

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Social Services Commission

RULE CITATION: 10A NCAC 10 .0309

DEADLINE FOR RECEIPT: Friday, December 8, 2017

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a) and throughout this Rule, is "operator" defined somewhere? I know that it is defined in the Child Care Rules in 10A NCAC 09 .0102, but is it defined somewhere in these Rules? The only definition I see related to this is "owner" or "provider" in 10A NCAC 10 .0102. Do you actually mean "owner" or "provider" since they are defined terms within this Chapter?

In (a), an overpayment and inadvertent error by whom? A LPA?

In (a), what is considered to be an "inadvertent error"? How is this different than an agency error in (c)? How do (a) and (c) go together?

Please consider making lines 6-8 (Should the operator cease... recouped by:)" its own Paragraph.

Why is (b) being separated from (a)? If the overpayment was made as a result of misrepresentation, would they still be eligible to participate in the program? Does .0308 come into play here? Since it appears to be the same procedure as any other overpayment set forth in (a), is this necessary?

Given (a), is (c) necessary? It seems to be duplicative.

In (c) and (d), who is the agency in "agency error"?

In (d), what does "shall be corrected" mean? Does this mean that it shall be corrected in the LPA's system and records? Does this mean that the correct payment shall be remitted to the operator (or owner, whatever is correct.)

In (d), do you mean more than 90 days from the date of discovery of the underpayment? What if the underpayment is not discovered until day 91?

Amber May
Commission Counsel
Date submitted to agency: November 28, 2017

In (e), just so I'm clear, the appeals process in .0311 would be used if appealing a decision of a LPA and .0312 would be used if appealing something from the Division?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: November 28, 2017

1 **10A NCAC 10 .0309 is readopted as published in 32:02 NCR 58-59 as follows:**

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3 **10A NCAC 10 .0309 CORRECTION OF OVERPAYMENTS AND UNDERPAYMENTS**

4 (a) An overpayment made to an operator as a result of an inadvertent error shall be recouped by withholding the
5 amount overpaid from monies due to the operator for services provided pursuant to the state's Subsidized Child Care
6 Assistance Program in an amount not to exceed 20 percent of each payment to the operator. Should the operator
7 cease to participate in the Subsidized Child Care Assistance Program before the overpayment is fully repaid, the
8 remaining monies shall be recouped by:

- 9 (1) Repayment agreement made with the local purchasing agency; however, the local purchasing
10 agency shall prosecute the operator for failure to make timely payments as required to comply with
11 the terms of the agreement;
12 (2) Involuntary repayment by pursuing court action; or
13 (3) Wage garnishment as permitted by law.

14 ~~(a) An overpayment made as a result of inadvertent error or fraudulent misrepresentation by the recipient or provider~~
15 ~~as described in Rule .0308(a) of this Section shall be recouped as follows:~~

- 16 ~~(1) From the recipient if the recipient at the time the overpayment occurred was at least 18 years of age~~
17 ~~or older; and~~
18 ~~(2) By:~~
19 ~~(A) voluntary repayment by the recipient or provider by;~~
20 ~~(B) involuntary repayment by pursuing court action; or~~
21 ~~(C) wage garnishment as permitted by law.~~

22 (b) An overpayment made to an operator as a result of fraudulent misrepresentation by the recipient or operator
23 shall be recouped by:

- 24 (1) Withholding the amount overpaid from monies due to the operator for services provided pursuant
25 to the state's Subsidized Child Care Assistance Program;
26 (2) Repayment agreement made with the local purchasing agency; however, the local purchasing
27 agency shall prosecute the operator for failure to make timely payments as required to comply with
28 the terms of the agreement;
29 (3) Involuntary repayment by pursuing court action; or
30 (4) Wage garnishment as permitted by law.

31 ~~(b)(c) An overpayment made due to agency error in complying with program rules and statutes shall be corrected by~~
32 ~~adjustment through the state's subsidized child care~~ Subsidized Child Care Assistance payment system.

33 ~~(c)(d) An underpayment made due to agency or provider operator error in complying with program rules and~~
34 ~~statutes shall be corrected within 30 days of discovery of the error, but in no event shall an underpayment be~~
35 ~~corrected more than 90 days from the date of the underpayment. the local purchasing agency is not required to~~
36 ~~correct the underpayment if it is discovered more than 45 days from the date the payment is made.~~

37 ~~(d)(e)~~ Appeals pursuant to this Rule shall be in accordance with 10A NCAC 10 .0311 and 10A NCAC 10 .0312.

1 *History Note: Authority G.S. 143B-153;*
2 *Eff. April 1, 2001;*
3 *Amended Eff. December 1, 2011;*
4 *Readoption Eff. February 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Social Services Commission

RULE CITATION: 10A NCAC 10 .0313

DEADLINE FOR RECEIPT: Friday, December 8, 2017

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), by G.S. 110-90, do you mean 110-90(5) and (9)?

In (a), just so I'm clear about the process, approval to participate in the Child Care Assistance Program can be given before a license is issued?

In (c) and throughout this Rule, is "operator" defined somewhere? I know that it is defined in the Child Care Rules in 10A NCAC 09 .0102, but is it defined somewhere in these Rules? The only definition I see related to this is "owner" or "provider" in 10A NCAC 10 .0102. Do you actually mean "owner" or "provider" since they are defined terms within this Chapter?

In (c), line 11, by "may", do you mean "shall"? Based upon the language in (a), it appears as though this would not be discretionary. (a) says that the approval will last 45 days after the administrative action, (b) says that an appeal will not stay that time. If the approval remains for 45 days, shouldn't they continue to receive payment for that time? If that is not correct, and this is in fact discretionary, how is the determination made as to how long the payments will continue?

In (c), line 11, and (e), line 17, please change "is" to "shall be."

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: November 28, 2017

1 10A NCAC 10 .0313 is readopted with changes as published in 32:02 NCR 59 as follows:

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3 10A NCAC 10 .0313 TERMINATION OF APPROVAL BASED UPON AN EFFECT OF
4 ADMINISTRATIVE ACTION ISSUED AGAINST PROVIDER OPERATOR

5 (a) Approval to participate in the Subsidized Child Care Assistance Program ~~All child care subsidy payments made~~
6 ~~pursuant to a Provider Agreement~~ shall terminate 45 days after issuance of an administrative action revoking,
7 summarily suspending, or denying a license to operate a child care facility issued pursuant to G.S. 110-90.

8 (b) An appeal of an administrative action revoking, summarily suspending, or denying a license ~~does~~ shall not stay
9 the termination of approval to participate in the state's Subsidized Child Care ~~Program.~~ Assistance Program.

10 (c) ~~If under appeal,~~ If the operator appeals the termination of approval, the maximum time period during which
11 payments from the state's Subsidized Child Care Assistance Program may be made is 45 days from the date on the
12 notice of the administrative action.

13 (d) ~~A provider~~ An operator subject to administrative action as described in this Rule Paragraph shall not be paid with
14 subsidized child care funds for any new children enrolled during the 45 day period after the date on the notice of the
15 administrative action.

16 (e) ~~(c)~~ A child care ~~provider~~ operator who has received an administrative action revoking or denying a license by the
17 Division of Child Development and Early Education, or who is currently under summary suspension, is ineligible to
18 participate in the state's Subsidized Child Care Assistance ~~Program as a nonlicensed child care home.~~ Program. This
19 includes facilities that are exempt from licensure pursuant to G.S. 110-106, facilities operating in other states, and
20 facilities certified by the United States Department of Defense.

21

22 *History Note: Authority G.S. 143B-153;*

23 *Eff. December 1, 2011;*

24 *Readopted Eff. February 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Social Services Commission

RULE CITATION: 10A NCAC 10 .0602

DEADLINE FOR RECEIPT: Friday, December 8, 2017

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

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In reviewing this Rule, the staff recommends the following technical changes be made:

In (a) and throughout this Rule, is "operator" defined somewhere? I know that it is defined in the Child Care Rules in 10A NCAC 09 .0102, but is it defined somewhere in these Rules? The only definition I see related to this is "owner" or "provider" in 10A NCAC 10 .0102. Do you actually mean "owner" or "provider" since they are defined terms within this Chapter?

In (a), when shall operators do these things? I assume, based on the title, that it is only when they wish to enroll in the subsidized child care assistance program. Because agencies can change titles of rules without going through the rule-making process, rules are read without titles. Please be sure that the intent of the Rule is clear within the body of the Rule.

In (a)(1), please consider deleting "to participate" in "enroll to participate", particularly if you add some language to (a) to make it clear that this Rule is only applying to participation in the program.

In (a)(2), Is your regulated familiar with who the program vendor is and how to do this? Is this set forth elsewhere in rule or statute?

Are the contract for payment in (a)(2) and the Provider Agreement in (a)(3) the same?

What is the intent of (a)(3)? Is the requirement simply that they renew the contract? Is this necessary given the requirement that operators "maintain" a contract?

In (b)(1), please delete or define "complete and accurate" as this language is not in .0302(d)(3) or .1721(e)(6). Please also delete the comma following ".0302(d)(3).

In (b)(2), please delete or define "complete and accurate" as this language is not in .0302(d)(4) or .1721(e)(6).

Amber May

Commission Counsel

Date submitted to agency: November 28, 2017

In (b)(3), please delete or define “accurate.” Also, what is meant by “as set forth in this Chapter”? Is this referring to the records of attendance or the participation? Either way, I don’t understand its use here.

How does (b)(3) coincide with (h) of this Rule? They appear to be requiring the same thing.

In (c), does the Block Grant Act set forth the training requirements or do the Rules? I believe it is the Rules. Please consider revising this to read:

To be eligible to participate in the Subsidized Child Care Assistance Program, centers that are exempt from licensure pursuant to G.S. 110-106 [must] shall comply with all staff orientation and training requirements [of the Child Care and Development Block Grant Act, 42 U.S.C. 9858, et seq. as] set forth in 10A NCAC 09 .1101, .1102, and ~~[.0304.]~~.0304, in accordance with the Child Care and Development Block Grant Act, 42 U.S.C. 9858, et seq.

What is the intent of (c)(1) and (e)(1)? Why is 150B-23(c) cross-referenced here? Are you saying that you will notify the operator by a method set forth in GS 1A-1, Rule 4?

In (d), you have used “LPA”; however, in other Rules throughout this Chapter, you have used “local purchasing agency.” Please be consistent.

In (d), how is the Division or LPA to determine whether an operator (or owner or provider, whichever is correct) is out of compliance? Is it based upon review of records, site visits, complaints, and these Rules? I realize that it likely won’t be an all-inclusive list, but some additional information may be helpful here.

In (d)(3), what factors will be used in setting the time limit? Please set forth some information as to how the time limit will be determined.

What is the intent of (f)? I’m not sure that the cross-references are correct or appropriate here. Is the intent to say upon the third instance that the Division or LPA determines an operator (or owner or provider) is out of compliance with any requirement for participation, he or shall be terminated from and ineligible to participate in the program? If so, please say that.

In (g), please delete or define “fully”

In (h), please delete or define “immediately”

In (h), what is meant by “all records pertaining to...” Is this referring to the attendance and time records? Records regarding training? Anything else?

Please consider breaking (j) down a bit more for purposes of clarity. Based upon .0311 and .0312, it appears to me that an operator may appeal pursuant to .0311 if an LPA finds noncompliance and .0312 if Division finds noncompliance. Is this correct? Please clarify in your Rule. Please note

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*that .0311 and .0312 uses the terms “provider or recipient”, not operator.
Please be consistent.*

*Is there any additional authority that can be provided? Does the federal
act require this rule-making?*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road,
Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: November 28, 2017

1 10A NCAC 10 .0602 is redopted with changes as published in 32:02 NCR 59-60 as follows:

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3 10A NCAC 10 .0602 ~~APPROVAL AND CONTINUED PARTICIPATION IN THE SUBSIDIZED CHILD~~
4 CARE ASSISTANCE PROGRAM

5 (a) ~~Application for approval to participate in the state's Subsidized Child Care Program shall be made to the local~~
6 ~~purchasing agency.~~ Operators shall:

- 7 (1) enroll to participate in the State's Subsidized Child Care Assistance Program through the State's
8 automated provider portal located at providerportal.nc.gov;
- 9 (2) enter into and maintain a contract for payment through the State's Subsidized Child Care Assistance
10 Program vendor; and
- 11 (3) enter into the Subsidized Child Care Assistance Program's Provider Agreement annually.

12 ~~(b) Any center [operator] approved for participation in the Subsidized Child Care [Assistance] Program shall continue~~
13 ~~to be eligible for as long as the center [provider or operator] maintains compliance with all of the requirements set~~
14 ~~forth in this Subchapter. [Chapter.]~~

15 (b) For purposes of this Rule, "requirements for participation" in the Subsidized Child Care Assistance Program shall
16 include:

- 17 (1) maintaining complete and accurate daily attendance records in accordance with 10A NCAC 09
18 .0302(d)(3), and .1721(e)(6);
- 19 (2) maintaining complete and accurate records of arrival and departure times for each child in
20 accordance with 1 0A NCAC 09 .0302(d)(4) and .1721(e)(6);
- 21 (3) submitting accurate records of attendance for each child participating in the Subsidized Child Care
22 Assistance Program as set forth in this Chapter;
- 23 (4) maintaining compliance with all of the requirements set forth in this Chapter; and
- 24 (5) complying with the terms and conditions of the Subsidized Child Care Assistant Program's Provider
25 Agreement.

26 (c) To be eligible to participate in the Subsidized Child Care Assistance Program, centers that are exempt from
27 licensure pursuant to G.S. 110-106 must comply with all staff orientation and training requirements of the Child Care
28 and Development Block Grant Act, 42 U.S.C. 9858, et seq. as set forth in 10A NCAC 09 .1101, .1102, and .0304.

29 ~~(e)(d) When a center is found to be out of compliance with any requirement for participation, the Division shall set a~~
30 ~~time limit for compliance. The Division shall base the time limit on the length of time projected to be needed for the~~
31 ~~center to comply with the requirement. If the center fails to comply within the set time limit, approval may be~~
32 ~~terminated.~~ Upon the first instance that the Division or the LPA determines an operator is out of compliance with any
33 requirement for participation the Division shall:

- 34 (1) notify the operator of the non-compliance in accordance with G.S. 150B-23(c); and
- 35 (2) issue a corrective action plan to address the areas of non-compliance and assist the operator to come
36 into compliance; and
- 37 (3) set a time limit for the [center] operator to complete the corrective action plan.

1 (e) Upon the second instance in a two-year period that the Division or the LPA determines an operator is out of
2 compliance with any requirement for participation, the operator shall be prohibited from enrolling new children who
3 receive subsidized child care for one year, and the Division shall:

4 (1) notify the operator of the non-compliance in accordance with G.S. 150B-23(c); and

5 (2) issue a corrective action plan to address the areas of non-compliance and assist the operator to come
6 into compliance; and

7 (3) set a time limit for the ~~center~~ operator to complete the corrective action plan.

8 (f) An operator who fails to maintain compliance in accordance with Paragraphs (c) and (d) of this Rule three times
9 in a two-year period shall be terminated from and permanently ineligible to participate in the Subsidized Child Care
10 Assistance Program.

11 ~~[(g)]~~ When an operator is subject to a corrective action plan, the operator shall be prohibited from accepting any new
12 Subsidized Child Care Assistance Program children.]

13 ~~[(h)]~~ (g) If the operator fails to fully complete the corrective action plan within the required timeframe, the Division
14 shall terminate the operator's participation in the Subsidized Child Care Assistance Program and the operator shall be
15 permanently ineligible to participate in the Subsidized Child Care Assistance Program.

16 ~~(d)~~ ~~(+)~~ (h) Upon request for review by a local, state, or federal agency representative, the operator of a child care ~~center~~
17 facility shall immediately provide all records pertaining to his or her participation in the state's Subsidized Child Care
18 Assistance Program.

19 ~~(+)~~ (i) If the LPA determines an operator to be out of compliance with any requirement for participation in the
20 Subsidized Child Care Assistance Program, the LPA shall notify the Division of the noncompliance within five days
21 of its determination.

22 ~~(k)~~ (j) An operator may appeal a determination of noncompliance or permanent ineligibility under this Rule pursuant
23 to 10A NCAC 10 .0311 and 10A NCAC 10 .0312; however, if the Division issues the determination, the operator may
24 appeal directly to the Division pursuant to 10A NCAC 10 .0312.

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26 *History Note: Authority G.S. 143B-153(2a);*
27 *Eff. February 1, 1986;*
28 *Amended Eff. April 1, 2001; February 1, 1996;*
29 *Emergency Amended Eff. August 22, 2016;*
30 *Temporary Amendment Eff. October 28, 2016;*
31 *Readopted Eff. February 1, 2018.*

1 **10A NCAC 10 .0702 is repealed through readoption as published in 32:02 NCR 60 as follows:**

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3 **10A NCAC 10 .0702 APPROVAL AND CONTINUED PARTICIPATION IN THE SUBSIDIZED CHILD**
4 **CARE PROGRAM**

5

6 *History Note: Authority G.S. 143B-153(2a);*

7 *Eff. January 1, 1988;*

8 *Amended Eff. April 1, 2001; February 1, 1996;*

9 *Emergency Amendment Eff. August 22, 2016;*

10 *Temporary Amendment Eff. October 28, 2016;*

11 *Repealed Eff. February 1, 2018.*