

10A NCAC 10 .0308 is readopted with changes as published in 32:02 NCR 57-58 as follows:

10A NCAC 10 .0308 SANCTIONS AND APPEALS FOR FRAUDULENT MISREPRESENTATION

(a) The local purchasing agency Notwithstanding G.S. 110-107, the Local Purchasing Agency or the Division shall impose sanctions for fraudulent misrepresentation when a person, whether an operator ~~[operator, as defined in G.S. 110-86(7)]~~ provider or recipient of child care subsidies, or someone claiming to be a ~~provider~~ [an operator] an operator or recipient of child care subsidies, does the following:

- (1) ~~With the intent to deceive, makes a false statement or representation regarding a material fact, or~~
omits or fails to disclose a material ~~fact; fact, or submits inaccurate records; [and] as~~
- ~~(2) [(3)] As a result of the false statement or representation or the omission, representation, omission, or~~
submission of inaccurate records, obtains, attempts to obtain, or continues to receive a child care subsidy for himself or herself or for another ~~person; person; or~~
- ~~[(2)] [With reckless disregard as to the accuracy of records, submits inaccurate records to the Department,~~
Division, or local purchasing agency; and]
- ~~(2)~~ Has an error rate in excess of 10 percent.

(b) For purposes of this Rule, the following definitions shall apply:

- (1) “Error rate” shall mean the correct monthly payment divided by the monthly payment paid. The
“correct monthly payment” shall mean the amount that should have been paid if the records
submitted had not contained any errors.
- (2) “Error” shall mean that for each child the operator marks as present for a particular day on
attendance entered into the automated provider portal for purposes of payment from the Subsidized
Child Care Assistance Program:
 - (A) Neither the daily attendance records required to be kept in accordance with 10A NCAC 09
.0302(d)(3) and .1721(e)(6) nor the records of arrival and departure times required to be
kept in accordance with 10A NCAC 09 .0302(d)(4) and .1721(e)(6) show the child marked
present; or
 - (B) Either the daily attendance records required to be kept in accordance with 10A NCAC 09
.0302(d)(3) and .1721(e)(6) or the records of arrival and departure times required to be kept
in accordance with 10A NCAC 09 .0302(d)(4) and .1721(e)(6) show the child marked
absent.

~~(b) [Upon the first instance of fraudulent misrepresentation by a recipient, the] The local purchasing agency [or the~~
~~Division] shall impose the following sanctions for fraudulent misrepresentation in addition to requiring [require] the~~
~~recipient to repay the amount of child care subsidy for which he or she [was] is ineligible to receive: [receive, and the~~
~~recipient shall be permanently ineligible to participate in the Subsidized Child Care Assistance Program.]~~

- ~~(1) After the first incidence of fraudulent misrepresentation by a recipient, the recipient shall be~~
~~ineligible to receive subsidized child care services until overpayment is recouped in full or the local~~

- 1 purchasing agency shall enter into a repayment agreement with the recipient if the recipient so
2 desires;
- 3 (2) After the second incidence of fraudulent misrepresentation by a recipient, the recipient shall be
4 ineligible to participate in the subsidized child care program for three months; and
5 (A) shall repay the overpayment in full; or
6 (B) the local purchasing agency shall enter into a new repayment agreement with the recipient
7 if the recipient so desires;
- 8 (3) After the third incidence of fraudulent misrepresentation by a recipient, the recipient shall be
9 permanently ineligible to participate in the subsidized child care program and shall repay the
10 overpayment in full.
- 11 (4) After the first incidence of fraudulent misrepresentation by a provider the provider shall not be paid
12 with subsidized child care funds for any new children who enroll in the provider's program for 12
13 months; and
14 (A) the provider shall repay the overpayment in full; or
15 (B) the local purchasing agency shall enter into a repayment agreement with the provider if the
16 provider so desires; and
- 17 (5) After the second incidence of fraudulent misrepresentation by a provider, the provider shall repay
18 the overpayment in full, shall be permanently ineligible to participate in the subsidized child care
19 program, and shall not be reimbursed for any services provided to children enrolled in the provider's
20 program from the date of notification of sanction in accordance with G.S. 150B-23(e).
- 21 (c) **Sanctions for fraudulent misrepresentation shall be as follows:**
- 22 (1) Upon the first instance of fraudulent misrepresentation by an [owner,] operator, [the local
23 purchasing agency or the Division shall require the owner to] he or she must repay the amount of
24 child care subsidy for which he or she was ineligible to receive, and the [owner] operator shall be
25 permanently ineligible to participate in the Subsidized Child Care Assistance Program. If a recipient
26 or provider enters into a repayment agreement and fails to comply with terms of that agreement:
27 eligibility to participate in the subsidized child care program shall cease until repayment is made in
28 full or the recipient or provider and the local purchasing agency agree to modify the repayment
29 agreement.
- 30 (2) Upon the first instance of fraudulent misrepresentation by an operator who is not an owner, [the
31 local purchasing agency or the Division shall require the owner to] he or she must repay the amount
32 of child care subsidy for which he or she was ineligible to receive, and the operator who is not an
33 owner shall be permanently ineligible to participate in the Subsidized Child Care Assistance
34 Program in the capacity of an operator.
- 35 (3) Upon the first instance of fraudulent misrepresentation by a recipient, [the local purchasing agency
36 or the Division shall require the recipient to] he or she must repay the amount of child care subsidy

for which he or she was ineligible to receive, and the recipient shall be permanently ineligible to participate in the Subsidized Child Care Assistance Program.

(4) Upon the first instance of fraudulent misrepresentation by someone claiming to be a provider or recipient of child care subsidies, the individual claiming to be a provider or recipient of child care subsidies shall be permanently ineligible to participate in the Subsidized Child Care Assistance Program.

(5) Repayments required under this Paragraph shall be made in accordance with Rule 10A NCAC 10 .0309(d).

(d) ~~Notwithstanding Paragraphs (b) and (c)~~ Subparagraphs (b)(4), (5), and (6) of this Rule, the ~~A~~ recipient or ~~provider~~ operator shall also be permanently ineligible to participate in the ~~subsidized child care program if: Subsidized~~ Child Care Assistance Program if convicted of fraudulent misrepresentation pursuant to G.S. 110-107. ~~When a court of competent jurisdiction finds a recipient or operator guilty of fraudulent misrepresentation pursuant to G.S. 110-107, the sanction imposed is not subject to appeal under this Rule.~~

(1) ~~the total dollar amount of the fraudulent misrepresentation exceeds ten thousand dollars (\$10,000);~~
~~or~~

(2) ~~the recipient or provider is convicted of fraudulent misrepresentation pursuant to G.S. 110-107.~~

(e) Sanctions pursuant to this Rule shall be effective 10 days from the date of notice of the sanction. ~~Appeal of a sanction shall not stay the termination of payments under this Rule.~~

(f) ~~[If an operator subject to a sanction under this Rule sells or transfers ownership of a child care facility, the new owner, as defined in 10A NCAC 10 .0102(5), shall be prohibited from receiving funds through the Subsidy Child Care Assistance Program for six months after the sale or transfer.]~~ ~~If an operator subject to a sanction purchases an existing~~ ~~[a new]~~ child care facility or opens ~~[another]~~ ~~a new~~ facility, the sanction in effect against the operator shall attach to the new ~~or existing~~ child care facility.

(g) ~~The Local Purchasing Agency Division may require the local purchasing agency to investigate instances of suspected fraudulent misrepresentation or suspected falsification by a recipient, or to~~ shall assist the Division in investigating instances of suspected fraudulent misrepresentation or falsification by an operator.

(h) ~~The [local purchasing agency]~~ Local Purchasing Agency shall notify the Division in writing within five days of issuing any sanction. Nothing in this Rule shall be construed as limiting child care services pursuant to 10A NCAC 10 .0906.

~~(f) (i) A child care provider~~ An operator may appeal any sanction imposed in Paragraph ~~(b)~~ (c) of this Rule pursuant to 10A NCAC 10 .0311 and 10A NCAC ~~10 .0312, 10 .0312;~~ however, if the Division issues any sanction pursuant to this Rule, the operator may appeal directly to the Division pursuant to 10A NCAC 10 .0312. A recipient may appeal any sanction imposed in Paragraph ~~(b)~~ (c) of this Rule by following the appeals procedures pursuant to G.S. 108A-79.

~~(g) [(j)] [When a court of competent jurisdiction finds a recipient or] provider [operator] [guilty of fraudulent misrepresentation pursuant to Subparagraph] (d)(2) [(d)] [of this Rule, the sanction imposed is not subject to appeal under this Section.]~~

1 ~~(4e)~~ (j) Nothing in this Rule shall prevent the Division from initiating its own investigation of suspected falsification,
2 inaccurate records, or fraudulent misrepresentation related child care subsidy, and taking administrative action as a
3 result of its findings and conclusions.

4 (k) If the Division issues a sanction in accordance with this Rule, prior to taking any action, the Division shall notify
5 the operator of the proposed action and the operator shall have 15 days to provide information to the Division as to
6 why the action should not be taken. This provision shall not apply to sanctions issued by the Local Purchasing Agency.

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8 *History Note: Authority G.S. 143B-153;*
9 *Eff. April 1, 2001;*
10 *Amended Eff. December 1, 2011;*
11 *Readopted Eff. February 1, 2018.*