the presence of mh/dd/sa disorders, or other relevant conditions;
- (3) procedures for completing reports required by Rule .0207 of this Section;
- (4) process for reporting findings to the court; and
- (5) an examination at the conclusion of the training which assesses comprehension of the training material and an understanding of the duties of a local certified forensic evaluator.

(b) Each local certified forensic evaluator shall complete four hours of continuing education seminars provided by the Pre-Trial Evaluation Center by December 31 of each calendar year.

(c) Continuing education seminar topics may include:

- (1) evaluation skills training to enhance skills acquired through the initial local certified forensic evaluator training;
- (2) changes in existing laws and current practices; and
- (3) evaluation of mh/dd/sa populations.

(d) Local certified forensic evaluators shall be exempt from the continuing education requirement in the calendar year in which they are first certified.

*History Note:* Authority G.S. 15A-1002; 122C-54; 122C-115.4(a); 122C-191; 143B-147;  
 Eff. July 1, 1982;  
 Amended Eff. May 1, 1990;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 26, 2017;  
 Amended Eff. Pending Legislative Review.

\*\*\*\*\*

#### **10A NCAC 43D .0202 DEFINITIONS**

(a) For the purposes of this Subchapter, all definitions set forth in 7 C.F.R. Part 246.2 are hereby incorporated by reference, including subsequent amendments and editions, with the following additions and modifications:

- (1) An "administrative appeal" is an appeal in accordance with Section .0800 of this Subchapter through which a local WIC agency, potential local WIC agency, authorized WIC vendor, or WIC vendor applicant may appeal the adverse actions listed in 7 C.F.R. 246.18(a)(1)(i), (a)(1)(ii), and (a)(3)(i).
- (2) An "authorized store representative" includes an owner, manager, assistant manager, head cashier, or chief fiscal officer.

- |   |  |
|---|--|
| <p>(3) An "authorized WIC vendor" is a food retailer or free-standing pharmacy that has executed a currently effective North Carolina WIC Vendor Agreement, as set forth in 7 C.F.R 246.12(h)(3).</p> <p>(4) A "chain store" is a store that is owned or operated by a corporation, partnership, cooperative association, or other business entity that has 20 or more stores owned or operated by the business entity.</p> <p>(5) An "Electronic Benefit Transfer (EBT) Processor" is an entity contracted by a government agency for the implementation, maintenance, and operation of the State WIC agency's WIC EBT system that acts as the agent of the State WIC agency to process and settle EBT transactions.</p> <p>(6) A "fair hearing" is the informal dispute resolution process in Section .0900 of this Subchapter through which any individual may appeal a State or local agency action that results in a claim against the individual for repayment of the cash value of issued benefits by which the individual is not eligible or results in the individual's denial of participation or disqualification from the WIC Program, as set forth in Rule .0410 of this Subchapter. This process must be complied with prior to requesting a contested case hearing in accordance with G.S. 150B, as set forth in 7 CFR 246.9.</p> <p>(7) "FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.</p> <p>(8) "Free-standing pharmacy" means a pharmacy that does not operate within another retail store. Free-standing pharmacy includes free-standing pharmacies that are chain stores and free-standing pharmacies participating under a WIC corporate agreement.</p> <p>(9) The "local WIC agency" is the local agency that enters into an agreement with the Division of Public Health to operate the Special Supplemental Nutrition Program for Women, Infants and Children.</p> <p>(10) A "local WIC program plan" is a written compilation of information on the local WIC agency policies concerning program operation, including administration, nutrition education, personnel functions, costs and other information prepared by the local WIC agency and submitted to the Nutrition Services Branch.</p> <p>(11) A "personal identification number" (PIN) is a numeric password selected and used by a WIC participant to authenticate the participant to the EBT system.</p> <p>(12) A "point of sale terminal" (POS) is an electronic device used to process EBT card payments at authorized vendor locations.</p> | <p>(13) A "predominantly WIC vendor" is an "above-50-percent vendor" as defined in 7 C.F.R. 246.2.</p> <p>(14) A "product look-up (PLU) code" is an identification number placed on produce sold at authorized vendor locations.</p> <p>(15) "Redemption" is the process by which a vendor deposits for payment a food instrument or cash-value voucher transacted at that vendor and the State agency (or its financial agent) makes payment to the vendor for the food instrument or cash-value voucher.</p> <p>(16) "Shelf price" is the price a vendor charges a non-WIC customer for a WIC supplemental food.</p> <p>(17) "SNAP-eligible food sales" means "food sales" as defined in 7 C.F.R. 246.2, which are those foods that can be purchased with Supplemental Nutrition Assistance Program ("SNAP") benefits.</p> <p>(18) The "State agency" is the Nutrition Services Branch, Women's and Children's Health Section, Division of Public Health, North Carolina Department of Health and Human Services.</p> <p>(19) "Store" means a food retailer or free-standing pharmacy operating at a single, fixed location.</p> <p>(20) "Supplemental food" or "WIC supplemental food" is a food that satisfies the requirements of 10A NCAC 43D .0501.</p> <p>(21) "Support costs" are clinic costs, administrative costs, and nutrition education costs.</p> <p>(22) "Transaction" is the process by which a WIC customer tenders a food instrument or a cash-value voucher to a vendor in exchange for authorized supplemental foods.</p> <p>(23) "Universal Product Code (UPC)" means an identification code printed on the packaging of WIC approved foods sold at WIC authorized vendor locations.</p> <p>(24) "Vendor applicant" is a store that has submitted an application to become an authorized WIC vendor but is not yet authorized.</p> <p>(25) A "vendor overcharge" is intentionally or unintentionally charging more for supplemental food provided to a WIC customer than to a non-WIC customer or charging more than the current shelf price for supplemental food provided to a WIC customer.</p> <p>(26) A "WIC corporate agreement" is a single WIC Vendor Agreement with a corporate entity that has 20 or more stores authorized as WIC vendors under the Agreement.</p> <p>(27) "WIC customer" means a WIC participant, parent, or caretaker of an infant or child participant, proxy for the eligible participant, or compliance investigator who tenders a food instrument or a cash-value voucher to a vendor in exchange for WIC supplemental food.</p> |
|---|--|



- (28) "WIC program" means the Special Supplemental Nutrition Program for Women, Infants, and Children authorized by 42 U.S.C. 1786 of the Child Nutrition Act of 1966 as amended.

(b) A copy of 7 C.F.R. Part 246 is available for inspection at the Department of Health and Human Services, Division of Public Health, Women's and Children's Health Section, Nutrition Services Branch, 5601 Six Forks Road, Raleigh, North Carolina 27609. Copies are available at no cost from the Supplemental Nutrition Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302, by calling (703) 305-2730 or online at <https://www.ecfr.gov/cgi-bin/text-idx?SID=a42889f84f99d56ec18d77c9b463c613&node=7:4.1.1.1.10&rgn=div5>.

*History Note:* Authority G.S. 130A-361; 7 C.F.R. 246; U.S.C. 1786;

*Eff. July 1, 1981;*

*Amended Eff. December 6, 1991; November 1, 1990; July 1, 1989;*

*Temporary Amendment Eff. May 17, 2000;*

*Amended Eff. April 1, 2001;*

*Temporary Amendment Eff. July 1, 2002;*

*Amended Eff. August 1, 2004;*

*Temporary Amendment Eff. July 1, 2006;*

*Amended Eff. October 1, 2017; February 1, 2013; October 1, 2009; April 1, 2007.*

#### **10A NCAC 43D .0203 REFERENCES**

(a) The State agency shall administer the WIC program in accordance with:

- (1) 42 U.S.C. 1786; and
- (2) 7 C.F.R. 246.1 through 246.28, United States Department of Agriculture, Food and Nutrition Service, Special Supplemental Nutrition Program for Women, Infants and Children.

(b) The documents listed in Paragraph (a) of this Rule are available for inspection at the Division of Public Health, Women's and Children's Section, Nutrition Services Branch at 5601 Six Forks Road, Raleigh, NC 27609 during regular business hours, Monday through Friday from 8:00 AM to 5:00 PM.

*History Note:* Authority G.S. 130A-361;

*Eff. July 1, 1981;*

*Amended Eff. October 1, 2017; October 1, 2009; April 1, 1984; April 1, 1982.*

#### **10A NCAC 43D .0703 USE OF FOOD INSTRUMENTS AND CASH-VALUE VOUCHERS**

(a) Participants may transact food instruments and cash-value vouchers on any day on or between the "First Date to Spend" and "Last Date to Spend" printed on the food instrument or cash-value voucher.

(b) Food instruments and cash-value vouchers shall be transacted only at authorized WIC vendors in accordance with the terms of the signed WIC Vendor Agreement and WIC program rules, regulations, and statutes. Authorized WIC vendors shall not be

reimbursed for food instruments and cash-value vouchers that are not properly transacted as set forth in Rule .0708 of this Section. Stores that are not authorized WIC vendors shall not be reimbursed for food instruments and cash-value vouchers transacted at their store.

(c) Printed food instruments and cash-value vouchers shall be deposited at the vendor's bank. Vendors that use EBT shall have their bank account credited with payments for completed EBT transactions. Food instruments and cash-value vouchers shall not be assigned, transferred, sold, or otherwise negotiated.

*History Note:* Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;

*Eff. July 1, 1981;*

*Amended Eff. April 1, 2001; November 1, 1990; July 1, 1989;*

*Temporary Amendment Eff. July 1, 2002;*

*Amended Eff. October 1, 2017; October 1, 2009; August 1, 2004.*

#### **10A NCAC 43D .0707 VENDOR APPLICANTS**

To become authorized as a WIC vendor, a vendor applicant shall comply with the following vendor selection criteria:

- (1) A vendor applicant shall complete a WIC Vendor Application, a WIC Price List, as set forth in Item (4) of this Rule, and a WIC Vendor Agreement, as set forth in 7 C.F.R. 246.12(h)(3). A vendor applicant shall submit its current highest shelf price for each WIC supplemental food listed on the WIC Price List, as set forth in Item (4) of this Rule.
- (2) A vendor applicant, at the time of application and throughout the term of authorization, shall submit all completed forms to the local WIC agency, except that a corporate entity operating under a WIC corporate agreement shall submit one completed WIC corporate agreement and the WIC Price Lists to the State agency and a separate WIC Vendor Application for each store to the local WIC agency. A corporate entity operating under a WIC corporate agreement may submit a single WIC Price List for those stores that have the same prices for WIC supplemental foods in each store, rather than submitting a separate WIC Price List for each store.
- (3) A vendor applicant shall purchase all infant formula, exempt infant formula, and WIC-eligible nutritionals directly from:
  - (a) The sources specified in 42 U.S.C. 1786(h)(8)(A)(ix), which is incorporated by reference with all subsequent amendments and editions;
  - (b) Retail food stores that purchase directly from the sources referenced in Sub-item (3)(a) of this Item; or
  - (c) A source on another state's list of approved infant formula sources as verified by that state's agency.

A vendor applicant shall make available to the State or local WIC agency invoices or receipts

documenting purchases of all infant formula, exempt infant formula, and WIC-eligible nutritionals. Receipts and invoices shall satisfy the requirements of Sub-items (32)(a) through (32)(c) of Rule .0708 of this Section. A vendor applicant shall not be authorized if within the last year the vendor applicant had a previous WIC Vendor Agreement terminated for failure to purchase infant formula, exempt infant formula, or WIC-eligible nutritionals from the sources specified in this Item. A vendor applicant shall not be authorized if within the last year the vendor applicant had a previous WIC Vendor Agreement terminated for providing infant formula, exempt infant formula, or WIC-eligible nutritionals to WIC customers that was not purchased from the sources specified in this Item.

- (4) A vendor applicant's current highest shelf price for each WIC supplemental food listed on the WIC Price List shall not exceed the maximum price set by the State agency for each supplemental food within that vendor applicant's peer group, except as provided in Sub-item (4)(b) of this Item. The maximum price for each supplemental food shall be established as follows:

- (a) The most recent WIC Price Lists submitted by authorized vendors within the same peer group shall be used to determine the maximum price for each supplemental food. The maximum price shall be the 97th percentile of the current highest shelf prices for each supplemental food within a vendor peer group. The State agency shall reassess the maximum price set for each supplemental food at least four times a year. For two of its price assessments, the State agency shall use the WIC Price Lists which shall be submitted by all vendors by April 1 and October 1 each year in accordance with Item (34) of Rule .0708 of this Section. The other two price assessments shall be based on WIC Price Lists requested from a sample of vendors within each peer group in January and July of each year.
- (b) If any of the vendor applicant's price(s) on its WIC Price List exceed the maximum price(s) set by the State agency for that applicant's peer group, the agency shall send the applicant written notice. Within 30 days of the date of the written notice, the vendor applicant may resubmit price(s) that it will charge the State WIC Program for those foods that exceeded the

maximum price(s). If none of the vendor applicant's resubmitted prices exceed the maximum prices set by the State agency, the vendor applicant shall be deemed to have met the requirements of Item (4) of this Rule. If any of the vendor applicant's resubmitted prices still exceed the maximum prices set by the State agency, or the vendor applicant does not resubmit prices within 30 days of the date of written notice, the agency shall send the applicant a written notice of denial. The vendor applicant shall wait 90 days from the date of receipt of the written denial to reapply for authorization.

- (5) A vendor applicant shall pass an announced monitoring review by the local WIC agency to determine whether the store has minimum inventory of supplemental foods as specified in Item (25) of Rule .0708 of this Section. A vendor applicant that fails this review shall be allowed a second opportunity for an unannounced monitoring review within 14 days. If the applicant fails both reviews, the application shall be denied in writing and the applicant shall wait 90 days from the date of the second monitoring review before submitting a new application.
- (6) A vendor applicant shall either attend, or cause a manager or another authorized store representative to attend, WIC Vendor Training provided by the local WIC agency prior to vendor authorization and ensure that the vendor applicant's employees receive instruction in WIC program procedures and requirements.
- (7) An applicant shall mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case at all times.
- (8) The store shall be at a single, fixed location within North Carolina. The store shall be located at the address indicated on the WIC vendor application and shall be the site where WIC supplemental foods are selected by the WIC customer.
- (9) A vendor applicant shall use point of sale (POS) terminals to support the WIC Program that are deployed in accordance with the minimum lane coverage provisions of 7 C.F.R. 246.12(z)(2)(ii).
- (10) The store shall be open throughout the year for business with the public at least six days a week for at least 40 hours per week between 8:00 a.m. and 11:00 p.m.
- (11) The store shall not use the acronym "WIC" or the WIC logo, including facsimiles, in total or in part, in the official name under which the

- business is registered or in the name under which it does business.
- (12) A vendor applicant shall not submit false, erroneous, or misleading information in an application to become an authorized WIC vendor or in subsequent documents submitted to the state or local WIC agency. A vendor applicant shall not be authorized if within the last year the vendor applicant had a previous WIC Vendor Agreement terminated for submitting false, erroneous, or misleading information.
- (13) The owner(s), officer(s), or manager(s) of a vendor applicant shall not be employed, or have a spouse, child, or parent who is employed by the State WIC program, or the local WIC program serving the county where the vendor applicant conducts business. A vendor applicant shall not have an employee who handles, transacts, deposits, or stores WIC food instruments or cash-value vouchers who is employed, or has a spouse, child, or parent who is employed by the State WIC program or the local WIC program serving the county where the vendor applicant conducts business. Such situations present a conflict of interest.
- (14) WIC vendor authorization shall be denied if in the last six years any of the vendor applicant's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity, including fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice, as set out in 7 C.F.R 246.12(g)(3)(ii). For purposes of this Item, "convicted" or "conviction" includes:
- (a) a plea of guilty;
  - (b) a verdict or finding of guilt by a jury, judge, magistrate, or adjudicating body, tribunal, or official, either civilian or military;
  - (c) a plea of no contest, nolo contendere, or the equivalent; or
  - (d) entry of a prayer for judgment continued following a conviction as defined in this Item is the same as a conviction for purposes of this Item.
- (15) A vendor applicant shall not be authorized if it is currently disqualified from the Supplemental Nutrition Assistance Program ("SNAP") or it has been assessed a SNAP civil money penalty for hardship and the disqualification period that otherwise would have been imposed has not expired.
- (16) A vendor applicant, excluding chain stores and stores under a WIC corporate agreement that have a separate manager on site for each store, shall not have an owner who holds a financial interest in any of the following:
- (a) a SNAP vendor that is disqualified from participation in the SNAP or has been assessed a civil money penalty for hardship in lieu of disqualification and the time period during which the disqualification would have run, had a penalty not been paid, is continuing; or
  - (b) another WIC vendor that is disqualified from participation in the WIC Program or has been assessed a monetary or civil money penalty pursuant to G.S. 130A-22(c1), Paragraph (e) or Paragraph (f) of Rule .0710 of this Section as the result of violation of Paragraphs (a) or (b) of Rule .0710 of this Section and if assessed a penalty, the time during which the disqualification would have run, had a penalty not been assessed, is continuing.
- The requirements of this Item shall not be met by the transfer or conveyance of financial interest during the period of disqualification. Additionally, the requirements of this Item shall not be met even if such transfer or conveyance of financial interest in a SNAP vendor under Sub-item (16)(a) of this Item prematurely ends the disqualification period applicable to that SNAP vendor. The requirements of this Item shall apply until the time the SNAP vendor disqualification otherwise would have expired.
- (17) A vendor applicant, excluding free-standing pharmacies, shall have SNAP authorization for the store as a prerequisite for WIC vendor authorization and shall provide its SNAP authorization number to the State agency.
- (18) A vendor applicant shall not become authorized as a WIC vendor if the store has been disqualified from participation in the WIC Program and the disqualification period has not expired. A vendor applicant shall not be authorized as a WIC vendor if any of the vendor applicant's owner(s), officer(s) or manager(s) currently has or previously had a financial interest in a WIC vendor that was assessed a claim by the WIC Program and the claim has not been paid in full.
- (19) A vendor applicant shall enter into contract with the State WIC Program's EBT processor or a third party processor certified according to criteria established by the State WIC Program's EBT processor prior to WIC authorization and comply with all requirements detailed in the EBT or third party processor's Vendor Agreement.

For a food retailer or free-standing pharmacy to participate in the WIC Program, a current WIC Vendor Agreement must be signed by the vendor, the local WIC agency, and the State agency. If an application for status as an authorized WIC vendor is denied, the applicant is entitled to an administrative appeal as described in Section .0800 of this Subchapter.

*History Note:* Authority G.S. 130A-361; 7 C.F.R. 246; 7 C.F.R. 246.12(g)(3); 7 C.F.R. 246.12(g)(3)(ii); 7 C.F.R. 246.12(h)(3)(ix); 7 C.F.R. 246.12(t); 42 U.S.C. 1786; Eff. February 1, 2013; Amended Eff. October 1, 2017.

#### **10A NCAC 43D .0708 AUTHORIZED VENDORS**

By signing the WIC Vendor Agreement, the vendor agrees to:

- (1) Process WIC Program food instruments and cash-value vouchers in accordance with the terms of the WIC Vendor Agreement and 42 U.S.C. 1786, 7 C.F.R. 246.1-246.28, and the rules of this Subchapter;
- (2) Accept WIC Program food instruments and cash-value vouchers in exchange for WIC supplemental foods. Supplemental foods are those foods that satisfy the requirements of 10A NCAC 43D .0501;
- (3) Provide only the authorized supplemental foods listed on the printed food instrument, or authorized fruits and vegetables with a printed cash-value voucher. Determine the charges to the WIC Program and complete the "Pay Exactly" box on the printed food instrument, or printed cash-value voucher, as set forth in Item (4) of this Rule, prior to obtaining the signature of the WIC customer. When transacting EBT, the vendor shall provide to the WIC customer only the approved supplemental foods, fruits, and vegetables contained in the authorized product list (APL) after it has been determined that the WIC customer has an available balance on the date of the transaction. The WIC customer is not required to get all of the supplemental foods listed on the printed food instrument or the full dollar value of the printed cash-value voucher. However, a WIC customer may obtain more fruits and vegetables than the full dollar value of a cash-value voucher if the WIC customer pays the difference, as set forth in 7 C.F.R. 246.12(h)(3)(xi);
- (4) Enter in the "Pay Exactly" box on the printed food instrument or printed cash-value voucher only the total amount of the current shelf prices, or less than the current shelf prices, for the supplemental food provided and shall not charge or collect sales taxes for the supplemental food provided. Vendors that utilize EBT shall only transmit the current shelf price of all WIC-approved supplemental foods purchased in the correct sizes, quantities, and the total dollar amount of all WIC-approved supplemental foods purchased in the EBT system;
- (5) Charge no more for supplemental food provided to a WIC customer than to a non-WIC customer or no more than the current shelf price, whichever is less;
- (6) Accept payment from the State WIC Program only up to the maximum price set by the State agency for each supplemental food within that vendor's peer group. The maximum price for each supplemental food shall be based on the maximum prices set by the State agency for each supplemental food, as described in Sub-item (4)(a) of Rule .0707 of this Section, listed on the food instrument. A request for payment submitted over the maximum price allowed by the State agency will only be paid up to the maximum price for that supplemental food;
- (7) Accept payment from the State WIC Program only up to the full dollar value of the cash-value voucher;
- (8) Not charge the State WIC Program more than the maximum price set by the State agency under Item (4)(a) of Rule .0707 of this Section for each supplemental food within the vendor's peer group;
- (9) Provide to WIC customers infant formula, exempt infant formula, and WIC eligible nutritionals purchased only from the sources specified in Item (3) of Rule .0707 of this Section. Providing infant formula, exempt infant formula, or WIC eligible nutritionals that has not been purchased from the sources specified in Item (3) of Rule .0707 of this Section shall result in termination of the WIC Vendor Agreement;
- (10) For free-standing pharmacies, provide only exempt infant formula and WIC-eligible nutritionals;
- (11) Excluding free-standing pharmacies, redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales. Failure to redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales shall result in termination of the WIC Vendor Agreement. The store must wait 180 days to reapply for authorization;
- (12) Accept WIC Program food instruments and cash-value vouchers only on or between the "First Date to Spend" and the "Last Date to Spend" dates;
- (13) Prior to obtaining the WIC customer's signature on the printed food instrument and cash-value voucher, enter in the "Date Transacted" box the month, day, and year the WIC food instrument or cash-value voucher is exchanged for supplemental food;
- (14) Ensure that the WIC customer signs the food instrument or cash-value voucher in the

- presence of the cashier. Vendors that utilize EBT shall ensure that a personal identification number (PIN) is used by the WIC customer to complete the EBT transaction in lieu of a signature;
- (15) Ensure that the WIC customer enters the PIN to initiate the EBT transaction. The vendor shall not enter the PIN for the WIC customer;
- (16) Refuse to transact any food instrument or cash-value voucher that has been altered;
- (17) Not transact food instruments or cash-value vouchers in whole or in part for cash, credit, unauthorized foods, or non-food items;
- (18) Not provide refunds or permit exchanges for authorized supplemental foods obtained with food instruments or cash-value vouchers, except for exchanges of an identical authorized supplemental food when the original authorized supplemental food is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food. An "identical authorized supplemental food" means the exact brand, type and size as the original authorized supplemental food obtained and returned by the WIC customer;
- (19) Imprint the authorized WIC vendor stamp in the "Pay the Authorized WIC Vendor Stamped Here" box on the face of the printed food instrument or cash-value voucher to enable the vendor number to be read during the WIC Program's editing process;
- (20) Imprint the vendor's bank deposit stamp or the vendor's name, address, and bank account number in the "Authorized WIC Vendor Stamp" box in the endorsement on the printed food instrument or cash-value voucher;
- (21) Deposit WIC program printed food instruments and cash-value vouchers in the vendor's bank. All North Carolina WIC program printed food instruments and cash-value vouchers must be deposited in the vendor's bank within 60 days of the "First Date to Spend" on the printed food instrument or cash-value voucher;
- (22) Ensure that the authorized WIC vendor stamp is used only for the purpose and in the manner authorized by the Agreement and be responsible for the unauthorized use of the authorized WIC vendor stamp;
- (23) Maintain storage of the authorized WIC vendor stamp so only the staff designated by the vendor owner or manager have access to the stamp and report loss of this stamp within two business days to the local WIC agency;
- (24) Notify the local WIC agency of misuse (attempted or actual) of WIC Program food instruments or cash-value vouchers;
- (25) Maintain a minimum inventory of supplemental foods in the store for purchase. Supplemental foods that are outside of the manufacturer's expiration date do not count towards meeting the minimum inventory requirement. The following items and sizes constitute the minimum inventory of supplemental foods for vendors in Peer Groups I through III of Item (1), vendors in Vendor Peer Groups I through IV of Item (2), and vendors in Vendor Peer Group IV of Item (3) of Rule .0706 of this Section:

Food Item	Type of Inventory	Quantities Required
Milk	Whole fluid: gallon	2 gallons
	-and- Skim/lowfat fluid: gallon	4 gallons
Cheese	1 pound package	2 packages
Cereals	2 types: whole grain (minimum package size 12 ounce)	6 packages total
Eggs	Grade A, large, white: 1 dozen size carton	2 dozen
Juices	Single strength:	
	48 ounce container 64 ounce container	4 containers 4 containers
Dried Peas and Beans	1 pound package	2 packages
Peanut Butter	16 to 18 ounce container	2 containers
Tuna	5 to 6 ounce can	6 cans
Bread/Tortillas	16 ounce loaf of bread or package of tortillas	2 loaves or 2 packages OR 1 loaf and 1 package

Rice	14 to 16 ounce package	2 packages
Infant Cereal	8 ounce box	6 boxes
Infant Fruits and Vegetables	3.5 to 4 ounce container 1 type of fruit and 1 type of vegetable	64 ounces
Infant Formula	milk-based powder; 11.0 to 14.0 ounce -and- soy-based powder; 11.0 to 14.0 ounce Brands must be the primary contract infant formulas	8 cans  4 cans
Fruits	14 to 16 ounce can: 2 varieties	10 cans total
Vegetables (Excludes foods in Dried Peas and Beans category)	14 to 16 ounce can: 2 varieties	10 cans total

All vendors in Vendor Peer Groups I through III of Item (1), Peer Groups I through IV of Item (2), and Vendor Peer Groups IV and V of Item (3) of Rule .0706 of this Section shall supply milk, soy-based or lactose-free infant formula in 32 ounce ready-to-feed or lactose-free powder within 48 hours of request by the State or local WIC agency;

- (26) Ensure that all supplemental foods in the store for purchase are within the manufacturer's expiration date;
- (27) Permit the purchase of supplemental food without requiring other purchases;
- (28) Comply with the following EBT provisions:
  - (a) Sign the WIC Vendor Agreement of the EBT Processor selected by the State WIC Program or a third-party processor that has been certified according to criteria established by the EBT Processor selected by the State WIC Program. Failure by a vendor to sign and retain a WIC Vendor Agreement with the State WIC Program's EBT Processor or a third-party processor that has been certified by the State WIC Program's EBT Processor shall result in termination of the WIC Vendor Agreement. Vendors shall notify the WIC Program within 24 hours of any periods of time during which they do not maintain an Agreement with the state WIC Program's EBT Processor or a third-party processor that has been certified by the State WIC Program's EBT Processor;
  - (b) Process EBT transactions in accordance with the terms of the North Carolina WIC Vendor Agreement, WIC Program State Rules, federal regulations, and statutes;
  - (c) Maintain Point of Sale (POS) terminals used to support the WIC Program in accordance with the minimum lane provisions of 7 C.F.R. 246.12(z)(2);
  - (d) Maintain a North Carolina EBT Processor certified in-store EBT system that is available for WIC redemption processing during all hours the store is open;
  - (e) Request the North Carolina EBT Processor re-certify its in-store system if the vendor alters or revises the system in any manner that impacts the EBT redemption or claims processing system after initial certification is completed;
  - (f) For vendors with integrated systems, obtain EBT card readers to support EBT transactions within their store(s). The vendor shall ensure that the EBT card readers they obtain meets all EBT and North Carolina EBT Processor requirements;
  - (g) Require an owner, manager or other authorized store representative to complete training on WIC EBT procedures. The vendor shall ensure that all cashiers and staff are fully trained on WIC EBT requirements, including training in the acceptance and processing of WIC EBT transactions;
  - (h) Require the WIC customer to approve the WIC transaction. Vendors shall ensure that the-vendor's staff does not approve the WIC transactions for WIC customers under any circumstances;

- (i) Release supplemental food to WIC customers when the transaction has been completed to include receipt of transaction approval by the EBT processing system, printing of the receipt, and updated balance of the WIC customer's account;
  - (j) Scan or manually enter Universal Product Codes (UPC) only from approved supplemental foods being purchased by the WIC customer in the types, sizes and quantities available on the WIC customer's EBT account. The vendor shall not scan codes from UPC codebooks or reference sheets;
  - (k) Return any EBT card found on the vendor's property and unclaimed for 24 hours to the WIC Program. The vendor shall not hold or use a WIC customer's EBT card and PIN for any purpose whatsoever;
  - (l) Connect the vendor's in-store system for each outlet covered by the WIC Vendor agreement to the State's WIC EBT system at least once each 24-hour period to download reconciliation files and the WIC Authorized Product UPC/Product Look-Up (PLU) list.
- (29) Attend, or cause a manager or other authorized store representative to attend, annual vendor training upon notification by the local WIC agency. Failure to attend annual vendor training by September 30 of each year shall result in termination of the WIC Vendor Agreement;
- (30) Inform and train vendor's cashiers and other staff on WIC Program requirements;
- (31) Be accountable for the actions of its owners, officers, managers, agents, and employees who commit vendor violations;
- (32) Allow monitoring and inspection by State and local WIC Program staff of the store premises and procedures to ensure compliance with the agreement and State, and federal WIC Program rules, regulations, and applicable law. This includes providing access to all program-related records, including access to all WIC food instruments and cash-value vouchers at the store; vendor records pertinent to the purchase and sale of WIC supplemental foods, including invoices, receipts, copies of purchase orders, and any other proofs of purchase; federal and state corporate and individual income tax and sales and use tax returns and all records pertinent to these returns; and books and records of all financial and business transactions. These records must be retained by the vendor for a period of three years or until any audit pertaining to these records is resolved, whichever is later. Notwithstanding any other provision of this Rule and Rules .0707 and .0710 of this Section, failure or inability to provide these records for an inventory audit or providing false records for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and Subparagraph (a)(1) of Rule .0710 of this Section. Invoices, receipts, purchase orders, and any other proofs of purchase for WIC supplemental foods shall include:
- (a) the name of the seller and be prepared entirely by the seller without alteration by the vendor or on the seller's business letterhead;
  - (b) the date of purchase and the date the authorized vendor received the WIC supplemental food at the store if different from the date of purchase; and
  - (c) a description of each WIC supplemental food item purchased, including brand name, unit size, type or form, and quantity;
- (33) Maintain a record of all SNAP-eligible food sales and provide to the State agency upon request a statement of the total amount of revenue derived from SNAP-eligible food sales and written documentation to support the amount of sales claimed by the vendor, such as sales records, financial statements, reports, tax documents or other verifiable documentation;
- (34) Submit a current completed WIC Price List when signing this agreement, and by April 1 and October 1 of each year. The vendor also agrees to submit a WIC Price List within two weeks of any written request by the State or local WIC agency;
- (35) Reimburse the state agency in full or agree to a repayment schedule with the state agency within 30 days of written notification of a claim assessed due to a vendor violation that affects payment to the vendor or a claim assessed due to the unauthorized use of the WIC vendor stamp. Failure to reimburse the State agency in full or agree to a repayment schedule within 30 days of written notification of a claim shall result in termination of the WIC Vendor Agreement. The state agency shall deny payment or assess a claim in the amount of the full purchase price of each food instrument or cash-value voucher invalid under Subparagraphs (a)(2), (a)(5), (a)(6) or (a)(7) of Rule .0704 of this Section. Denial of payment by the State agency or payment of a claim by the vendor for a vendor violation(s) shall not absolve the vendor of the violation(s). The vendor shall also be subject to any vendor sanctions authorized under Rule .0710 of this Section for the vendor violation(s);

- (36) Not seek restitution from the WIC customer for reimbursement paid by the vendor to the State agency or for WIC food instruments or cash-value vouchers not paid or partially paid by the state agency. Additionally, the vendor shall not charge the WIC customer for authorized supplemental foods obtained with food instruments or cash-value vouchers;
- (37) Not contact a WIC customer outside the store regarding the transaction or redemption of WIC food instruments or cash-value vouchers;
- (38) Notify the local WIC agency in writing at least 30 days prior to a change of ownership, change in store location, cessation of operations, or withdrawal from the WIC Program. Change of ownership, change in store location of more than three miles from the store's previous location, cessation of operations, withdrawal from the WIC Program, or disqualification from the WIC Program shall result in termination of the WIC Vendor Agreement by the State agency. Change of ownership, change in store location, ceasing operations, withdrawal from the WIC Program, or nonrenewal of the WIC Vendor Agreement shall not stop a disqualification period applicable to the store;
- (39) Return the authorized WIC vendor stamp to the local WIC agency upon termination of the WIC Vendor Agreement or disqualification from the WIC Program;
- (40) Not discriminate on the basis of WIC participation, such as failing to offer WIC customers the same courtesies, as set forth in 7 C.F.R. 246.12(g)(3)(iii), offered to other customers or requiring separate WIC lines;
- (41) Reapply to continue to be authorized beyond the period of its current WIC Vendor Agreement. Additionally, a store shall reapply to become authorized following the expiration of a disqualification period or termination of the Agreement. In all cases, the vendor applicant is subject to the vendor peer group criteria of Rule .0706 of this Section and the vendor selection criteria of Rule .0707 of this Section; and
- (42) Comply with all the requirements for vendor applicants of Items (3), (4), and (7) through (17), and (19) of Rule .0707 of this Section throughout the term of authorization. The State agency may reassess a vendor at any time during the vendor's period of authorization to determine compliance with these requirements. The State agency shall terminate the WIC Vendor Agreement of any vendor that fails to comply with Items (3), (4), (8), (9), (10), (11), (12), (13), (14), (16), (17), or (19) of Rule .0707 of this Section during the vendor's period of authorization, and terminate the agreement of or sanction or both any vendor that fails to

comply with Items (7), (15), (17), or (19) of Rule .0707 of this Section during the vendor's period of authorization.

*History Note:* Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;  
*Eff.* March 1, 2013;  
*Amended Eff.* October 1, 2017.

\*\*\*\*\*

**10A NCAC 70I .0101 LICENSING ACTIONS**

- (a) All rules in 10A NCAC 70I apply to residential child-care facilities.
- (b) License.
  - (1) The Department of Health and Human Services, Division of Social Services, hereafter referred to as the "licensing authority," shall issue a license when it determines that a residential child-care facility is in compliance with rules in Subchapters 70I and in the case of specialized residential child care programs, 70J of this Chapter.
  - (2) A license shall be issued for a period of two years.
  - (3) A residential child-care facility shall not be licensed under both G.S. 131D and G.S. 122C.
  - (4) Residential child-care facilities initially licensed after August 1, 2011 shall have a three year or longer accreditation from either the Council on Accreditation (COA), The Joint Commission (TJC), The Commission on Accreditation of Rehabilitation Facilities (CARF), or The Council on Quality and Leadership (CQL).
- (c) Changes in any information on the license.
  - (1) A residential child-care facility shall send a written request for a change in its license to the licensing authority. The request shall include information that is necessary to assure the change is in compliance with the rules in Subchapters 70I and 70J of this Chapter.
  - (2) The licensing authority shall change a license during the period of time it is in effect if the change is in compliance with rules in Subchapters 70I and 70J.
- (d) Termination.
  - (1) When a residential child-care facility voluntarily discontinues child-caring operations, either temporarily or permanently, the residential child-care facility shall notify the licensing authority in writing of the date, reason, and anticipated length of closing.
  - (2) If a license is not renewed by the end of the licensure period, the licensing authority shall automatically terminate the license.
  - (3) If a license issued pursuant to this Subchapter is terminated for more than 60 days, the facility



shall meet all requirements for a new facility before being relicensed.

- (4) Any existing licensed residential child-care facility that is closed or vacant for more than one year shall meet all requirements of a new facility prior to being relicensed.

**(e) Adverse Licensure Action.**

- (1) The licensing authority shall deny, suspend, or revoke a license when a residential child-care facility is not in compliance with the rules in Subchapters 70I and 70J unless the residential child-care facility, within 10 business days from the date the residential child-care facility initially received the deficiency report from the licensing authority, submits a plan of correction. The plan of correction shall specify the following:

- (A) the measures that will be put in place to correct the deficiency;
- (B) the systems that will be put in place to prevent a re-occurrence of the deficiency;
- (C) the individual or individuals who will monitor the corrective action; and
- (D) the date the deficiency will be corrected, which shall be no later than 60 days from the date the residential child-care facility submits a plan of correction.

- (2) The licensing authority shall notify a residential child-care facility in writing of the decision to deny, suspend, or revoke a license.

- (3) Appeal procedures specified in 10A NCAC 70L .0301 are applicable for persons seeking an appeal to the licensing authority's decision to deny, suspend, or revoke a license.

**(f) Licensure Restriction.**

- (1) An applicant who meets any of the following conditions shall have his or her licensure denied:

- (A) the applicant owns a facility or agency licensed under G.S. 122C and that facility or agency incurred a penalty for a Type A or B violation under Article 3 of G.S. 122, or any combination thereof, and any one of the following conditions exist:
  - (i) A single violation has been assessed in the six months prior to the application.
  - (ii) Two violations have been assessed in the 18 months prior to the application and 18 months have not passed from the date of the most recent violation.
  - (iii) Three violations have been assessed in the 36 months prior to the application and

36 months have not passed from the date of the most recent violation.

- (iv) Four or more violations have been assessed in the 60 months prior to application and 60 months have not passed from the date of the most recent violation.

- (B) the Department of Health and Human Services has initiated revocation or summary suspension proceedings against any facility licensed pursuant to G.S. 122C, Article 2; G.S. 131D, Articles 1 or 1A; or G.S. 110, Article 7 that was previously held by the applicant and the applicant voluntarily relinquished the license and 60 months have not passed from the date of the revocation or summary suspension;
- (C) there is a pending appeal of a denial, revocation or summary suspension of any facility licensed pursuant to G.S. 122C, Article 2; G.S. 131D, Articles 1 or 1A; or G.S. 110, Article 7 that is owned by the applicant;
- (D) the applicant has an individual as part of their governing body or management who previously held a license that was revoked or summarily suspended under G.S. 122C, Article 2; G.S. 131D, Articles 1 or 1A; and G.S. 110, Article 7 and the rules adopted under these laws and 60 months have not passed from the date of the revocation or summary suspension;
- (E) the applicant is an individual who has a finding or pending investigation by the Health Care Personnel Registry in accordance with G.S. 131E-256; or
- (F) the applicant is an individual who has a finding on the Responsible Individual's List as described in 10A NCAC 70A .0102.

- (2) The denial of licensure pursuant to this Paragraph shall be in accordance with G.S. 122C-23(e1) and G.S. 131D-10.3(h). A copy of these statutes may be obtained through the internet at <http://www.ncleg.net/Statutes/Statutes.html>.

- (3) The facility or agency shall inform the licensing authority of any current licenses or licenses held in the past five years for residential child-care facilities, child-placing agencies, or maternity homes in other states. The agency shall provide written notification from the licensing authority in other states regarding violations, penalties, or probationary status imposed in that state. The licensing authority

shall take this information into consideration when granting a North Carolina license.

*History Note: Authority G.S. 131D-10.3; 131D-10.5; 143B-153;  
Eff. July 1, 1999 (See S. L. 1999, c. 237, s. 11.30);  
Temporary Amendment Eff. July 1, 2003;  
Amended Eff. May 1, 2004 (this amendment replaces the amendment approved by RRC on December 18, 2003);  
Amended Eff. August 1, 2011; September 1, 2007;  
Readopted Eff. October 1, 2017.*

**10A NCAC 70I .0201 DEFINITIONS**

In addition to the definitions found in G.S. 131D-10.2, the following definitions apply to the rules in Subchapters 70I and 70J of this Chapter.

- (1) "Child-caring institution" means a private residential child-care facility or group home that cares for foster children or a public residential child-care facility or group home that cares for no more than 25 children. This number includes the caregivers' own children and other relative children under the age of 18 residing in the facility. The composition of the facility shall include:
  - (a) no more than two children under the age of two;
  - (b) four children under the age of six; and
  - (c) six children under the age of 12.
 Child-caring institutions shall not include detention facilities, forestry camps, children's foster care camps, residential therapeutic (habilitative) camps, training schools, or any other facility operated for the detention of children who are determined by a court to be delinquent or undisciplined. A child-caring institution shall not provide day care, nor shall it be available to adults in the community who wish to rent rooms.
- (2) "Children's foster care camp" means the term "children's camp" as defined in G.S. 131D-2.
- (3) "Direct service personnel" means staff responsible for the direct services provided to children and their families, including child-care workers, residential counselors, house/teaching parents, social workers, recreation and education staff.
- (4) "Emergency shelter care" means 24 hour care provided in a residential child-care facility for a period not to exceed 90 days, in accordance with 10A NCAC 70J .0200.
- (5) "Executive director" means the person who is in charge of the agency and who is responsible for developing and supervising the program of residential child-care and services.
- (6) "Foster child" means an individual less than 18 years of age who has not been emancipated under North Carolina law, and who is dependent, neglected, abused, abandoned,

destitute, orphaned, undisciplined, delinquent, or otherwise in need of care away from home and not held in detention, or one who is 18 and not yet 21 years of age and continues to reside in a residential child-care facility and meets the requirements in G.S. 108A-48.

- (7) "Full license" means a license issued for two years when all licensing requirements are met.
- (8) "License" means written permission granted to a corporation, agency, or county government by the licensing authority to engage in the provision of full-time residential child-care or child-placing activities based upon an initial determination, and biennially thereafter, that the corporation, agency, or a county government has complied with standards set forth in this Subchapter.
- (9) "Licensing authority" means the North Carolina Department of Health and Human Services, Division of Social Services.
- (10) "Licensed medical provider" means a physician, physician's assistant, or certified nurse practitioner.
- (11) "Out-of-home family services agreement" means a document developed with the child's custodian that identifies a child's permanency plan (return to parents, placement with relatives, guardianship, or adoption). The out-of-home family services agreement describes a child's needs, goals, and objectives in a residential child-care facility and the tasks and assignments of the staff of the residential child-care facility to meet a child's and family's needs, goals, and objectives. The out-of-home family services agreement shall specify what must change in order for the parents to meet the needs of the child. Basic goal planning steps include:
  - (a) involving the family in the process;
  - (b) identifying goals that are both realistic and achievable;
  - (c) using family strengths when outlining objectives and activities to attain the goals;
  - (d) spelling out the steps necessary for success;
  - (e) documenting who will do what and when they will do it; and
  - (f) providing for review by parents or guardian, the legal custodian, the child, and any individual or agency providing services.
- (12) "Owner" means any individual who is a sole proprietor, co-owner, partner or shareholder holding an ownership or controlling interest of five percent or more of the applicant entity. Owner includes a "principal" or "affiliate" of the residential child-care facility.

- (13) "Private agency residential child-care facility" means a residential child-care facility under the auspices of a licensed child-placing agency or another private residential child-care facility.
- (14) "Private residential child-care facility" means a residential child-care facility under the control, management, and supervision of a private non-profit or for-profit corporation, sole proprietorship, or partnership that operates independently of a licensed child-placing agency or any other residential child-care facility.
- (15) "Provisional license" means a license issued for a maximum of six months enabling a facility to operate while some below standard component of the program is being corrected. A provisional license for the same below standard program component shall not be renewed.
- (16) "Public agency residential child-care facility" means a residential child-care facility under the control, management, or supervision of a county department of social services.
- (17) "Public residential child-care facility" means a residential child-care facility under the control, management, or supervision of a county government other than a county department of social services.
- (18) "Social worker" means an individual who has a bachelor's, master's, or doctorate degree in social work from a social work program accredited by the Council on Social Work Education (CSWE) as provided in the Social Worker Certification and Licensure Act (G.S. 90B). Agencies may use terms such as "case manager" or "case manager supervisor" to refer to these individuals.
- (19) "Staff" means full-time, part-time, and contracted staff persons.
- (20) The "reasonable and prudent parent standard", has the meaning set forth in G.S. 131D-10.2A.
- (21) "Visitation and contact plan" means a document that is developed by the child's custodian for each child that specifies whom the child may visit with and have contact with and the circumstances under which the visits and contacts shall take place.
- (22) "Volunteer" means a person working in a staff position for an agency who is not paid.

*History Note:* Authority G.S. 131D-10.2A; 131D-10.3; 131D-10.5; 143B-153;  
 Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30);  
 Amended Eff. July 18, 2002;  
 Temporary Amendment Eff. July 1, 2003;  
 Amended Eff. October 1, 2008; August 1, 2004;  
 Readopted Eff. October 1, 2017.

**10A NCAC 70I .0202 RESPONSIBILITY TO LICENSING AUTHORITY**

- (a) A residential child-care facility shall biennially submit to the licensing authority the information and materials required by rules in Subchapters 70I and 70J of this Chapter to document compliance and to support issuance of a license.
- (b) A residential child-care facility shall submit to the licensing authority a biennial statistical report of program activities that shall include information such as agency governance structure, financial data, staff employed, and clients served during the licensure period.
- (c) A residential child-care facility shall provide written notification to the licensing authority, prior to a change in the executive director.
- (d) A residential child-care facility shall provide written notification to the licensing authority, prior to any proposed changes in policies and procedures to assure that the changes are in compliance with the rules in Subchapters 70I and 70J of this Chapter. The residential child-care facility shall receive written approval from the licensing authority before instituting any changes in policies and procedures.
- (e) The office of a residential child-care facility shall be maintained in North Carolina. The licensee shall carry out activities under the North Carolina license from this office.
- (f) The current license of a residential child-care facility shall be posted at all times in a public area within the facility.
- (g) When there is a death of a child who is a resident of a residential child-care facility, the executive director or his or her designee shall notify the licensing authority within 72 hours in accordance with Rule. 0614 of this Subchapter.
- (h) The agency shall provide to the licensing authority at the time of license application the legal name and social security number of each individual who is an owner.
- (i) The agency shall provide to the licensing authority written notification of a change in the legal name of any person holding an interest in the agency of at least five percent within 30 days following the changes.
- (j) A residential child-care facility shall notify the Local Management Entity – Managed Care Organization entity where services are being provided within 24 hours of placement that a child may require mental health, developmental disabilities, or substance abuse services.
- (k) If a residential child-care facility is monitored by a Local Management Entity – Managed Care Organization, the residential child-care facility shall provide data to the Local Management Entity – Managed Care Organization as required by Rule 10A NCAC 27G .0608, which is hereby incorporated by reference, including subsequent amendments and editions, for monitoring and reporting to the General Assembly.
- (l) The agency shall notify the licensing authority within 24 hours if the agency receives notice of debarment that prohibits the agency from participating in State and Federal procurement contracts and covered non-procurement transactions.

*History Note:* Authority G.S. 131D-10.3; 131D-10.5; 143B-153;  
 Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30);  
 Amended Eff. July 18, 2002;  
 Temporary Amendment Eff. July 1, 2003;

*Amended Eff. October 1, 2008; August 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without  
substantive public interest Eff. April 5, 2016;  
Amended Eff. October 1, 2017.*

**10A NCAC 701 .0302 RESPONSIBILITIES OF THE  
GOVERNING BODY**

The governing body shall:

- (1) adopt administrative, personnel, and program policies and review them at least every two years;
- (2) review and approve a budget prior to the beginning of the fiscal year;
- (3) establish and review policies on fundraising and investment management at least every two years;
- (4) in the case of a private residential child-care facility, annually review and accept the financial audit;
- (5) employ an executive director (also called CEO, director, president, superintendent) and delegate authority to that person to employ and dismiss staff, implement board policies, and manage day-to-day operation of the facility;
- (6) ensure that the criminal history of the executive director is checked prior to employment, and based on the criminal history, determine the individual's fitness for employment. The governing body shall ensure that searches of the North Carolina Sex Offender and Public Protection Registry and the North Carolina Health Care Personnel Registry (pursuant to G.S. 131E-256) are completed prior to employment, and based on these searches, determine the individual's fitness for employment. The governing body shall submit authorization to the licensing authority to search the Responsible Individuals List, as defined in 10A NCAC 701 .0102, to determine if the executive director has had child protective services involvement resulting in a substantiation of child abuse or serious neglect, and based on this search, determine the individual's fitness for employment. The governing body shall require that the executive director provide a signed statement prior to employment that he or she has not abused or neglected a child or has been a respondent in a juvenile court proceeding that resulted in the removal of a child or has had child protective services involvement that resulted in the removal of a child. The governing body shall require that the executive director provide a signed statement that the executive director has not abused, neglected, or exploited a disabled adult and that the executive director has never committed an act of domestic violence upon another person. Agencies or applicants that do

- (7) not have a governing body shall provide this information directly to the licensing authority; not employ an executive director who has ever been convicted of a felony involving:
  - (A) child abuse or neglect;
  - (B) spouse abuse;
  - (C) a crime against a child or children (including child pornography); or
  - (D) a crime of rape, sexual assault, or homicide;
- (8) not employ an executive director who has been convicted of a felony within the last five years involving:
  - (A) assault;
  - (B) battery; or
  - (C) a drug-related offense;
- (9) permit the executive director or his or her designee to attend all meetings of the governing body and committees with the exception of those held for the purpose of reviewing his or her performance, status, or compensation;
- (10) annually evaluate and document the executive director's performance through criteria and objectives;
- (11) annually evaluate the effectiveness of the agency's services to its clients. This evaluation shall include the agency's services to ensure client safety;
- (12) annually review facility needs related to risk management;
- (13) maintain a long range plan and review annually;
- (14) develop and implement policies and procedures to comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act, all of which are hereby incorporated by reference, including subsequent amendments and editions. Copies of the Civil Rights Act of 1964 may be accessed free of charge at <https://www.justice.gov/crt/fcs/TitleVI-Overview>. Copies of the Rehabilitation Act of 1973 may be accessed free of charge at <https://www.gpo.gov>. Copies of the Americans with Disabilities Act may be accessed free of charge at <https://www.ada.gov>;
- (15) ensure that the agency complies with the Multiethnic Placement Act (MEPA) of 1994, P.L. 103-82, as amended by the Interethnic Adoption Provisions (IEP) of 1996; which is incorporated by reference including subsequent amendments and editions. The MEPA may be accessed free of charge at <https://www.gpo.gov>; and
- (16) ensure the agency complies with the terms and conditions of State and Federal requirements to participate in procurement contracts and covered non-procurement transactions as required by Title 2 of the Code of Federal Register, which is incorporated by reference,

including subsequent amendments and editions, and may be accessed free of charge at <https://www.ecfr.gov>, and G.S. Chapter 64, Article 2.

*History Note:* Authority G.S. 131D-10.5; 131D-10.6; 143B-153;

*Eff. July 1, 1999 (See S.L. 1999, c.237, s. 11.30);*

*Amended Eff. June 1, 2010; October 1, 2008;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 5, 2016;*

*Amended Eff. October 1, 2017.*

### **10A NCAC 70I .0305 RECORDKEEPING AND REPORTING**

(a) A residential child-care facility shall develop and enforce a policy on confidentiality that shall:

- (1) identify the individuals with access to or control over confidential information;
- (2) specify that persons who have access to records or specified information in a record be limited to persons authorized by law, including:
  - (A) the parents, guardian, or legal custodian (if applicable);
  - (B) children ages 12 years or older;
  - (C) agency staff and auditing, licensing, or accrediting personnel; and
  - (D) individuals that the parent, guardian, or legal custodian (if applicable) have given written consent for release of confidential information; and
- (3) require that when a child's information is disclosed, a signed written consent for release of information is obtained from the parent, guardian, legal custodian, or client if age 18 or older.

(b) A residential child-care facility shall:

- (1) provide a secure place for the storage of records with confidential information;
- (2) inform any individual with access to confidential information of the provisions of this Rule;
- (3) ensure that, upon employment and whenever revisions to the policy are made, staff sign a compliance statement that indicates an understanding of the requirements of confidentiality;
- (4) permit a child to review his or her case record in the presence of facility personnel on the facility premises, in a manner that protects the confidentiality of other family members or other individuals referenced in the record, unless facility personnel determine the information in the child's case record would be harmful to the child;
- (5) in cases of perceived harm to the child, document in writing any refusals to share information with the parents, guardian, and

legal custodian (if applicable) and child (12 years of age and older);

- (6) maintain a confidential case record for each child;
- (7) maintain confidential personnel records for all employees; and
- (8) maintain confidential records for all volunteers.

(c) A residential child-care facility may destroy in office a closed record when a child has been discharged for a period of three years, unless the record is included in a federal or state fiscal or program audit that is unresolved. A residential child-care facility may destroy in office a record three years after a child has reached age 21, unless included in a federal or state fiscal or program audit that is unresolved. The agency may destroy these closed records in office when the federal or state fiscal or program audits have been resolved and the agency is released from all audits involving these records.

*History Note:* Authority G.S. 131D-10.5; 143B-153;

*Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30);*

*Amended Eff. October 1, 2008; July 18, 2002;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 5, 2016;*

*Amended Eff. October 1, 2017.*

### **10A NCAC 70I .0306 CLIENT RIGHTS**

(a) A residential child-care facility shall develop and implement policies and procedures to protect the individual rights and dignity of children and families.

(b) A residential child-care facility shall have a client's and family's rights policy that includes that each child has the right to:

- (1) privacy;
- (2) be provided food, clothing, and shelter that is sufficient and appropriate to the individual child;
- (3) have access to family time and have telephone conversations with family members, when not contraindicated in the child's visitation and contact plan;
- (4) have personal property and a space for storage;
- (5) express opinions on issues concerning the child's care or treatment;
- (6) receive care in a manner that recognizes variations in cultural values and traditions;
- (7) be free from coercion by facility personnel with regard to religious decisions. The facility shall have a process to assure that, whenever practical, the wishes of the parents or guardians with regard to a child's religious participation are ascertained and followed;
- (8) not be identified as a foster child in any way;
- (9) not be forced to acknowledge dependency on or gratitude to the facility; and
- (10) participate in extracurricular, enrichment, cultural, and social activities as appropriate and in accordance with G.S. 131D-10.2A.

(c) A residential child-care facility shall have a policy that prohibits direct involvement by a child in soliciting funds for the facility.

(d) A residential child-care facility shall have a policy that prohibits the child's participation in any activities involving audio or visual recording and research without the voluntary signed, time-limited consent of the parents, guardian, or legal custodian and child, if 12 years of age and older.

*History Note:* Authority G.S. 131D-10.2A; 131D-10.5; 143B-153;  
*Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30);*  
*Amended Eff. October 1, 2008; July 18, 2002;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without*  
*substantive public interest Eff. April 5, 2016;*  
*Amended Eff. October 1, 2017.*

**10A NCAC 70I .0308 NORMALCY FOR FOSTER CHILDREN**

(a) A residential child-care facility shall develop and follow policies and procedures to implement the reasonable and prudent parent standard established in G.S. 131D-10.2A.

(b) The agency shall demonstrate compliance with policies and procedures that include:

- (1) Appointment of a designated official to apply the reasonable and prudent parent standard when determining whether to allow a child to participate in extracurricular, enrichment, cultural, and social activities;
- (2) Documentation of any reasonable and prudent parent standard decision;
- (3) Training for residential staff in the reasonable and prudent parent standard; and
- (4) Supervision and support to staff in implementing the reasonable and prudent parent standard.

*History Note:* Authority G.S. 131D-10.2A; 131D-10.5; 143B-153;  
*Eff. October 1, 2017.*

**10A NCAC 70I .0405 PERSONNEL POSITIONS**

(a) Executive Director. There shall be a full-time executive director for an agency with one or more facilities licensed for 20 or more children. At a minimum, there shall be a part-time executive director for an agency with one or more facilities licensed for less than 20 children.

(b) The executive director shall meet the requirements of a Social Services Program Administrator I as defined by the North Carolina Office of State Human Resources. A copy of these requirements, which are hereby incorporated by reference, including subsequent amendments and editions, can be found at: <https://oshr.nc.gov/state-employee-resources/classification-compensation/job-classification>. The college or university degree shall be from a college or university listed at the time of the degree in the Higher Education Directory, which is incorporated by reference, including subsequent amendments and editions. This information can be purchased from Higher Education Publications, Inc. for a cost of one hundred and twenty five dollars (\$125.00) at: <http://www.hepinc.com>.

(c) The executive director shall:

- (1) be responsible for the general management and administration of the residential child-care facility in accordance with policies established by the governing body and licensing requirements;
- (2) explain licensing standards, residential child-care standards, and the residential child-care facility's services to the governing body, the facility's constituency, other human service agencies, and the public;
- (3) initiate and carry out the program of residential child-care as approved by the governing body;
- (4) report to the governing body on all phases of operation at least quarterly;
- (5) delegate authority and responsibility to staff qualified to ensure the maintenance of the residential child-care facility's operations;
- (6) establish and oversee fiscal practices and present the annual operating budget and quarterly reports to the governing body;
- (7) evaluate, at least annually, the training needs of the staff and plan and implement staff training and consultation to address identified needs;
- (8) employ and discharge staff and meet on a regular basis with management staff to review, discuss, and formulate policies and procedures;
- (9) supervise staff who report directly to the executive director; and
- (10) conduct an annual individual written evaluation of each staff member who reports directly to the executive director. This evaluation shall contain both a review of job responsibilities and goals for future job performance.

(d) Clerical, Maintenance, and Other Support Personnel. The residential child-care facility shall employ or contract personnel to perform all clerical, support, and maintenance duties.

(e) Business and Financial Personnel. The residential child-care facility shall employ or contract personnel to perform all business, accounting, and financial functions.

(f) Direct Care Service Personnel. Any staff member who assumes the duties of direct care service personnel in the living unit shall comply with all the standards for direct care services personnel in the living unit.

- (1) Direct care service personnel shall:
  - (A) have a high school diploma or GED;
  - (B) complete a medical history form prior to assuming the position. The medical history form shall be signed and dated by the staff member and contain the name, contact information, date of birth, health history, and statement of health. A copy of the medical history form ("Medical History Form" DSS-5017) can be obtained from the Division or found on the Division's website at <https://www.ncdhhs.gov/divisions/dss>;
  - (C) have a medical examination by a licensed medical provider 12 months

- prior to assuming the position and biennially thereafter. This report shall include a statement indicating the presence of any communicable disease that may pose a risk of transmission in the residential child-care facility. After the initial examination, the cost of the medical examinations as required by licensure shall be at the expense of the facility;
- (D) have a TB skin test or chest x-ray, unless the medical provider advises against this test, prior to assuming the position; and
  - (E) be 21 years of age.
- (2) Standards for direct care service personnel:
- (A) There shall be one direct care staff personnel assigned to every six children during waking hours and one direct care staff personnel assigned to every ten children during overnight hours.
  - (B) A residential child-care facility shall ensure that a staff member certified in cardiopulmonary resuscitation (CPR) and first-aid, such as those provided by the American Red Cross, the American Heart Association, or equivalent organizations, is always available to the children in care. The residential child-care facility shall ensure that direct care service personnel shall, within the first 30 days of employment, successfully complete certification in first-aid, CPR, and universal precautions provided by either the American Heart Association, the American Red Cross, or equivalent organizations approved by the Division of Social Services. Division staff shall determine that an organization is substantially equivalent if the organization is already approved by the Department or meets the same standard of care as the American Heart Association or the American Red Cross. First-aid, CPR, and universal precautions training shall be renewed as required by the American Heart Association, the American Red Cross, or equivalent organizations. "Successfully completed" is defined as demonstrating competency, as evaluated by the instructor who has been approved by the American Heart Association, the American Red Cross, or other organizations approved by the Division of Social Services to provide first-aid, CPR, and universal precautions training. Training in CPR shall be appropriate for the ages of children in care. Documentation of successful completion of first-aid, CPR, and universal precautions shall be maintained by the agency. The Division shall not accept web-based trainings for certification in first-aid, CPR, or universal precautions.
  - (C) A residential child-care facility shall ensure that direct care service personnel receive supervision and training in the areas of child development, permanency planning methodology, group management, preferred discipline techniques, family relationships, human sexuality, health care and socialization, leisure time and recreation. In addition, the residential child-care facility shall provide training to direct care service personnel in accordance with the needs of the client population, including training in child sexual abuse. Direct care service personnel shall receive 24 hours of continuing education annually.
  - (D) A residential child-care facility shall ensure that direct care service personnel receive supervision in food preparation and nutrition when meals are prepared in the living unit.
  - (E) Any duties other than direct care services duties assigned to direct care service personnel shall be specified in writing and assigned in accordance with the residential child-care program.
- (3) Direct care service supervisory personnel shall have a high school diploma or GED and be 21 years of age.
  - (4) Standards for direct care service supervisory personnel:
    - (A) There shall be at least one supervisor for every 15 direct care service personnel.
    - (B) Supervisory staff shall be selected on the basis of the knowledge, experience, and competence required to manage direct service personnel.
    - (C) Direct care service supervisory personnel shall receive 24 hours of continuing education annually.
  - (g) Social work supervisors or case manager supervisors shall be employed by the residential child-care facility to supervise, evaluate and monitor the work and progress of the social work or case manager staff.

- (1) Social work supervisors or case manager supervisors shall meet the requirements of a Social Work Supervisor II as defined by the North Carolina Office of State Human Resources. A copy of these requirements, which are hereby incorporated by reference, including subsequent amendments and editions, can be found at <https://oshr.nc.gov/state-employee-resources/classification-compensation/job-classification>. The college or university degree shall be from a college or university listed at the time of the degree in the Higher Education Directory. Social work supervisors or case manager supervisors shall receive 24 hours of continuing education annually.
- (2) Supervision of social workers or case managers shall be assigned as follows:

Supervisors Required	Social Workers or Case Managers Employed
0	0-4 (executive director serves as social work or case manager supervisor)
1	5
2	6-10
3	11-15
There shall be one additional supervisor for every one to five additional social workers or case managers.	

(h) Social workers or case managers shall be employed by the residential child-care facility to provide social work or case management services to the children in care and their families in accordance with the out-of-home family services agreement.

- (1) Social workers or case managers shall meet the requirements of a Social Worker II as defined by the North Carolina Office of State Human Resources. A copy of these requirements, which are hereby incorporated by reference, including subsequent amendments and editions, can be found at <https://oshr.nc.gov/state-employee-resources/classification-compensation/job-classification>. The college or university degree shall be from a college or university listed at the time of the degree in the Higher Education Directory. Social workers or case managers shall receive 24 hours of continuing education annually.
- (2) There shall be at least one social worker or case manager assigned for every 15 children.
- (3) A residential child-care facility shall ensure that social workers or case managers receive supervision and training in the areas of child development, permanency planning methodology, group dynamics, family systems and relationships, and child sexual abuse.
- (4) Any duties other than social work or case management duties assigned to staff employed

as social workers or case managers shall be specified in writing and assigned in accordance with the residential child-care program.

*History Note:* Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30); Amended Eff. June 1, 2010; October 1, 2008; July 18, 2002; Readopted Eff. October 1, 2017.

#### **10A NCAC 70I .0503 ADMISSION AGREEMENT**

(a) At admission, a residential child-care facility shall develop a written agreement between the parents, guardian, or legal custodian, if applicable, and the facility that specifies the services to be provided by the facility and the responsibilities of the parents, guardian, or legal custodian, if applicable. This includes:

- (1) the statement of consent for placement by the parents, guardian, or legal custodian, if applicable, with the date of admission;
- (2) the plan for providing admission information on the child's care, developmental, educational, medical, and psychological needs to the parents, guardian, or legal custodian, if applicable, the frequency of out-of-home family service agreement reviews, and receipt of program information required by 10A NCAC 70I .0307(a) and 10A NCAC 70I .0504(a);
- (3) the statement of facility responsibility for working with the child's parents, guardian, or legal custodian, if applicable;
- (4) the statement related to the provision of religious training and practices and consent to these by the parents, guardian, or legal custodian, if applicable;
- (5) the visitation and contact plan;
- (6) the fees and plan for payment of care;
- (7) the plan for discharge to include projected length of stay; and
- (8) the statement of facility responsibility for aftercare services.

(b) For foster children 18 years of age and older residing in the residential child-care facility or reentering the facility, the facility shall obtain a copy of the voluntary placement agreement signed by the foster child that specifies the conditions for residential child-care and services.

*History Note:* Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30); Amended Eff. October 1, 2008; July 18, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 5, 2016; Amended Eff. October 1, 2017.

#### **10A NCAC 70I .0504 ORIENTATION**

(a) A residential child-care facility shall provide information and discuss the program policies governing residential care and services for children with the child's parents, guardian, or legal custodian and the child at or before admission. These include:



- (1) family time, mail, gifts, personal possessions, money, and telephone calls and restrictions that may be imposed on these;
- (2) discipline and behavior management, including the use of searches of children's rooms and possessions;
- (3) program of religious training and practices;
- (4) educational resources;
- (5) trips away from the facility;
- (6) use of volunteers, if any;
- (7) physical restraint practices;
- (8) client rights and grievance procedures;
- (9) daily and seasonal schedules; and
- (10) reasonable and prudent parent standard.

(b) The residential child-care facility shall obtain the out-of-home family services agreement from the county department of social services at or before admission when the county department of social services is the legal custodian. In the case of a private placement, the facility shall develop an out-of-home family services agreement within 30 days of admission. The out-of-home family services agreement shall be reviewed initially within 60 days, the second review shall be within 90 days of the initial review and all subsequent reviews shall be held every six months, inviting the parent, guardian, legal custodian, and the child, as well as any individual or agency designated as providing services to participate.

(c) The out-of-home family services agreement shall be developed utilizing information from an assessment of the child's and family's needs and include goals based on normal developmental tasks and needs. The goals and objectives shall be based on identified issues, be behaviorally specific, time-limited and measurable and include staff assignments and strategies to be taken to meet the goals in the following areas:

- (1) special interests and personal aspirations;
- (2) intellectual, academic, and vocational;
- (3) psychological and emotional;
- (4) medical;
- (5) social and family relationships;
- (6) cultural and spiritual; and
- (7) basic living skills.

(d) A visitation and contact plan shall be developed for each child by the parents, guardian, or legal custodian, if different.

(e) A written discharge plan shall be part of the out-of-home family services agreement.

(f) Direct care staff shall be informed about the child's out-of-home family services agreement by the executive director of the residential child-care facility or his or her designee and shall participate or provide input at the reviews set forth in Paragraph (b) of this Rule.

(g) A copy of the child's out-of-home family services agreement shall be provided to the parents, guardian, and the executive director of the residential child-care facility or his or her designee by the county department of social services serving as the legal custodian. The child's out-of-home family services agreement shall be provided to other agencies and individuals listed as providing services to the child and his or her parents or guardian. Each child shall receive a version of the out-of-home family services agreement that is appropriate for the child's age, intelligence, emotional makeup, and past experiences.

(h) The child's out-of-home family services agreement review shall include:

- (1) an evaluation of progress towards meeting identified issues;
- (2) any new needs identified since the child's out-of-home family services agreement was developed or last reviewed and behaviorally-specific strategies to meet these needs, including instructions to staff;
- (3) an update of the estimated length of stay and discharge plan; and
- (4) the signatures of the persons participating in the review.

(i) If the legal custodian is a county department of social services, the residential child-care agency, department of social services, parents or guardian, other service providers, and child shall develop a single out-of-home family services agreement. The residential child-care staff shall attend court reviews, child and family team meetings, and permanency planning action team meetings. The out-of-home family services agreement ("Out-of-Home Services Agreement" DSS-5240) or the transitional living plan ("Transitional Living Plan for Youth/Young Adults in Foster Care" DSS-5096a) may serve as the out-of-home family services agreement for the residential child-care facility if the documents reflect input and participation by the residential child-care facility. Both forms contain the client's name and demographic information, the names and contact information for other relevant individuals, the client's permanency plan, the client's goals and objectives, supportive services to meet these goals and objectives, and the signatures of all individuals who participated. These forms can be obtained from the Division or found on the Division's website at <https://www.ncdhhs.gov/division/dss>.

*History Note: Authority G.S. 131D-10.5; 143B-153;*

*Eff. July 1, 1999 (See S.L. 1999, c.237, s. 11.30);*

*Amended Eff. October 1, 2008;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 5, 2016;*

*Amended Eff. October 1, 2017.*

#### **10A NCAC 70I .0506 CLIENT RECORDS**

(a) A residential child-care facility shall maintain a client record for each child that contains the following:

- (1) documentation of placement authority by parents, guardian, or legal custodian;
- (2) written placement consent and agreement;
- (3) intake study and related documents;
- (4) the completed application for services that includes demographic information on the child and the child's family;
- (5) documentation that verifies the child's birth;
- (6) the pre-admission medical examination report or a medical examination report completed within two weeks of admission (unless the child's health indicates the completion of a medical examination report sooner) and copies of subsequent medical examination reports;
- (7) immunization records;

- (8) the out-of-home family services agreement and reviews;
- (9) any court orders;
- (10) visitation and contact plan, including type, duration, location both on-site and off-site, and frequency, as well as any rationale for restrictions on family involvement;
- (11) documentation of all visitation;
- (12) consents for release of information;
- (13) consent for emergency medical treatment;
- (14) consents for overnight activities outside the direct supervision of the caregiver for periods exceeding 72 hours;
- (15) consents for time-limited audio-visual recording signed by both the child and parents or guardian, and legal custodian (if applicable);
- (16) ongoing record of medical and dental care;
- (17) documentation of medical insurance;
- (18) progress notes;
- (19) a discharge summary including date of discharge, time of discharge and the name, address, telephone number and relationship of the person or agency to whom the child was discharged, a summary of services provided during care, needs that remain to be met, and plans for the services needed to meet these goals;
- (20) medical reports including medical history, cumulative health history, and available psychological and psychiatric reports, and, if applicable:
  - (A) documentation of mental illness, developmental disabilities, or substance abuse diagnosis coded in accordance with the Diagnostic and Statistical Manual of Mental Disorders that was current at the time of diagnosis. The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition ("DSM-5"), which is incorporated by reference, including subsequent amendments and editions, may be purchased from the American Psychiatric Association at cost of two hundred and ten dollars (\$210.00) at <https://www.psychiatry.org/psychiatrists/practice.dsm>;
  - (B) documentation of screening and assessment;
  - (C) medication orders and Medication Administration Record (MAR);
  - (D) documentation of medication administration errors;
  - (E) documentation of adverse drug reactions; and
  - (F) orders and copies of lab tests;
- (21) documentation of searches for drugs, weapons, contraband, or stolen property, including date

and time of the search, action taken by direct care staff, the date and time the direct care staff informed the residential child-care facility of the search, and the date and time of the notification to the child's parents, guardian, or legal custodian; and

- (22) authorization from the parents, guardian, legal custodian, or licensed medical provider to administer non-prescription medications.

(b) Staff members recording entries in client records shall sign or initial and date entries.

*History Note: Authority G.S. 131D-10.2A; 131D-10.5; 143B-153;  
 Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30);  
 Amended Eff. October 1, 2008; July 18, 2002;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 5, 2016;  
 Amended Eff. October 1, 2017.*

### **10A NCAC 70I .0601 PROGRAM POLICIES AND PRACTICES**

- (a) A residential child-care facility shall have a written program description.
- (b) The residential child care facility shall provide any child placed in the facility with supervision that is appropriate for the child's age, intelligence, emotional make-up and past experience, and adhere to the supervision requirements specified in the out-of-home family services agreement or person-centered plan.
- (c) The residential child-care facility shall design a program to provide opportunities for learning experiences and to meet the needs of children and families.
- (d) The residential child-care facility shall provide a daily schedule of activities to meet the needs of children, and allow time for privacy and individual pursuits.
- (e) The residential child-care facility shall provide opportunities that take into consideration each child's ethnic and cultural backgrounds.
- (f) The residential child-care facility shall give each child individual attention and nurturing.
- (g) The residential child-care facility shall provide each child with the opportunity to have interaction with adults and children of both sexes.
- (h) The residential child-care facility shall instruct and supervise each child in hygiene and grooming appropriate for the age, sex, race, and developmental capacity of the child.
- (i) The residential child-care facility shall ensure that each child has contacts in the community where the facility is located through participation in events such as school functions, recreational facilities, church youth groups, part-time paid employment, and volunteer work. An exception shall be made when community contact is inconsistent with the program design.
- (j) The residential child-care facility shall allow each child to form friendships with children outside the facility, to visit friends in the community, and have their friends visit them at the facility. An exception shall be made when contact with friends is inconsistent with the program design or out-of-home family services agreement.

(k) The residential child-care facility shall provide residents with access to telephones to maintain contact with friends and family members.

(l) The residential child-care facility shall maintain a log of children in residence that includes:

- (1) the child's name, age, sex and race;
- (2) the name of parents, guardian, or legal custodian; and
- (3) the dates of admission and discharge.

*History Note: Authority G.S. 131D-10.5; 143B-153;*

*Eff. July 1, 1999 (See S.L. 1999, c.237, s. 11.30);*

*Amended Eff. October 1, 2008;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 5, 2016;*

*Amended Eff. October 1, 2017.*

### **10A NCAC 70I .0604 HEALTH SERVICES**

(a) The residential child-care facility shall ensure that each child shall have a current medical examination. Medical examinations completed by a licensed medical provider (physician, physician's assistant or nurse practitioner, in this Rule, "licensed medical provider") within 12 months prior to the admission of the child to the facility shall be considered current. If a child has not had a medical examination by a licensed medical provider within 12 months prior to admission, the residential child-care facility shall arrange a medical examination for the child within two weeks after admission or sooner if indicated by the child's health condition. The medical examination report shall include a signed statement by a licensed medical provider specifying the child's medical condition and medications prescribed and indicating the presence of any communicable disease which may pose a risk of transmission in the facility. If a child is in the custody of a county department of social services, is already scheduled to have a medical examination completed annually, and is entering a residential child-care facility, the schedule of annual medical examinations is not required to be changed. The facility shall obtain a copy of the most recent medical examination report from the responsible county department of social services.

(b) A child admitted to a residential child-care facility shall be immunized against diphtheria, tetanus, whooping cough, poliomyelitis, red measles (rubeola), rubella, mumps, and any other disease as required by 10A NCAC 41A .0401, which is hereby incorporated by reference, including subsequent amendments and editions, as age appropriate, prior to admission. The facility shall obtain documentation of immunization.

(c) A residential child-care facility shall make arrangements with one or more licensed medical providers or medical clinics and dentists for the care of the children.

(d) Each child shall have a medical examination at least once a year and more often if indicated by the child's health. A child shall not be allowed to participate in activities that pose risks to his or her health based on any previously diagnosed medical conditions. Any illness, disease, or medical condition of a child shall be identified and treated through proper medical care. Children shall have a psychiatric or psychological examination or both when indicated by the needs of the child, and treatment when recommended by the psychiatrist or psychologist.

(e) Children shall have had a dental examination, by a licensed dentist, within one year prior to admission or arrangements shall be made for an exam within six weeks after admission and annually thereafter. The facility shall document dental services in the child's record.

(f) The facility shall instruct direct child-care staff on medical care that may be given by them without orders from a licensed medical provider. The facility shall instruct direct child-care staff in the facility's procedures for obtaining medical care beyond home health care and handling medical emergencies.

(g) The residential child-care facility shall determine which local hospital will admit children from the facility in the event of serious illness or emergency.

(h) The residential child-care facility shall obtain a mouthpiece, utilize universal precautions, and other precautionary equipment for administering CPR for the children in residence.

(i) The residential child-care facility shall ensure that first aid kits are available for use in each living unit, recreation area, and in vehicles used to transport children.

(j) The residential child-care facility shall not engage in any home health care practices that conflict with the control measures for communicable diseases in 10A NCAC 41A .0200, which is hereby incorporated by reference, including subsequent amendments and editions.

(k) Direct child-care staff shall be able to recognize common symptoms of common illnesses in children and be alert to any infectious condition and take precautions to prevent the spread of the condition.

(l) Direct child-care staff shall be able to provide home health care. A thermometer shall be kept available for use. When there is risk of transmission, arrangements shall be made for isolation and attendant care of a child with a communicable disease.

(m) Prescription medications shall be administered only when approved by a licensed medical provider.

(n) Non-prescription medications shall be administered to a child taking prescription medications only when authorized by the child's licensed medical provider. The residential child-care facility shall allow non-prescription medications to be administered to a child not taking prescription medication, with the authorization of the parents, guardian, legal custodian, or licensed medical provider.

(o) All prescription and non-prescription medication shall be stored in a locked cabinet, closet, or box not accessible to children.

(p) Each child shall have a medical record that contains written consent from the legal custodian or parent authorizing routine medical and dental treatment and emergency treatment.

(q) A residential child-care facility shall have written policies and procedures regarding the administration of medications to children placed in the residential child-care facility. The executive director of a residential child-care facility, or his or her designee, shall discuss and provide these policies and procedures to the parents, guardian, or legal custodian, and the child (if 12 years of age or older), upon admission. These policies and procedures shall address medication:

- (1) administration;
- (2) dispensing, packaging, labeling, storage and disposal;
- (3) review;
- (4) education and training; and

- (5) documentation, including medication orders, Medication Administration Record (MAR), orders and copies of lab tests, and medication administration errors and adverse drug reactions.

(r) The residential child-care facility shall maintain a Medication Administration Record (MAR) for each child that documents all medications administered. The residential child-care facility shall document medication errors, adverse drug reactions and medication orders in the child's Medication Administration Record (MAR).

(s) Upon discharge of a child, the residential child-care facility shall return prescription medications to the person or agency legally authorized to remove the child from residential child-care. The residential child-care facility shall provide oral or written education to the person or agency legally authorized to remove the child from residential child-care regarding the medications. Expired or discontinued prescription medications shall be disposed of in accordance with Federal Drug Administration guidelines, which are incorporated by reference, including subsequent amendments and editions. These guidelines can be accessed at no cost at: <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm101653.htm>.

*History Note: Authority G.S. 131D-10.5; 143B-153;*

*Eff. July 1, 1999 (See S.L. 1999, c.237, s. 11.30);*

*Amended Eff. October 1, 2008;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 5, 2016;*

*Amended Eff. October 1, 2017.*

#### **10A NCAC 70I .0609 RECREATION AND LEISURE ACTIVITIES**

(a) A residential child-care facility shall develop a written schedule of planned recreational, leisure, or physical exercise activities with input from both staff and children that meets the children's developmental needs. The schedule shall be posted in each facility.

(b) A residential child-care facility shall provide indoor and outdoor, individual and group recreational opportunities, with adult supervision, appropriate to the age, interests, needs, and abilities of each child in accordance with the reasonable and prudent parent standard, G.S. 131D-10.2A.

(c) A residential child-care facility shall provide recreational opportunities for children to play with children of both genders.

(d) A residential child-care facility shall have an individualized recreation plan for any child who has special recreational needs.

*History Note: Authority G.S. 131D-10.2A; 131D-10.5; 143B-153;*

*Eff. July 1, 1999 (See S.L. 1999, c. 237 s. 11.30);*

*Amended Eff. October 1, 2008;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 5, 2016;*

*Amended Eff. October 1, 2017.*

#### **10A NCAC 70I .0613 DISCIPLINE AND BEHAVIOR MANAGEMENT**

(a) A residential child-care facility shall have written policies and procedures on discipline and behavior management, including the type and use of physical restraint holds, if utilized. A copy of the written policies and procedures shall be provided to and discussed with each child and the child's parents, guardian, or legal custodian prior to or at the time of admission. Policies and procedures shall include:

- (1) a way of interacting with and teaching children that emphasize praise and encouragement for exhibiting self control and desired behavior; and
- (2) methods for protecting children and others when a child is out of control.

(b) A residential child-care facility shall implement standards for behavior that are appropriate for the child's age, intelligence, emotional makeup, and past experiences.

(c) A residential child-care facility shall not engage in discipline or behavior management that includes:

- (1) corporal and physical punishment;
- (2) cruel or abusive punishment, as established in G.S. 7B-101(1) and (15);
- (3) discipline of one child by another child;
- (4) denial of food, sleep, clothing, or shelter;
- (5) denial of family contact, including family time, telephone, or mail contacts with family;
- (6) exercise or work to the point of physical exhaustion;
- (7) verbal abuse, threats, or humiliating remarks about himself or herself or his or her family;
- (8) mechanical restraints;
- (9) a drug used as a restraint, except as set forth in Paragraph (e) of this Rule;
- (10) seclusion or isolation time-out; except as outlined in Paragraph (d) of this Rule;
- (11) physical restraints except as outlined in Paragraph (f) of this Rule.

(d) "Time-out" means the removal of a child to a separate unlocked room or area from which the child is not physically prevented from leaving. The residential child-care facility may use isolation time-out as a behavioral control measure when the facility provides it within hearing distance of a staff member. The length of the isolation time-out shall be appropriate for the child's age, intelligence, emotional makeup, and past experiences.

(e) "A drug used as a restraint" means a medication used to control behavior or to restrict a child's freedom of movement that is not a standard medication for the child's medical or psychiatric condition. A drug used as a restraint shall be employed only if required to treat a medical condition. It shall not be employed for the purpose of punishment, staff convenience, or as a substitute for adequate staffing.

(f) "Physical restraint" of a child means physically holding a child who is at imminent risk of harm to himself or herself or others until the child is calm. A residential child-care facility shall only use physical restraint holds approved by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, pursuant to 10A NCAC 27E .0108, which is hereby incorporated by reference, including subsequent amendments and

editions. Approved physical restraint holds can be found at the following website:  
<https://www2.ncdhs.gov/mhddsas/providers/trainingandconferences/restraints.htm>.

(g) Physical restraints where a person ends up in a prone or face down position are prohibited.

(h) Physical restraint holds shall be administered only by staff trained in the use of physical restraint holds. No child or group of children shall be allowed to participate in the physical restraint of another child.

(i) The residential child-care facility shall not use physical restraints that will cause a child harm, given his or her medical condition or any medications that he or she is taking.

(j) No child shall be physically restrained utilizing a physical object.

(k) Physical restraint holds shall:

- (1) not be used for purposes of discipline or convenience;
- (2) only be used when there is imminent risk of harm to the child or others and less restrictive approaches have failed;
- (3) be administered in the least restrictive manner possible to protect the child or others from imminent risk of harm; and
- (4) end when there is no longer any risk of imminent harm to any party.

(l) A residential child-care facility shall:

- (1) ensure that any physical restraint hold utilized on a child is administered by a trained staff member with a second trained staff member in attendance. An exception may occur when no other staff member is present or can be called for assistance. Concurrent with the administration of a physical restraint hold and for a minimum of 15 minutes after the termination of the hold, a staff member shall monitor the child's breathing, ascertain the child is verbally responsive and motorically in control, and ensure the child remains conscious without any complaints of pain. If at any time during the administration of a physical restraint hold the child complains of being unable to breathe or loses motor control, the staff member administering the physical restraint hold shall terminate the hold or adjust the position to ensure that the child's breathing and motor control are not restricted. If at any time it appears to be necessary, a staff member shall immediately seek medical attention for the child. Following the use of a physical restraint hold, a staff member shall conduct an interview with the child about the incident, and the staff administering the physical restraint hold shall be interviewed by a supervisor about the incident;
- (2) document each incident of a child being subjected to a physical restraint hold on an incident report. This report shall include the following:

- (A) the child's name, age, height, and weight;
- (B) the type of hold utilized;
- (C) the duration of the hold;
- (D) the staff member administering the hold;
- (E) the staff member witnessing the hold;
- (F) the supervisory staff who reviewed the incident report;
- (G) less restrictive alternatives that were attempted prior to utilizing physical restraint;
- (H) the child's behavior that necessitated the use of physical restraint;
- (I) whether the child's condition necessitated medical attention;
- (J) planning and debriefing conducted with the child and staff to eliminate or reduce the probability of reoccurrence; and
- (K) the total number of restraints of the child since admission.

Within 72 hours, supervisory staff shall review the incident report to ensure that correct steps were followed and shall forward the report to the parents, guardian, or legal custodian and the licensing authority on a report developed by the licensing authority. If a child dies as a result of a physical restraint hold, the residential child-care facility shall report the death of the child to the parents, guardian or legal custodian and to the licensing authority within 72 hours;

- (3) submit a report to the licensing authority by the 10<sup>th</sup> day of each month stating the number of physical restraint holds used during the previous month on each child and any injuries that resulted;

- (4) ensure that any physical restraint hold utilized on a child is administered by a trained staff member who has completed at least 16 hours of training in behavior management, including techniques for de-escalating problem behavior, the appropriate use of physical restraint holds, monitoring of the child's breathing, verbal responsiveness, and motor control. Training shall also include debriefing children and staff involved in physical restraint holds. Thereafter, staff authorized to use physical restraint holds shall annually complete at least eight hours of behavior management training, including techniques for de-escalating problem behavior. Instructor qualifications and training requirements include:

- (A) instructors shall demonstrate competence by scoring 100 percent on testing in a training program aimed at preventing, reducing and eliminating the need for restrictive interventions;

- (B) instructors shall demonstrate competence by scoring 100 percent on testing in a training program teaching the use of physical restraint;
- (C) instructors shall demonstrate competence by scoring a passing grade on testing in an instructor training program as determined by the North Carolina Division of Mental Health, Developmental Disabilities and Substance Abuse Services;
- (D) the training shall be competency-based, and shall include measurable learning objectives, measurable testing (written and by observation of behavior) on those objectives and measurable methods to determine passing or failing the course;
- (E) the content of the instructor training shall be approved by the Division of Mental Health, Developmental Disabilities and Substance Abuse Services;
- (F) instructors shall be retrained annually and demonstrate competence in the use of physical restraints;
- (G) instructors shall be trained in CPR, such as those provided by the American Red Cross, American Heart Association, or substantially equivalent organizations. Division staff shall determine that an organization is substantially equivalent if the organization is already approved by the Department or meets the same standard of care as the American Heart Association or American Red Cross. The Division shall not accept web-based trainings for certification in CPR;
- (H) instructors shall have been coached in teaching the use of restrictive interventions two times with a positive review by the coach; and instructors shall teach a program on the use of physical restraints at least once annually; and
- (I) instructors shall complete a refresher instructor training at least every two years;
- (5) complete an annual review of the discipline and behavior management policies and techniques to verify that the physical restraint holds being utilized are being applied properly and safely. This review shall be documented and submitted to the licensing authority as part of the biennial licensing renewal application; and
- (6) maintain reports of physical restraint holds in a manner consistent with the facility's risk

management policies (clinical decisions and activities undertaken to identify, evaluate, and reduce the risk of injury to clients, staff, and visitors and reduce the risk of loss to the facility) and make them available to the licensing authority upon request.

*History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999; Temporary Amendment Eff. July 20, 1999; Temporary Amendment Eff. May 15, 2000; Amended Eff. November 1, 2009; October 1, 2008; April 19, 2001; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 5, 2016; Amended Eff. October 1, 2017.*

#### **10A NCAC 70I .0614 CRITICAL INCIDENTS AND CRITICAL INCIDENT REPORTS**

(a) A residential child-care facility shall have written policies and procedures for handling and reporting critical incidents.  
 (b) Critical incident reports shall be submitted to the licensing authority by the executive director or designee on a form developed by the licensing authority within 72 hours of the critical incident. A copy of the critical incident form ("Critical Incident Reporting Form" DSS-5281) can be obtained from the Division or found on the Division's website at <https://www.ncdhhs.gov/divisions/dss>. Critical incidents involving a child who is a resident of a residential child-care facility include the following:

- (1) a death of a child;
- (2) reports of abuse and neglect;
- (3) admission to a hospital;
- (4) suicide attempt;
- (5) runaway lasting more than 24 hours;
- (6) arrest for violations of state, municipal, county, or federal laws; and
- (7) reports of physical restraint holds.

(c) Documentation of critical incidents shall include:

- (1) the name of child or children involved;
- (2) the date and time of incident;
- (3) a description of incident;
- (4) the action taken by staff;
- (5) a need for medical attention;
- (6) the name of staff involved and person completing the report;
- (7) the name of child's parents, guardian or legal custodian that was notified and date and time of notification; and
- (8) the approval of supervisory or administrative staff reviewing the report.

(d) If there is a death of a child who is a resident of a residential child-care facility, the executive director or his or her designee shall notify the parents, guardian, or legal custodian and the licensing authority within 72 hours.

(e) The residential child-care facility shall have and follow policies and procedures for handling any suspected incidents of abuse or neglect of children involving staff, subcontractors, volunteers or interns. The policies and procedures shall include:

- (1) a provision for reporting any suspicions of abuse or neglect to the appropriate county department of social services in accordance with G.S. 7B-301;
- (2) a provision for recording any suspected incident of abuse or neglect and for reporting it to the executive director or governing body;
- (3) a provision for notifying the parents, guardian, or legal custodian;
- (4) a provision for preventing a recurrence of the alleged incident pending the investigative assessment.;
- (5) a policy concerning personnel action to be taken when the incident involves a staff member, subcontractor, volunteer, or intern;
- (6) a provision for submitting a critical incident report to the licensing authority within 72 hours of the incident being accepted for an investigative assessment by a county department of social services; and
- (7) a provision for submitting written notification to the licensing authority within 72 hours of the case decision by the county department of social services conducting the investigative assessment.

(f) Critical incident reports shall be maintained in a manner consistent with the agency's risk management policies and shall be made available to the licensing authority upon request.

(g) When staff determines that a foster child under the age of 18 is missing, they shall notify the appropriate law enforcement authority within 24 hours.

*History Note: Authority G.S. 131D-10.5; 143B-153; P.L. 113-183;  
Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30);  
Amended Eff. October 1, 2008; July 18, 2002;  
Pursuant to G.S. 150B-21.3A, rule is necessary without  
substantive public interest Eff. April 5, 2016;  
Amended Eff. October 1, 2017.*

## **TITLE 12 - DEPARTMENT OF JUSTICE**

### **12 NCAC 09A .0206 SUMMARY SUSPENSIONS**

(a) The Commission, by and through the Probable Cause Committee, may summarily suspend the certification of a criminal justice officer or instructor before the commencement of proceedings for suspension or revocation of the certification if the public health, safety, or welfare requires action pursuant to G.S. 150B-3. The Commission has determined that the following conditions specifically affect the public health, safety, or welfare and therefore it, by and through the Probable Cause Committee, may summarily suspend a certification if:

- (1) the person has committed or been convicted of a violation of the criminal code that would require a permanent revocation or denial of certification;

- (2) the certified officer fails to satisfactorily complete the in-service training requirements as prescribed in 12 NCAC 09E; or
- (3) the certified officer has produced a positive result on a urinalysis test, conducted in accordance with 12 NCAC 09B .0101(5).

(b) For the purpose of considering a summary suspension of certification, the Probable Cause Committee shall meet only upon notice given by mail, telephone, or other means not less than 48 hours in advance of the meeting.

(c) A summary suspension shall be effective on the date specified in the order of summary suspension or upon service of the certified copy of the order at the last known address of the person, whichever is later. The summary suspension shall remain effective during the proceedings.

(d) The Director, upon receipt of information showing the existence of a basis for summary suspension provided for in Subparagraph (a)(1), (2), or (3) of this Rule, shall coordinate the meeting described in Paragraph (b) of this Rule. All affected persons shall be notified, that the person may submit any pertinent matters to the Probable Cause Committee for its consideration before the Committee acts on the summary suspension issue. No person shall be allowed more than 48 hours to submit information to the Probable Cause Committee.

(e) Upon oral notification by the Director that the certification of an officer or instructor is being summarily suspended by written order, the Department Head of the Criminal Justice Agency or the executive officer of the institution shall ensure that the officer or instructor does not perform duties requiring certification by the Commission.

(f) The Commission, by and through the Director, upon determining that a Commission-certified Concealed Carry Handgun Instructor has conducted a concealed carry handgun training course as mandated by G.S. 14-415(a)(4) that is not in compliance with 12 NCAC 09F .0102 and negatively affects the public safety and welfare shall do the following until such time as the training course has been brought into compliance or reported to the Probable Cause Committee for action:

- (1) summarily suspend the Concealed Carry Handgun Instructor certification, prohibiting him or her from delivering concealed carry handgun training until the Director determines the training program is brought into compliance with 12 NCAC 09F .0102 and 12 NCAC 09F .0105 of this Chapter; and
- (2) inform the instructor that he or she may appeal the Director's suspension by requesting, in writing, a formal hearing before the Probable Cause Committee at the next scheduled Commission meeting.

(g) The Commission, by and through the Director, upon determining that a criminal justice officer who was issued a waiver of the requirements of 12 NCAC 09C .0306 has not met those requirements within 60 days of being awarded general certification by the Commission, shall summarily suspend the officer's certification until the officer meets the requirements of 12 NCAC 09C .0306.

*History Note: Authority G.S. 17C-6; 17C-10; 150B-3;*

*Eff. January 1, 1981;  
Amended Eff. October 1, 2017; February 1, 2016; December 1, 2007; March 1, 2004; July 1, 1990; July 1, 1989; October 1, 1985; August 15, 1981.*

**12 NCAC 09B .0101 MINIMUM STANDARDS FOR  
CRIMINAL JUSTICE OFFICERS**

Every criminal justice officer employed by an agency in North Carolina shall:

- (1) be a citizen of the United States;
- (2) be at least 20 years of age;
- (3) be of good moral character pursuant to G.S. 17C-10 and as evidenced by the following:
  - (a) not having been convicted of a felony;
  - (b) not having been convicted of a misdemeanor as defined in 12 NCAC 09B .0111(1) for five years or the completion of any corrections supervision imposed by the courts, whichever is later;
  - (c) not having been convicted of an offense that, under 18 U.S.C. 922, incorporated by reference with subsequent amendments and editions (found at no cost at (<http://www.gpo.gov/fdsys/pkg/USC-ODE-2011-title18-part1-chap44-sec922.pdf>), would prohibit the possession of a firearm or ammunition;
  - (d) having submitted to and produced a negative result on a drug test within 60 days of employment or any in-service drug screening required by the appointing agency that meets the certification standards of the Department of Health and Human Services for Federal Workplace Drug Testing Programs. A list of certified drug testing labs that meet this requirement may be obtained, at no cost, at (<https://www.samhsa.gov/programs-campaigns/drug-free-workplace/guidelines-resources/drug-testing/certified-lab-list>);
  - (e) submitting to a background investigation consisting of the verification of age and education and a criminal history check of local, state, and national files;
  - (f) being truthful in providing information to the appointing agency and to the Standards Division for the purpose of obtaining probationary or general certification;
  - (g) not having pending or outstanding felony charges that, if convicted of such charges, would disqualify the

- (h) applicant from holding such certification, pursuant to North Carolina General Statute 17C-13; and not engage in any conduct that brings into question the truthfulness or credibility of the officer, or involves "moral turpitude." "Moral Turpitude" is conduct that is contrary to justice, honesty, or morality, including conduct as defined in: *re Willis*, 299 N.C. 1, 215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (1975); in *re State v. Harris*, 216 N.C. 746, 6 S.E. 2d 854 (1940); in *re Legg*, 325 N.C. 658, 386 S.E. 2d 174(1989); in *re Applicants for License*, 143 N.C. 1, 55 S.E. 635 (1906); in *re Dillingham*, 188 N.C. 162, 124 S.E. 130 (1924); *State v. Benbow*, 309 N.C. 538, 308 S.E. 2d 647 (1983); and later court decisions that cite these cases as authority.
- (4) have been fingerprinted and a search made of local, state, and national files to disclose any criminal record;
- (5) have been examined and certified by a licensed physician or surgeon to meet physical requirements necessary to properly fulfill the officer's particular responsibilities and shall have produced a negative result on a drug screen administered according to the following specifications:
  - (a) the drug screen shall be a urine test consisting of an initial screening test using an immunoassay method and a confirmatory test on an initial positive result using a gas chromatography/mass spectrometry (GC/MS) or other reliable initial and confirmatory tests as may, from time to time, be authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs;
  - (b) a chain of custody shall be maintained on the specimen from collection to the eventual discarding of the specimen;
  - (c) the drug screen shall test for the presence of at least cannabis, cocaine, phencyclidine (PCP), opiates, and amphetamines or their metabolites;
  - (d) the test threshold values meet the requirements established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs, as found in 82 FR 7920 (2017) incorporated by reference, including later amendments and editions (found at no cost at <https://www.federalregister.gov/docu>



- ments/2017/01/23/2017-00979/mandatory-guidelines-for-federal-workplace-drug-testing-programs);
- (e) the test conducted shall be not more than 60 days old, calculated from the time when the laboratory reports the results to the date of employment;
  - (f) the laboratory conducting the test shall be certified for federal workplace drug testing programs, and shall adhere to applicable federal rules, regulations, and guidelines pertaining to the handling, testing, storage, and preservation of samples;
- (6) have been administered a psychological screening examination by a clinical psychologist or psychiatrist licensed to practice in North Carolina or by a clinical psychologist or psychiatrist authorized to practice in accordance with the rules and regulations of the United States Armed Forces within one year prior to employment by the employing agency to determine the officer's mental and emotional suitability to properly fulfill the responsibilities of the position;
  - (7) have been interviewed personally by the Department head or his representative or representatives to determine such things as the applicant's appearance, demeanor, attitude, and ability to communicate;
  - (8) notify the Standards Division of all criminal offenses that the officer is arrested for or charged with, pleads no contest to, pleads guilty to or is found guilty of as well as Domestic Violence Orders (50B) that are issued by a judicial official. This shall include all criminal offenses except minor traffic offenses and shall specifically include any offense of Driving Under The Influence (DUI) or Driving While Impaired (DWI). A minor traffic offense is defined, for purposes of this Subparagraph, as an offense for which the maximum punishment allowable by law is 60 days or less. Other offenses under Chapter 20 (Motor Vehicles) of the General Statutes of North Carolina or similar laws of other jurisdictions which shall be reported to the Standards Division expressly include G.S. 20-139 (persons under influence of drugs), G.S. 20-28(b) (driving while license permanently revoked or permanently suspended), and G.S. 20-166 (duty to stop in event of accident). The notifications required under this Subparagraph shall be in writing and shall specify the nature of the offense, the court in which the case was handled, the date of the arrest or criminal charge, the final disposition, and the date thereof. The notifications required under this Subparagraph shall be received by

the Standards Division within 30 days of the date of arrest or charge and of case disposition. The requirements of this Subparagraph shall be applicable at all times during which the officer is certified by the Commission and shall also apply to all applicants for certification. Officers required to notify the Standards Division under this Subparagraph shall also make the same notification to their employing or appointing executive officer within 20 days of the date the case was disposed of in court. The executive officer, provided he has knowledge of the officer's arrests or criminal charges and final dispositions, shall also notify the Standards Division of all arrests or criminal charges and final dispositions within 30 days of the date the case was disposed of in court. Receipt by the Standards Division of a single notification, from either the officer or the executive officer, shall be sufficient notice for compliance with this Subparagraph.

*History Note: Authority G.S. 17C-6; 17C-10; Eff. January 1, 1981; Amended Eff. October 1, 2017; September 1, 2001; April 1, 1999; January 1, 1995; November 1, 1993; July 1, 1990.*

#### **12 NCAC 09B .0104 MEDICAL EXAMINATION**

(a) Each applicant for employment as a criminal justice officer shall complete the Commission's Medical History Statement Form within one year prior to employment by the employing agency and shall be examined by either a physician or surgeon licensed to practice medicine in North Carolina or by a physician or surgeon authorized to practice medicine in accordance with the rules and regulations of the United States Armed Forces to help determine the applicant's fitness in carrying out the physical requirements of the criminal justice officer position.

(b) The examining physician shall record the results of the examination on the Commission's Medical Examination Report Form and shall record any evidence of past or present defects, diseases, injuries, operations.

(c) An applicant for employment as a law enforcement officer seeking general certification may not be employed or placed in a sworn law enforcement position prior to the date on which the employing agency receives the report of the results of the medical examination unless all of the following requirements are met:

- (1) The applicant has completed and signed the applicant's certificate (Section A) of the Commission's Report of Appointment, wherein the applicant's temporary employment and probationary law enforcement officer certification is acknowledged to be contingent on a report to the Commission of the completion of the drug screening of the individual being issued general certification.
- (2) The requirements of this Paragraph shall be met within 60-days of the law enforcement officer being issued general certification.

*History Note: Authority G.S. 17C-6; 17C-10;  
Eff. January 1, 1981;  
Amended Eff. October 1, 2017; November 1, 1993; February 1, 1991; March 1, 1990; April 1, 1985.*

**12 NCAC 09B .0205 BASIC LAW ENFORCEMENT TRAINING**

(a) The basic training course for law enforcement officers shall consist of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function in law enforcement.

(b) The course entitled "Basic Law Enforcement Training" shall consist of a minimum of 632 hours of instruction and shall include the following identified topical areas and minimum instructional hours for each:

- |     |                                    |   |
|-----|------------------------------------|---|
| (1) | LEGAL UNIT                         |   |
|     | (A)                                | Motor Vehicle Laws 20 Hours   |
|     | (B)                                | Preparing for Court and Testifying in Court 12 Hours                    |
|     | (C)                                | Elements of Criminal Law 24 Hours                                       |
|     | (D)                                | Juvenile Laws and Procedures 8 Hours                                    |
|     | (E)                                | Arrest, Search and Seizure/Constitutional Law 28 Hours                  |
|     | (F)                                | Alcohol Beverage Control (ABC)Laws and Procedures 4 Hours               |
|     | UNIT TOTAL                         | 96 Hours  |
| (2) | PATROL DUTIES UNIT                 |   |
|     | (A)                                | Techniques of Traffic Law Enforcement 24 Hours                          |
|     | (B)                                | Explosives and Hazardous Materials Emergencies 12 Hours                 |
|     | (C)                                | Traffic Crash Investigation 20 Hours                                    |
|     | (D)                                | In-Custody Transportation 8 Hours                                       |
|     | (E)                                | Crowd Management 12 Hours   |
|     | (F)                                | Patrol Techniques 28 Hours  |
|     | (G)                                | Law Enforcement Communication and Information Systems 8 Hours           |
|     | (H)                                | Anti-Terrorism 4 Hours  |
|     | (I)                                | Rapid Deployment 8 Hours  |
|     | UNIT TOTAL                         | 124 Hours   |
| (3) | LAW ENFORCEMENT COMMUNICATION UNIT |   |
|     | (A)                                | Responding to Victims and the Public 10 Hours                           |
|     | (B)                                | Domestic Violence Response 12 Hours                                     |
|     | (C)                                | Ethics for Professional Law Enforcement 4 Hours                         |
|     | (D)                                | Individuals with Mental Illness and Developmental Disabilities 24 Hours |
|     | (E)                                | Crime Prevention Techniques 6 Hours                                     |
|     | (F)                                | Communication Skills for Law Enforcement Officers 8 Hours               |
|     | UNIT TOTAL                         | 64 Hours  |
| (4) | INVESTIGATION UNIT                 |   |

- |     |   |           |
|-----|---|-----------|
| (A) | Fingerprinting and Photographing Arrestee     | 6 Hours   |
| (B) | Field Note-taking and Report Writing          | 12 Hours  |
| (C) | Criminal Investigation                        | 34 Hours  |
| (D) | Interviews                                    | 16 Hours  |
| (E) | Controlled Substances                         | 12 Hours  |
| (F) | Human Trafficking                             | 2 Hours   |
|     | UNIT TOTAL                                    | 82 Hours  |
| (5) | PRACTICAL APPLICATION UNIT                    |           |
| (A) | First Responder                               | 32 Hours  |
| (B) | Firearms                                      | 48 Hours  |
| (C) | Law Enforcement Driver Training               | 40 Hours  |
| (D) | Physical Fitness (classroom instruction)      | 8 Hours   |
| (E) | Fitness Assessment and Testing                | 12 Hours  |
| (F) | Physical Exercise 1 hour daily, 3 days a week | 34 Hours  |
| (G) | Subject Control Arrest Techniques             | 40 Hours  |
|     | UNIT TOTAL                                    | 214 Hours |
| (6) | SHERIFF-SPECIFIC UNIT                         |           |
| (A) | Civil Process                                 | 24 Hours  |
| (B) | Sheriffs' Responsibilities: Detention Duties  | 4 Hours   |
| (C) | Sheriffs' Responsibilities: Court Duties      | 6 Hours   |
|     | UNIT TOTAL                                    | 34 Hours  |
| (7) | COURSE ORIENTATION                            | 2 Hours   |
| (8) | TESTING                                       | 16 Hours  |
|     | TOTAL COURSE HOURS                            | 632 Hours |

(c) The "Basic Law Enforcement Training Manual" published by the North Carolina Justice Academy shall be used as the curriculum for this training course. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division  
North Carolina Department of Justice  
1700 Tryon Park Drive  
Post Office Drawer 149  
Raleigh, North Carolina 27602

and may be obtained at the cost of printing and postage from the North Carolina Justice Academy at the following address:

North Carolina Justice Academy  
Post Office Drawer 99  
Salemberg, North Carolina 28385

(d) The "Basic Law Enforcement Training Course Management Guide" published by the North Carolina Justice Academy shall be used by school directors in planning, implementing, and delivering basic training courses. Copies of this guide may be obtained at the cost of printing and postage from the Justice Academy.

*History Note: Authority G.S. 17C-6; 17C-10;  
Eff. January 1, 1981;  
Temporary Amendment Eff. December 14, 1983 for a period of 120 days to expire on April 12, 1984;*

*Amended Eff. January 1, 2018; July 1, 2017; July 1, 2016; January 1, 2015; February 1, 2014; July 1, 2011; July 1, 2009; January 1, 2006; August 1, 2002; August 1, 2000; November 1, 1998; July 1, 1997; January 1, 1995; February 1, 1991; July 1, 1989.*

**12 NCAC 09B .0209 CRIMINAL JUSTICE INSTRUCTOR TRAINING**

(a) The instructor training course required for general instructor certification shall consist of a minimum of 78 hours of instruction presented during a continuous period of not more than two weeks.  
(b) Each instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice instructor.

(c) Each instructor training course shall include the following identified topic areas and minimum instructional hours for each area:

- |      |   |          |
|------|---|----------|
| (1)  | Orientation and Pre-Test  | 3 Hours  |
| (2)  | Instructional Systems Design (ISD)                                | 6 Hours  |
| (3)  | Law Enforcement Instructor Liabilities and Legal Responsibilities | 3 Hours  |
| (4)  | Instructional Leadership  | 4 Hours  |
| (5)  | Lesson Plan Preparation: Professional Resources                   | 3 Hours  |
| (6)  | Lesson Plan Development: Format and Objectives                    | 4 Hours  |
| (7)  | Adult Learning  | 4 Hours  |
| (8)  | Instructional Styles and Platform Skills                          | 4 Hours  |
| (9)  | Classroom Management  | 4 Hours  |
| (10) | Active Learning: Demonstration and Practical Exercises            | 6 Hours  |
| (11) | The Evaluation of Learning  | 4 Hours  |
| (12) | Principles of Instruction: Audio-Visual Aids                      | 4 Hours  |
| (13) | Student 8-Minute Talk and Video Critique                          | 6 Hours  |
| (14) | Student Performance: First 30-Minute Presentation                 | 5 Hours  |
|      | Second 30-Minute Presentation                                     | 5 Hours  |
|      | Final 70-Minute Presentation and Review                           | 12 Hours |
| (15) | Course Closing  | 1 Hour   |

(d) The "Instructor Training" manual published by the North Carolina Justice Academy shall be the curriculum for instructor training courses. Copies of this publication may be inspected at the agency:

Criminal Justice Standards Division  
North Carolina Department of Justice  
1700 Tryon Park Drive  
Post Office Drawer 149  
Raleigh, North Carolina 27602

and may be purchased at the cost of printing and postage from the Academy at the following address:

North Carolina Justice Academy  
Post Office Drawer 99  
Salemberg, North Carolina 28385

*History Note: Authority G.S. 17C-6;*

*Eff. January 1, 1981;*

*Amended Eff. January 1, 2018; January 1, 2015; December 1, 2009; August 1, 2005; November 1, 1998; January 1, 1995; March 1, 1990; July 1, 1989; January 1, 1985.*

**12 NCAC 09B .0301 CERTIFICATION OF INSTRUCTORS**

(a) A person participating in a Commission-certified criminal justice training course or program as an instructor, teacher, professor, lecturer, or other participant making presentations to the class shall first be certified by the Commission as an instructor.

(b) The Commission shall certify instructors under the following categories: General Instructor Certification, Specialized Instructor Certification, or Professional Lecturer Certification as outlined in Rules .0302, .0304 and 0306 of this Section. Instructor certification shall be granted on the basis of documented qualifications of experience, education, and training in accord with the requirements of this Section and as stated on the applicant's Request for Instructor Certification Form.

(c) In addition to all other requirements of this Section, each instructor certified by the Commission to teach in a Commission-certified course shall remain competent in his or her specialized areas. Such competence shall include remaining current in the instructor's area of expertise, which shall be demonstrated by attending and successfully completing all updated instructor training courses required by the Commission.

(d) If a person certified as an instructor by the Commission is found to have knowingly and willfully violated any provision or requirement of the rules in this Subchapter, the Commission shall take action to correct the violation and to ensure that the violation does not recur, including:

- (1) issuing an oral warning and request for compliance;
- (2) issuing a written warning and request for compliance;
- (3) issuing an official written reprimand;
- (4) suspending the individual's certification for a specified period of time or until acceptable corrective action is taken by the individual; and
- (5) and revoking the individual's certification.

(e) The Commission shall deny, suspend, or revoke an instructor's certification if the Commission finds that the person:

- (1) has failed to meet and maintain any of the requirements for qualification;
- (2) has failed to remain knowledgeable in the person's areas of expertise;
- (3) has failed to deliver training in a manner consistent with the instructor lesson plans outlined in the "Basic Instructor Training Manual" as found in 12 NCAC 09B .0209;
- (4) has failed to follow specific guidelines outlined in the "Basic Law Enforcement Training Course Management Guide" as found in 12 NCAC 09B .0205;
- (5) has demonstrated unprofessional personal conduct in the delivery of commission-mandated training. For the purposes of this Subparagraph, unprofessional personal conduct

means an act that is: job-related conduct which constitutes a violation of State or federal law; conviction or commission of a criminal offense, as set out in 12 NCAC 09A .0204; the willful violation of Rules of this Chapter; conduct that is detrimental to instruction in the Commission's mandated courses; the abuse of a client or student whom the instructor is teaching or supervising or falsification of an instructor application or in other employment documentation;

- (6) has demonstrated instructional incompetence;
- (7) has knowingly and willfully obtained or attempted to obtain instructor certification by deceit, fraud, or misrepresentation;
- (8) has failed to meet or maintain good moral character as defined in: *re Willis*, 299 N.C. 1, 215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (9175); *State v. Harris*, 216 N.C. 746, 6 S.E. 2d 854 (1940); *in re Legg*, 325 N.C. 658, 386 S.E. 2d 174(1989); *in re Applicants for License*, 143 N.C. 1, 55 S.E. 635 (1906); *in re Dillingham*, 188 N.C. 162, 124 S.E. 130 (1924); *State v. Benbow*, 309 N.C. 538, 308 S.E. 2d 647 (1983); and later court decisions that cite these cases as authority, and as required to effectively discharge the duties of a criminal justice instructor;
- (9) has failed to deliver training in a manner consistent with the Qualified Retired Law Enforcement Officers Firearms Qualification Certification Program as found in 12 NCAC 09H .0102; or
- (10) has knowingly and willfully aided or attempted to aid any person in obtaining qualification or certification under the Qualified Retired Law Enforcement Officers Firearms Qualification Certification Program by deceit, fraud, or misrepresentation;
- (11) has committed or been convicted of an offense which could result in the denial, suspension, or revocation of an officer's law enforcement certification, pursuant to 12 NCAC 02A .0204 or 12 NCAC 09G .0504; or
- (12) has knowingly made a material misrepresentation of any information required for certification or accreditation.

(f) When a person certified as a law enforcement officer by the North Carolina Criminal Justice Education and Training Standards Commission (Commission), the North Carolina Sheriffs Education and Training Standards Commission (Sheriffs' Commission), or the North Carolina Department of Insurance, Office of State Fire Marshal, Fire Rescue Commission (Fire Commission) and Office of Emergency Medical Services has his or her law enforcement officer or fire and rescue certification suspended or revoked by their respective Commission, that person shall report the suspension or revocation to the Criminal Justice Standards within 30-days. They shall also have their General Instructor certification (if applicable) similarly and automatically

suspended or revoked for the same time period as their respective Commission certification.

- (1) This suspension or revocation of the General Instructor certification shall also include suspension or revocation to any Commission recognized Specialized or additional instructor certification, as outlined in 12 NCAC 09B .0304.
- (2) If the term of suspension or revocation exceeds the expiration date of the instructor's initial certification expiration date, they shall forfeit their certifications as a General Instructor and Specialized Instructor and shall be required to obtain certification pursuant to the requirements of 12 NCAC 09B .0302 before any instruction may be delivered in any commission approved or mandated training, including the completion of a subsequent General Instructor's training course in its entirety.
- (3) If the term of suspension or revocation does not exceed the expiration date of the instructor's initial certification expiration date, the instructor shall be reinstated as a General Instructor only upon reinstatement of his or her law enforcement officer certification by the Commission. The terms of renewal for the existing General Instructor and Specialized Instructor certifications shall remain subject to all renewal requirements pursuant to 12 NCAC 09B .0303(c) by the next immediate expiration date.

*History Note: Authority G.S. 17C-6; Eff. January 1, 1981; Amended Eff. October 1, 2017; October 1, 2009; August 1, 2004; April 1, 1999; July 1, 1991; January 1, 1985.*

## **12 NCAC 09B .0302 GENERAL INSTRUCTOR CERTIFICATION**

(a) A General Instructor Certification issued after December 31, 1984, shall be limited to those topics that are not expressly incorporated under the Specialized Instructor Certification category. Individuals certified under the general instructor category shall not teach any of the subjects specified in Rule .0304 of this Subchapter, entitled "Specialized Instructor Certification." To qualify for issuance of General Instructor Certification, an applicant shall demonstrate a combination of education and experience in criminal justice and proficiency in the instructional process by meeting the following requirements:

- (1) Present documentary evidence showing that the applicant:
  - (A) is a high school, college, or university graduate or has received a high school equivalency credential as recognized by the issuing state; and
  - (B) has acquired four years of practical experience as a Criminal Justice Officer, an administrator or specialist

in a field directly related to the criminal justice system, or as an employee of a Criminal Justice Agency;

- (2) Present evidence showing completion of a Commission-accredited instructor training program or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise; and
- (3) Achieve a passing score on the comprehensive written examination administered by the Commission, as required by Rule .0413(d) of this Subchapter.

(b) Applications for General Instructor Certification shall be submitted to the Standards Division within 60 days of the date the applicant passed the state comprehensive examination administered at the conclusion of the Commission-accredited instructor training program or an equivalent instructor training course use the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise.

(c) Persons having completed a Commission-accredited instructor training course or an equivalent instructor training course using the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise, and not having made application within 60 days of completion of the course shall complete a subsequent Commission-accredited instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise, in its entirety.

(d) Applicants for Speed Measuring Instrument Instructor courses shall possess probationary or General Instructor Certification.

*History Note: Authority G.S. 17C-6.*

*Eff. January 1, 1981;*

*Amended Eff. October 1, 2017; January 1, 2017; February 1, 2016; January 1, 2015; January 1, 2006; May 1, 2004; August 1, 2000; July 1, 1991; December 1, 1987; October 1, 1985; January 1, 1985.*

## **12 NCAC 09B .0403 EVALUATION FOR TRAINING WAIVER**

(a) The Standards Division staff shall evaluate each law enforcement officer's training and experience to determine if equivalent training has been completed as specified in Rule .0402(a) of this Section. Applicants for certification with prior law enforcement experience shall have been employed in a full-time, sworn law enforcement position in order to be considered for training evaluation under this Rule. Applicants for certification with a combination of full-time and part-time experience shall be evaluated on the basis of the full-time experience only. The following criteria shall be used by Standards Division staff in evaluating a law enforcement officer's training and experience to determine eligibility for a waiver of training requirements:

- (1) Persons having completed a Commission-accredited basic training program and not having been duly appointed and sworn as a law enforcement officer within one year of completion of the program shall complete a subsequent Commission-accredited basic training program, as prescribed in Rule .0405(a) of this Section, and shall achieve a passing score on the State Comprehensive Examination prior to obtaining probationary law enforcement certification, unless the Director determines that a delay in applying for certification was not due to neglect on the part of the applicant, in which case the Director shall accept a Commission-accredited basic training program that is over one year old. The appointing agency shall request in writing the extension of the one year period, which shall not exceed 30 days from the first year anniversary of the passing of the state comprehensive examination;
- (2) Out-of-state transferees shall be evaluated to determine the amount and quality of their training and experience. Out-of-state transferees shall not have a break in service exceeding three years. At a minimum, out-of-state transferees shall have two years' full-time, sworn law enforcement experience and have completed a basic law enforcement training course accredited by the transferring State. Prior to employment as a certified law enforcement officer, out-of-state transferees shall complete with a passing score the employing agency's in-service firearms training and qualification program as prescribed in 12 NCAC 09E .0106. In addition, out-of-state transferees shall complete the Legal Unit in a Commission-accredited Basic Law Enforcement Training Course as prescribed in Rule .0205(b)(1) of this Subchapter and shall achieve a passing score on the State Comprehensive Examination within the 12 month probationary period;
- (3) Persons who have completed a 369-hour basic law enforcement training program accredited by the Commission under guidelines administered beginning October 1, 1984, have been separated from a sworn position for over one year but less than three years, and who have had a minimum of two years' experience as a full-time, sworn law enforcement officer in North Carolina shall complete the Legal Unit in a Commission-accredited Basic Law Enforcement Training Course as prescribed in Rule .0205(b)(1) of this Subchapter and shall achieve a passing score on the State Comprehensive Examination within the 12 month probationary period. Prior to employment as a certified law enforcement

- officer, these persons shall complete with a passing score the employing agency's in-service firearms training and qualification program as prescribed in 12 NCAC 09E;
- (4) Persons out of the law enforcement profession for over one year but less than three years who have had less than two years' experience as a full-time, sworn law enforcement officer in North Carolina shall complete a Commission-accredited basic training program, as prescribed in Rule .0405(a) of this Section, and achieve a passing score on the State Comprehensive Examination;
  - (5) Persons out of the law enforcement profession for over three years shall complete a Commission-accredited basic training program, as prescribed in Rule .0405(a) of this Section, regardless of prior training or experience, and shall achieve a passing score on the State Comprehensive Examination;
  - (6) Persons who separated from law enforcement employment during their probationary period after having completed a Commission-accredited basic training program and who have separated from a sworn law enforcement position for more than one year shall complete a subsequent Commission-accredited basic training program and shall achieve a passing score on the State Comprehensive Examination;
  - (7) Persons who separated from a sworn law enforcement position during their probationary period after having completed a Commission-accredited basic training program and who have separated from a sworn law enforcement position for less than one year shall serve a new 12 month probationary period as prescribed in Rule .0401(a) of this Section, but shall not be required to complete an additional training program;
  - (8) Persons who have completed a minimum 160-hour basic law enforcement training program accredited by the North Carolina Criminal Justice Training and Standards Council under guidelines administered beginning on July 1, 1973, and continuing through September 30, 1978, and who have separated from a sworn law enforcement position for over one year but less than two years shall complete the Legal Unit and the topical area entitled "Law Enforcement Driver Training" of a Commission-accredited Basic Law Enforcement Training Course as prescribed in Rule .0205(b)(1) and .0205(b)(5)(C) of this Subchapter and shall achieve a passing score on the State Comprehensive Examination within the 12 month probationary period;
  - (9) Persons who have completed a minimum 160-hour basic law enforcement training program accredited by the North Carolina Criminal Justice Training and Standards Council under guidelines administered beginning on July 1, 1973, and continuing through September 30, 1978, and have been separated from a sworn law enforcement position for two or more years shall complete a Commission-accredited basic training program, as prescribed in Rule .0405 of this Section, regardless of training and experience, and shall achieve a passing score on the State Comprehensive Examination;
  - (10) Persons who have completed a minimum 240-hour basic law enforcement training program accredited by the Commission under guidelines administered beginning October 1, 1978, and continuing through September 30, 1984, and have been separated from a sworn position over one year but less than three years shall complete the Legal Unit in a Commission-accredited Basic Law Enforcement Training Course as prescribed in Rule .0205(b)(1) of this Subchapter and shall achieve a passing score on the State Comprehensive Examination within the 12 month probationary period;
  - (11) Persons previously holding law enforcement certification in accordance with G.S. 17C-10(a) who have been separated from a sworn law enforcement position for over one year and who have not previously completed a minimum basic training program accredited by either the North Carolina Criminal Justice Training and Standards Council or the Commission shall complete a Commission-accredited basic training program, as prescribed in Rule .0405 of this Section, and shall achieve a passing score on the State Comprehensive Examination prior to employment;
  - (12) Individuals seeking certification with the Commission who have been appointed as Special Agents with the Federal Bureau of Investigation; United States Secret Service; Bureau of Alcohol, Tobacco and Firearms; and Drug Enforcement Administration; United States Marshals and Deputy United States Marshals, who have not had a break in service exceeding three years, shall be evaluated to determine the amount and quality of their training and experience. At a minimum, federal law enforcement officers shall have two years' full-time, sworn law enforcement experience and have completed a basic law enforcement training course as required by their appointing federal agency. Prior to employment as a certified law enforcement officer, these individuals shall complete with a passing score the employing agency's in-service firearms

- training and qualification program as prescribed in 12 NCAC 09E .0106. These individuals shall complete the Basic Law Enforcement Training topics pursuant to 12 NCAC 09B .0205(b)(1)(A), (b)(1)(C), (b)(1)(D), (b)(1)(F), (b)(2)(A), (b)(2)(C), (b)(2)(E), (b)(2)(F), (b)(2)(I), (b)(3)(B), (b)(3)(D), (b)(4)(E), (b)(5)(A), (b)(6)(A), (b)(6)(B), (b)(6)(C), and shall achieve a passing score on the State Comprehensive Examination pursuant to 12 NCAC 09B .0406 within the 12 month probationary period. Individuals who submit to the Commission documentation of completion of training equivalent to the topics set forth in 12 NCAC 09B .0205(b)(2)(A), (b)(2)(C), (b)(2)(E), (b)(2)(F), (b)(2)(I), (b)(3)(B), (b)(3)(D), (b)(4)(E), (b)(5)(A), (b)(6)(A), (b)(6)(B), and (b)(6)(C) shall not be required to complete those topics.
- (13) Federal law enforcement transferees other than those listed in Paragraph (12) of this Rule who have not had a break in service exceeding three years shall be evaluated to determine the amount and quality of their training and experience. At a minimum, federal law enforcement officers shall have two years' full-time, sworn law enforcement experience and have completed a basic law enforcement training course as required by their appointing federal agency. Prior to employment as a certified law enforcement officer, transferees shall complete with a passing score the employing agency's in-service firearms training and qualification program as prescribed in 12 NCAC 09E .0106. At a minimum, transferees shall complete the Legal Unit in a Commission-accredited Basic Law Enforcement Training Course as prescribed in Rule .0205(b)(1) of this Subchapter and shall achieve a passing score on the State Comprehensive Examination within 12 month probationary period.
- (14) Applicants with part-time experience who have a break in service in excess of one year shall complete a Commission-accredited basic training program, as prescribed in Rule .0405 of this Section, and shall achieve a passing score on the State Comprehensive Examination prior to employment;
- (15) Applicants who hold or previously held certification issued by the North Carolina Sheriffs' Education and Training Standards Commission (Sheriffs' Commission) shall be subject to evaluation based on the applicant's active or inactive certification status with the Sheriffs' Commission. A deputy sheriff certified with the Sheriffs' Commission shall be considered active if he or she has performed any law enforcement function during the previous 12 months. A deputy sheriff certified with the Sheriffs' Commission shall be considered inactive if he or she has not performed a law enforcement function during the previous 12 months.
- (A) The Standards Division shall issue certification to an applicant holding active general certification with the Sheriffs' Commission provided that the applicant:
- (i) Does not have a break in service of greater than 12 months;
  - (ii) Has completed the mandatory in-service training requirements pursuant to 12 NCAC 10B .2005 for each year certification was held; and
  - (iii) Held active status with the Sheriffs' Commission within 12 months of the date the applicant achieved a passing score on the Basic Law Enforcement Training state comprehensive examination.
- (B) The Standards Division shall issue certification to an applicant holding inactive certification with the Sheriffs' Commission provided that the applicant:
- (i) Holds inactive probationary or general certification with the Sheriffs' Commission;
  - (ii) Has served a minimum of 24 months of full time sworn service or does not have a break in service of greater than 12 months;
  - (iii) Has completed the mandatory in-service training requirements pursuant to 12 NCAC 10B .2005, with the exception of Firearms Training and Requalification, during each year certification was held; and
  - (iv) Held active status with the Sheriffs' Commission within 12 months of the date the applicant achieved a passing score on the Basic Law Enforcement Training state comprehensive examination.
- (C) An applicant awarded certification with the Sheriffs' Commission by means of the Sheriffs' Standards BLET Challenge as prescribed in 12 NCAC 10B .0505(9)(b) shall meet the

- following requirements in order to obtain probationary certification from the Commission:
- (i) Have a minimum of 24 months of sworn, full-time law enforcement service;
  - (ii) Not have a break in service of greater than 12 months; and
  - (iii) Have completed all mandatory in-service requirements pursuant to 12 NCAC 10B .0505 during the previous 2 years.
- (D) An applicant who is a criminal justice officer, as defined in G.S. 17C-2(3), and who is elected Sheriff shall not be required to maintain certification with the Sheriffs' Commission for the time period he or she serves as Sheriff. The applicant's certification shall be reinstated by the Commission upon the conclusion of the period of service as Sheriff and in conformance with 12 NCAC 09C .0303.
- (16) Alcohol law enforcement agents who received basic alcohol law enforcement training prior to November 1, 1993, and transfer to another law enforcement agency in a sworn capacity shall be subject to evaluation of their prior training and experience on an individual basis. The Standards Division staff shall determine the amount of training required of these applicants, based upon the type of certification held by the applicant and the length of any break in the applicant's sworn, full-time service.
- (17) Wildlife enforcement officers who separate from employment with the Wildlife Enforcement Division and transfer to another law enforcement agency in a sworn capacity shall be subject to evaluation of their prior training and experience on an individual basis. The Standards Division staff shall determine the amount of training required of these applicants, based upon the type of certification held by the applicant and the length of any break in the applicant's sworn, full-time service.
- (18) Active duty, guard, or reserve military members failing to complete all of the required annual in-service training topics, as defined in 12 NCAC 09E .0105 of this Chapter, due to military obligations are subject to the following training requirements as a condition for return to active criminal justice status. The agency head shall verify the person's completion of the appropriate training by submitting a statement, on Form F-9C, Return to Duty Request form. This form is located on the agency's website: <http://www.ncdoj.gov/getdoc/ac22954d-5e85-4a33-87af-308ba2248f54/F-9C-6-11.aspx>.
- (A) Active duty members of the armed forces eligible for probationary certification pursuant to Paragraph (18) of this Rule and active duty, guard, or reserve military members holding probationary or general certification as a criminal justice officer who fail to complete all of the required annual in-service training topics due to military obligations for up to a period of three years shall complete the previous year's required in-service training topics, the current year's required in-service training topics, and complete with a passing score the appointing agency's in-service firearms training and qualification program as prescribed in 12 NCAC 09E prior to their return to active criminal justice status;
- (B) Active duty, guard, or reserve military members holding probationary or general certification as a criminal justice officer who fail to complete all of the required annual in-service training topics due to military obligations for a period greater than three years shall complete the following topic areas within the following time frames:
- (i) The person shall complete the previous year's required in-service training topics, the current year's required in-service training topics, and complete the appointing agency's in-service firearms training and qualification program as prescribed in 12 NCAC 09E prior to their return to active criminal justice status;
  - (ii) The person shall achieve a passing score on the practical skills testing for the First Responder, Law Enforcement Driver Training, and Subject Control Arrest Techniques topics enumerated in Rule .0205(b)(5) of this Subchapter prior to returning to active criminal justice status. This practical skills testing may be completed either in a Commission-accredited Basic Law Enforcement Training course or under the instruction of a



- Commission-Certified instructor for that particular skill. The person shall complete one physical fitness assessment in lieu of the Fitness Assessment and Testing topic. The person shall also be examined by a physician per Rule .0104(b) of this Subchapter; and
- (iii) The person shall complete some of the topics in the legal unit of instruction in the Basic Law Enforcement Training course as set forth in Rule .0205(b)(1) of this Subchapter. The required topics include Motor Vehicle Law; Juvenile Laws and Procedures; Arrest, Search and Seizure/Constitutional Law; and ABC Laws and Procedures. The person shall achieve a passing score on the appropriate topic tests for each course. The person may undertake each of these legal unit topics of instruction either in a Commission-accredited Basic Law Enforcement Training course or under the instruction of a Commission-certified instructor for that particular topic of instruction. The person shall complete each of the enumerated topics of instruction within 12 months from the beginning of his or her return to active criminal justice status.
- (19) An active duty member of the armed forces who completes the basic training course in its entirety as prescribed in Rule .0405 of this Subchapter, annually completes the mandatory in-service training topics as prescribed in 12 NCAC 09E .0105, with the exception of the Firearms Qualification and Testing requirements contained in 12 NCAC 09E .0105(a)(1), for each year subsequent to the completion of the basic training course, and achieves a passing score on the state comprehensive examination as prescribed in Rule .0406 of this Subchapter within five years of separating from active duty status shall be eligible for probationary certification as prescribed in 12 NCAC 09C .0303 for a period of 12 months from the date he or she separates from active duty status in the armed forces. All mandatory in-service training topics as prescribed in 12 NCAC 09E .0105 shall be completed by the individual prior to receiving probationary certification as prescribed in 12 NCAC 09E .0105.
- (b) In the event the applicant's prior training is not equivalent to the Commission's standards, the Commission shall prescribe as a condition of certification supplementary or remedial training to equate previous training with current standards.
- (c) If certifications issued by the Commission require satisfactory performance on a written examination as part of the training, the Commission shall require the examinations for the certification.
- (d) If an evaluation of the applicant's prior training and experience determines that required attendance in the entire Basic Law Enforcement Training Course is unnecessary, the Director of the Standards Division shall determine the amount of training those persons shall complete during their probationary period.
- (e) The following criteria shall be used by Standards Division staff in evaluating prior training and experience of local confinement personnel to determine eligibility for a waiver of training requirements:
- (1) Persons who hold probationary, general, or grandfather certification as local confinement personnel and separate after having completed a Commission-accredited course as prescribed in Rule .0224 or .0225 of this Subchapter and have been separated for one year or more shall complete a subsequent Commission-accredited training course and achieve a passing score on the State Comprehensive Examination during the probationary period as prescribed in Rule .0401(a) of this Section;
  - (2) Persons who separated from a local confinement personnel position after having completed a Commission-accredited course as prescribed in Rule .0224 or .0225 of this Subchapter and who have been separated for less than one year shall serve a new 12 month probationary period, but shall be required to complete an additional training program;
  - (3) Applicants who hold or previously held "Detention Officer Certification" issued by the North Carolina Sheriffs' Education and Training Standards Commission shall be subject to evaluation of their prior training and experience on an individual basis. No additional training shall be required where the applicant obtained certification and successfully completed the required 120 hour training course and has not had a break in service in excess of one year; and
  - (4) Persons holding certification for local confinement facilities who transfer to a district or county confinement facility shall complete the course for district and county confinement facility personnel, as adopted by reference in Rule .0224 of this Subchapter, and achieve a passing score on the State Comprehensive

Examination during the probationary period as prescribed in Rule .0401(a) of this Section.

*History Note:* Authority G.S. 17C-2; 17C-6; 17C-10; 93B-15.1;

*Eff. January 1, 1981;*

*Amended Eff. October 1, 2017; January 1, 2017; October 1, 2016;*

*November 1, 2014; August 1, 2000; November 1, 1993; March 1,*

*1992; July 1, 1989; February 1, 1987.*

**12 NCAC 09B .0410 CRIMINAL JUSTICE INSTRUCTOR TRAINING COURSE**

(a) To successfully complete the "Criminal Justice Instructor Training Course" the trainee shall:

- (1) satisfactorily complete all of the required coursework, specifically including each of the introductory trainee presentations with video taping, playback, and critique as specified in the "Instructor Training Manual" as published by the North Carolina Justice Academy. All trainee presentations shall have met the criteria and conditions specified in the course orientation of the "Instructor Training Manual;" and
- (2) attain the passing score on each performance area as specified in the course abstract of the "Instructor Manual" for the final written lesson plan and final 70-minute presentation.

(b) Should a trainee fail to meet the minimum criteria on the final lesson plan or the final 70-minute presentation, he or she shall be authorized one opportunity to correct either of these deficiencies by the end of the original two-week course.

*History Note:* Authority G.S. 17C-6; 17C-10;

*Eff. January 1, 1985;*

*Amended Eff. January 1, 2018; January 1, 1995; February 1, 1987.*

**12 NCAC 09C .0210 REQUEST FOR TRAINING COURSE ACCREDITATION**

*History Note:* Authority G.S. 17C-6; 150B-11;

*Eff. January 1, 1981;*

*Repealed Eff. October 1, 2017.*

**12 NCAC 09C .0306 LATERAL TRANSFER OF LAW ENFORCEMENT OFFICERS**

(a) A law enforcement officer with general certification from either the Criminal Justice Education and Training Standards Commission or the Sheriffs' Education and Training Standards Commission may transfer from one law enforcement agency to another law enforcement agency with less than a 12 month break in law enforcement service. Prior to employing the officer, the employing agency shall:

- (1) verify the certification of the officer with the Criminal Justice Standards Division or the Sheriffs' Standards Division;
- (2) submit a new fingerprint check to the North Carolina State Bureau of Investigation, in

compliance with the requirements set forth in 12 NCAC 09B .0103(a) and (b), in the same manner as prescribed for non-certified new applicants. No certification shall be transferred if the holder has been convicted since initial certification of any offense for which revocation or suspension of certification is authorized;

- (3) advise the officer that he will be serving under a probationary appointment with the agency for one year; and
- (4) notify the Commission by submitting a Report of Appointment that the officer is being employed and stating the date on which employment will commence.

(b) Prior to transfer of certification, the law enforcement officer shall:

- (1) complete a Medical History Statement Form within one year prior to the transfer to the employing agency;
- (2) submit to examination by a physician licensed to practice medicine in North Carolina in the same manner prescribed for non-certified new applicants in 12 NCAC 09B .0104 within one year prior to the transfer to the employing agency;
- (3) submit results of the physical examination to the employing agency for placement in the officer's permanent personnel file;
- (4) produce a negative result on a drug screen administered according to the specifications outlined in 12 NCAC 09B .0101(5); and
- (5) either:
  - (A) submit a copy of the Commission's annual in-service training report form to the employing agency for placement in the officer's permanent personnel file when the duty and off duty weapons remain the same as those previously used to qualify. Such in-service training compliance shall have occurred within the 12 month period preceding transfer; or
  - (B) satisfactorily complete the employing agency's in-service firearms training program as prescribed in 12 NCAC 09E .0105 and .0106.

(c) Officers previously certified who were not previously required to meet the educational or basic training requirements shall not be required to meet such requirements when laterally transferring to another agency with less than a 12-month break in law enforcement service.

(d) For currently certified full time officers with no break in service, upon written request from the department head of the hiring agency, the Division shall waive for a period of no more than 60-days from the receipt of the Report of Appointment by the Standards Division the requirements of Subparagraphs of (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5) of this Rule. The Report of Appointment Form is located on the agency's website:

[http://www.ncdoj.gov/getdoc/64d263a3-a598-4c45-9541-04ef088cf288/F-5A-\(DJJD\)--6-11.aspx](http://www.ncdoj.gov/getdoc/64d263a3-a598-4c45-9541-04ef088cf288/F-5A-(DJJD)--6-11.aspx).

*History Note:* Authority G.S. 17C-6; 17C-10;  
*Eff. January 1, 1981;*  
*Amended Eff. October 1, 2017; May 1, 2009; July 1, 1990; March 1, 1990; July 1, 1989; July 1, 1982.*

**12 NCAC 09E .0105 MINIMUM TRAINING SPECIFICATIONS: ANNUAL IN-SERVICE TRAINING**

(a) The following topics, specifications, and hours shall be included in each law enforcement officer's annual in-service training courses. For the purposes of this Subchapter, a credit shall be equal to one hour of traditional classroom instruction. All sworn law enforcement officers shall complete a minimum of 24 in-service training credits. The following topics, totaling 18 credits, shall be specifically required:

- (1) 2018 Firearms Training and Qualification (4 credits);
- (2) 2018 Legal Update (4 credits);
- (3) 2018 Strategies to Improve Law Enforcement Interactions and Relationships With Minority Youth (2 credits);
- (4) 2018 Equality in Policing (4 credits);
- (5) 2018 Communications Skills With Persons in Crisis – De-escalation Techniques (4 credits).

(b) All sworn law enforcement officers shall complete a minimum of 6 in-service credits, in topics identified by their respective agency heads. The Department Head may choose any topic, provided the lesson plan is written in Instructional Systems Design format and is taught by an instructor who is certified by the Commission. Topics delivered pursuant to Rule .0104(1) of this Section to satisfy this requirement shall not be required to be written in Instructional Systems Design format or delivered by an instructor certified by the Commission.

(c) The "Specialized Firearms Instructor Training Manual" published by the North Carolina Justice Academy shall be applied as a guide for conducting the annual in-service firearms training program. Copies of this publication may be inspected at the office of the:

Criminal Justice Standards Division  
 North Carolina Department of Justice  
 1700 Tryon Park Drive  
 Raleigh, North Carolina 27610

and may be obtained at the cost of printing and postage from the Academy at the following address:

North Carolina Justice Academy  
 Post Office Drawer 99  
 Salemburg, North Carolina 28385

(d) The "In-Service Lesson Plans" published by the North Carolina Justice Academy shall be applied as a minimum curriculum for conducting the annual in-service training program. Copies of this publication may be inspected at the office of the:

Criminal Justice Standards Division  
 North Carolina Department of Justice  
 1700 Tryon Park Drive  
 Raleigh, North Carolina 27610

and may be obtained at the cost of printing and postage from the Academy at the following address:

North Carolina Justice Academy  
 Post Office Drawer 99  
 Salemburg, North Carolina 28385

(e) Lesson plans are designed to be delivered in hourly increments. A student who completes an online in-service training topic shall receive the number of credits that correspond to the number of hours of traditional classroom training, regardless of the amount of time the student spends completing the course.

(f) Completion of training shall be demonstrated by passing a written test for each in-service training topic, as follows:

- (1) A written test comprised of at least five questions per credit shall be developed by the agency or the North Carolina Justice Academy for each in-service training topic requiring testing. Written courses that are more than four credits in length shall include a written test comprising of a minimum of 20 questions. The Firearms Training and Qualifications in-service course and topics delivered pursuant to Rule .0104(1) of this Section shall be exempt from this written test requirement;
- (2) A student shall pass each test by achieving 70 percent correct answers; and
- (3) A student who completes a topic of in-service training in a traditional classroom setting or online and fails the end of topic exam shall be given one attempt to re-test. If the student fails the exam a second time, the student shall complete the in-service training topic in a traditional classroom setting before taking the exam a third time.

*History Note:* Authority G.S. 17C-6; 17C-10;  
*Eff. July 1, 1989;*  
*Amended Eff. January 1, 2005; November 1, 1998;*  
*Temporary Amendment Eff. January 1, 2005;*  
*Amended Eff. January 1, 2018; January 1, 2017; July 1, 2016; January 1, 2016; January 1, 2015; February 1, 2014; June 1, 2012; February 1, 2011; January 1, 2010; April 1, 2009; April 1, 2008; February 1, 2007; January 1, 2006.*

**12 NCAC 09E .0106 ANNUAL IN-SERVICE FIREARMS QUALIFICATION SPECIFICATIONS**

(a) All certified law enforcement officers shall qualify for both day and night use with their individual and department-approved service handguns at least once each calendar year. For the purpose of this specification, service handgun shall include any semi-automatic pistol or revolver. In addition to the requirements specified in Rule .0105 of this Subchapter, the course of fire shall not be less stringent than the "Basic Training Law Enforcement Officers" course requirements for firearms qualification.

(b) All certified law enforcement officers who are issued or authorized to use a shotgun, rifle, or automatic weapon shall qualify with each weapon respectively for both day and night use at least once each calendar year.

(c) The qualifications required by Paragraphs (a) and (b) of this Rule shall be completed with duty equipment and duty ammunition or ballistic-equivalent ammunition, including lead-

free ammunition that meets the same point of aim, point of impact, and felt recoil of the duty ammunition for all weapons.

(d) All certified law enforcement officers who are authorized to carry off-duty handguns shall qualify with each such handgun consistent with the specifications outlined in Rules .0105(1) and .0106(a) and (g) of this Section.

(e) To satisfy the training requirements for all in-service firearms qualifications, an officer shall attain at least 70 percent accuracy with each weapon.

(f) The qualifications required by Paragraphs (a) and (b) of this Rule shall be achieved at least once in a single day in no more than three attempts in a single day for each course of fire and for each weapon for which qualification is required. Individuals not qualifying in a single day for each course of fire or for a certain weapon for which qualification is required shall be deemed as having failed and Rule .0103(4) and (5) of this Section shall apply.

(g) The In-Service Firearms Qualification Manual as published by the North Carolina Justice Academy shall be applied as a guide for conducting the annual in-service firearms qualification. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division  
North Carolina Department of Justice  
1700 Tryon Park Drive  
Raleigh, North Carolina 27610

and may be viewed and downloaded at no cost from the Academy's website at the following address:

<http://www.jus.state.nc.us/NCJA>

*History Note:* Authority G.S. 17C-6; 17C-10;

*Eff. July 1, 1989;*

*Amended Eff. January 1, 2019; January 1, 2006; January 1, 2005; November 1, 1998; March 1, 1992.*

## **12 NCAC 09G .0206 MORAL CHARACTER**

Every person employed as a correctional officer or probation/parole officer by the Department of Public Safety, Division of Adult Correction and Juvenile Justice shall demonstrate good moral character as evidenced by the following:

- (1) not having been convicted of a felony;
- (2) not having been convicted of a misdemeanor as defined in 12 NCAC 09G .0102(10) for three years or the completion of any corrections supervision imposed by the courts, whichever is later;
- (3) not having been convicted of an offense that, under 18 U.S.C. 922, incorporated by reference with subsequent amendments and editions (found at no cost at <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title18-part1-chap44-sec922.pdf>), would prohibit the possession of a firearm or ammunition;
- (4) having submitted to and produced a negative result on a drug test within 60 days of employment or any in-service drug screening required by the Department of Public Safety, Division of Adult Correction and Juvenile Justice that meets the certification standards of

the Department of Health and Human Services for Federal Workplace Drug Testing Programs. A list of certified drug testing labs that meet this requirement may be obtained, at no cost, at [http://workplace.samhsa.gov/DrugTesting/Level\\_1\\_Pages/CertifiedLabs.html](http://workplace.samhsa.gov/DrugTesting/Level_1_Pages/CertifiedLabs.html);

- (5) submitting to a background investigation consisting of the following:
  - (a) verification of age;
  - (b) verification of education; and
  - (c) criminal history check of local, state, and national files;
- (6) being truthful in providing information to the Department of Public Safety, Division of Adult Correction and Juvenile Justice and to the Standards Division for the purpose of obtaining probationary or general certification;
- (7) not having pending or outstanding felony charges that, if convicted of such charges, would disqualify the applicant from holding such certification, pursuant to G.S. 17C-13; and
- (8) not engage in any conduct that brings into question the truthfulness or credibility of the officer, or involves "moral turpitude." "Moral Turpitude" is conduct that is contrary to justice, honesty, or morality, including conduct as defined in: re Willis, 299 N.C. 1, 215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (1975); in re State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); in re Legg, 325 N.C. 658, 386 S.E. 2d 174(1989); in re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); in re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 647 (1983); and later court decisions that cite these as authority.

*History Note:* Authority G.S. 17C-6; 17C-10;

*Temporary Adoption Eff. January 1, 2001;*

*Eff. August 1, 2002;*

*Amended Eff. October 1, 2017; April 1, 2017; January 1, 2015; June 1, 2012; April 1, 2009; August 1, 2004.*

## **12 NCAC 09G .0313 CORRECTIONS INSTRUCTOR TRAINING COURSE**

(a) To successfully complete Corrections Instructor Training, the trainee shall:

- (1) satisfactorily complete all of the required course work, specifically including each of the trainee presentations with videotaping, playback, and critique as specified in the "Basic Instructor Training Manual" as published by the North Carolina Justice Academy. All trainee presentations shall have met the criteria and conditions specified in the course orientation of the "Basic Instructor Training Manual;"
- (2) attain the minimum score on each performance area as specified in the course abstract of the "Basic Instructor Manual" for the final written

lesson plan and final 80-minute presentation;  
and

- (3) achieve a score of 75 percent correct answers on the comprehensive written examination.

(b) If a trainee fails to meet the minimum criteria on the final lesson plan or the final 70-minute presentation, he or she shall be authorized one opportunity to correct either of these deficiencies by the end of the original two-week course.

*History Note: Authority G.S. 17C-6;  
Temporary Adoption Eff. January 1, 2001;  
Eff. January 1, 2018; August 1, 2002.*

**12 NCAC 09G .0414 INSTRUCTOR TRAINING**

(a) The instructor training course required for general instructor certification shall consist of a minimum of 78 hours of instruction presented during a continuous period of not more than two weeks.  
(b) Each instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice instructor.

(c) Each instructor training course shall include as a minimum the following identified topic areas and minimum instructional hours for each area:

- |      |  |          |
|------|--|----------|
| (1)  | Orientation and Pretest;   | 3 hours  |
| (2)  | Instructional Systems Design (ISD);                                | 6 hours  |
| (3)  | Law Enforcement Instructor Liabilities and Legal Responsibilities; | 3 hours  |
| (4)  | Instructional Leadership   | 4 hours  |
| (5)  | Lesson Plan Preparation: Professional Resources;                   | 3 hours  |
| (6)  | Lesson Plan Development: Format and Objectives;                    | 4 hours  |
| (7)  | Adult Learning;  | 4 hours  |
| (8)  | Instructional Style and Platform Skills;                           | 4 hours  |
| (9)  | Classroom Management;  | 4 hours  |
| (10) | Active Learning: Demonstration and Practical Exercises;            | 6 hours  |
| (11) | The Evaluation Process of Learning;                                | 4 hours  |
| (12) | Principles of Instruction: Audio-Visual Aids;                      | 4 hours  |
| (13) | Student 8-Minute Talk and Video Critique; and                      | 6 hours  |
| (14) | Student Performance:   |          |
|      | First 30-Minute Presentation;                                      | 5 hours  |
|      | Second 30-Minute Presentation; and                                 | 5 hours  |
|      | Final 70-Minute Presentation and Review;                           | 12 hours |
| (15) | Course Closing   | 1 hour   |

(d) The "Instructor Training Manual" published by the North Carolina Justice Academy shall be applied as the basic curriculum for instructor training courses. Copies of this publication may be inspected at the agency:

Criminal Justice Standards Division  
North Carolina Department of Justice  
1700 Tryon Park Drive Post Office Drawer 149  
Raleigh, North Carolina 27602

and may be purchased at the cost of printing and postage from the North Carolina Justice Academy at the following address:

North Carolina Justice Academy  
Post Office Drawer 99  
Salemberg, North Carolina 28385

*History Note: Authority G.S. 17C-6;  
Temporary Adoption Eff. January 1, 2001;  
Eff. August 1, 2002;  
Amended Eff. January 1, 2018; January 1, 2015.*

**TITLE 15A - DEPARTMENT OF ENVIRONMENTAL QUALITY**

**15A NCAC 10I .0103 ENDANGERED SPECIES LISTED**

(a) The following species of resident wildlife shall be designated as federally-listed endangered species:

- |     |   |
|-----|---|
| (1) | Amphibians: None Listed At This Time.   |
| (2) | Birds:  |
| (A) | Bachman's warbler (Vermivora bachmanii);  |
| (B) | Ivory-billed woodpecker (Campephilus principalis);  |
| (C) | Kirtland's warbler (Setophaga kirtlandii);  |
| (D) | Piping plover (Charadrius melodus circumcinctus);   |
| (E) | Red-cockaded woodpecker (Picoides borealis); and  |
| (F) | Roseate tern (Sterna dougallii dougallii).  |
| (3) | Crustacea: None Listed At This Time.  |
| (4) | Fish:   |
| (A) | Cape Fear shiner (Notropis mekistocholas);  |
| (B) | Roanoke logperch (Percina rex);   |
| (C) | Shortnose sturgeon (Acipenser brevirostrum), when found in inland fishing waters as defined in G.S. 113-291(9)a. and (9)b.; and |
| (D) | Atlantic sturgeon (Acipenser oxyrinchus oxyrinchus), when found in inland fishing waters.                                       |
| (5) | Mammals:  |
| (A) | Carolina northern flying squirrel (Glaucomys sabrinus coloratus);   |
| (B) | Eastern cougar (Puma concolor);   |
| (C) | Gray bat (Myotis grisescens);   |
| (D) | Indiana bat (Myotis sodalis);   |
| (E) | Manatee (Trichechus manatus), when found in inland fishing waters; and  |
| (F) | Virginia big-eared bat (Corynorhinus townsendii virginianus).   |
| (6) | Mollusks:   |
| (A) | Appalachian elktoe (Alasmodonta raveneliana);   |
| (B) | Carolina heelsplitter (Lasmigona decorata);   |

- (C) Dwarf wedgemussel (*Alasmidonta heterodon*);
- (D) James spinymussel (*Pleurobema collina*);
- (E) Littlewing pearlymussel (*Pegias fabula*);
- (F) Tan riffleshell (*Epioblasma florentina walkeri*); and
- (G) Tar River spinymussel (*Elliptio steinstansana*).
- (7) Reptiles:
  - (A) Kemp's ridley seaturtle (*Lepidochelys kempii*);
  - (B) Atlantic hawksbill seaturtle (*Eretmochelys imbricata imbricata*); and
  - (C) Leatherback seaturtle (*Dermochelys coriacea*).
- (b) The following species of resident wildlife shall be designated as state-listed endangered species:
  - (1) Amphibians:
    - (A) Gopher frog (*Rana* [=*Lithobates*] *capito*);
    - (B) Ornate chorus frog (*Pseudacris ornata*); and
    - (C) River frog (*Rana* [=*Lithobates*] *heckscheri*).
  - (2) Birds:
    - (A) American peregrine falcon (*Falco peregrinus anatum*);
    - (B) Bewick's wren (*Thryomanes bewickii*);
    - (C) Common tern (*Sterna hirundo*);
    - (D) Henslow's sparrow (*Ammodramus henslowii*); and
    - (E) Wayne's black-throated green warbler (*Setophaga virens waynei*).
  - (3) Crustacea: Bennett's Mill cave water slater (*Caecidotea carolinensis*).
  - (4) Fish:
    - (A) Blotchside logperch (*Percina burtoni*);
    - (B) Bridle shiner (*Notropis bifrenatus*);
    - (C) Dusky darter (*Percina sciera*);
    - (D) Orangefin madtom (*Noturus gilberti*);
    - (E) Paddlefish (*Polyodon spathula*);
    - (F) Robust redhorse (*Moxostoma robustum*);
    - (G) Rustyside sucker (*Thoburnia hamiltoni*);
    - (H) Sharpnose darter (*Percina oxyrhynchus*); and
    - (I) Stonecat (*Noturus flavus*).
  - (5) Mammals: None Listed At This Time.
  - (6) Mollusks:
    - (A) Atlantic pigtoe (*Fusconaia masoni*);
    - (B) Barrel floater (*Anodonta couperiana*);
    - (C) Brook floater (*Alasmidonta varicosa*);
    - (D) Carolina creekshell (*Villosa vaughaniana*);

- (E) Fragile glyph (*Glyphyalinia clingmani*);
- (F) Green floater (*Lasmigona subviridis*);
- (G) Greenfield rams-horn (*Helisoma eucosmium*);
- (H) Knotty elimia (*Elimia christyi*);
- (I) Longsolid (*Fusconaia subrotunda*);
- (J) Magnificent rams-horn (*Planorbella magnifica*);
- (K) Purple wartyback (*Cyclonaias tuberculata*);
- (L) Savannah lilliput (*Toxolasma pullus*);
- (M) Slippershell mussel (*Alasmidonta viridis*);
- (N) Tennessee clubshell (*Pleurobema oviforme*);
- (O) Tennessee heelsplitter (*Lasmigona holstonia*);
- (P) Tennessee pigtoe (*Fusconaia barnesiana*);
- (Q) Yellow lampmussel (*Lampsilis cariosa*); and
- (R) Yellow lance (*Elliptio lanceolata*).
- (7) Reptiles:
  - (A) Eastern coral snake (*Micrurus fulvius fulvius*); and
  - (B) Eastern diamondback rattlesnake (*Crotalus adamanteus*).

*History Note: Authority G.S. 113-134; 113-291.2; 113-292; 113-333;*  
*Eff. June 11, 1977;*  
*Amended Eff. October 1, 2017; August 1, 2016; May 1, 2008;*  
*April 1, 2001; February 1, 1994; November 1, 1991; April 1, 1991; June 1, 1990*

#### **15A NCAC 10I .0104 THREATENED SPECIES LISTED**

(a) The following species of resident wildlife shall be designated as federally-listed threatened species:

- (1) Amphibians: None Listed At This Time.
- (2) Birds:
  - (A) Piping plover (*Charadrius melodus melodus*);
  - (B) Red knot (*Calidris canutus rufa*); and
  - (C) Wood stork (*Mycteria americana*).
- (3) Crustacea: None Listed At This Time.
- (4) Fish:
  - (A) Spotfin chub (*Erimonax monachus*); and
  - (B) Waccamaw silverside (*Menidia extensa*).
- (5) Mammals: Northern long-eared bat (*Myotis septentrionalis*)
- (6) Mollusks: Noonday globe (*Patera clarki nantahala*).
- (7) Reptiles:
  - (A) Bog turtle (*Glyptemys muhlenbergii*);

- (B) American alligator (*Alligator mississippiensis*);  
 (C) Green sea turtle (*Chelonia mydas*); and  
 (D) Loggerhead sea turtle (*Caretta caretta*).  
 (b) The following species of resident wildlife are designated as state-listed threatened species:

(1) Amphibians:

- (A) Eastern tiger salamander (*Ambystoma tigrinum tigrinum*);  
 (B) Green salamander (*Aneides aeneus*);  
 (C) Junaluska salamander (*Eurycea junaluska*);  
 (D) Mabee's salamander (*Ambystoma mabeei*); and  
 (E) Wehrle's salamander (*Plethodon wehrlei*).

(2) Birds:

- (A) Bald eagle (*Haliaeetus leucocephalus*);  
 (B) Caspian tern (*Hydroprogne caspia*);  
 (C) Gull-billed tern (*Gelochelidon nilotica aranea*); and  
 (D) Northern saw-whet owl (*Aegolius acadicus*).

(3) Crustacea: None Listed At This Time.

(4) Fish:

- (A) Bigeye jumprock (*Moxostoma ariommum*);  
 (B) Carolina madtom (*Noturus furiosus*);  
 (C) Carolina pygmy sunfish (*Elassoma boehlkei*);  
 (D) Carolina redhorse (*Moxostoma sp.*)(Pee Dee River and its tributaries and Cape Fear River and its tributaries);  
 (E) Least brook lamprey (*Lampetra aepyptera*);  
 (F) Logperch (*Percina caprodes*);  
 (G) Mimic shiner (*Notropis volucellus*);  
 (H) Rosyface chub (*Hybopsis rubrifrons*);  
 (I) Sharphead darter (*Etheostoma acuticeps*);  
 (J) Sicklefin redhorse (*Moxostoma sp.*)(Hiwassee River and its tributaries and Little Tennessee River and its tributaries);  
 (K) Turquoise darter (*Etheostoma inscriptum*); and  
 (L) Waccamaw darter (*Etheostoma perlongum*).

(5) Mammals:

- (A) Eastern woodrat (*Neotoma floridana floridana*);  
 (B) Rafinesque's big-eared bat (*Corynorhinus rafinesquii rafinesquii*); and  
 (C) Red wolf (*Canis rufus*).

(6) Mollusks:

- (A) Alewife floater (*Anodonta imbecilis*);

- (B) Big-tooth covert (*Fumonelix jonesiana*);  
 (C) Cape Fear threetooth (*Triodopsis soelneri*);  
 (D) Carolina fatmucket (*Lampsilis radiata conspicua*);  
 (E) Eastern lampmussel (*Lampsilis radiata radiata*);  
 (F) Eastern pondmussel (*Ligumia nasuta*);  
 (G) Engraved covert (*Fumonelix orestes*);  
 (H) Mountain creekshell (*Villosa vanuxemensis*);  
 (I) Notched rainbow (*Villosa constricta*);  
 (J) Rainbow (*Villosa iris*);  
 (K) Roan supercoil (*Paravitrea varidens*);  
 (L) Sculpted supercoil (*Paravitrea ternaria*);  
 (M) Smoky Mountain covert (*Inflectarius ferrissi*);  
 (N) Squawfoot (*Strophitus undulatus*);  
 (O) Tidewater mucket (*Leptodea ochracea*);  
 (P) Triangle floater (*Alasmodonta undulata*);  
 (Q) Waccamaw ambersnail (*Catinella waccamawensis*);  
 (R) Waccamaw fatmucket (*Lampsilis fullerkati*); and  
 (S) Waccamaw spike (*Elliptio waccamawensis*).
- (7) Reptiles:
- (A) Northern pine snake (*Pituophis melanoleucus melanoleucus*); and  
 (B) Southern hognose snake (*Heterodon simus*).

*History Note: Authority G.S. 113-134; 113-291.2; 113-292; 113-333;  
 Eff. March 17, 1978;  
 Amended Eff. June 1, 2008; April 1, 2001; November 1, 1991;  
 April 1, 1991; June 1, 1990; September 1, 1989;  
 Temporary Amendment Eff. February 27, 2015;  
 Amended Eff. October 1, 2017; July 1, 2016; August 1, 2016.*

**15A NCAC 10I .0105 SPECIAL CONCERN SPECIES LISTED**

The following species of resident wildlife shall be designated as state-listed special concern species:

(1) Amphibians:

- (a) Crevice salamander (*Plethodon longicrus*);  
 (b) Dwarf salamander (*Eurycea quadridigitata*);  
 (c) Dwarf black-bellied salamander (*Desmognathus folkertsii*);  
 (d) Eastern hellbender (*Cryptobranchus alleganiensis alleganiensis*);  
 (e) Four-toed salamander (*Hemidactylium scutatum*);

- (f) Gray treefrog (*Hyla versicolor*);
  - (g) Longtail salamander (*Eurycea longicauda longicauda*);
  - (h) Mole salamander (*Ambystoma talpoideum*);
  - (i) Mountain chorus frog (*Pseudacris brachyphona*);
  - (j) Mudpuppy (*Necturus maculosus*);
  - (k) Neuse River waterdog (*Necturus lewisi*);
  - (l) Southern zigzag salamander (*Plethodon ventralis*); and
  - (m) Weller's salamander (*Plethodon welleri*).
- (2) Birds:
- (a) American oystercatcher (*Haematopus palliatus*);
  - (b) Bachman's sparrow (*Peucaea aestivalis*);
  - (c) Barn owl (*Tyto alba*);
  - (d) Black-capped chickadee (*Poecile atricapillus*);
  - (e) Black rail (*Laterallus jamaicensis*);
  - (f) Black skimmer (*Rynchops niger*);
  - (g) Brown creeper (*Certhia americana nigrescens*);
  - (h) Cerulean warbler (*Setophaga cerulea*);
  - (i) Glossy ibis (*Plegadis falcinellus*);
  - (j) Golden-winged warbler (*Vermivora chrysoptera*);
  - (k) Least bittern (*Ixobrychus exilis*);
  - (l) Least tern (*Sternula antillarum*);
  - (m) Little blue heron (*Egretta caerulea*);
  - (n) Loggerhead shrike (*Lanius ludovicianus*);
  - (o) Painted bunting (*Passerina ciris*);
  - (p) Red crossbill (*Loxia curvirostra*);
  - (q) Snowy egret (*Egretta thula*);
  - (r) Tricolored heron (*Egretta tricolor*);
  - (s) Vesper sparrow (*Poecetes gramineus*); and
  - (t) Wilson's plover (*Charadrius wilsonia*).
- (3) Crustacea:
- (a) Broad River spiny crayfish (*Cambarus spicatus*);
  - (b) Carolina skistodiaptomus (*Skistodiaptomus carolinensis*);
  - (c) Carolina well diacyclops (*Diacyclops jeannelli putei*);
  - (d) Chowanoke crayfish (*Orconectes virginienensis*);
  - (e) Graceful clam shrimp (*Lynceus gracilicornis*);
  - (f) Greensboro burrowing crayfish (*Cambarus catagius*);
  - (g) Hiwassee headwaters crayfish (*Cambarus parrishi*);
  - (h) Little Tennessee River crayfish (*Cambarus georgiae*);
  - (i) North Carolina spiny crayfish (*Orconectes carolinensis*);
  - (j) Oconee stream crayfish (*Cambarus chaugaensis*); and
  - (k) Waccamaw crayfish (*Procambarus braswelli*).
- (4) Fish:
- (a) American brook lamprey (*Lethenteron appendix*);
  - (b) Banded sculpin (*Cottus carolinae*);
  - (c) Blackbanded darter (*Percina nigrofasciata*);
  - (d) Bluefin killifish (*Lucania goodei*);
  - (e) Blue Ridge sculpin (*Cottus caeruleomentum*);
  - (f) Blueside darter (*Etheostoma jessiae*);
  - (g) Broadtail madtom (*Noturus sp.*)(Lumber River and its tributaries and Cape Fear River and its tributaries);
  - (h) Carolina darter (*Etheostoma collis*);
  - (i) Cutlip minnow (*Exoglossum maxillingua*);
  - (j) Freshwater drum (*Aplodinotus grunniens*)(French Broad River);
  - (k) Highfin carpsucker (*Carpionodes velifer*)(Cape Fear River and its tributaries);
  - (l) Kanawha minnow (*Phenacobius teretulus*);
  - (m) Lake sturgeon (*Acipenser fulvescens*);
  - (n) Least killifish (*Heterandria formosa*);
  - (o) Longhead darter (*Percina macrocephala*);
  - (p) Mooneye (*Hiodon tergisus*);
  - (q) Mountain madtom (*Noturus eleutherus*);
  - (r) Ohio lamprey (*Ichthyomyzon bdellium*);
  - (s) Olive darter (*Percina squamata*);
  - (t) Pinewoods darter (*Etheostoma mariae*);
  - (u) River carpsucker (*Carpionodes carpio*);
  - (v) Sandhills chub (*Semotilus lumbee*);
  - (w) Smoky dace (*Clinostomus sp.*)(Little Tennessee River and tributaries);
  - (x) Striped shiner (*Luxilus chrysocephalus*);
  - (y) Tennessee snubnose darter (*Etheostoma simoterum*);
  - (z) Thinlip chub (*Cyprinella zanema*)(Lumber River and its tributaries and Cape Fear River and its tributaries);
  - (aa) Waccamaw killifish (*Fundulus waccamensis*);
  - (bb) Wounded darter (*Etheostoma vulneratum*); and



- |      |   |      |   |
|------|---|------|---|
| (cc) | Yellowfin shiner (Notropis lutipinnis)(Savannah River and its tributaries). | (s)  | Pink glyph (Glyphyalinia pentadelphia);                       |
| (5)  | Mammals:  | (t)  | Pod lance (Elliptio folliculata);                             |
| (a)  | Allegheny woodrat (Neotoma magister);                                       | (u)  | Queen crater (Appalachina chilhoweensis);                     |
| (b)  | Buxton Woods white-footed mouse (Peromyscus leucopus buxtoni);              | (v)  | Ramp Cove supercoil (Paravitrea lacteodens);                  |
| (c)  | Coleman's oldfield mouse (Peromyscus polionotus colemani);                  | (w)  | Ridged lioplax (Lioplax subcarinata);                         |
| (d)  | Eastern big-eared bat (Corynorhinus rafinesquii macrotis);                  | (x)  | Roanoke slabshell (Elliptio roanokensis);                     |
| (e)  | Eastern small-footed bat (Myotis leibii leibii);                            | (y)  | Saw-tooth disc (Discus bryanti);                              |
| (f)  | Florida yellow bat (Lasiurus intermedius floridanus);                       | (z)  | Seep mudalia (Leptoxis dilatata);                             |
| (g)  | Pungo white-footed mouse (Peromyscus leucopus easti);                       | (aa) | Spike (Elliptio dilatata);                                    |
| (h)  | Southeastern bat (Myotis austroriparius);                                   | (bb) | Spiral coil (Helicodiscus bonamicus);                         |
| (i)  | Southern rock vole (Microtus chrotorrhinus carolinensis); and               | (cc) | Velvet covert (Inflectarius subpalliatu);                     |
| (j)  | Star-nosed mole (Condylura cristata parva).                                 | (dd) | Waccamaw amnicola (Amnicola sp.);                             |
| (6)  | Mollusks:   | (ee) | Waccamaw siltsnail (Cincinnati sp.); and                      |
| (a)  | Appalachian gloss (Zonitoides patuloides);                                  | (ff) | Wavy-rayed lampmussel (Lampsilis fasciola).                   |
| (b)  | Bidentate dome (Ventridens coelaxis);                                       | (7)  | Reptiles:   |
| (c)  | Black mantleslug (Pallifera hemphilli);                                     | (a)  | Carolina pigmy rattlesnake (Sistrurus miliarius miliarius);   |
| (d)  | Blackwater ancyliid (Ferrissia hendersoni);                                 | (b)  | Carolina swamp snake (Seminatrix pygaea paludis);             |
| (e)  | Blue-foot lancetooth (Haplotrema kendeighi);                                | (c)  | Carolina watersnake (Nerodia sipedon williamengelsi);         |
| (f)  | Cape Fear spike (Elliptio marsupiobesa);                                    | (d)  | Cumberland slider (Trachemys scripta troostii);               |
| (g)  | Clingman covert (Fumonelix wheatleyi clingmanicus);                         | (e)  | Diamondback terrapin (Malaclemys terrapin);                   |
| (h)  | Dark glyph (Glyphyalinia junaluskana);                                      | (f)  | Eastern chicken turtle (Deirochelys reticularia reticularia); |
| (i)  | Dwarf proud globe (Patera clarki clarki);                                   | (g)  | Eastern smooth green snake (Opheodrys vernalis vernalis);     |
| (j)  | Dwarf threetooth (Triodopsis fulciden);                                     | (h)  | Eastern spiny softshell (Apalone spinifera spinifera);        |
| (k)  | Fringed coil (Helicodiscus fimbriatus);                                     | (i)  | Mimic glass lizard (Ophisaurus mimicus);                      |
| (l)  | Glossy supercoil (Paravitrea placentula);                                   | (j)  | Outer Banks kingsnake (Lampropeltis getula sticticeps);       |
| (m)  | Great Smoky slitmouth (Stenotrema depilatum);                               | (k)  | Stripeneck musk turtle (Sternotherus minor peltifer); and     |
| (n)  | High mountain supercoil (Paravitrea andrewsae);                             | (l)  | Timber rattlesnake (Crotalus horridus).                       |
| (o)  | Honey glyph (Glyphyalinia vanattai);  |      |   |
| (p)  | Lamellate supercoil (Paravitrea lamellidens);                               |      |   |
| (q)  | Mirey Ridge supercoil (Paravitrea clappi);                                  |      |   |
| (r)  | Open supercoil (Paravitrea umbilicaris);                                    |      |   |

*History Note: Authority G.S. 113-134; 113-291.2; 113-292; 113-333;  
 Eff. September 1, 1989;  
 Amended Eff. October 1, 2017; August 1, 2016; May 1, 2008; July 18, 2002; April 1, 2001; November 1, 1991; April 1, 1991; June 1, 1990.*

\*\*\*\*\*

<b>15A NCAC 18A .1801</b>	<b>DEFINITIONS</b>
<b>15A NCAC 18A .1802</b>	<b>PERMITS</b>
<b>15A NCAC 18A .1803</b>	<b>PUBLIC DISPLAY OF GRADE CARD</b>
<b>15A NCAC 18A .1804</b>	<b>INSPECTIONS</b>
<b>15A NCAC 18A .1805</b>	<b>INSPECTION FORMS</b>
<b>15A NCAC 18A .1806</b>	<b>GRADING</b>
<b>15A NCAC 18A .1807</b>	<b>APPROVED LODGING ESTABLISHMENTS</b>
<b>15A NCAC 18A .1808</b>	<b>LOBBY: HALLS: STAIRS: AND VENDING AREAS</b>
<b>15A NCAC 18A .1809</b>	<b>LAVATORIES AND BATHS</b>
<b>15A NCAC 18A .1810</b>	<b>WATER SUPPLY</b>
<b>15A NCAC 18A .1811</b>	<b>DRINKING WATER FACILITIES</b>
<b>15A NCAC 18A .1812</b>	<b>GUESTROOMS</b>
<b>15A NCAC 18A .1813</b>	<b>STORAGE AND LAUNDRY FACILITIES</b>
<b>15A NCAC 18A .1814</b>	<b>DISPOSAL OF GARBAGE AND TRASH: PREMISES</b>
<b>15A NCAC 18A .1815</b>	<b>SEVERABILITY</b>

*History Note:* Authority G.S. 130A-248;  
*Eff. February 1, 1976;*  
*Readopted Eff. December 5, 1977;*  
*Amended Eff. April 1, 1997; August 1, 1996; January 1, 1996;*  
*April 1, 1992; September 1, 1990; December 1, 1988; March 1,*  
*1988; July 1, 1986; June 30, 1980; September 1, 1979;*  
*Temporary Amendment Eff. June 22, 1998;*  
*Temporary Amendment Expired March 12, 1999;*  
*Temporary Amendment Eff. March 18, 1999;*  
*Temporary Amendment Eff. January 31, 2000;*  
*Amended Eff. November 1, 2006; September 1, 2002; April 1,*  
*2001; August 1, 2000;*  
*Repealed Eff. October 1, 2017.*

**15A NCAC 18A .1817 APPEALS PROCEDURE**

*History Note:* Authority G.S. 130A-248;  
*Eff. February 1, 1987;*  
*Amended Eff. September 1, 1990;*  
*Repealed Eff. October 1, 2017.*

**15A NCAC 18A .1818 PLAN REVIEW**

*History Note:* Authority G.S. 130A-248;  
*Eff. August 1, 1990;*  
*Amended Eff. January 1, 1996;*  
*Repealed Eff. October 1, 2017.*

**15A NCAC 18A .1821 DEFINITIONS**

The following definitions shall apply throughout this Section:

- (1) "Accredited Program"
- (a) "Accredited program" means a food protection manager certification program that has been evaluated and listed by an accrediting agency as conforming to national standards for organizations that certify individuals.
- (b) "Accredited program" refers to the certification process and is a designation based upon an independent evaluation of factors such as the sponsor's mission; organizational structure; staff resources; revenue sources; policies; public information regarding program scope, eligibility requirements, re-certification, discipline, and grievance procedures; and test development and administration.
- (c) "Accredited program" does not refer to training functions or educational programs.
- (2) "Adulterated" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, 402, 21 U.S.C. 342, which is hereby incorporated by reference, including subsequent amendments and Editions and which can be accessed free of charge at <https://www.gpo.gov/fdsys/pkg/USCODE-2010-title21/html/USCODE-2010-title21-chap9-subchapIV-sec342.htm>.
- (3) "Approved" means acceptable to the regulatory authority based upon a determination of conformity with principles, practices, and generally recognized standards that protect public health.
- (4) "Bed and Breakfast Home" means bed and breakfast home as defined in G.S. 130A-247(5a).
- (5) "Bed and Breakfast Inn" means bed and breakfast inn as defined in G.S. 130A-247(6).
- (6) "CFR" means Code of Federal Regulations.
- (7) "Clean" means washed and free from dirt, marks, or unwanted matter.
- (8) "Department" means the North Carolina Department of Health and Human Services.
- (9) "Employee" means the permit holder, person in charge, food employee, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a lodging establishment.
- (10) "Equipment" means an article that is used in the operation of a lodging establishment such as a freezer, grinder, hood, ice machine, water fountain, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine.
- (11) "Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.
- (12) "Food-contact surface" means:

- (a) A surface of equipment or a utensil with which food normally comes into contact; or
- (b) A surface of equipment or a utensil from which food may drain, drip, or splash:
  - (i) Into a food product; or
  - (ii) Onto a surface normally in contact with food.
- (13) "Food employee" means an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.
- (14) "Furnishings" means furniture, fittings, window coverings, and other accessories, including decorative accessories.
- (15) "Good Repair" means equipment and utensils shall be maintained in a state of repair and condition that meets the requirements specified under Parts 4-1 and 4-2 of the Food Code as incorporated by reference in Rule 15A NCAC 18A .2650.
- (16) "Guest Rooms" means the accommodations or designated areas for persons who pay for the services of the lodging establishment, such as bedrooms, suite areas, and bathrooms.
- (17) "Handwashing sink" means a lavatory, basin, or vessel for washing, a washbasin, or a plumbing fixture placed for use in personal hygiene and designed for the washing of the hands. This includes an automatic handwashing facility.
- (18) "Kitchenware" means food preparation and storage utensils.
- (19) "Linen" means fabric items such as bedding, towels, cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including cloth gloves.
- (20) "Lodging establishment" means all hotels, motels, inns, tourist homes, and other places providing lodging accommodations for pay. Facilities described in G.S. 130A-250 (1) through (5) shall not be regulated as "lodging establishment." For the purposes of this Section, the term "lodging establishment" also includes bed and breakfast homes and bed and breakfast inns.
- (21) "mg/L" means milligrams per liter, which is the metric equivalent of parts per million (ppm).
- (22) "Packaged" means bottled, canned, cartoned, bagged, or wrapped, whether packaged in a food establishment or a food processing plant.
- (23) "Permit" means the document issued by the regulatory authority that authorizes a person to operate a lodging establishment.
- (24) "Permit Holder" means:
  - (a) The person in charge who resides in and owns or rents the bed and breakfast home or bed and breakfast inn.
  - (b) The legal entity responsible for the operation of the lodging establishment, such as the owner, the owner's agent, or other person.
- (25) "Person" means person as defined in G.S. 130A-2(7).
- (26) "Person in charge" means the individual present at a lodging establishment who is responsible for the operation at the time of inspection.
- (27) "Physical facilities" means the structure and interior surfaces of a lodging establishment, including furnishings and accessories such as soap and towel dispensers and attachments, such as light fixtures and heating or air conditioning system vents.
- (28) "Poisonous or toxic materials" means substances that are not intended for ingestion and are included in four categories:
  - (a) Cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;
  - (b) Pesticides, except sanitizers, which include substances such as insecticides and rodenticides;
  - (c) Substances that are necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and personal care items; and
  - (d) Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.
- (29) "Potentially Hazardous Food" means potentially hazardous food (time/temperature control for safety food) to limit pathogenic microorganism growth or toxin formation.
- (30) "Premises" means the physical facility, its contents, and the contiguous land or property under the control of the permit holder.
- (31) "Refuse" means solid waste not carried by water through the sewage system.
- (32) "Registered Environmental Health Specialist" means an Environmental Health Specialist as defined in G.S. 90A-51(2b) who has registered in accordance with G.S. 90A-51(4).
- (33) "Regulatory Authority" means the Department or authorized agent of the Department.
- (34) "Sanitization" means the application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction of five logs, which is equal to a 99.999% reduction, of representative disease microorganisms.
- (35) "Sewage" means liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.

- (36) "Single-use articles" means tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one time, one person use after which they are intended for discard. It also includes utensils and bulk food containers designed and constructed to be used once and discarded, such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans.
- (37) "Tableware" means eating, drinking, and serving utensils for table use such as flatware including forks, knives, and spoons; hollowware including bowls, cups, serving dishes, and tumblers; and plates.
- (38) "Temperature measuring device" means a thermometer, thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.
- (39) "Transitional Permit" means a permit issued by the regulatory authority upon the transfer of ownership or lease of an existing lodging establishment to allow the correction of construction and equipment problems that do not represent an immediate threat to public health.
- (40) "Utensil" means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multiuse, single-service, or single-use; gloves used in contact with food; temperature sensing probes of food temperature measuring devices; and probe-type price or identification tags used in contact with food.
- (41) "Warewashing" means the cleaning and sanitizing of utensils and food-contact surfaces of equipment.

*History Note:* Authority G.S. 130A-4; 130A-6; 130A-248;  
Eff. October 1, 2017.

#### **15A NCAC 18A .1822 MANAGEMENT AND PERSONNEL**

- (a) Bed and breakfast homes or bed and breakfast inns shall comply with Parts 2-1 through 2-4 of the Food Code as amended by Rule 15A NCAC 18A .2652, with the following exceptions:
- (1) Food preparation shall not be prohibited in a bed and breakfast home or bed and breakfast inn.
  - (2) Nothing shall prohibit family style dining or return to self-service areas such as buffets in a bed and breakfast home or bed and breakfast inn.
  - (3) The requirement in Section 2-102.12 of the Food Code as amended by Rule 15A NCAC

18A .2652 shall be effective one year after the effective date of this Rule.

- (b) Lodging establishment employees shall comply with the requirements of Sections 2-301.11, 2-301.12, 2-301.14, 2-301.15, 2-304.11, 2-401.11, 2-401.12, and 2-403.11 of the Food Code as amended by Rule 15A NCAC 18A .2652.

*History Note:* Authority G.S. 130A-4; 130A-6; 130A-248;  
Eff. October 1, 2017.

#### **15A NCAC 18A .1823 FOOD**

- (a) Lodging establishments that prepare and serve food shall obtain a food establishment permit unless exempted by G.S. 130A-250.
- (b) Food prepared in a bed and breakfast home or a bed and breakfast inn shall comply with Chapter 3 of the Food Code as amended by Rule 15A NCAC 18A .2653. The rules in this Section shall not prohibit family style service in bed and breakfast homes and bed and breakfast inns, and no additional protection or labeling of food shall be required during display and service in these establishments.
- (c) In lodging establishments, ice used for room service shall be manufactured from a water supply that complies with 15A NCAC 18A .1700, "Rules Governing the Sanitation of Protection of Water Supplies Rules" and 15A NCAC 18C and shall be stored and handled in a manner so as to prevent contamination. All ice machines for use by guests shall dispense ice without exposing stored ice to guests.

*History Note:* Authority G.S. 130A-4; 130A-6; 130A-248;  
Eff. October 1, 2017.

#### **15A NCAC 18A .1824 EQUIPMENT AND UTENSILS**

- (a) Food-contact surfaces shall comply with Parts 4-1 and 4-2 of the Food Code as amended by Rule 15A NCAC 18A .2654. This shall not prohibit the use of domestic equipment.
- (b) Equipment and utensils shall be kept clean and in good repair.
- (c) All kitchenware and food-contact surfaces of equipment, excluding cooking surfaces of equipment, used in the preparation or serving of food or drink, and all food storage utensils, in a bed and breakfast home or bed and breakfast inn shall be cleaned and sanitized, as required in Parts 4-6 and 4-7 of the Food Code as amended by Rule 15A NCAC 18A .2654 after each use, air dried, and stored in a manner to prevent contamination.
- (d) Cooking and baking equipment in a bed and breakfast home or bed and breakfast inn shall be cleaned no less than once each day.
- (e) Nonfood-contact surfaces of equipment shall be clean.
- (f) Sanitizers used for sanitization of kitchenware and food-contact surfaces shall be maintained as required in Part 4-5 of the Food Code as amended by Rule 15A NCAC 18A .2564.
- (g) Nothing in this Rule shall require sanitization as exempted in guest rooms per G.S. 130A-248(a3)(3).
- (h) Sinks in guest rooms shall be sanitized before washing multi-use utensils.
- (i) Single-use articles may be used if discarded after each use. Single-use articles must be stored and handled to prevent contamination.

- (j) A food temperature measuring device with a small diameter probe shall be provided and accessible for use by employees in ensuring attainment and maintenance of food temperatures.
- (k) A test kit or other device that measures the concentration in mg/L of sanitizing solutions shall be provided by the lodging establishment.
- (l) Equipment for preparing coffee and tea shall be kept clean, but is exempt from sanitization required by Paragraph (c) of this Rule.

*History Note:* Authority G.S. 130A-4; 130A-6; 130A-248;  
Eff. October 1, 2017.

#### **15A NCAC 18A .1825 WATER, PLUMBING, AND WASTE**

- (a) Water, plumbing, and waste shall comply with Chapter 5 of the Food Code as amended by Rule 15A NCAC 18A .2655. The requirements of Sections 5-202.12, 5-203.11, 5-203.12, 5-203.13, 5-204.11, and 5-205.11 of the Food Code as amended by Rule 15A NCAC 18A .2655 shall be effective one year after the effective date of this Rule.
- (b) Bed and Breakfast Homes that are permitted prior to April 2017 and only serve the breakfast meal shall not be required to provide a separate handwashing sink in the kitchen.
- (c) A handwashing sink, located to allow use by employees handling clean and soiled linen, shall be provided. This requirement shall be effective one year after the effective date of this Rule. Facilities that do not have handwashing sinks in soiled linen areas shall not be required to install additional lavatories if a hand hygiene program, approved by the regulatory authority, is used.
- (d) Baths, handwashing sinks, and toilets shall be provided for each guest room or unit in lodging establishments constructed on or after December 1, 1988.
- (e) All refuse shall be collected and stored in covered receptacles. Refuse receptacles shall be kept clean and in good repair.
- (f) Where dumpsters are used, a contract for off-site cleaning shall constitute compliance with Paragraph (e) of this rule.
- (g) Refuse shall be removed from the premises at a frequency that will prevent the development of odors and other conditions that attract or harbor insects and rodents.

*History Note:* Authority G.S. 130A-4; 130A-6; 130A-248;  
Eff. October 1, 2017.

#### **15A NCAC 18A .1826 PHYSICAL FACILITIES**

- (a) Handwashing sinks as required in Rule .1825 in this Section shall be supplied with hand soap, and either individual, disposable towels; a continuous towel system that supplies the user with a clean towel; a heated-air hand drying device; or a hand drying device that employs an air-knife system that delivers high velocity, pressurized air at ambient temperatures. Handwashing sinks in guest rooms shall be supplied with soap and clean towels.
- (b) Toilets or urinals shall be provided as in Rule .1825 of this Section and shall have a supply of toilet tissues available at each toilet.
- (c) Sinks, vanities, toilets, and showers in guest rooms shall be cleaned and sanitized between guests.
- (d) The light intensity shall be minimum 215 lux/20 foot candles at a distance of 75 cm/30 inches above the floor in areas used for

handwashing, warewashing, and equipment and utensil storage, and in toilet rooms.

- (e) Where natural ventilation only is provided, outside openings shall be screened and in good repair. Windows and doors shall be kept clean and in good repair.
- (f) Physical facilities shall be kept clean and in good repair.
- (g) Perimeter walls and roofs shall protect the lodging establishment from the weather and the entry of insects, rodents, and other pests.
- (h) Furnishings, bathroom fixtures, carpets, and other accessories in guest rooms, shall be kept clean and in good repair.
- (i) The premises and guest rooms shall be maintained free of insects, rodents, and other pests. The presence of insects, rodents, and other pests shall be controlled to eliminate their presence on the premises by: inspecting incoming shipments of food and supplies; inspecting the premises for evidence of pests; and eliminating harborage conditions.
- (j) Live animals shall be prohibited from entering areas of food preparation, storage, sales, display, or dining. This excludes service animals accompanying persons with disabilities in areas that are not used for food preparation.

*History Note:* Authority G.S. 130A-4; 130A-6; 130A-248;  
Eff. October 1, 2017.

#### **15A NCAC 18A .1827 PREMISES, STORAGE, POISONOUS OR TOXIC MATERIALS**

- (a) There shall be no fly or mosquito breeding places, rodent harborages, or undrained areas on the premises. The premises shall free of litter and items unnecessary to the operation or maintenance of the lodging establishment, such as equipment that is nonfunctional or no longer used.
- (b) Only pesticides that have been registered with the EPA and with the N.C. Department of Agriculture and Consumer Services shall be used and only for the specific use for which they have been approved. Such pesticides shall be used as directed on the label and shall be handled and stored to avoid health hazards. Pesticides shall not be accessible to guests.
- (c) Household cleaning agents such as bleaches, detergents, and polishes shall be used and stored according to manufacturer's recommendations.
- (d) Sanitizing solutions shall not be stored in or dispensed from containers previously containing other poisonous or toxic materials.
- (e) Chemical sanitizers and other chemical antimicrobials applied to food-contact surfaces shall meet the requirements specified in "40 CFR 180.940," tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (food-contact surface sanitizing solutions). 40 CFR 180.940 is hereby incorporated by reference, including all subsequent editions and amendments, and can be accessed free of charge at <https://www.gpo.gov/fdsys/granule/CFR-2012-title40-vol25/CFR-2012-title40-vol25-sec180-940>.
- (f) Medications under the control of the permit holder shall be stored in a manner to avoid contamination of food and food contact surfaces.
- (g) A storage area shall be provided for building and ground maintenance tools and supplies and stored in a manner to avoid

contamination of food and food contact surfaces, linen, and single-use articles.

*History Note:* Authority G.S. 130A-4; 130A-6; 130A-248; Eff. October 1, 2017.

**15A NCAC 18A .1828 LAUNDRY AND LINENS**

- (a) Except as specified in Paragraph (b) of this Rule, clean bed and bath linen in good repair shall be provided for each guest who is provided accommodations and shall be changed between successive guests. Two sheets shall be provided for each bed. The lower sheet shall be folded under both ends of the mattress. The upper sheet shall be folded under the mattress at the lower end.
- (b) If bed covers are not cleaned between successive guests, the upper sheet shall be folded under the mattress at the lower end and folded over the bed cover minimum six inches at the top end.
- (c) Clean linen and supplies shall be stored in cabinets, or on shelves in linen and supply storage rooms. Cabinets, shelves, and storage rooms shall be in good repair and kept clean.
- (d) Items on housekeeping carts shall be arranged in a manner to prevent cross-contamination between soiled and cleaned items. Housekeeping carts shall be kept clean and stored to protect items from contamination.
- (e) Soiled laundry shall be handled and stored separately from clean laundry using separate cleanable carts or bags. Carts used for soiled laundry shall be labeled or identified for soiled laundry use only.

*History Note:* Authority G.S. 130A-4; 130A-6; 130A-248; Eff. October 1, 2017.

**15A NCAC 18A .1829 PERMITS**

- (a) No permit for a lodging establishment shall be issued to a person until an application is submitted in accordance with Rule .1833 and an evaluation by the regulatory authority shows that the establishment complies with this Section. However, for bed and breakfast homes and inns, the regulatory authority shall allow a period of 210 days after the date of issuance of the permit to comply with the certified food protection manager requirements in Rule .1822 of this Section.
- (b) Upon transfer of ownership of an existing lodging establishment, the regulatory authority shall complete an evaluation. If the lodging establishment satisfies all the requirements of the rules, a permit shall be issued. If the lodging establishment does not satisfy all the requirements of the rules, a permit shall not be issued. A transitional permit shall be issued if the regulatory authority determines that the noncompliant items are construction or equipment problems that do not represent an immediate threat to public health. The transitional permit shall expire 180 days after the date of issuance, unless suspended or revoked before that date, and shall not be renewed. Upon expiration of a transitional permit, the permit holder shall have corrected the noncompliant items and obtained a permit, or the lodging establishment shall not continue to operate.
- (c) The regulatory authority shall impose conditions on the issuance of a permit or a transitional permit if necessary to ensure that a lodging establishment remains in compliance with this Section. Conditions may be specified for one or more of the following areas:

- (1) The number of bedrooms or persons housed;
- (2) The amount of laundry or kitchen and warewashing equipment on the premises;
- (3) Time schedules in completing minor construction items;
- (4) Modification or maintenance of water supplies, water use fixtures, and sanitary sewage systems;
- (5) Use of facilities for more than one purpose;
- (6) Continuation of contractual arrangements upon which basis the permit was issued; or
- (7) Any other conditions necessary for a lodging place to remain in compliance with this Section.

(d) If a permit or transitional permit has been suspended, the suspension shall be lifted if the regulatory authority has evaluated the lodging establishment and found that the violations causing the suspension have been corrected. If a permit or transitional permit has been revoked, a new permit shall be issued only after a request is made by the permit holder and the regulatory authority has evaluated the lodging establishment and found it to comply with the rules of this Section. The evaluations shall be conducted within 15 days after the request is made by the permit holder.

*History Note:* Authority G.S. 130A-4; 130A-6; 130A-248; Eff. October 1, 2017.

**15A NCAC 18A .1830 PUBLIC DISPLAY OF GRADE CARD**

- (a) Upon initial inspection of a lodging establishment or if a renovation or other change in the establishment makes the grade card not visible, the regulatory authority shall designate the location for posting the grade card. The grade card shall be located in a conspicuous place where it may be readily observed by the public upon entering the lodging establishment. If the person in charge of the lodging establishment objects to the location designated by the regulatory authority, the grade card may be posted in another location that meets the criteria of this Rule if agreed upon by the person in charge and the regulatory authority.
- (b) When an inspection of a lodging establishment is made, the regulatory authority shall remove the existing grade card, issue a new grade card, and post the new grade card in the same location where the grade card was previously posted as long as that location remains conspicuous. The person in charge of the lodging establishment shall keep the grade card posted at the designated location at all times. The grade card may be posted in another location that meets the criteria of this Rule if agreed upon by the person in charge and the regulatory authority.
- (c) The grade card issued by the Department shall be posted. The posted grade card shall be black on a white background. The alphabetical and numerical rating shall be 1.5 inches in height.

*History Note:* Authority G.S. 130A-4; 130A-6; 130A-248; 130A-249; Eff. October 1, 2017.

**15A NCAC 18A .1831 INSPECTIONS AND REINSPECTIONS**

- (a) Upon entry into a lodging establishment, the regulatory authority shall provide identification and the purpose in visiting

that establishment. The regulatory authority shall inquire as to the identity of the person in charge and invite the person in charge to accompany the regulatory authority during the inspection. If no employee is identified as the person in charge, the regulatory authority shall invite an employee to accompany them on the inspection. Following the inspection, the regulatory authority shall offer to review the results of the inspection with the person in charge or employee, as applicable.

(b) The grading of lodging establishments shall be conducted using an inspection form furnished by the regulatory authority. The form shall provide the following information:

- (1) The name and mailing address of the lodging establishment;
- (2) The name of the permit holder;
- (3) The permit status and score given;
- (4) Standards of construction and operation as listed in Rules .1821 through .1834 of this Section;
- (5) An explanation for all points deducted;
- (6) The signature of the regulatory authority; and
- (7) The date.

(c) The grading of lodging establishments shall be based on the standards of operation and construction as set forth in Rules .1821 through .1834 of this Section.

(d) The Inspection of Lodging Establishment form shall be used to document points assessed for violation of the rules of this Section as follows:

- (1) Violation of Part 2-1 of the Food Code incorporated by reference in Rule .1822 of this Section related to person in charge present, certification by accredited program or performs duties shall equal no more than 2 points.
- (2) Violation of Part 2-1 of the Food Code incorporated by reference in Rule .1822 of this Section related to management awareness, policy present, and allergy awareness shall equal no more than 2 points.
- (3) Violation of Part 2-2 of the Food Code incorporated by reference in Rule .1822 of this Section related to use of reporting, restriction, and exclusion shall equal no more than 2 points.
- (4) Violation of Part 2-4 or Chapter 3 of the Food Code incorporated by reference in Rules .1822 and .1823 of this Section related to eating, tasting, drinking, or tobacco use shall equal no more than 1 point.
- (5) Violation of Parts 2-3 through 2-4 of the Food Code incorporated by reference in Rule .1822 of this Section related to personal cleanliness and hair restraints shall equal no more than 1 point.
- (6) Violation of Part 2-3 or Chapter 3 of the Food Code incorporated by reference in Rules .1822 and .1823 of this Section related to hands clean shall equal no more than 4 points.
- (7) Violation of Chapter 3 of the Food Code incorporated by reference in Rule .1823 of this Section related to food obtained from approved

source, good condition, safe, and unadulterated shall equal no more than 3 points.

- (8) Violation of Chapter 3 of the Food Code incorporated by reference in Rule .1823 of this Section related to food separated and protected from contamination shall equal no more than 3 points.
- (9) Violation of Rule .1823 or Chapter 3 of the Food Code incorporated by reference in Rule .1823 of this Section related to food protected from environmental or other sources of contamination, including proper dispensing of ice, shall equal no more than 3 points.
- (10) Violation of Chapter 3 of the Food Code incorporated by reference in Rule .1823 of this Section related to cooking/reheating temperatures shall equal no more than 3 points.
- (11) Violation of Chapter 3 of the Food Code incorporated by reference in Rule .1823 of this Section related to proper cooling and approved methods shall equal no more than 3 points.
- (12) Violation of Chapter 3 of the Food Code incorporated by reference in Rule .1823 of this Section related to cold/hot holding temperatures shall equal no more than 3 points.
- (13) Violation of Chapter 3 of the Food Code incorporated by reference in Rule .1823 of this Section related to date marking shall equal no more than 3 points.
- (14) Violation of Rule .1824 or Parts 4-1 through 4-2 of the Food Code incorporated by reference in Rule .1824 of this Section related to equipment, food and nonfood-contact surfaces approved, cleanable, properly designed, constructed and used shall equal no more than 1 point.
- (15) Violation of Rule .1824 of this Section related to utensils, equipment properly stored, dried and handled shall equal no more than 1 point.
- (16) Violation of Rule .1824 or Part 4-6 of the Food Code incorporated by reference in Rule .1824 of this Section related to warewashing facilities installed, maintained and used shall equal no more than 2 points.
- (17) Violation of Rule 1824 or Parts 4-5 through 4-7 of the Food Code incorporated by reference in Rule .1824 of this Section or of Rule .1827 of this Section related to food-contact surfaces cleaned and sanitized where required and sanitizers maintained as required shall equal no more than 3 points.
- (18) Violation of Rule .1824 of this Section related to cooking surfaces of equipment and nonfood-contact surfaces clean shall equal no more than 1 point.
- (19) Violation of Rule .1824 of this Section related to single-use articles properly stored and used shall equal no more than 1 point.
- (20) Violation of Rule 1824 of this Section related to temperature measuring devices and sanitizer

- test kits provided shall equal no more than 2 points.
- (21) Violation of Rule .1825 or Chapter 5 of the Food Code incorporated by reference in Rule .1825 or .1826 of this Section related to handwashing sinks supplied and accessible and toilet tissue supplied shall equal no more than 2 points.
- (22) Violation of Rule .1823 of this Section or Chapter 5 of the Food Code incorporated by reference in Rule .1825 of this Section related to water from approved source, backflow prevention, plumbing in good repair shall equal no more than 4 points.
- (23) Violation of Chapter 5 of the Food Code incorporated by reference in Rule .1825 of this Section related to service sink or other approved method and mop storage shall equal no more than 2 points.
- (24) Violation of Chapter 5 of the Food Code incorporated by reference in Rule .1825 of this Section related to sewage and waste water disposal shall equal no more than 4 points.
- (25) Violation of Rule .1826 of this Section related to natural ventilation and lighting requirements shall equal no more than 2 points.
- (26) Violation of Rule .1826 of this Section related to furnishings clean and in good repair and guest room bathroom fixtures clean and sanitized between guests shall equal no more than 4 points.
- (27) Violation of Rule .1826 of this Section related to physical facilities installed, maintained and clean shall equal no more than 4 points.
- (28) Violation of Rule .1826 of this Section related to insects and rodents present shall equal no more than 4 points.
- (29) Violation of Rule .1828 of this Section related to linens changed as required shall equal no more than 3 points.
- (30) Violation of Rule .1828 of this Section related to linen clean and in good repair shall equal no more than 4 points.
- (31) Violation of Rule .1828 of this Section related to linen properly handled and stored shall equal no more than 3 points.
- (32) Violation of Rule .1828 of this Section related to housekeeping carts shall equal no more than 4 points.
- (33) Violation of Rule .1825 or Chapter 5 of the Food Code incorporated by reference in Rule .1825 of this Section or of Rule .1827 of this Section related to garbage and refuse disposal and facilities maintained shall equal no more than 2 points.
- (34) Violation of Rule .1826 or .1827 of this Section related to premises maintained to prevent breeding and harborage shall equal no more than 3 points.

- (35) Violation of Rule .1827 of this Section related to storage areas maintained clean, provided for maintenance equipment shall equal no more than 3 points.
- (36) Violation of Rule .1827 of this Section related to approved pesticide use shall equal no more than 3 points.
- (37) Violation of Rule .1827 of this Section related to household cleaning agents, sanitizers, and medicines properly stored and handled shall equal no more than 3 points.
- (38) Violation of Rule .1827 of this Section related to premises kept neat and clean shall equal no more than 2 points.

(e) Upon request of the permit holder or his or her representative a reinspection shall be made. In the case of establishments that request an inspection for the purpose of raising the alphabetical grade, and that hold unrevoked permits, the regulatory authority shall make an unannounced inspection within 15 days from the date of the request.

*History Note: Authority G.S. 130A-4; 130A-6; 130A-248; 130A-249; Eff. October 1, 2017.*

#### **15A NCAC 18A .1832 GRADING**

(a) The grading of lodging establishments shall be based on a system of scoring. A lodging establishment that earns a score of:

- (1) 90 percent or more shall receive a grade A;
- (2) 80 percent and less than 90 percent shall receive a grade B;
- (3) 70 percent and less than 80 percent shall receive a grade C.

(b) Permits shall be immediately revoked in accordance with G.S. 130A-23(d) for lodging establishments receiving a score of less than 70 percent.

*History Note: Authority G.S. 130A-4; 130A-6; 130A-4; 130A-6; 130A-248; 130A-249; Eff. October 1, 2017.*

#### **15A NCAC 18A .1833 APPLICATION AND PLAN REVIEW**

(a) Plans drawn to scale for new lodging establishments shall be submitted for review and approval to the local health department prior to initiating construction, or prior to construction of additions or renovations, excluding cosmetic or nonstructural changes to existing lodging establishments.

(b) An applicant shall submit an application for a permit or transitional permit at least 30 days before the date planned for opening the lodging establishment. The applicant shall submit to the regulatory authority a written application for a permit on a form provided by the regulatory authority.

(c) The application form shall include:

- (1) The name, mailing address, telephone number, and signature of the person applying for the permit and the name, mailing address, and location of the lodging establishment;



- (2) Information specifying whether the lodging establishment is owned by an association, corporation, individual, partnership, or other legal entity;
- (3) The name, title, address, and telephone number of the person in charge responsible for the lodging establishment;
- (4) A statement specifying the number of guest rooms or units and whether the lodging establishment is an operation that includes one or more of the following:
  - (A) Prepares, or serves potentially hazardous food (time/temperature control for safety food) for guests;
  - (B) Prepares only food that is not potentially hazardous (time/temperature control for safety food) for guests;
  - (C) Does not prepare, but serves only prepackaged food that is not potentially hazardous (time/temperature control for safety food) for guests;
- (5) Number and type of meals served, and the menu;
- (6) Source of water supply and wastewater disposal; and
- (7) A statement signed by the applicant that attests to the accuracy of the information provided in the application.

*History Note:* Authority G.S. 130A-4; 130A-6; 130A-248; Eff. October 1, 2017.

**15A NCAC 18A .1834 INFORMAL REVIEW PROCESS**

- (a) If a permit holder disagrees with a decision of the local health department on the enforcement of the rules of this Section the permit holder may request an informal review in accordance with Paragraphs (b) and (c) of this Rule.
- (b) If the permit holder requests an informal review, the request shall be in writing and shall be postmarked or hand delivered to the local health department within seven days of notice of the decision giving rise to the review. The request shall state the issues in dispute. The informal review shall be conducted by a Registered Environmental Health Specialist authorized as an agent of the Department. If the inspection giving rise to the informal review was conducted by the Environmental Health Supervisor in the county or area where the lodging establishment is located, or when the county or area has only one Registered Environmental Health Specialist assigned to inspect lodging establishments, the Departmental Environmental Health Regional Specialist assigned to that county or area shall conduct the local informal review. As soon as possible, but no later than 30 days of receipt of the request, the person conducting the review shall:
  - (1) Contact the permit holder;
  - (2) Provide that permit holder an opportunity to be heard on the issues in dispute; and
  - (3) Issue a written decision addressing the issues raised in the informal review.

Copies of the decision shall be delivered by the local health department to the permit holder and to the State Health Director. That decision shall be followed by the Department for the purposes of future inspections of the establishment in question unless modified pursuant to Paragraph (c) of this Rule.

(c) Following receipt of the written decision issued pursuant to Paragraph (b) of this Rule, the permit holder who initiated the informal review may request a State informal review of the resulting decision to an Informal Review Officer employed by and designated by the Department as responsible for final decisions on requests for State informal review from throughout the State. Notice of the request for State informal review shall be in writing, shall include a copy of the Environmental Health Supervisor's or his or her representative's decision, and shall be postmarked or hand-delivered to the local health department and to the Department within seven days of receipt of the written decision issued pursuant to Paragraph (b) of this Rule. Within 35 days of receipt of this request for State informal review, the designated Informal Review Officer shall hold a conference in Wake County. At least 10 days prior to the conference, the Informal Review Officer shall provide notice of the time and place of this conference to the permit holder and the Environmental Health Supervisor for the county or area where the issue arose. Within 10 days following the date of the conference, the Informal Review Officer shall issue a written decision addressing the issues raised in the State informal review and that decision shall be followed by the Department for purposes of future inspections of the establishment in question.

(d) If the informal review results in a change in the score resulting from an inspection of the establishment, the regulatory authority shall post a new grade card reflecting that new score.

(e) Nothing in this Rule shall impact the right of a permit holder to a reinspection pursuant to Rule .1831 of this Section.

(f) Nothing in this Rule shall prohibit the permit holder from seeking remedies as set forth under G.S. 150B.

*History Note:* Authority G.S. 130A-4; 130A-6; 130A-248; 248-249; Eff. October 1, 2017.

<b>15A NCAC 18A .2201</b>	<b>DEFINITIONS</b>
<b>15A NCAC 18A .2202</b>	<b>PERMITS</b>
<b>15A NCAC 18A .2203</b>	<b>INSPECTIONS: VISITS:</b>
<b>15A NCAC 18A .2204</b>	<b>POSTING OF GRADE CARD</b>
<b>15A NCAC 18A .2205</b>	<b>INSPECTION FORMS</b>
<b>15A NCAC 18A .2206</b>	<b>GRADING</b>
<b>15A NCAC 18A .2207</b>	<b>FLOORS</b>
<b>15A NCAC 18A .2208</b>	<b>WALLS AND CEILINGS</b>
<b>15A NCAC 18A .2209</b>	<b>LIGHTING AND VENTILATION</b>
<b>15A NCAC 18A .2210</b>	<b>TOILET: HANDWASHING:</b>
<b>15A NCAC 18A .2211</b>	<b>LAUNDRY: AND BATHING FACILITIES</b>
<b>15A NCAC 18A .2212</b>	<b>WATER SUPPLY</b>
<b>15A NCAC 18A .2213</b>	<b>DRINKING WATER</b>
<b>15A NCAC 18A .2214</b>	<b>FACILITIES: ICE HANDLING</b>
<b>15A NCAC 18A .2215</b>	<b>DISPOSAL OF WASTES</b>
	<b>VERMIN CONTROL: PREMISES</b>
	<b>STORAGE: MISCELLANEOUS</b>
	<b>BEDS: LINEN: FURNITURE</b>

**15A NCAC 18A .2216 FOOD SERVICE UTENSILS AND EQUIPMENT**  
**15A NCAC 18A .2217 FOOD SUPPLIES**  
**15A NCAC 18A .2218 FOOD PROTECTION**  
**15A NCAC 18A .2219 FOOD SERVICE PERSONS**  
**15A NCAC 18A .2220 SEVERABILITY**  
**15A NCAC 18A .2221 APPEALS PROCEDURE**

*History Note: Authority G.S. 130A-250;*

*Eff. April 1, 1984;*

*Amended Eff. November 1, 2006; November 1, 2002; October 1, 1993; April 1, 1992; August 1, 1991; September 1, 1990; March 1, 1988; February 1, 1987; July 1, 1986;*

*Repealed October 1, 2017.*

**15A NCAC 18A .3001 DEFINITIONS**  
**15A NCAC 18A .3002 PERMITS**  
**15A NCAC 18A .3003 INSPECTIONS: VISITS: POSTING OF GRADE CARDS**  
**15A NCAC 18A .3004 INSPECTION FORMS**  
**15A NCAC 18A .3005 GRADING**  
**15A NCAC 18A .3006 FOOD SOURCES AND PROTECTION**  
**15A NCAC 18A .3007 FOOD SERVICE PERSONS**  
**15A NCAC 18A .3008 FOOD SERVICE UTENSILS AND EQUIPMENT AND THEIR CLEANING**  
**15A NCAC 18A .3009 LAVATORIES AND BATHROOMS**  
**15A NCAC 18A .3010 WATER SUPPLY**  
**15A NCAC 18A .3011 DRINKING WATER FACILITIES**  
**15A NCAC 18A .3012 BEDS: LINEN**  
**15A NCAC 18A .3013 VERMIN CONTROL: PREMISES**  
**15A NCAC 18A .3014 STORAGE: MISCELLANEOUS**  
**15A NCAC 18A .3015 FLOORS: WALLS: CEILINGS: LIGHTING: VENTILATION**  
**15A NCAC 18A .3016 DISPOSAL OF GARBAGE AND TRASH**

*History Note: Authority G.S. 130A-248;*

*Eff. July 1, 1992;*

*Amended Eff. November 1, 2002; October 1, 1993; July 1, 1993;*

*Repealed Eff. October 1, 2017.*

- (1) The chief officer is the Secretary of the Local Government Commission;
- (2) The mailing address is 3200 Atlantic Avenue, Raleigh, North Carolina 27604; and
- (3) The office is located in the Longleaf Building, 3200 Atlantic Avenue, Raleigh, North Carolina 27604.

(c) The staff of the Local Government Commission is provided by the state and local government finance division.

*History Note: Authority G.S. 159-3(f);*

*Eff. February 1, 1976;*

*Readopted Eff. September 23, 1977;*

*Amended Eff. October 1, 2017.*

## **20 NCAC 03 .0701 GENERAL INFORMATION**

(a) This Section sets forth the manner in which a mutual fund for local government investment shall be certified as required by G.S. 159-30(c)(7).

(b) All correspondence to the State Treasurer under this Section shall be addressed to: Secretary, Local Government Commission, Department of State Treasurer, 3200 Atlantic Avenue, Raleigh, North Carolina 27604.

*History Note: Authority G.S. 159-3(f); 159-30(c)(7);*

*Eff. February 1, 1982;*

*Amended Eff. October 1, 2017.*

## **20 NCAC 03 .1003 PETITION FOR HEARING**

The municipality or joint agency shall file a petition with the Secretary of the Local Government Commission setting forth the facts upon which its desire to issue refunding bonds is based and any legal arguments supporting its view that issuance of the refunding bonds is proper. The municipality or joint agency shall mail one original and ten copies of the petition to the office of the Secretary of the Local Government Commission at 3200 Atlantic Avenue, Raleigh, North Carolina 27604. No filing fee shall be required.

*History Note: Authority G.S. 159-3(f); 159B-25(b);*

*Eff. November 1, 1990;*

*Amended Eff. October 1, 2017.*

## **TITLE 20 - DEPARTMENT OF STATE TREASURER**

### **20 NCAC 03 .0101 ORGANIZATION AND FUNCTIONS**

(a) The Local Government Commission operates as a division of the Department of the State Treasurer and is the state's agency charged with the duty of advising and assisting officials of local governments (counties, cities, towns, public authorities, special districts) in all phases of fiscal management. It promotes the efficient use of monetary resources of local governments through sound fiscal management, careful borrowing, and sound debt management practices.

(b) The following is general information about the Local Government Commission:

## **TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

### **CHAPTER 10 – BOARD OF CHIROPRACTIC EXAMINERS**

#### **21 NCAC 10 .0306 PUBLICATION OF NON-DIPLOMATE CREDENTIALS**

(a) Scope of Rule. Any credential awarded to a licensee of the Board upon completion of a healthcare-related educational program shall be subject to this Rule except an academic degree or a diploma recognized pursuant to Rule .0304 of this Section.

(b) Publication of Unrecognized Credentials Unlawful. It shall constitute false or misleading advertising, in violation of G.S. 90-154(b)(1), for a licensee to publish a credential that is not

recognized by the Board. For purposes of this Rule, "publication" includes representations made in a licensee's print, broadcast or online advertisement, professional stationery, business cards, and office signage.

(c) **Criteria for Recognition.** The criteria for recognition by the Board of a credential subject to this Rule shall be as follows:

- (1) the educational program leading to the awarding of the credential is offered at the post-doctor of chiropractic level;
- (2) for a chiropractic discipline, the educational program is offered or sponsored by a chiropractic college accredited by the Council on Chiropractic Education;
- (3) for a discipline not unique to chiropractic, the educational program is offered or sponsored by a professional school or college accredited by an agency that is the equivalent of the Council on Chiropractic Education;
- (4) the educational program is 100 hours in duration, except for programs in Acupuncture-Meridian Therapy, whose duration shall conform to Rule .0208 of this Chapter; and
- (5) The educational program culminates in a final examination that the candidate must pass to earn the credential.

(d) **Recognized Credentials.** The following credentials are recognized by the Board and may be published upon the credentialed licensee's compliance with Paragraph (e) of this Rule.

- (1) Certified Chiropractic Extremity Practitioner (CCEP);
- (2) Certified Chiropractic Rehabilitation Doctor (CCRD);
- (3) Certified Chiropractic Sports Physician (CCSP);
- (4) Chiropractic Certification in Spinal Trauma (CCST);
- (5) International Chiropractic Sports Physician (ICSP); and
- (6) Certificate in Acupuncture-Meridian Therapy.

Any licensee wishing to publish a credential not listed in this Paragraph shall first make written application to the Board and provide evidence that the credential meets the criteria set forth in Paragraph (c) of this Rule. The licensee shall not publish the credential until receipt of Board recognition.

(e) **Filing Certificates.** A licensee shall not publish any recognized credential until he or she files with the Board a copy of the dated certificate or similar document signifying that the licensee successfully completed all program requirements and that the credential was awarded.

*History Note: Authority G.S. 90-142; 90-154; Eff. October 1, 2017.*

\*\*\*\*\*

## **CHAPTER 65 – BOARD OF RECREATIONAL THERAPY LICENSURE**

### **21 NCAC 65 .1001 COMPLAINTS AND REPORTS**

(a) The Board shall accept from the licensee as a self-report, an employer agency, or the public reports and complaints of suspected malpractice, violations of Chapter 90C, complaints, or incident reports of disciplinary issues, including misconduct in the workplace or the community by any licensee.

(b) The complainant shall submit a signed Board approved form that includes the information required in Paragraph (c) of this Rule. The form shall be filed electronically on the Board website at [www.ncbrtl.org](http://www.ncbrtl.org) or by contacting the Board office by phone, email, or mail for a form. The complainant shall state he or she believes the facts stated in the complaint or report to be true.

(c) A complaint regarding a violation of the G.S. 90C or Rules shall be submitted in writing within 24-72 hours of occurrence or upon receipt of knowledge regarding a suspected occurrence and document the following facts pertaining to the complaint or report:

- (1) the complainant first and last name;
- (2) the complainant address;
- (3) the complainant phone number;
- (4) the licensee first and last name;
- (5) the nature of the complaint and description of the alleged behavior or incident;
- (6) if known, the name, mailing address, email address, and phone number of the individual(s)(including co-workers and members of the public) involved in the complaint;
- (7) if known, the name, work address, and phone number of the supervisor of the individual being reported; and
- (8) the signature of complainant and statement of the truthfulness of the information.

(d) The Board staff shall return any incomplete forms to the complainant. The complainant may correct the incomplete complaint and resubmit it to the Board.

(e) Upon receipt of the completed complaint, Board staff shall notify the complainant of receipt and open a file.

(f) The Board shall not accept any anonymous complaints.

(g) Complaints and reports shall be reviewed by the Executive Director and Board Chair, who shall determine whether further investigation is needed, based upon the facts in the complaint.

*History Note: Authority G.S. 90C-24(a)(3); 90-24(8); 90C-24(a)(8); 90C-32;*

*Temporary Adoption Eff. December 1, 2005;*

*Eff. January 1, 2007;*

*Amended Eff. October 1, 2017.*

### **21 NCAC 65 .1002 INVESTIGATIONS**

(a) After accepting a report or complaint as referenced in Rule .1001 of this Section, the Board shall require information from the licensee regarding any disciplinary action taken by an employer or any sanctions issued to the licensee by a credentialing board or by a professional association.

(b) The individual being reported shall submit the Board's form located on the Board's website [www.ncbrtl.org](http://www.ncbrtl.org), located under the headings of Documents or Complaints. The form requires:

- (1) the name of individuals (client names and identifying information to be de-identified or blacked out) present at the time of the incident;
- (2) a description of the alleged behavior or incident;
- (3) the individual's supervisor's name, mailing address, email address and phone number;
- (4) the copies of any written notes, or de-identified client records involved;
- (5) the date and time of the incident; and
- (6) if taken, a summary of employing agency's action in response to the incident.

(c) The individual shall send the form by mail to the Board's mailing address or via email to the Board's email address. The Board staff shall open a file and assign a case number.

(d) The Board staff shall request information from professional associations, professional review organizations, or facilities where a licensee performs professional services concerning the case.

(e) The Executive Director shall prepare a report of each investigation for the Board's review.

*History Note:* Authority G.S. 90C-24(a)(3); 90C-24(a)(8); 90C-32;  
*Eff:* October 1, 2017.

#### **21 NCAC 65 .1003 LETTER OF NOTIFICATION**

If the Board receives information that an individual may be practicing recreational therapy without a license, the Board shall issue a Letter of Notification. The Board shall inform the individual in writing that his or her practice may be considered within the recreational therapy scope of practice and he or she could be found in violation if he or she continues to practice recreational therapy without a license. The Board shall refer the individual to Chapter 90C, the rules of this Chapter, and the NCBRTL Employment Form, which sets forth the Standards of Practice for Recreational Therapy in G.S. 90C-22(2).

*History Note:* Authority G.S. 90C-22(2); 90C-32(6);  
*Eff:* October 1, 2017.

#### **21 NCAC 65 .1004 UNAUTHORIZED PRACTICE**

(a) Except as otherwise authorized in G.S. 90C-34, non-licensed individuals shall not:

- (1) Practice, attempt to practice, supervise recreational therapy, or hold out any individual as being able to do any of these things in this State, without first having obtained a license from the Board for the individual performing services or being so held out;
- (2) Use in connection with any individual's name any letters, words, codes, or insignia indicating or implying that the individual is a recreational therapist or recreational therapy assistant, unless the individual is licensed in accordance with this Chapter;
- (3) Practice or attempt to practice recreational therapy as defined in G.S. 90C-22(2) and

referenced in the ATRA Standards of Practice with a revoked, lapsed, or suspended license; or  
 (4) Aid, abet, or assist any unlicensed individual to practice recreational therapy in violation of this Article.

(b) To determine whether an individual has engaged in the unauthorized practice of recreational therapy, the Board shall request the individual complete a NCBRTL Employment Form listing the duties performed by the individual being investigated.

(c) To the extent permitted by law, any individual found by the Board to be engaged in the unauthorized practice of recreational therapy shall be subject to the sanctions set forth in Rule .1006 of this Chapter.

*History Note:* Authority G.S. 90C-22(2); 90C-24(a)(8); 90C-32; 90C-36; 90C-37;  
*Eff:* October 1, 2017.

#### **21 NCAC 65 .1005 VIOLATIONS**

(a) Following an investigation, the Board shall determine whether a Compliance Violation has occurred.

(1) As used in this Section, a "Compliance Violation" shall mean:

- (A) A licensee's failure to pay required fee in accordance with Rule .0501 of this Chapter by the due date for Maintenance and Renewal/Continuing Education;
- (B) A licensee's failure to submit Renewal/Continuing Education requirements by the Renewal due date prescribed by the Board and in accordance with Rules .0601 and .0602 of this Chapter; or
- (C) A licensee practicing with an expired license for one month or less.

(2) The Board shall allow a licensee that it determines has committed a Compliance Violation to enter into a "Corrective Action Plan." The Corrective Action Plan shall require the licensee to submit missing documents, a Reinstatement Application, and fee. in accordance with Rule .0501 of this Chapter. Each violation shall require the licensee to attend a "NCBRTL Compliance and Ethics" training session by a date specified by the Board. The Board shall notify the individual of the date in a letter.

(b) Following an investigation, the Board shall determine whether a Practice Violation has occurred.

(1) As used in this Section, a "Practice Violation" shall mean:

- (A) Practicing Recreational Therapy without a license from the Board;
- (B) Actions by a licensee that caused a client or patient actual or potential harm;

- (C) A licensee practicing beyond the scope of practice for recreational therapy;
  - (D) A licensee's failure to follow the physician's orders as prescribed for a client or patient;
  - (E) A licensee's violation of the ATRA Code of Ethics in the Standards of Practice in accordance with Rules .0203 and .0204 of this Chapter; or
  - (F) A licensee continuing to practice with an expired license for a period exceeding one month.
- (2) In the event the Board determines that a licensee or other individual has committed a Practice Violation, the Board shall issue one or more of the disciplinary sanctions set forth in Rule .1005 of this Section.

*History Note:* Authority G.S. 90C-32; 90C-36; 90C-37;  
Eff: October 1, 2017.

**21 NCAC 65 .1006 SANCTIONS**

(a) Upon the Board's determination that an applicant or licensee (if the licensee has not entered into a corrective action plan) has violated the rules set forth in this Chapter with a Compliance or Practice Violation or engaged in any conduct violating G.S. Chapter 90C, the Board may impose one or more of the following disciplinary sanctions:

- (1) Denial of Application;
- (2) Letter of Reprimand;
- (3) Required Remedial Education;
- (4) Restriction by Probation;
- (5) Suspension of License;
- (6) Revocation of License; or
- (7) Request for Injunction.

(b) On a case-by-case basis, the Board may also impose restrictions and conditions on a licensee's practice including:

- (1) restriction on the licensee's scope of practice;
- (2) direct supervision of the licensee's practice;
- (3) requiring the licensee to submit quarterly reports for a designated amount of time to the Board; or
- (4) requiring the licensee to complete additional educational coursework.

(c) Information regarding disciplinary sanctions for any licensee shall be available on the Board's website, [www.ncbrtl.org](http://www.ncbrtl.org). The Board shall list the following:

- (1) the name of the licensee;
- (2) the agency;
- (3) the infraction(s);
- (4) the sanction(s) imposed by the Board; and
- (5) the date(s) of imposition.

*History Note:* Authority G.S. 90C-24(a)(8); 90C-32; 90-36; 90C-37;  
Eff: October 1, 2017.

**21 NCAC 65 .1007 HEARINGS**

(a) The individual may submit a request for a hearing in the Board's office. The request must be received by the Board within 30 days of the date such individual receives notice of the Board's action or proposed action.

(b) The written request must include:

- (1) a statement of request for a hearing before the Board;
- (2) the name and address of the petitioner;
- (3) a statement of the action taken by the Board that is being challenged;
- (4) a statement of reason(s) the petitioner has been aggrieved; and
- (5) a statement of any new information that the petitioner thinks is relevant to the issue.

(c) The Board shall schedule the hearing within 60 days of receipt of the request.

(d) The Board shall serve one written copy of the decision to each party in the hearing.

(e) Formal hearings shall be conducted in accordance with G.S. 150B-38.

*History Note:* Authority G.S. 150B-38;  
Eff: October 1, 2017.

\*\*\*\*\*

**CHAPTER 66 - VETERINARY MEDICAL BOARD**

**21 NCAC 66 .0108 FEES**

The following fees established by the Board shall be paid in advance to the Executive Director of the Board:

- (1) Veterinary License
  - (a) Issuance or Renewal \$170.00
  - (b) North Carolina License Examination \$250.00
  - (c) Late Renewal Fee \$50.00
  - (d) Reinstatement \$100.00
- (2) Veterinary Technician Registration
  - (a) Issuance or Renewal \$50.00
  - (b) North Carolina Veterinary Technician Examination \$50.00
  - (c) Late Renewal Fee \$50.00
  - (d) Reinstatement \$100.00
- (3) Professional Corporation Certificate of Registration
  - (a) Issuance or Renewal \$160.00
  - (b) Late Renewal Fee \$50.00
  - (c) Reinstatement \$100.00
- (4) Limited Veterinary License
  - (a) Issuance or Renewal \$170.00
  - (b) Late Renewal Fee \$50.00
  - (c) Reinstatement \$100.00
- (5) Veterinary Faculty Certificate
  - (a) Issuance or Renewal \$170.00
  - (b) Late Renewal Fee \$50.00
  - (c) Reinstatement \$100.00
- (6) Zoo Veterinary Certificate
  - (a) Issuance or Renewal \$170.00

---

**APPROVED RULES**

---

- (b) Late Renewal Fee \$50.00  
(c) Reinstatement \$100.00  
(7) Temporary Permit: Issuance \$150.00  
(8) Veterinary Student Intern Registration:  
Issuance \$25.00  
(9) Veterinary Student Preceptee Registration:  
Issuance \$25.00  
(10) Veterinary Practice Facility Inspection \$125.00  
(11) Copies of Board publications, rosters, or other  
materials available for distribution from the  
Board shall be free or at a minimal cost unless  
otherwise specifically provided by law. As used
- herein, "minimal cost" shall mean the actual  
cost of reproducing the public record or public  
information.
- History Note: Authority 90-185(6); 90-186(6); 90-187(b);  
90-187.5; 132-6.2;  
Eff. February 1, 1976;  
Readopted Eff. September 30, 1977;  
Amended Eff. October 1, 2017; January 1, 2016; January 1, 2015;  
May 1, 1996; May 1, 1989.*

*This Section contains information for the meeting of the Rules Review Commission November 16, 2017 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2<sup>nd</sup> business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.*

**RULES REVIEW COMMISSION MEMBERS****Appointed by Senate**

Jeff Hyde (1<sup>st</sup> Vice Chair)  
Robert A. Bryan, Jr.  
Margaret Currin  
Jay Hemphill  
Jeffrey A. Poley

**Appointed by House**

Garth Dunklin (Chair)  
Andrew P. Atkins  
Anna Baird Choi  
Paul Powell  
Jeanette Doran

**COMMISSION COUNSEL**

Abigail Hammond	(919)431-3076
Amber Cronk May	(919)431-3074
Amanda Reeder	(919)431-3079
Jason Thomas	(919)431-3081

**RULES REVIEW COMMISSION MEETING DATES**

November 16, 2017	December 14, 2017
January 18, 2018	February 15, 2018

---

**AGENDA****RULES REVIEW COMMISSION**

**THURSDAY, NOVEMBER 16, 2017 10:00 A.M.**  
**1711 New Hope Church Rd., Raleigh, NC 27609**

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-up matters
  - A. Commission for Mental Health, Developmental Disabilities and Substance Abuse Services - 10A NCAC 27H .0205, .0206 (May)
- IV. Review of Log of Filings (Permanent Rules) for rules filed September 21, 2017 through October 20, 2017
  - Pre-Reviewed Rules
    - Board of Refrigeration Examiners (May)
  - Non Pre-Reviewed Rules
    - Code Officials Qualification Board (Hammond)
    - Department of Insurance (Reeder)
    - Alarm Systems Licensing Board (Thomas)
    - Midwifery Joint Committee (Hammond)
    - Board of Nursing (Hammond)
    - Building Code Council (Reeder)
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
- VI. Existing Rules Review
  - Review of Reports
    - 1. 10A NCAC 14A – Department of Health and Human Services (Section .0100) (Thomas)
    - 2. 10A NCAC 14A – Medical Care Commission (Section .0300) (Thomas)
    - 3. 10A NCAC 14G – DHHS/Director Division of Health Service Regulation (Thomas)

4. 10A NCAC 14H - DHHS/Director Division of Health Service Regulation (Thomas)
5. 11 NCAC 08 - Department of Insurance (Sections .0200, .0400 and .1500) (May)
6. 11 NCAC 08 - Code Officials Qualification Board (Sections .0500 –.0800) (May)
7. 11 NCAC 08 – Manufactured Housing Board (Sections .0900 and .1400) (May)
8. 11 NCAC 08 – Home Inspector Licensure Board (Sections .1000 – .1300) (May)
9. 14B NCAC 09 – Public Safety/Victims Compensation Commission (Sections .0100, .0200) (Hammond)
10. 14B NCAC 09 – Victims Compensation Commission (Section .0300) (Hammond)
11. 14B NCAC 10 – Department of Public Safety/Boxing Authority (Hammond)
12. 14B NCAC 11 – Department of Public Safety (Hammond)
13. 14B NCAC 12 – Department of Public Safety (Hammond)
14. 14B NCAC 13 – Department of Public Safety (Hammond)
15. 21 NCAC 16 - Dental Examiners (Hammond)
16. 21 NCAC 33 – Midwifery Joint Committee (Reeder)
17. 21 NCAC 36 – Board of Nursing (Reeder)
18. 21 NCAC 39 – Onsite Wastewater Contractors and Inspectors Certification Board (Hammond)
19. 21 NCAC 66 – Veterinary Medical Board (Reeder)

VII. Commission Business

- B. Review of Amendments to 26 NCAC 05 .0211
- C. Summary of the Readoption Process
  - Next meeting: Thursday, December 14, 2017

**Commission Review**  
*Log of Permanent Rule Filings*  
 September 21, 2017 through October 20, 2017

**CODE OFFICIALS QUALIFICATION BOARD**

The rules in Chapter 8 are the engineering and building codes including the approval of school maintenance electricians (.0400); qualification board-limited certificate (.0500); qualification board-probationary certificate (.0600); qualification board-standard certificate (.0700); disciplinary actions and other contested matters (.0800); manufactured housing board (.0900); NC Home Inspector Licensure Board (.1000); home inspector standards of practice and code of ethics (.1100); disciplinary actions (.1200); home inspector continuing education (.1300); Manufactured Housing Board continuing education (.1400); and alternate designs and construction appeals (.1500).

<u>Nature of Probationary Certificate</u>	11	NCAC	08	.0602
Amend/*				
<u>Certificate</u>	11	NCAC	08	.0708
Amend/*				

**INSURANCE, DEPARTMENT OF**

The rules in Chapter 18 concern multiple employer welfare arrangements.

<u>Filing Requirements</u>	11	NCAC	18	.0103
Readopt with Changes/*				

The rules in Chapter 20 concern managed care health benefit plans including managed care definitions (.0100); contracts between network plan carriers and health care providers (.0200); provider accessibility and availability (.0300); network provider credentials (.0400); HMO quality management programs (.0500); and significant modifications to HMO operations (.0600).

<u>Changes Requiring Approval</u>	11	NCAC	20	.0203
Readopt with Changes/*				



<u>Provider Availability Standards</u> Readopt without Changes/*	11	NCAC	20	.0301
<u>Provider Accessibility Standards</u> Readopt with Changes/*	11	NCAC	20	.0302
<u>Application</u> Readopt with Changes/*	11	NCAC	20	.0404
<u>Delegation of Credential Verification Activities</u> Readopt without Changes/*	11	NCAC	20	.0410
<u>Applications for Modifications to Service Areas or Produc...</u> Readopt with Changes/*	11	NCAC	20	.0601

The rules in Chapter 21 concern third party administrators.

<u>Payment of Claims</u> Readopt without Changes/*	11	NCAC	21	.0106
---	----	------	----	-------

### **ALARM SYSTEMS LICENSING BOARD**

The rules in Chapter 11 are from the N.C. Alarm Systems Licensing Board and cover the organization and general provisions (.0100); provisions for licensees (.0200); provisions for registrants (.0300); the recovery fund (.0400); and continuing education for licensees (.0500).

<u>Purpose</u> Amend/*	14B	NCAC	17	.0101
<u>Location</u> Amend/*	14B	NCAC	17	.0102
<u>Application for License</u> Amend/*	14B	NCAC	17	.0201
<u>Experience Requirements for License</u> Amend/*	14B	NCAC	17	.0202
<u>Application for Registration</u> Amend/*	14B	NCAC	17	.0301

### **MIDWIFERY JOINT COMMITTEE**

The rules in Chapter 33 are from the Midwifery Joint Committee.

<u>Reporting Criteria</u> Amend/*	21	NCAC	33	.0110
--------------------------------------	----	------	----	-------

### **NURSING, BOARD OF**

The rules in Chapter 36 include rules relating to general provisions (.0100); licensure (.0200); approval of nursing programs (.0300); unlicensed personnel and nurses aides (.0400); professional corporations (.0500); articles of organization (.0600); nurse licensure compact (.0700); and approval and practice parameters for nurse practitioners (.0800).

<u>Reporting Criteria</u> Amend/*	21	NCAC	36	.0815
--------------------------------------	----	------	----	-------

### **REFRIGERATION EXAMINERS, BOARD OF**

The rules in Chapter 60 are from the Board of Refrigeration Examiners and concern organization and definitions (.0100); examinations (.0200); licenses and fees (.0300); disciplinary action (.1100); and continuing education.

<u>Office of the Board</u>	21	NCAC	60	.0102
Amend/*				
<u>Rule-making and Administrative Hearing Procedures</u>	21	NCAC	60	.0103
Repeal/*				
<u>Classifications</u>	21	NCAC	60	.0106
Adopt/*				
<u>Examination Application Duly Filed</u>	21	NCAC	60	.0206
Repeal/*				
<u>Requirements for Examination Applicants</u>	21	NCAC	60	.0207
Amend/*				
<u>Fees</u>	21	NCAC	60	.0209
Amend/*				
<u>Qualifying Examinations</u>	21	NCAC	60	.0212
Amend/*				
<u>Examinations</u>	21	NCAC	60	.0213
Amend/*				

## **BUILDING CODE COUNCIL**

<u>2014 NC Electrical Code/Conductors</u>	300.3
Amend/*	
<u>2014 NC Electrical Code/Frames of Ranges and Clothes Dryers</u>	250.140
Amend/*	
<u>2014 NC Electrical Code/Use of Grounded Circuit Conductor...</u>	250.142
Amend/*	
<u>2014 NC Electrical Code/Supplemental Electrode Required</u>	250.53(A)(2)
Amend/*	
<u>2014 NC Electrical Code/Raceways in Wet Locations Above Grad</u>	300.9
Amend/*	
<u>2012 NC Fire Prevention Code/Scope</u>	901.1
Amend/*	

*This Section contains a listing of recently issued Administrative Law Judge decisions for contested cases that are non-confidential. Published decisions are available for viewing on the OAH website at <http://www.ncoah.com/hearings/decisions/>. If you are having problems accessing the text of the decisions online or for other questions regarding contested cases or case decisions, please contact the Clerk's office by email: [oah.clerks@oah.nc.gov](mailto:oah.clerks@oah.nc.gov) or phone 919-431-3000.*

**OFFICE OF ADMINISTRATIVE HEARINGS**

**Chief Administrative Law Judge**  
JULIAN MANN, III

**Senior Administrative Law Judge**  
FRED G. MORRISON JR.

**ADMINISTRATIVE LAW JUDGES**

Melissa Owens Lassiter  
Don Overby  
J. Randall May  
David Sutton

A. B. Elkins II  
Selina Malherbe  
J. Randolph Ward  
Stacey Bawtinheimer

Year	Code	Number	Date Decision Filed	Petitioner		Respondent	ALJ
				<b><u>PUBLISHED</u></b>			
17	DHR	00755	9/14/2017	Tonya Staton	v.	North Carolina Department of Health and Human Services Division of Child Development	Culpepper
17	DHR	01778	9/18/2017	Raintree Healthcare of Wilkesboro LLC DBA Wilkes County Adult Care	v.	Division of Health Service Regulation NC Department of Health and Human Services	Malherbe
17	DHR	02429	9/28/2017	Coby Crandall The Pro Se Reentry Recovery SVCS	v.	NC Department of Health and Human Services	Overby
17	DHR	04335	9/5/2017	Angela and Timothy Munson	v.	The Mecklenburg County Health Department and Health Director Anthony Trotman	Malherbe
17	DHR	04749	9/14/2017	Appletree Day Care, Inc. and Carolyn Driggers	v.	NC Department of Health and Human Services, Nutrition Services, Child & Adult Care Food Program	Overby
17	DOJ	02257	9/11/2017	Antoine Joseph Singleton	v.	NC Criminal Justice Education and Training Standards Commission	Bawtinheimer
17	DOJ	02976	9/12/2017	Kevin Robert Bray	v.	NC Private Protective Services Board	Malherbe
17	DOJ	05556	9/28/2017	Stanley Lewis Huffstetler IV	v.	North Carolina Alarm Systems Licensing Board	Overby
16	OSP	10621	9/26/2017	Dontravis Swain	v.	North Carolina Department of Public Safety	Ward
16	OSP	10948	9/22/2017	Sharon Renea Blackmon	v.	NC DHHS	May
17	OSP	01770	9/7/2017	Bernard Robinson	v.	NCDPS Lumberton Correctional	Overby

**CONTESTED CASE DECISIONS**

				<b><u>UNPUBLISHED</u></b>			
17	ABC	03322	9/7/2017	Reginald Hilton Belton, Owner Robbin Heights Mini Market	v.	NC Alcoholic Beverage Control Commission	Ward
17	CSE	02642	9/6/2017	Terry R Locklear	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	May
17	CSE	04856	9/20/2017	Ned Burgess Jr	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Sutton
17	CSE	04917	9/21/2017	Thomas Yu	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
16	DHR	09945	9/22/2017	Green Acres Family Care Home #2 Latrishia Green	v.	Adult Care Licensure Megan Lamphere MSW Chief	Ward
17	DHR	02847	9/12/2017	Adam E Smith	v.	NC Dept. of Health and Human Services	Bawtinhimer
17	DHR	04173	9/14/2017	A+ Williamson Care Network	v.	NC Department of Health and Human Services, Division of Medical Assistance	Mann
17	DHR	05044	9/19/2017	Barbara Stocks Barbara Stocks Daycare	v.	Division of Child Development and Early Education	May
17	DOJ	02731	9/5/2017	Terry Teray Arrington	v.	NC Criminal Justice Education and Training Standards Commission	Lassiter
17	DOJ	04249	9/22/2017	Eddricco Lishaun Brown-Bey	v.	The State of North Carolina Attorney General Office Et Al	May
17	DOT	03280	9/22/2017	Brandon Roshon McClendon	v.	State of North Carolina Department of Transportation	Mann
17	DOT	05492	9/29/2017	William Delmar Covington	v.	North Caorlina Highway Patrol Office and North Caorlina Department of Transportation	Overby
17	EDC	05343	9/28/2017	Teshia McLean	v.	NC Department of Public Instruction	Overby
17	INS	01662	9/1/2017	Cynthia Martin	v.	North Carolina State Health Plan	Ward
17	INS	02291	9/5/2017	Michelle Jernigan	v.	State Health Plan	Overby
17	INS	02679	9/13/2017	Kendra Matthews	v.	State Health Plan	May
16	OSP	05955	9/14/2017	Eric Rice	v.	NC State University	Culpepper
17	OSP	04383	9/8/2017	Walle Laniyan	v.	Durham Co Govt	Bawtinhimer