

1 10A NCAC 10 .0309 is readopted with changes 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) For purposes of this Rule, "agency" shall mean the Local Purchasing Agency or the Division.

5 (b) An overpayment made to an operator owner as a result of an inadvertent error by the agency or the  
6 operator shall be recouped by withholding the amount overpaid from monies due to the operator owner for services  
7 provided pursuant to the state's Subsidized Child Care Assistance Program in an amount not to exceed 20 percent of  
8 each payment to the operator owner.

9 (c) Should the operator owner cease to participate in the Subsidized Child Care Assistance Program before the  
10 overpayment is fully repaid, the remaining monies shall be recouped by:

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

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

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

24 (b) (d) An overpayment made to an operator owner as a result of fraudulent misrepresentation by the recipient or  
25 operator owner shall be recouped by:

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

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

35 (e) (d) (e) An underpayment made due to agency or provider operator owner error in complying with program  
36 rules and statutes shall be corrected in the Subsidized Child Care Assistance Program records and by remitting  
37 payment to the owner within 30 days of discovery of the error, but in no event shall an underpayment be corrected

1 more than 90 days from the date of the ~~[underpayment.]~~ underpayment unless the owner was unaware of the  
2 underpayment because the director or other person having primary responsibility for operation of the child care  
3 facility failed to notify the owner. In no event shall the agency correct an underpayment more than one year from the  
4 date of the underpayment. ~~the local purchasing agency is not required to correct the underpayment if it is discovered~~  
5 ~~more than 45 days from the date the payment is made.~~

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

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

9 *Eff. April 1, 2001;*

10 *Amended Eff. December 1, 2011;*

11 *Readoption Eff. February 1, 2018.*

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,~~ ~~revoking~~ or denying a license to operate a child care facility issued pursuant to G.S. ~~110-90.~~  
8 110-90(5) and (9).

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

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

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

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

23  
24 *History Note:* Authority G.S. 143B-153;  
25 Eff. December 1, 2011;  
26 Readopted Eff. February 1, 2018.

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] Owners wishing to participate in the Subsidized Child Care Assistance Program 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](http://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, "complete records" shall mean records having an indication of absent or present for  
16 each day a child is scheduled to attend the facility and "accurate records" shall mean attendance records with an error  
17 rate no greater than 10 percent.

18 (c) For purposes of this Rule, "error" shall mean that for each child the operator marks as present for a particular day  
19 on attendance sheets submitted to the Local Purchasing Agency for purposes of reimbursement from the Subsidized  
20 Child Care Program:

21 (1) neither the daily attendance records required to be kept in accordance with 10A NCAC 09  
22 .0302(d)(3) and 10A NCAC 09 .1721(e)(6) nor the records of arrival and departure times required  
23 to be kept in accordance with 10A NCAC 09 .0302(d)(4) and .1721(e)(6) show the child marked  
24 present; or

25 (2) either the daily attendance records required to be kept in accordance with 10A NCAC 09 .0302(d)(3)  
26 and 10A NCAC 09 .1721(e)(6) or the records of arrival and departure times required to be kept in  
27 accordance with 10A NCAC 09 .0302(d)(4) and .1721(e)(6) show the child marked absent.

28 (d) For purposes of this Rule, "error rate" shall mean the total number of errors divided by the total number of entries  
29 showing the daily attendance of children on attendance sheets submitted to the Local Purchasing Agency for the  
30 purpose of reimbursement from the Subsidized Child Care Program.

31 (e) For purposes of this Rule, "requirements for participation" in the Subsidized Child Care Assistance Program shall  
32 include:

33 (1) maintaining complete and accurate daily attendance records in accordance with 10A NCAC 09  
34 .0302(d)(3) and .1721(e)(6);

35 (2) maintaining complete and accurate records of arrival and departure times for each child in  
36 accordance with 10A NCAC 09 .0302(d)(4) and .1721(e)(6);

- (3) submitting accurate records of attendance for each child participating in the Subsidized Child Care Assistance Program to the Subsidized Child Care Assistance Program;
- (4) maintaining compliance with all of the requirements set forth in this Chapter; and
- (5) complying with the terms and conditions of the Subsidized Child Care Assistance Program's Provider Agreement.

~~(e)~~ (f) To be eligible to participate in the Subsidized Child Care Assistance Program, ~~centers~~ facilities 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.

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

- (1) notify the operator of the non-compliance; ~~non-compliance in accordance with G.S. 150B-23(e);~~
- and
- (2) issue a corrective action plan to address the areas of non-compliance and assist the ~~operator~~ facility to come into compliance; and
- (3) set a time limit for the ~~center~~ operator to complete the corrective action ~~plan.~~ plan depending upon the nature of non-compliance.

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

- (1) notify the operator of the non-compliance; ~~non-compliance in accordance with G.S. 150B-23(e);~~
- and
- (2) issue a corrective action plan to address the areas of non-compliance and assist the ~~operator~~ facility to come into compliance; and
- (3) set a time limit for the ~~center~~ operator to complete the corrective action ~~plan.~~ plan depending upon the nature of non-compliance.

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

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

~~(h)~~ (j) If the operator fails to ~~fully~~ complete the corrective action plan within the required timeframe, the Division shall terminate the ~~operator's~~ owner participation in the Subsidized Child Care Assistance Program and the owner

1 or any operator who is not an owner shall be permanently ineligible to participate in the Subsidized Child Care  
2 Assistance Program.

3 ~~(d)~~~~(i)~~~~(k)~~ Upon request for review by a local, state, or federal agency representative, the operator of a child care center  
4 facility shall immediately provide all records pertaining to his or her participation in the state's Subsidized Child Care  
5 Assistance Program. These records include:

- 6 (1) daily attendance records kept in accordance with 10A NCAC 09 .0302(d)(3) and .1721(e)(6);
- 7 (2) records of arrival and departure times for each child kept in accordance with accordance with 10A  
8 NCAC 09 .0302(d)(4) and .1721(e)(6);
- 9 (3) records of attendance maintained for purposes of the federal Child and Adult Care Food Program;  
10 and
- 11 (4) any other records that show children's attendance at the facility.

12 ~~(j)~~ (l) If the [LPA] Local Purchasing Agency determines ~~an operator~~ a facility to be out of compliance with any  
13 requirement for participation in the Subsidized Child Care Assistance Program, the [LPA] Local Purchasing Agency  
14 shall notify the Division of the noncompliance within five days of its determination.

15 ~~(k)~~ (m) An operator may appeal a determination of noncompliance or permanent ineligibility under this Rule as  
16 follows:

- 17 (1) pursuant to 10A NCAC 10 .0311 if Local Purchasing Agency makes the determination of non-  
18 compliance or permanent ineligibility; or
- 19 (2) pursuant to 10A NCAC 10 .0312 if the Division makes the determination of non-compliance or  
20 permanent ineligibility.

21 ~~[pursuant to 10A NCAC 10 .0311 and 10A NCAC 10 .0312; however, if the Division issues the~~  
22 ~~determination, the operator may appeal directly to the Division pursuant to 10A NCAC 10 .0312.]~~

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