



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

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May 17, 2018

Dedra Alston, Rulemaking Coordinator
NC Child Care Commission
Sent via email only: dedra.alston@dhhs.nc.gov

Re: Extension of the Period of Review for Rules 10A NCAC 09 .0401, .1904, .2208 and Objection to Rules 10A NCAC 09 .2201, .2202, .2203, .2204, .2205, .2206, .2207, .2209, .2213, .2216, and .2217

Dear Ms. Alston:

At its meeting the morning, the Rules Review Commission extended the period of review for 10A NCAC 09 .0401, .1904, and .2208 in accordance with G.S. 150B-21.10 at the request of the agency. Pursuant to 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days.

In addition, the Commission objected to Rules 10A NCAC 09 .2201-.2207, .2209, .2213, .2216, and .2217 in accordance with G.S. 150B-21.12 as follows:

- the Commission objected to Rule .2201, finding that Paragraph (b) was ambiguous as written;
- the Commission objected to Rule .2202, finding that it was not within the statutory authority of the agency to issue an administrative action against an "owner" of a child care facility and also found that this Rule was ambiguous as written; and
- the Commission objected to Rules .2203-.2207, .2209, .2213, .2216, and .2217, finding that it was not within the statutory authority of the agency to issue an administrative action against an "owner."

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's actions, please feel free to contact me.

Sincerely,

Amber May
Commission Counsel

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1 **10A NCAC 09 .1904 is repealed through readoption as published in 32:14 NCR 1343 as follows:**

2
3 **10A NCAC 09 .1904 ADMINISTRATIVE SANCTIONS**

4
5 *History Note: Authority G.S. 110-88(5); 110-88(6a); 110-102.2; 110-103.1; 143B-168.3; 150B-3; 150B-23;*
6 *Eff. January 1, 1986;*
7 *Amended Eff. April 1, 2001; August 1, 1990; November 1, 1989; July 1, ~~1988.~~ 1988.*
8 *Repealed Eff. October 1, 2018.*

10A NCAC 09 .2201 is readopted with changes as published in 32:14 NCR 1343-1345 as follows:

SECTION .2200 - ADMINISTRATIVE ACTIONS AND CIVIL PENALTIES

10A NCAC 09 .2201 ADMINISTRATIVE ACTIONS AND CIVIL PENALTIES: GENERAL PROVISIONS

(a) Upon a finding that a child care facility has violated any provision of G.S. 110, Article 7, the Rules of this Chapter, or 10A NCAC 10, Pursuant to G.S. 110-102.2, the ~~secretary~~ Secretary or ~~[their]~~ his or her designee may order one or more administrative ~~penalties~~ actions, civil penalties, or both, ~~both, against any [owner of a child care facility] operator who violates any provision of Article 7 of Chapter 110 of the General Statutes or of this Chapter. [G.S. 110, Article 7, or rules in this Chapter or 10A NCAC 10.]~~ The administrative actions ~~[and civil penalties]~~ include:

- (1) a written reprimand as set forth in Rule .2202 of this Section;
- (2) a written warning as set forth in Rule .2203 of this Section;
- (3) a provisional child care facility license or provisional notice of compliance not to exceed 12 months as set forth in Rule .2204 of this Section;
- (4) a special provisional child care facility license or special provisional notice of compliance not to exceed six months and may include a limited enrollment restriction as set forth in Rule .2207 of this Section;
- (5) a probationary child care facility license or probationary notice of compliance not to exceed 12 months as set forth in Rule .2205 of this Section;
- (6) revocation of the child care facility license, or an order to cease operation to operate a child care facility as set forth in Rule .2209 of this Section;
- (7) summary suspension of the child care facility license, notice of compliance, or other permit to operate a child care facility that results in immediate closure of the facility as set forth in Rule .2213 of this Section;
- (8) denial of an application or child care facility license as set forth in Rule .2215 of this Section;
- (9) suspension of the child care facility license, notice of compliance, or other permit to operate a child care facility not to exceed 12 months and results in closure of the facility on the date of the order as set forth in Rule .2206 of this Section; and
- (10) the assessment of civil penalties as set forth in Rules .2208, .2214, .2216 and .2217 of this Section.

(b) The Division shall consider the following factors when determining the type of administrative action ~~[and civil penalty]~~ to be issued:

- (1) the severity of the violation or incident;
- (2) the probability of recurrence of the violation or incident;
- (3) all prior administrative actions issued to the facility;
- ~~(3)~~ (4) all prior incidents [of] where the Division has determined that abuse, neglect, or child maltreatment occurred at the facility;

1 ~~(4)~~(5) the operator's response to the violation or incident, including actions taken to prevent ~~recurrence~~
2 ~~recurrence~~, such as revision to facility policies and procedures or additional staff training;
3 ~~(5)~~(6) a self- report of the violation or incident was submitted to the Division by the operator; and
4 ~~(6)~~(7) information or records received from local, State, or federal agencies relevant to the violation or
5 incident.

6 Nothing shall prevent the issuance of an administrative action or civil penalty for a situation that does not fit the
7 specified criteria set forth in this Section so long as these factors are considered by the Division.

8 (c) For purposes of this Section, the following definitions shall apply:

9 (1) "Pattern of noncompliance" means ~~documented~~ violations of G.S. 110, Article 7, this Chapter, or
10 10A NCAC 10 ~~documented~~ during a time period of 18 months or less involving ~~similar~~ situations
11 or ~~incidents.~~ incidents for which technical assistance has been provided and the operator continues
12 to demonstrate noncompliance.

13 ~~(2)~~ ["History of noncompliance" means documented violations of G.S. 110, Article 7, this Chapter, or
14 10A NCAC 10 ~~documented~~ over the duration of the child care facility license and includes any
15 ~~previous administrative actions.~~]

16 ~~(3)~~ (2) "Serious harm" "Harm" as referenced in G.S. 110-105.3(b)(3) means:

17 (A) physical, psychological, or emotional injury to a child by a caregiver;

18 (B) an act of omission or commission to a child by a caregiver that is likely to result in or that
19 results in permanent limitations or disability;

20 (C) sexual abuse; or

21 (D) the death of a child.

22 ~~(d)~~ [The Division may levy a civil penalty against any owner who violates any provision of G.S. 110, Article 7, this
23 Chapter, or 10A NCAC 10, or who fails to take corrective action after being provided written notice by the Division.]

24 ~~(b) Nothing in this Section shall restrict the Secretary from using any other statutory or civil penalty available. A civil~~
25 ~~penalty in accordance with G.S. 110-103.1 and Section .2200 of this Chapter may be imposed in conjunction with any~~
26 ~~other administrative activity.~~

27 ~~(e)~~ (d) In accordance with G.S. 150B-(3)(b) the ~~[The]~~ Division shall issue a prior notice of administrative action to
28 the owner or prospective owner regarding the determination to issue a provisional child care facility license or notice
29 of compliance, special provisional child care facility license or notice of compliance, probationary child care facility
30 license or notice of compliance, revocation of the child care facility license, order to cease operation, suspension of
31 the child care facility license or notice of compliance, or denial of a child care facility license or notice of compliance.
32 The owner or prospective owner shall be given an opportunity to respond in writing as to why the administrative
33 action should not be taken. The written response shall be submitted to the Division within 15 days of receiving the
34 prior notice of administrative action. Upon receiving a written request from an owner or operator, the ~~[The]~~ Division
35 shall grant an extension of time not to exceed an additional 15 days, so long as the request is received before the initial
36 response time has ended.

~~(f)~~ (e) The Division may issue a ~~less stringent~~ different type of administrative action based upon the owner's or prospective owner's written response in accordance with Paragraph (d) ~~or the factors in Paragraph (b)~~ of this Rule.

~~(g)~~ (f) The Division shall issue a final notice of administrative action to the owner or prospective owner. The final notice of administrative action shall describe the reasons for its issuance including identification of the statutes or rules violated.

~~(h)~~ (g) When a corrective action plan is included in the notice of administrative action, it shall describe those actions necessary for the operator to be in full compliance with requirements of G.S. 110, Article 7, this Chapter, or 10A NCAC 10, and shall specify a time period for completion of additional requirements that may prevent recurrence, such as training or policy implementation. Corrective action plans may be issued only with a written warning, provisional child care facility license or notice of compliance, special provisional child care facility license or notice of compliance, and probationary child care facility license or notice of compliance. Subject to the exceptions in Paragraph (i) of this Rule, corrective action plans are stayed during the pendency of an appeal.

~~(i)~~ (h) Protection plans and immediate Immediate corrective action plans resulting from an investigation or determination of child maltreatment as set forth in G.S. ~~110-105.3(f)~~ 110-105.3(e) and (f) and restrictions that prohibit new enrollment as set forth in G.S. 110-105.6(f) shall not be stayed during the pendency of an appeal.

~~(j)~~ (i) The issuance of an administrative ~~action or civil~~ penalty may be appealed pursuant to G.S. 150B-23.

~~(k)~~ (j) (i) Following the substantiation of any abuse or neglect complaint or the issuance of any administrative action against a child care facility, an owner, the operator shall: shall post the administrative action, cover letter, and corrective action plan, if applicable, received from the Division in a prominent location visible to parents and visitors near the entrance of the child care facility during the pendency of an appeal and throughout the effective time period of an administrative action. The effective time period shall end as follows:

(1) [an administrative action shall remain posted during the pendency of an appeal and throughout the effective time period of an administrative action.]

(2) [the effective time period shall end:]

~~(A)~~ (1) three months from receipt of a final notice of administrative action containing a written reprimand;

~~(B)~~ (2) three months and upon receipt of a closure letter from the Division stating that the corrective action plan has been completed for a final notice of administrative action containing a written warning;

~~(C)~~ (3) upon issuance of a star rated license following a final notice of administrative action containing a special provisional child care facility license, a provisional child care facility license, or a probationary child care facility license; or

~~(D)~~ (4) upon re-issuance of a notice of compliance following a final notice of administrative action containing a special provisional notice of compliance, a provisional notice of compliance, or a probationary notice of compliance.

(1) maintain copies of documentation of the substantiated complaint investigation or of the administrative action issued against the facility for the past three years in a binder, which is accessible to parents;

(2) within 30 days, notify the parents of the children currently enrolled that a complaint was substantiated or that an administrative action was taken against the facility, including administrative actions that may be stayed pending appeal. The notice shall:

(A) be in writing;

(B) include information on the nature of the substantiated complaint or the type of administrative action taken; and

(C) state where the binder containing copies of the substantiated complaint investigation or administrative action may be found on site for review by the parents; and

(3) document the date that the written notice was given to all parents and have parents sign an acknowledgement that they have received said notice.

~~(4)~~ (i) Following the issuance of an administrative ~~action,~~ action other than a written reprimand, the Division shall monitor the child care facility for compliance with:

(1) the following health and safety requirements:

(A) supervision of children;

(B) discipline, nurture, or care of children;

(C) staff/child ratio;

(D) group size;

(E) licensed capacity;

(F) permit restriction;

(G) CPR training;

(H) First Aid training;

(I) ITS-SIDS training; and

(J) criminal record check requirements regarding pre-service and three-year reassessments in accordance with G.S. 110-90.2(b).

~~(4)~~ (2) ~~[monitor the child care facility for compliance with the health and safety requirements]~~ protection plans and immediate corrective action plans as set forth in G.S. 110-105.3(e) and (f), restrictions that prohibit new enrollment as set forth in G.S. 110-105.6(f), and license restrictions during the time period of the administrative action, including administrative actions that may be stayed pending appeal; and

~~(2)~~ (3) ~~[monitor the child care facility for compliance with]~~ the terms of the administrative action, including license restrictions and completion of the corrective action plan, except for administrative actions that are stayed pending appeal.

~~(m)~~ (k) If the operator fails to achieve compliance during the specified time period of an administrative action, the Division may assess a civil penalty ~~and~~ or take ~~more restrictive~~ additional administrative action to achieve compliance. ~~[compliance, including or up to issuing a revocation of the child care facility license, notice of compliance or other permit to operate a child care facility, or an order to cease operation.]~~

1 *History Note:* *Authority G.S. 110-85; 110-88; 110-90; 110-102.2; 110-103.1; 110-105.3; 110-105.5; 110-105.6;*
2 *143B-168.3; ~~150B-23;~~ 150B-3;*
3 *Eff. July 1, 1988;*
4 *Amended Eff. July 1, 2010; January 1, 2006; April 1, 2001, November 1, ~~1989;~~ 1989;*
5 *Readopted Eff. October 1, 2018.*

1 10A NCAC 09 .2202 is readopted with changes as published in 32:14 NCR 1345 as follows:

2
3 **10A NCAC 09 .2202 WRITTEN REPRIMANDS**

4 A written reprimand may be issued to an owner ~~[in accordance with 10A NCAC 09 .2201]~~ for any violation related
5 to ~~[a brief event]~~ an incident that will not recur in the day-to-day ~~[ordinary]~~ operation of the child care facility and the
6 Division has determined that no corrective action plan is required.

7 ~~(a) A written reprimand may be issued to censure any violation which the Division determines to have been a brief~~
8 ~~un customary event which is unlikely to recur in the ordinary operation of the center or home.~~

9 ~~(b) The reprimand shall describe the reasons for its issuance including identification of the specific section of the~~
10 ~~statutes or rules violated.~~

11
12 *History Note: Authority G.S. 110-88; 110-90; 110-102.2; 143B-168.3;*

13 *Eff. July 1, 1988;*

14 *Amended Eff. April 1, 2001; August 1, 1990; November 1, ~~1989.~~ 1989;*

15 *Readopted Eff. October 1, 2018.*

1 10A NCAC 09 .2203 is readopted with changes as published in 32:14 NCR 1345 as follows:

3 10A NCAC 09 .2203 WRITTEN WARNINGS

4 (a) A written warning and a corrective action plan may be issued to an owner ~~[a child care facility licensee in~~
5 ~~accordance with the provisions of 10A NCAC 09 .2201(a) and (h) and G.S. 110-88(6a)]~~ in regard to any violation to
6 ~~allow the operator an opportunity to demonstrate compliance with all requirements. [including but not limited to,]~~
7 including, but not limited to, these situations:

8 (1) ~~[substantiated violations as a result of a complaint that meets criteria for an administrative action set~~
9 ~~forth in this Rule;]~~ a substantiation of one or more violations as a result of a complaint that do not
10 meet the criteria for a maltreatment finding in accordance with G.S. 110-105.3(b)(3) but for which
11 corrective action is needed;

12 (2) citation of [eight] 16 or more [rule] violations of separate rules in a single visit where the operator
13 does not meet the criteria of other administrative actions set forth in this Section; [Section and has
14 not been subject to an administrative action within the last three years;] or

15 (3) citation of one of the following violations [rules] on two consecutive visits; [visits as set forth in this
16 Paragraph of this Rule;]

17 (a) supervision of children;

18 (b) discipline, nurture, or care of children;

19 (c) staff/child ratio;

20 (d) group size;

21 (e) licensed capacity; [or]

22 (f) permit restriction;

23 (g) CPR training;

24 (h) First Aid training;

25 (i) ITS-SIDS training; and

26 (j) criminal record check requirements regarding pre-service and three-year reassessments in
27 accordance with G.S. 110-90.2(b).

28 [(4)] ~~[receipt of two provisional sanitation classifications within one year or a disapproved sanitation that~~
29 ~~was corrected prior to the Division being notified of the disapproved status;]~~

30 [(5)] ~~[receipt of documentation regarding lead hazards with remediation as provided by the health~~
31 ~~inspector; or]~~

32 [(6)] ~~[two citations of a violation of the provisions of G.S. 110-90.2 regarding criminal history record~~
33 ~~check requirements within an 18-month time period;]~~

34 (b) ~~The written warning and corrective action plan shall describe the reasons for its issuance including identification~~
35 ~~of the specific section of the statutes or rules violated. It shall also describe those actions necessary for the operator to~~
36 ~~be in full compliance with requirements and shall specify a time period for compliance to be achieved.~~

(e) ~~If the operator fails to achieve compliance during the specified time period, the Division shall employ more restrictive action to achieve compliance or shall revoke the permit.~~

*History Note: Authority G.S. 110-88; 110-90; 110-102.2; 143B-168.3;
Eff. July 1, 1998;
Amended Eff. April 1, 2001; November 1, ~~1989~~. 1989;
Readopted October 1, 2018.*

10A NCAC 09 .2204 is adopted with changes as published in 32:14 NCR 1345-1346 as follows:

**10A NCAC 09 .2204 PROVISIONAL CHILD CARE FACILITY LICENSE OR PROVISIONAL
NOTICE OF COMPLIANCE**

A provisional child care facility license or provisional notice of compliance may be issued to an owner ~~a child care facility licensee in accordance with the provisions of 10A NCAC 09 .2201(a) and (h) and G.S. 110-88(6)~~ for any period of time not to exceed 12 ~~consecutive~~ months for, among other things, for the following reasons:

- (1) ~~substantiated violations as a result of a complaint that meets criteria for an administrative action set forth in this Rule; a substantiation of one or more violations as a result of a complaint that do not meet the criteria for a maltreatment finding pursuant to G.S. 110-105.3(b)(3) but for which more than three months is needed to monitor for correction action implementation;~~
- (2) to allow a time period for correcting a violation of the building, fire, or sanitation requirements, provided that the inspector documents that the violation is not hazardous to the health or safety of the ~~children;~~ children, including lead hazard remediation;
- (3) to allow a time period for correction of an administratively dissolved corporation status from the North Carolina Secretary of State;
- ~~(6)(4)~~ when the compliance history of the facility drops below the minimum requirement set forth in G.S. 110-90; ~~or~~
- (5) change of location of a child care facility without proper notification to the Division as specified in Rules 10A NCAC 09 .0204(b), .0403(a), and .1702(d); or
- ~~(10)(6)~~ pattern of noncompliance.
- (3) ~~receipt of more than two provisional sanitation classifications within 12 months, regardless of the approved sanitation classifications that may follow;~~
- (4) ~~receipt of two or more disapproved sanitation classifications within 12 months, regardless of the approved sanitation classifications that may follow;~~
- (5) ~~receipt of a disapproved sanitation classification followed by a provisional sanitation classification at any time, regardless of the approved sanitation classifications that may follow;~~
- (7) ~~citation of one of the following rules on two consecutive visits;~~
 - (a) ~~Supervision of children;~~
 - (b) ~~Discipline, nurture, or care of children;~~
 - (c) ~~Staff/child ratio;~~
 - (d) ~~Group size;~~
 - (e) ~~Licensed capacity;~~
 - (f) ~~CPR training;~~
 - (g) ~~First Aid training;~~
 - (h) ~~ITS-SIDS training; and~~
 - (i) ~~Health and Safety Training;~~

1 (8) ~~citation of 16 or more rule violations in a single visit where the operator does not meet the criteria~~
2 ~~of other administrative actions as set forth in this Section;~~

3 (9) ~~more than two citations of a violation of the provisions of G.S. 110-90.2 regarding criminal history~~
4 ~~record check requirements within an 18-month time period; or~~

5

6 History Note: Authority G.S. 110-88(6); 110-90; 110-99; 143B-168.3;

7 Eff. October 1, 2018.

1 10A NCAC 09 .2205 is readopted with changes as published in 32:14 NCR 1346 as follows:

2
3 **10A NCAC 09 .2204 .2205** **PROBATIONARY LICENSE OR PROBATIONARY NOTICE OF**
4 **COMPLIANCE**

5 A probationary license or probationary notice of compliance may be issued to an owner ~~[in accordance with the~~
6 ~~provisions of 10A NCAC 09 .2201]~~ for any period of time not to exceed 12 ~~[consecutive]~~ months in accordance with
7 the factors listed in 10A NCAC 09 .2201(b) for the following reasons:

- 8 (1) a violation of any section of the G.S. 110, Article 7 of this Chapter that has been willful, continual,
9 or hazardous to the health or safety of children;
10 (2) the operator has failed to comply with the terms of a corrective action plan issued with a written
11 warning or provisional license or notice of compliance; or
12 ~~[(3)]~~ ~~[there is a history of noncompliance with child care requirements; or]~~
13 ~~[(4)]~~ (3) when, in accordance with G.S. 110-105.3, the Division determines that child maltreatment occurred
14 in a child care facility ~~[facility,]~~ and there is a pattern ~~[or history]~~ of noncompliance.

15 ~~(a) A permit may be placed in probationary status for a period of time not to exceed one year when, in the Division's~~
16 ~~determination, violation of any section of the statutes or rules has been willful, continual, or hazardous to health or~~
17 ~~safety.~~

18 ~~(b) The document ordering probation shall describe the reasons for its issuance including identification of the specific~~
19 ~~section of the statutes or rules violated and shall specify the period of probation. It shall also specify terms of probation~~
20 ~~with which the operator must comply to retain the permit.~~

21 ~~(c) The order of probation shall be posted in a prominent place in the center or home during the probationary period.~~
22 ~~If probation is stayed pending appeal, the probation order shall remain posted in the center or home pending final~~
23 ~~action.~~

24 ~~(d) Failure of the operator to comply with the terms of probation shall result in the commencement of proceedings to~~
25 ~~suspend or revoke the permit.~~

26
27 *History Note:* *Authority G.S. 110-88; 110-90; 110-102.2; 143B-168.3;*

28 *Eff. July 1, 1988;*

29 *Amended. Eff. April 1, 2001; November 1, ~~1989~~ 1989;*

30 *Readopted Eff. October 1, 2018 (Transferred from 10A NCAC 09 .0204).*

1 10A NCAC 09 .2206 is readopted with changes as published in 32:14 NCR 1346-1347 as follows:

2
3 10A NCAC 09 ~~.2205~~ .2206 SUSPENSION

4 A suspension ~~Suspension~~ of a [child care facility] license or suspension of a notice of compliance may be [ordered]
5 issued to an owner ~~[a child care facility licensee in accordance with the provisions of 10A NCAC 09 .2201 and]~~ for a
6 time period not to exceed 12 consecutive months for the following reasons:

- 7 (1) the owner of the child care facility is a corporate entity that has been placed under revenue
8 suspension by the North Carolina Secretary of State;
9 (2) when the Division has issued a provisional child care facility license or notice of compliance related
10 to building, fire, or sanitation requirements and the operator has failed to comply; or
11 (3) to allow ~~[allowance of]~~ a specific time period for correcting a violation of building, fire, or sanitation
12 requirements, provided that the appropriate inspector documents that closure of the child care
13 facility is necessary to protect health or safety of children during correction.

14 The suspension of a child care facility license or suspension of a notice of compliance shall not be stayed during the
15 pendency of an appeal.

16 ~~(a) Suspension of a permit for a period of time not to exceed 45 days may be ordered when violation of any section~~
17 ~~of the statutes or rules has been willful, continual, or hazardous to health or safety, and/or the operator has not made~~
18 ~~reasonable efforts to conform to standards.~~

19 ~~(b) The operator shall be notified in advance of the determination to suspend the permit and the reasons for such~~
20 ~~action. The operator may request an agency review of the situation and shall be given an opportunity to show~~
21 ~~compliance with all requirements for retention of the permit.~~

22 ~~(c) The suspension order shall specify the period of suspension and the reasons for its issuance. The operator shall~~
23 ~~surrender the permit to the Division on the effective date of the suspension order and shall refrain from operating a~~
24 ~~center or home during the suspension period.~~

25 ~~(d) If suspension is stayed pending appeal, the suspension order shall be posted in a prominent place in the center or~~
26 ~~home pending final action.~~

27 ~~(e) Failure to comply with the suspension order shall result in civil action in accordance with G.S. 110-103.1 and/or~~
28 ~~criminal penalty in accordance with G.S. 110-103. The Division may also seek injunctive relief in accordance with~~
29 ~~G.S. 110-104.~~

30
31 *History Note:* Authority G.S. 110-88; 110-90; 110-102.2; 143B-168.3; 150B-3;

32 Eff. July 1, 1988;

33 Amended Eff. April 1, 2001; November ~~1989~~, 1989;

34 Readopted Eff. October 1, 2018 (Transferred from 10A NCAC 09 .2205).

10A NCAC 09 .2207 is adopted with changes as published in 32:14 NCR 1347 as follows:

10A NCAC 09 .2207 SPECIAL PROVISIONAL CHILD CARE FACILITY LICENSE OR SPECIAL PROVISIONAL NOTICE OF COMPLIANCE

(a) When the Division determines that child maltreatment has occurred in accordance with G.S. 110-105.3, the Division may issue a ~~A special provisional child care facility license or special provisional notice of compliance may be issued to a child care facility licensee in accordance with the provisions of 10A NCAC 09 .2201(a) and (h). A special provisional child care facility license or special provisional notice of compliance may be issued to an owner for a period not to exceed six months. six month period when the Division determines that child maltreatment has occurred. occurred in a child care facility.~~

(b) A limited enrollment restriction may be included on the special provisional child care facility license or special provisional notice of compliance that prevents new children from being enrolled during the special provisional time period until the Division is satisfied that unsafe conditions no longer exist.

*History Note: Authority G.S. 110-88; 110-90; 110-105.3; 110-105.6; 143B-168.3;
Eff. October 1, 2018.*

1 10A NCAC 09 .2209 is readopted with changes as published in 32:14 NCR 1347-1348 as follows:

2
3 10A NCAC 09 ~~.2206~~ .2209 REVOCATION OF A CHILD CARE FACILITY LICENSE OR AN
4 ORDER TO CEASE OPERATION

5 (a) Revocation of a ~~permit~~ child care facility license or an order to cease operation may be ~~ordered~~ issued to an owner
6 [a child care facility licensee in accordance with the provisions of 10A NCAC 09 .2201] for the following reasons:
7 ~~when violation of any section of the statutes or rules has been willful, continual, or hazardous to health or safety, or~~
8 ~~the operator has not made reasonable efforts to conform to standards or is unable to comply.~~

9 (1) child maltreatment has occurred in a child care facility and [serious] harm occurred as set forth in
10 Rule [~~.2201(e)(3)~~] .2201(c)(2) of this Section;

11 (2) [~~when one or more prior~~ more than two determinations of child maltreatment have occurred at a
12 child care facility within three years;

13 (3) violation of any section of G.S. 110, Article 7 or the Rules of this Chapter or 10A NCAC 10 [the
14 statutes or rules] has been [willful, continual, or hazardous to health or safety of children;] willful
15 or continual as evidenced by:

16 (a) a pattern of noncompliance, and the operator has not made efforts to correct repeated
17 violations or is unable to comply; or

18 (b) the operator has failed to comply with the terms of a corrective action plan issued with a
19 special provisional or probationary license or notice of compliance;

20 (4) violation of any section of G.S. 110, Article 7 or the Rules of this Chapter or 10A NCAC 10 is
21 hazardous to health or safety of children;

22 ~~[(4)]~~ (5) the operator fails to comply with an implemented protection plan as set forth in G.S. 110-105.3(e);

23 ~~[(5)]~~ [the operator fails to comply with immediate corrective action required pursuant to an investigation
24 or determination of child maltreatment as set forth in G.S. 110-105.3(f);]

25 (6) the operator falsifies information in violation of G.S. 110-91(14);

26 ~~[(7)]~~ [the operator fails to comply with the terms of an administrative action or corrective action plan
27 issued with a special provisional or probationary child care facility license or notice of compliance;]

28 ~~[(8)]~~ (7) the compliance history of the facility drops below the minimum requirement set forth in G.S. 110-
29 90 [G.S. 110-90;] and the conditions at the facility are hazardous to the health and safety of the
30 children or staff;

31 ~~[(9)]~~ [history of noncompliance;]

32 ~~[(10)]~~ (8) receipt of a disapproved sanitation classification that is not corrected with a provisional or approved
33 sanitation classification; or

34 ~~[(11)]~~ [change of ownership of a child care facility without proper notification to the Division as specified
35 in Rules 10A NCAC 09 .0204(a), .0403(a), and .1702(j);]

36 ~~[(12)]~~ [change of location of a child care facility without proper notification to the Division as specified in
37 Rules 10A NCAC 09 .0204(b), .0403(a), and .1702(d); or]

1 ~~[(13)]~~(9) the owner of the child care facility is a corporate entity that has been ~~administratively dissolved~~
2 placed under revenue suspension from the North Carolina Secretary of ~~[State.]~~ State that has not
3 been corrected within one year of issuance of a Suspension as set forth in Rule .2206 of this Section.

4 (b) The operator shall be notified in advance of the determination to revoke the permit and the reasons for such action.
5 The operator may request an agency review of the situation and shall be given an opportunity to show compliance
6 with all requirements for retention of the permit.

7 ~~(c) The revocation order shall specify the reasons for its issuance and the effective date of revocation and shall be~~
8 ~~posted prominently in the center or home immediately upon receipt. The operator shall surrender the permit on the~~
9 ~~effective date of the revocation order and shall refrain from operating the center or home thereafter.~~

10 ~~(d) Failure to comply with the revocation order shall result in civil action in accordance with G.S. 110-103.1 or a~~
11 ~~criminal penalty in accordance with G.S. 110-103, or both. The Secretary may also seek injunctive relief in accordance~~
12 ~~with G.S. 110-104.~~

13
14 History Note: Authority G.S. 110-88; 110-90; 110-102.2; 143B-168.3; 150B-3;

15 Eff. July 1, 1988;

16 Amended Eff. April 1, 2001; August 1, 1990; November 1, 1989;

17 Readopted Eff. October 1, 2018 (Transferred from 10A NCAC 09 .2206).

1 10A NCAC 09 .2213 is readopted with changes as published in 32:14 NCR 1348 as follows:

2
3 10A NCAC 09 ~~.2207~~ .2213 SUMMARY SUSPENSION

4 The Division may issue a summary suspension of a child care facility license or notice of compliance to an owner if
5 the agency finds that the public health, safety, or welfare requires emergency action. ~~[Summary suspension of a child~~
6 ~~care facility may be ordered to a child care facility licensee in accordance with the provisions of 10A NCAC 09~~
7 ~~.2201 and G.S. 150B-3(e) when, in the Division's determination, immediate action is required to protect the health~~
8 ~~and safety of children in a child care facility regulated by the Division.]~~ The order shall be effective on the date on the
9 date specified in the ~~[order.]~~ order or on service of the certified copy of the order, whichever is later, in accordance
10 with G.S. 150B-3. The order shall be effective during proceedings to suspend or revoke the child care facility license
11 or during proceedings to cease operation of a facility with a notice of compliance. Administrative actions summarily
12 suspending a child care facility license, notice of compliance, or other permit to operate a child care facility shall not
13 be stayed during the pendency of an appeal pursuant to G.S. 150B-3(c).

14 (a) ~~Summary suspension of a permit may be ordered in accordance with G.S. 150B-3(e) when, in the Division's~~
15 ~~determination, emergency action is required to protect the health, safety, or welfare of children in a child care facility~~
16 ~~regulated by the Division.~~

17 (b) ~~The suspension order shall specify the reasons for its issuance including identification of the specific section of~~
18 ~~the statutes and rules violated and the determination of the need for emergency action. The order shall be effective on~~
19 ~~the date specified in the order. The order shall be effective during proceedings to suspend or revoke the permit.~~

20 (c) ~~The operator shall surrender the permit on the effective date of the order and shall refrain from operating a center~~
21 ~~or home until final action is determined.~~

22 (d) ~~Failure to comply with the summary suspension order shall result in civil action in accordance with G.S.~~
23 ~~110-103.1, and/or criminal penalty in accordance with G.S. 110-103. The Division may also seek injunctive relief in~~
24 ~~accordance with G.S. 110-104.~~

25
26 *History Note:* Authority G.S. 110-88; 110-90; 110-102.2; 110-105.6; 143B-168.3; 150B-3;

27 *Eff. July 1, 1988;*

28 *Amended Eff. April 1, 2001; November 1, ~~1989~~ 1989;*

29 *Readopted Eff. October 1, 2018 (Transferred from 10A NCAC 09 .2207).*

1 10A NCAC 09 .2216 is readopted with changes as published in 32:14 NCAC 1348 as follows:

2
3 10A NCAC 09 .~~2209~~ .2216 AMOUNT OF ~~PENALTY~~ CIVIL PENALTIES FOR CHILD CARE
4 FACILITIES

5 (a) The amount of the penalty assessed to a child care facility by the Secretary an owner shall be based upon the
6 following: [following factors:]

7 (1) willful or negligent ~~non-compliance~~ noncompliance by the ~~operator~~, operator;

8 ~~[(2)]~~ [history of non-compliance;]

9 ~~[(3)]~~ (2) extent of deviation from the ~~regulation~~, rule or law;

10 ~~[(4)]~~ (3) evidence of ~~good faith~~ effort to ~~comply~~, comply; and

11 (4) harm or risk of harm to children; and

12 (5) any other factors relevant to the ~~unique~~ situation.

13 (b) The amount of the penalty, within the limitation established by G.S. 110-103.1, shall be in accordance with the
14 following schedule: [schedule and with consideration of the factors set forth in Paragraph (a) of this Rule:]

15 (1) Where [where] a violation presents a clear and imminent danger to the safety of the children, a civil
16 penalty up to one thousand dollars (\$1000) may be imposed;

17 (2) Where [where] a violation endangers, or has the potential to endanger the children's health, safety,
18 or well-being, a civil penalty up to five hundred dollars (\$500.00) may be imposed; [or]

19 (3) Where [where] a violation does not directly endanger the children, a civil penalty of up to two
20 hundred and fifty dollars (\$250.00) may be imposed.

21 (e) A separate penalty may be imposed for each violation.

22 (b) A separate penalty may be imposed for each violation.

23 (c) A civil penalty in an amount up to one thousand dollars (\$1,000) may be imposed for the following violations:

24 (1) Noncompliance with the rules and laws for:

25 (A) staff-child ratios;

26 (B) adequate supervision of children;

27 (C) transportation of children;

28 (D) use of swimming pools and other swim areas;

29 (E) administration of medication;

30 (F) discipline, nurture, or care of children; or

31 (G) medical action plan requirements;

32 (2) Disapproved fire safety, building or sanitation inspection reports;

33 (3) Exceeding licensed capacity of center, or use of unauthorized space;

34 (4) Change of ownership or relocation of center without prior notification to the Division;

35 (5) Determination of child maltreatment at the center as set forth in G.S. 110-105.3;

36 (6) Willful, repeated noncompliance with any requirement; or

37 (7) Denial of entry to a representative of the Department or Division.

1 (d) A civil penalty in an amount up to five hundred dollars (\$500.00) may be imposed for the following violations:

2 (1) Noncompliance with the rules and laws for:

3 (A) staff health requirements;

4 (B) staff qualifications;

5 (C) children's health requirements;

6 (D) proper nutrition;

7 (E) sanitation and personal hygiene practices;

8 (F) indoor or outdoor space;

9 (G) emergency medical plan; or

10 (2) Failure to comply with a corrective action plan.

11 (e) A civil penalty in an amount up to two hundred and fifty dollars (\$250.00) may be imposed for the following
12 violations:

13 (1) Noncompliance with the rules and laws for:

14 (A) safe environment;

15 (B) age-appropriate activities; or

16 (C) staff development;

17 (2) Failure to post current child care license or notice of compliance to operate a child care center; or

18 (3) Failure to maintain records as set forth in Rule .2318 of this Chapter.

19 (f) Other violations of G.S. 110, Article 7 or the Rules of this Chapter or 10A NCAC 10 may result in the assessment
20 of a penalty according to the effect or potential effect of the violation on the safety and well-being of the child.

21
22 *History Note:* Authority G.S. 110-88; 110-90(9); 110-103.1; 143B-168.3;

23 Eff. January 1, 1986; 1989;

24 Readopted Eff. October 1, 2018 (Transferred from 10A NCAC 09 .2209).

10A NCAC 09 .2217 is repealed as published with changes in 32:14 NCR 1348-1349 as follows:

10A NCAC 09 .2213 .2217 SCHEDULE OF CIVIL PENALTIES FOR CHILD CARE CENTERS

(a) The following penalties may be assessed against child care centers [by the Secretary] as defined in G.S. 110-86(3). [110-86(3) for each violation documented. The Division shall consider the factors set forth in Rule .2216(a) of this Section when determining the amount of civil penalties assessed.]

(b) A civil penalty in an amount up to one thousand dollars (\$1,000) may be imposed for the following violations:

(1) Non-compliance [Noncompliance] with the standards [rules and laws] for:

(A) Staff-child [staff-child] ratios;

(B) Adequate [adequate] supervision of children;

(C) Transportation [transportation] of children; or

(D) Use [use] of swimming pools and other swim areas;

(E) [administration of medication];

(F) [discipline, nurture, or care of children; or]

(G) [medical action plan requirements];

(2) Disapproved fire safety, building or sanitation inspection reports;

(3) Exceeding licensed capacity of center, or use of unauthorized space;

(4) Change of ownership or relocation of center without prior notification to the Division;

(5) [Determination of child maltreatment at the center as set forth in G.S. 110-105.3;] Substantiation that a child (or children) was abused or neglected while in the care of the center; or

(6) Willful, repeated pattern of non-compliance [noncompliance] with any requirement over extended period of time. [time; or]

(7) [Denial of entry to an authorized representative of the Department or Division.]

(c) A civil penalty in an amount up to five hundred dollars (\$500.00) may be imposed for the following violations:

(1) Non-compliance [Noncompliance] with the standards [rules and laws] for:

(A) Staff [staff] health requirements;

(B) Staff [staff] qualifications;

(C) Children's [children's] health requirements;

(D) Proper [proper] nutrition;

(E) Sanitation [sanitation] and personal hygiene practices;

(F) Discipline of children;

(G) [(F)] Indoor [indoor] or outdoor space; or

(H) [(G)] Emergency [emergency] medical plan; [or]

(2) Failure to comply with a corrective action plan; [plan.]

(3) Denial of entry to an authorized representative of the department or Division.

(d) A civil penalty in an amount up to two hundred and fifty dollars (\$250.00) may be imposed for the following violations:

1 (1) Non-compliance [~~Noncompliance~~] with the standards to provide: [~~rules and laws for:~~]
2 [~~(A)~~] [~~safe environment;~~]
3 (A)[~~(B)~~] Age-appropriate [~~age appropriate~~] activities; or
4 (B) [~~(C)~~] Staff development. [~~staff development;~~]
5 (2) Failure to post provisional permit; [~~current child care license, notice of compliance or other permit~~
6 to operate a child care facility;] or
7 (3) Failure to maintain accurate records. [~~records as set forth in Rule .2318 of this Chapter.~~]
8 (e) Violation of other standards may result in the assessment of a penalty according to the effect or potential effect of
9 the violation on the safety and well-being of the child.

10
11 History Note: Authority G.S. 110-88; 110-90(9); 110-103.1; 143B-168.3;
12 Eff. January 1, 1986;
13 Amended eff. April 1, 2001, October 1, ~~1991~~. 1991;
14 Repealed Eff. October 1, 2018 (Transferred from .2213).

1 **10A NCAC 09 .0401 is repealed through readoption as published in 32:14 NCR 1340 as follows:**

2
3 **SECTION .0400 - ISSUANCE OF PROVISIONAL AND TEMPORARY LICENSES**

4 **10A NCAC 09 .0401 PROVISIONAL LICENSES FOR FACILITIES**

5
6 *History Note: Authority G.S. 110-88(6); 110-99; 143B-168.3;*

7 *Eff. January 1, 1986;*

8 *Amended Eff. July 1, 1998; April 1, 1992; August 1, 1990; July 1, 1988; January 1, ~~1987~~ 1987;*

9 *Repealed Eff. October 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .1904

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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:

Please include the Rule name in the repeal.

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: April 30, 2018

1 **10A NCAC 09 .1904 is repealed through readoption as published in 32:14 NCR 1343 as follows:**

2
3 *History Note: Authority G.S. 110-88(5); 110-88(6a); 110-102.2; 110-103.1; 143B-168.3; 150B-3; 150B-23;*
4 *Eff. January 1, 1986;*
5 *Amended Eff. April 1, 2001; August 1, 1990; November 1, 1989; July 1, ~~1988~~. 1988;*
6 *Readopted Eff. October 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .2201

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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:

What is the overall intent of (a)? Is it to give your regulated public one Rule to look to give the potential penalties? If so, given that G.S. 110-102.2 only allows for administrative penalties, not civil penalties (which are allowed by G.S. 110-103.1), and paragraph (a) deals with both, please delete "Pursuant to G.S. 110-102.2" and consider the following revision: "Upon a finding that an owner of a child care facility has violated any provision of G.S. 110, Article 7, the Rules of this Chapter, or 10A NCAC 10, the Secretary, or his or her designee, may..." This may require conforming changes within the Subparagraphs.

Alternatively, if the intent of (a) is to address only those penalties contained within 110-102.2, it appears as though (a)(3),(4), (7), (8), and (10) fall outside of 110-102.2. Please revise accordingly.

In (a), please change "their" to "his or her"

On line 6, please capitalize "rules"

What is the difference between a "written reprimand" in (a)(1) and a "written warning" in (a)(2)? I see that 110-102.2 allows both, but I'm not sure what the difference is. Perhaps it would be appropriate to address this in .2202 and .2203?

In (a)(2), should "written warning" be a "written warning and a request for compliance" to track the statutory language?

(a)(4), what is a "special provisional notice of compliance"? Although I do see "notice of compliance", I don't see this (the "special" part) mentioned in your authorizing statutes.

What is a notice of compliance? I assume that your regulated public knows what this is, but I'm not sure. Is this an alternative to a license?

In (a)(5), what is a "probationary notice of compliance"? I don't see this mentioned in your authorizing statutes, but I do see that you have the authority to "place a licensee on probation?" Again, what is a "notice of compliance?"

Amber May

Commission Counsel

Date submitted to agency: April 30, 2018

In (a)(6), what is an “order to cease operation to operate a child care facility”? When would this be used? I only see revocation allowed by your authorizing statutes.

How do the factors in (b) go with the specific circumstances that an action or penalty will occur as set forth in each Rule? I’m a bit unclear how these provisions work together.

In (b)(4), please delete “of” in between “incidents” and “where”

In (b)(5), please also add a comma after “recurrence”

In (b)(6), do you mean whether a self-report occurred? I think that the language here could be more clear.

In (b), page 2, lines 6-7, what is meant by “the specified criteria”? I get the need for some sort of catch all here, but I’m not sure that I understand what criteria is being referenced.

In (c)(2), is it necessary to define “harm”? The definition appears to be essentially restating the definition of “child maltreatment” contained in 110-105.3(b)(3). Is “harm” used elsewhere in your Rules? If so, would it not be appropriate to use the statutorily defined term of “child maltreatment”?

Is (d) necessary? It appears to be duplicative of (a)(10).

In (e), please verify that you intended to address “owners”, rather than “operators.”

What is meant by the first sentence in (e)? Is the intent to simply say that prior to initiating an action for provisions, special provisions, probationary, suspension, or denial, that the Division will provide notice? I’m not sure what exactly is being noticed here. Also, why is a “prospective owner” coming in here? I don’t see it elsewhere.

Again in (e), what is a “order to cease operation”?

In (e), are owners not given an opportunity to respond in other situations? You have a reference to an operator’s response in (b)(5) which appears to address the factors for all actions and penalties – how is the opportunity to respond in (e) different than that referenced in (b)(5)? Is it the difference between owners and operators?

In (e), please consider adding some language saying that an owner may request an extension of time. I think it’s clear that the Division will grant one, and when, but it appears to be missing a step regarding the request. Perhaps just add “Upon the owner’s request at the beginning of the sentence “The Division shall grant...”

In (f), what is meant by “less stringent administrative action”? Since the potential actions don’t appear to go in order of severity in (a), I’m not sure that this is clear. Please delete or define.

In (f), line 37, should “or” be “and”? I assume that you all will use the factors in making this determination?

In (h), when would a “corrective action plan” be issued? Based upon the statutes, these appear to be exclusive to instances of child maltreatment. Please provide some additional information as to when these would be appropriate.

In (h), what is meant by “completion of additional requirements that may prevent recurrence such as training or policy implementation”? Is the specified time period for the requirements to bring the facility into compliance or is it for future requirements to prevent additional issues? It appears to me that there are 3 different parts of the plan. Please consider listing these out to make it more clear.

Please add a comma after “recurrence”

In (k), line 17, please delete or define “prominent” in “prominent location”

Please consider moving (k)(1) and (2) to the end of (k) and making (k)(2)(A) through (D) subparagraphs. The reason being that the intro language makes it appear as though it is going to give posting requirements, not time line requirements. If you chose to do this, it would look something like this:

~~(k) Following the substantiation of any abuse or neglect complaint or the issuance of any administrative action against a child care facility, owner, the operator shall:~~
~~shall post the administrative action, cover letter, and corrective action plan, if applicable, received from the Division in a [prominent] location near the entrance of the child care facility [as follows:~~

~~(1) — an administrative action shall remain posted]~~ during the pendency of an appeal and throughout the effective time period of an administrative action.

~~[(2) — the] The effective time period shall [end:] end as follows:~~

~~[(A)]~~ (1) three months from receipt of a final notice of administrative action containing a written reprimand;

In (l), what are “health and safety requirements”? Do you mean your Rules? If so, would a specific cross-reference be helpful here?

In (m), please delete or define “more restrictive”

In (m), please delete “or up to”

In (m), what is an “order to cease operation”?

Given 110-90(5) and (9), is (j) necessary? It doesn’t appear to provide any additional information.

In your History Note, please add 150b-3 (for summary suspensions.)

Amber May
Commission Counsel
Date submitted to agency: April 30, 2018

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: April 30, 2018

10A NCAC 09 .2201 is readopted with changes as published in 32:14 NCR 1343-1345 as follows:

SECTION .2200 - ADMINISTRATIVE ACTIONS AND CIVIL PENALTIES

10A NCAC 09 .2201 ADMINISTRATIVE ACTIONS AND CIVIL PENALTIES: GENERAL PROVISIONS

(a) Pursuant to G.S. 110-102.2, the ~~secretary~~ Secretary or their designee may order one or more administrative ~~penalties actions, civil penalties, or both,~~ against any owner of a child care facility operator who violates any provision of ~~Article 7 of Chapter 110 of the General Statutes or of this Chapter.~~ G.S. 110, Article 7, or rules in this Chapter or 10A NCAC 10. The administrative actions and civil penalties include:

- (1) a written reprimand as set forth in Rule .2202 of this Section;
- (2) a written warning as set forth in Rule .2203 of this Section;
- (3) a provisional child care facility license or provisional notice of compliance not to exceed 12 months as set forth in Rule .2204 of this Section;
- (4) a special provisional child care facility license or special provisional notice of compliance not to exceed six months and may include a limited enrollment restriction as set forth in Rule .2207 of this Section;
- (5) a probationary child care facility license or probationary notice of compliance not to exceed 12 months as set forth in Rule .2205 of this Section;
- (6) revocation of the child care facility license, or an order to cease operation to operate a child care facility as set forth in Rule .2209 of this Section;
- (7) summary suspension of the child care facility license, notice of compliance, or other permit to operate a child care facility that results in immediate closure of the facility as set forth in Rule .2213 of this Section;
- (8) denial of an application or child care facility license as set forth in Rule .2215 of this Section;
- (9) suspension of the child care facility license, notice of compliance, or other permit to operate a child care facility not to exceed 12 months and results in closure of the facility on the date of the order as set forth in Rule .2206 of this Section; and
- (10) the assessment of civil penalties as set forth in Rules .2208, .2214, .2216 and .2217 of this Section.

(b) The Division shall consider the following factors when determining the type of administrative action and civil penalty to be issued:

- (1) the severity of the violation or incident;
- (2) the probability of recurrence of the violation or incident;
- (3) all prior administrative actions issued to the facility;
- ~~(3)~~ (4) all prior incidents of where the Division has determined that abuse, neglect, or child maltreatment occurred at the facility;

- 1 ~~(4)~~(5) the operator's response to the violation or incident, including actions taken to prevent recurrence
2 such as revision to facility policies and procedures or additional staff training;
3 ~~(5)~~(6) a self- report of the violation or incident to the Division by the operator; and
4 ~~(6)~~(7) information or records received from local, State, or federal agencies relevant to the violation or
5 incident.

6 Nothing shall prevent the issuance of an administrative action or civil penalty for a situation that does not fit the
7 specified criteria set forth in this Section so long as these factors are considered by the Division.

8 (c) For purposes of this Section, the following definitions shall apply:

9 (1) "Pattern of noncompliance" means ~~documented~~ violations of G.S. 110, Article 7, this Chapter, or
10 10A NCAC 10 ~~documented~~ during a time period of 18 months or less involving ~~similar~~ situations
11 or ~~incidents.~~ incidents for which technical assistance has been provided and the operator continues
12 to demonstrate noncompliance.

13 ~~(2)~~ ["History of noncompliance" means documented violations of G.S. 110, Article 7, this Chapter, or
14 10A NCAC 10 ~~documented~~ over the duration of the child care facility license and includes any
15 ~~previous administrative actions.~~]

16 ~~(3)~~ (2) ["Serious harm" "Harm" as referenced in G.S. 110-105.3(b)(3) means:

- 17 (A) physical, psychological, or emotional injury to a child by a caregiver;
18 (B) an act of omission or commission to a child by a caregiver that is likely to result in or that
19 results in permanent limitations or disability;
20 (C) sexual abuse; or
21 (D) the death of a child.

22 (d) The Division may levy a civil penalty against any owner who violates any provision of G.S. 110, Article 7, this
23 Chapter, or 10A NCAC 10, or who fails to take corrective action after being provided written notice by the Division.

24 ~~(b) Nothing in this Section shall restrict the Secretary from using any other statutory or civil penalty available. A civil~~
25 ~~penalty in accordance with G.S. 110-103.1 and Section .2200 of this Chapter may be imposed in conjunction with any~~
26 ~~other administrative activity.~~

27 (e) The Division shall issue a prior notice of administrative action to the owner or prospective owner regarding the
28 determination to issue a provisional child care facility license or notice of compliance, special provisional child care
29 facility license or notice of compliance, probationary child care facility license or notice of compliance, revocation of
30 the child care facility license, order to cease operation, suspension of the child care facility license or notice of
31 compliance, or denial of a child care facility license or notice of compliance. The owner or prospective owner shall
32 be given an opportunity to respond in writing as to why the administrative action should not be taken. The written
33 response shall be submitted to the Division within 15 days of receiving the prior notice of administrative action. The
34 Division shall grant an extension of time not to exceed an additional 15 days, so long as the request is received before
35 the initial response time has ended.

36 (f) The Division may issue a less stringent administrative action based upon the owner's or prospective owner's written
37 response or the factors in Paragraph (b) of this Rule.

1 (g) The Division shall issue a final notice of administrative action to the owner or prospective owner. The final notice
2 of administrative action shall describe the reasons for its issuance including identification of the statutes or rules
3 violated.

4 (h) When a corrective action plan is included in the notice of administrative action, it shall describe those actions
5 necessary for the operator to be in full compliance with requirements of G.S. 110, Article 7, this Chapter, or 10A
6 NCAC 10, and shall specify a time period for completion of additional requirements that may prevent recurrence such
7 as training or policy implementation. Corrective action plans may be issued only with a written warning, provisional
8 child care facility license or notice of compliance, special provisional child care facility license or notice of
9 compliance, and probationary child care facility license or notice of compliance. Subject to the exceptions in Paragraph
10 (i) of this Rule, corrective action plans are stayed during the pendency of an appeal.

11 (i) Protection plans and immediate [Immediate] corrective action plans [resulting from an investigation or
12 determination of child maltreatment] as set forth in G.S. [110-105.3(f)] 110-105.3(e) and (f) and restrictions that
13 prohibit new enrollment as set forth in G.S. 110-105.6(f) shall not be stayed during the pendency of an appeal.

14 ~~(e)(j)~~ The issuance of an administrative action or civil penalty may be appealed pursuant to G.S. 150B-23.

15 ~~(4)(k)~~ Following the substantiation of any abuse or neglect complaint or the issuance of any administrative action
16 against a child care facility, owner, the operator shall: shall post the administrative action, cover letter, and corrective
17 action plan, if applicable, received from the Division in a prominent location near the entrance of the child care facility
18 as follows:

19 (1) an administrative action shall remain posted during the pendency of an appeal and throughout the
20 effective time period of an administrative action.

21 (2) the effective time period shall end:

22 (A) three months from receipt of a final notice of administrative action containing a written
23 reprimand;

24 (B) three months and upon receipt of a closure letter from the Division stating that the
25 corrective action plan has been completed for a final notice of administrative action
26 containing a written warning;

27 (C) upon issuance of a star rated license following a final notice of administrative action
28 containing a special provisional child care facility license, a provisional child care facility
29 license, or a probationary child care facility license; or

30 (D) upon re-issuance of a notice of compliance following a final notice of administrative action
31 containing a special provisional notice of compliance, a provisional notice of compliance,
32 or a probationary notice of compliance.

33 ~~(4)~~ maintain copies of documentation of the substantiated complaint investigation or of the
34 administrative action issued against the facility for the past three years in a binder, which is
35 accessible to parents;

(2) ~~within 30 days, notify the parents of the children currently enrolled that a complaint was substantiated or that an administrative action was taken against the facility, including administrative actions that may be stayed pending appeal. The notice shall:~~

(A) ~~be in writing;~~

(B) ~~include information on the nature of the substantiated complaint or the type of administrative action taken; and~~

(C) ~~state where the binder containing copies of the substantiated complaint investigation or administrative action may be found on site for review by the parents; and~~

(3) ~~document the date that the written notice was given to all parents and have parents sign an acknowledgement that they have received said notice.~~

(l) Following the issuance of an administrative ~~action,~~ action other than a written reprimand, the Division shall:

(1) monitor the child care facility for compliance with health and safety requirements, protection plans and immediate corrective action plans as set forth in G.S. 110-105.3(e) and (f), restrictions that prohibit new enrollment as set forth in G.S. 110-105.6(f), and license restrictions during the time period of the administrative action, including administrative actions that may be stayed pending appeal; and

(2) monitor the child care facility for compliance with the terms of the administrative action, including license restrictions and completion of the corrective action plan, except for administrative actions that are stayed pending appeal.

(m) If the operator fails to achieve compliance during the specified time period of an administrative action, the Division may assess a civil penalty and take more restrictive action to achieve compliance, including or up to issuing a revocation of the child care facility license, notice of compliance or other permit to operate a child care facility, or an order to cease operation.

History Note: Authority G.S. 110-85; 110-88; 110-90; 110-102.2; 110-103.1; 110-105.3; 110-105.5; 110-105.6; 143B-168.3; 150B-23;

Eff. July 1, 1988;

Amended Eff. July 1, 2010; January 1, 2006; April 1, 2001, November 1, 1989; 1989;

Readopted Eff. October 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .2202

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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:

What is meant by "in accordance with 10A NCAC 09 .2201"? Is the cross-reference needed here? I understand that .2201 gives an overview of the potential actions and penalties; however, it does not give authority for the action itself. Please considering deleting.

On line 5, please delete or define "brief"

On line 6, please delete or define "ordinary"

On lines 5-6, what is a corrective action plan? Based upon the statute, this appears to pertain to child maltreatment cases. Do you mean a request for compliance as used in 110-102.2? I just want to be sure that terms remain consistent for purposes of clarity?

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: April 30, 2018

1 **10A NCAC 09 .2202 is readopted as published in 32:14 NCR 1345 as follows:**

2
3 **10A NCAC 09 .2202 WRITTEN REPRIMANDS**

4 A written reprimand may be issued in accordance with 10A NCAC 09 .2201 for any violation related to a brief event
5 that will not recur in the ordinary operation of the child care facility and the Division has determined that no corrective
6 action plan is required.

7 ~~(a) A written reprimand may be issued to censure any violation which the Division determines to have been a brief~~
8 ~~unecustomary event which is unlikely to recur in the ordinary operation of the center or home.~~

9 ~~(b) The reprimand shall describe the reasons for its issuance including identification of the specific section of the~~
10 ~~statutes or rules violated.~~

11
12 *History Note: Authority G.S. 110-88; 110-90; 110-102.2; 143B-168.3;*

13 *Eff. July 1, 1988;*

14 *Amended Eff. April 1, 2001; August 1, 1990; November 1, ~~1989~~. 1989;*

15 *Readopted Eff. October 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .2203

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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:

On line 4, what is a "corrective action plan"? These plans appear to only pertain to child maltreatment cases. Do you mean "requests for compliance" as set forth in 110-102.2(b)?

What is meant by "in accordance with the provisions of 10A NCAC 09 .2201(a) and (h) and G.S. 110-88(6a)? Is a cross-reference needed here? Please consider deleting.

On line 6, is "but not limited to" needed? If not, please delete. If so, please add commas before and after the phrase.

What is meant by Item (1)? Is it to say that if a center has less than 16 violations of separate Rules or that one of the Rules in (3) are violated that the center will get a written warning? If that's correct, I think that it could be more clear? Perhaps it would be helpful to reorganize a bit and include that information in the introductory language at the top of the Rule?

What is the intent of Item (3)? I assume that it is to say that if any of the Rules pertaining to (3)(a) through (j) are violated on 2 consecutive visits, then they will receive a written warning? If that is correct, I think that it could be more clear.

To make sure that I understand the overall intent, am I correct in assuming that if a facility does not meet the criteria of this Rule (or any others), then they will receive a written reprimand? If so, would it be appropriate to add that information to .2202 for purposes of clarity?

Would it be helpful to your regulated public to provide the cross-reference to the specific Rule requirements for each category?

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: April 30, 2018

10A NCAC 09 .2203 is readopted with changes as published in 32:14 NCR 1345 as follows:

10A NCAC 09 .2203 WRITTEN WARNINGS

(a) A written warning and a corrective action plan may be issued to a child care facility licensee in accordance with the provisions of 10A NCAC 09 .2201(a) and (h) and G.S. 110-88(6a) in regard to any violation to allow the operator an opportunity to demonstrate compliance with all requirements, including but not limited to these situations:

- (1) substantiated violations as a result of a complaint that meets criteria for an administrative action set forth in this Rule;
- (2) citation of ~~eight~~ 16 or more ~~rule~~ violations of separate rules in a single visit where the operator does not meet the criteria of other administrative actions set forth in this Section; [Section and has not been subject to an administrative action within the last three years;]
- (3) citation of one of the following ~~rules~~ on two consecutive visits as set forth in this Paragraph of this Rule:
 - (a) supervision of children;
 - (b) discipline, nurture, or care of children;
 - (c) staff/child ratio;
 - (d) group size;
 - (e) licensed capacity; ~~or~~
 - (f) permit restriction;
 - (g) CPR training;
 - (h) First Aid training;
 - (i) ITS-SIDS training; and
 - (j) criminal record check requirements regarding pre-service and three-year reassessments in accordance with G.S. 110-90.2(b).
- ~~(4) [receipt of two provisional sanitation classifications within one year or a disapproved sanitation that was corrected prior to the Division being notified of the disapproved status;]~~
- ~~(5) [receipt of documentation regarding lead hazards with remediation as provided by the health inspector; or]~~
- ~~(6) [two citations of a violation of the provisions of G.S. 110-90.2 regarding criminal history record check requirements within an 18 month time period.]~~

(b) ~~The written warning and corrective action plan shall describe the reasons for its issuance including identification of the specific section of the statutes or rules violated. It shall also describe those actions necessary for the operator to be in full compliance with requirements and shall specify a time period for compliance to be achieved.~~

(c) ~~If the operator fails to achieve compliance during the specified time period, the Division shall employ more restrictive action to achieve compliance or shall revoke the permit.~~

History Note: Authority G.S. 110-88; 110-90; 110-102.2; 143B-168.3;

1 *Eff. July 1, 1998;*
2 *Amended Eff. April 1, 2001; November 1, ~~1989~~ 1989;*
3 *Readopted October 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .2204

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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:

What is meant by "in accordance with the provisions of 10A NCAC 09 .2201(a) and (h) and G.S. 110-88(6)? Is a cross-reference needed here? Please consider deleting.

What is meant by Item (1)? Perhaps it would be helpful to reorganize a bit and include that information in the introductory language at the top of the Rule?

Would it be helpful to your regulated public to add the specific Rules for the requirements contained in Items (2) and (3) as you have in Item (5)?

Please delete "or" at the end of Item (4).

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: April 30, 2018

1 10A NCAC 09 .2204 is adopted with changes as published in 32:14 NCR 1345-1346 as follows:

2
3 10A NCAC 09 .2204 PROVISIONAL CHILD CARE FACILITY LICENSE OR PROVISIONAL
4 NOTICE OF COMPLIANCE

5 A provisional child care facility license or provisional notice of compliance may be issued to a child care facility
6 licensee in accordance with the provisions of 10A NCAC 09 .2201(a) and (h) and G.S. 110-88(6) for any period of
7 time not to exceed 12 consecutive months for the following reasons:

- 8 (1) substantiated violations as a result of a complaint that meets criteria for an administrative action set
9 forth in this Rule;
- 10 (2) to allow a time period for correcting a violation of the building, fire, or sanitation requirements,
11 provided that the inspector documents that the violation is not hazardous to the health or safety of
12 the ~~children;~~ children, including lead hazard remediation;
- 13 (3) to allow a time period for correction of an administratively dissolved corporation status from the
14 North Carolina Secretary of State;
- 15 ~~(6)(4)~~ when the compliance history of the facility drops below the minimum requirement set forth in G.S.
16 110-90; or
- 17 (5) change of location of a child care facility without proper notification to the Division as specified in
18 Rules 10A NCAC 09 .0204(b), .0403(a), and .1702(d); or
- 19 ~~(10)(6)~~ pattern of noncompliance.
- 20 (3) ~~receipt of more than two provisional sanitation classifications within 12 months, regardless of the~~
21 ~~approved sanitation classifications that may follow;~~
- 22 (4) ~~receipt of two or more disapproved sanitation classifications within 12 months, regardless of the~~
23 ~~approved sanitation classifications that may follow;~~
- 24 (5) ~~receipt of a disapproved sanitation classification followed by a provisional sanitation classification~~
25 ~~at any time, regardless of the approved sanitation classifications that may follow;~~
- 26 (7) ~~citation of one of the following rules on two consecutive visits;~~
 - 27 (a) ~~Supervision of children;~~
 - 28 (b) ~~Discipline, nurture, or care of children;~~
 - 29 (c) ~~Staff/child ratio;~~
 - 30 (d) ~~Group size;~~
 - 31 (e) ~~Licensed capacity;~~
 - 32 (f) ~~CPR training;~~
 - 33 (g) ~~First Aid training;~~
 - 34 (h) ~~ITS SIDS training; and~~
 - 35 (i) ~~Health and Safety Training;~~
- 36 (8) ~~citation of 16 or more rule violations in a single visit where the operator does not meet the criteria~~
37 ~~of other administrative actions as set forth in this Section;~~

1 (9) ~~more than two citations of a violation of the provisions of G.S. 110-90.2 regarding criminal history~~
2 ~~record check requirements within an 18-month time period; or~~
3
4 *History Note:* *Authority G.S. 110-88(6); 110-90; 110-99; 143B-168.3;*
5 *Eff. October 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .2205

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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:

What is the difference between a "license" and a "notice of compliance"? I asked about this back in .2201. If this is addressed elsewhere, please ignore this note.

What is meant by "in accordance with the provisions of 10A NCAC 09 .2201(a)? Is a cross-reference needed here? Please consider deleting.

How is the amount of time the probationary period will last determined? Is this based upon the factors contained in .2201(b)?

In Item (3), please delete the comma after "facility"

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: April 30, 2018

10A NCAC 09 .2205 is readopted with changes as published in 32:14 NCR 1346 as follows:

10A NCAC 09 .~~2204~~ .2205 PROBATIONARY LICENSE OR PROBATIONARY NOTICE OF COMPLIANCE

A probationary license or probationary notice of compliance may be issued in accordance with the provisions of 10A NCAC 09 .2201 for any period of time not to exceed 12 consecutive months for the following reasons:

- (1) a violation of any section of the G.S. 110, Article 7 of this Chapter that has been willful, continual, or hazardous to the health or safety of children;
- (2) the operator has failed to comply with the terms of a corrective action plan issued with a written warning or provisional license or notice of compliance; **or**
- ~~[(3)]~~ [there is a history of noncompliance with child care requirements; **or**
- ~~[(4)]~~ (3) when, in accordance with G.S. 110-105.3, the Division determines that child maltreatment occurred in a child care facility, and there is a pattern [or history] of noncompliance.

~~(a) A permit may be placed in probationary status for a period of time not to exceed one year when, in the Division's determination, violation of any section of the statutes or rules has been willful, continual, or hazardous to health or safety.~~

~~(b) The document ordering probation shall describe the reasons for its issuance including identification of the specific section of the statutes or rules violated and shall specify the period of probation. It shall also specify terms of probation with which the operator must comply to retain the permit.~~

~~(c) The order of probation shall be posted in a prominent place in the center or home during the probationary period. If probation is stayed pending appeal, the probation order shall remain posted in the center or home pending final action.~~

~~(d) Failure of the operator to comply with the terms of probation shall result in the commencement of proceedings to suspend or revoke the permit.~~

History Note: Authority G.S. 110-88; 110-90; 110-102.2; 143B-168.3;

Eff. July 1, 1988;

Amended. Eff. April 1, 2001; November 1, ~~1989~~ 1989;

Readopted Eff. October 1, 2018 (Transferred from 10A NCAC 09 .0204).

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .2206

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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:

What is the difference between a "license" and a "notice of compliance"? I asked about this back in .2201. If this is addressed elsewhere, please ignore this note.

Lines 4-5, was it intentional to say that it "may be ordered to "a child care facility licensee"? .2201(a) says that the action or penalty will be issued against "any owner of a child care facility." Please be consistent.

On line 5, what is meant by "in accordance with the provisions of 10A NCAC 09 .2201(a)? Is a cross-reference needed here? Please consider deleting.

How is the amount of time the probationary period will last determined? Is this based upon the factors contained in .2201(b)?

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: April 30, 2018

10A NCAC 09 .2206 is readopted as published in 32:14 NCR 1346-1347 as follows:

10A NCAC 09 .2205 .2206 SUSPENSION

Suspension of a child care facility license or suspension of a notice of compliance may be ordered to a child care facility licensee in accordance with the provisions of 10A NCAC 09 .2201 and for a time period not to exceed 12 consecutive months for the following reasons:

- (1) the owner of the child care facility is a corporate entity that has been placed under revenue suspension by the North Carolina Secretary of State;
- (2) when the Division has issued a provisional child care facility license or notice of compliance related to building, fire, or sanitation requirements and the operator has failed to comply; or
- (3) allowance of a specific time period for correcting a violation of building, fire, or sanitation requirements, provided that the appropriate inspector documents that closure of the child care facility is necessary to protect health or safety of children during correction.

The suspension of a child care facility license or suspension of a notice of compliance shall not be stayed during the pendency of an appeal.

~~(a) Suspension of a permit for a period of time not to exceed 45 days may be ordered when violation of any section of the statutes or rules has been willful, continual, or hazardous to health or safety, and/or the operator has not made reasonable efforts to conform to standards.~~

~~(b) The operator shall be notified in advance of the determination to suspend the permit and the reasons for such action. The operator may request an agency review of the situation and shall be given an opportunity to show compliance with all requirements for retention of the permit.~~

~~(c) The suspension order shall specify the period of suspension and the reasons for its issuance. The operator shall surrender the permit to the Division on the effective date of the suspension order and shall refrain from operating a center or home during the suspension period.~~

~~(d) If suspension is stayed pending appeal, the suspension order shall be posted in a prominent place in the center or home pending final action.~~

~~(e) Failure to comply with the suspension order shall result in civil action in accordance with G.S. 110-103.1 and/or criminal penalty in accordance with G.S. 110-103. The Division may also seek injunctive relief in accordance with G.S. 110-104.~~

*History Note: Authority G.S. 110-88; 110-90; 110-102.2; 143B-168.3; 150B-3;
Eff. July 1, 1988;
Amended Eff. April 1, 2001; November 1989; 1989;
Readopted Eff. October 1, 2018 (Transferred from 10A NCAC 09 .2205).*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .2207

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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:

What is the difference between a "license" and a "notice of compliance"? I asked about this back in .2201. If this is addressed elsewhere, please ignore this note.

Lines 4-5, was it intentional to say that it may be issued to "a child care facility licensee"? .2201(a) says that the action or penalty will be issued against "any owner of a child care facility." (h) references an operator. Please be consistent.

On line 6, what is meant by "in accordance with the provisions of 10A NCAC 09 .2201(a) and (h)? Is a cross-reference needed here? Please consider deleting.

How is it determined whether a special provisional license or notice of compliance would be appropriate? In some of the other Rules, there are specific instances that would warrant the other actions, but it is unclear to me how the determination will be made here. Based upon the language of 110-88(6a), it appears as though these will be only be issued in child abuse or neglect cases. Please make that more clear. A suggestion would be to add some language at the beginning of the Rule such as "When an investigation pursuant to G.S. 110-105(a)(3) substantiates abuse or neglect, a special provisional license or special notice of compliance may be issued..." Then say under what circumstances that may occur (is it based upon the factors contained in .2201(b)?)

How is the amount of time the provisional period will last determined? Is this based upon the factors contained in .2201(b)?

Would it be helpful to break this Rule into 2 paragraphs – the first regarding the special provisional licenses and notices of compliance and the second regarding the limited enrollment restriction? Please consider.

How will it be determined whether the limited enrollment provision is included? Is this based upon the factors contained in .2201(b)?

On line 11, please consider changing "is satisfied" to "determines"

Amber May
Commission Counsel
Date submitted to agency: April 30, 2018

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: April 30, 2018

1 **10A NCAC 09 .2207 is adopted with changes as published in 32:14 NCR 1347 as follows:**

2
3 **10A NCAC 09 .2207 SPECIAL PROVISIONAL CHILD CARE FACILITY LICENSE OR SPECIAL**
4 **PROVISIONAL NOTICE OF COMPLIANCE**

5 A special provisional child care facility license or special provisional notice of compliance may be issued to a child
6 care facility licensee in accordance with the provisions of 10A NCAC 09 .2201(a) and (h). A special provisional child
7 care facility license or special provisional notice of compliance may be issued for a period not to exceed six -months
8 ~~six-month period~~ when the Division determines that child maltreatment has occurred. ~~occurred in a child care facility.~~

9 A limited enrollment restriction may be included on the special provisional child care facility license or special
10 provisional notice of compliance that prevents new children from being enrolled during the special provisional time
11 period until the Division is satisfied that unsafe conditions no longer exist.

12
13 *History Note: Authority G.S. 110-88; 110-90; 110-105.3; 110-105.6; 143B-168.3;*
14 *Eff. October 1, 2018.*

1 **10A NCAC 09 .2208 is repealed through readoption as published in 32:14 NCR 1347 as follows:**

2

3 **10A NCAC 09 .2208 CIVIL PENALTIES: SCOPE AND PURPOSE**

4

5 *History Note: Authority G.S. 110-90(9); 110-103.1; 143B-168.3;*

6 *Eff. January 1, 1986;*

7 *Amended Eff. April 1, 2001; November 1, 1989; January 1, ~~1987~~, 1987;*

8 *Repealed Eff. October 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .2209

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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:

What is an "order to cease operation to operate a child care facility"? When would this be used? I only see revocation allowed by your authorizing statutes.

On line 6, what is meant by "in accordance with the provisions of 10A NCAC 09 .2201? Is a cross-reference needed here? Please consider deleting .2201.

Lines 4-5, was it intentional to say that it may be issued to "a child care facility licensee"? .2201(a) says that the action or penalty will be issued against "any owner of a child care facility." I don't see "licensee" used elsewhere in .2201. Please be consistent.

In Item (3), what is meant by "any section of the statutes or rules"? Do you mean "violation of G.S. 110, Article 7 or the Rules of this Chapter or 10A NCAC 10?" If so, please say that.

In Item (3), how will it be determined whether the violation has been "willful, continual, or hazardous"? Also, how will it be determined whether "the operator has not made reasonable efforts to conform to standards or is unable to comply"? Please delete or define "reasonable."

In Item (3), please consider revising "has not made reasonable efforts to conform to standards or is unable to comply" to "has not made efforts or is unable to conform." Also, what "standards"? Is this referring to the violations noted or is this referring to the statute and rules?

In Item (7), please delete the comma after G.S. 110-90.

In Item (8), what is meant by "is not corrected with a provisional or approved classification"? Is this something given by CPH under their sanitation Rules?

Please add an "or" at the end of Item (8).

Amber May
Commission Counsel
Date submitted to agency: April 30, 2018

In Item (9), is the cross-reference to Rule .2206 needed here? It appears to be superfluous language.

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: April 30, 2018

1 10A NCAC 09 .2209 is readopted with changes as published in 32:14 NCR 1347-1348 as follows:

2
3 10A NCAC 09 ~~.2206~~ .2209 REVOCATION OF A CHILD CARE FACILITY LICENSE OR AN
4 ORDER TO CEASE OPERATION

5 (a) Revocation of a ~~permit~~ child care facility license or an order to cease operation may be ~~ordered~~ issued to a child
6 care facility licensee in accordance with the provisions of 10A NCAC 09 .2201 for the following reasons: ~~when~~
7 ~~violation of any section of the statutes or rules has been willful, continual, or hazardous to health or safety, or the~~
8 ~~operator has not made reasonable efforts to conform to standards or is unable to comply.~~

- 9 (1) child maltreatment has occurred in a child care facility and [serious] harm occurred as set forth in
10 Rule [~~.2201(e)(3)~~] .2201(c)(2) of this Section;
11 (2) when [one or more prior] more than two determinations of child maltreatment have occurred at a
12 child care facility within three years;
13 (3) violation of any section of the statutes or rules has been willful, continual, or hazardous to health or
14 safety of [children;] children or the operator has not made reasonable efforts to conform to standards
15 or is unable to comply;
16 (4) the operator fails to comply with an implemented protection plan as set forth in G.S. 110-105.3(e);
17 ~~(5) [the operator fails to comply with immediate corrective action required pursuant to an investigation~~
18 ~~or determination of child maltreatment as set forth in G.S. 110-105.3(f);]~~
19 ~~(6)~~ (5) the operator falsifies information in violation of G.S. 110-91(14);
20 ~~(7)~~ (6) the operator fails to comply with the terms of an administrative action or corrective action plan
21 issued with a special provisional or probationary child care facility license or notice of compliance;
22 ~~(8)~~ (7) the compliance history of the facility drops below the minimum requirement set forth in G.S. 110-
23 90, and the conditions at the facility are hazardous to the health and safety of the children or staff;
24 ~~(9) [history of noncompliance;]~~
25 ~~(10)~~ (8) receipt of a disapproved sanitation classification that is not corrected with a provisional or approved
26 classification;
27 ~~(11) [change of ownership of a child care facility without proper notification to the Division as specified~~
28 ~~in Rules 10A NCAC 09 .0204(a), .0403(a), and .1702(j);]~~
29 ~~(12) [change of location of a child care facility without proper notification to the Division as specified in~~
30 ~~Rules 10A NCAC 09 .0204(b), .0403(a), and .1702(d); or]~~
31 ~~(13)~~ (9) the owner of the child care facility is a corporate entity that has been [administratively dissolved]
32 placed under revenue suspension from the North Carolina Secretary of [State.] State that has not
33 been corrected within one year of issuance of a Suspension as set forth in Rule .2206 of this Section.

34 (b) ~~The operator shall be notified in advance of the determination to revoke the permit and the reasons for such action.~~
35 ~~The operator may request an agency review of the situation and shall be given an opportunity to show compliance~~
36 ~~with all requirements for retention of the permit.~~

1 ~~(c) The revocation order shall specify the reasons for its issuance and the effective date of revocation and shall be~~
2 ~~posted prominently in the center or home immediately upon receipt. The operator shall surrender the permit on the~~
3 ~~effective date of the revocation order and shall refrain from operating the center or home thereafter.~~

4 ~~(d) Failure to comply with the revocation order shall result in civil action in accordance with G.S. 110-103.1 or a~~
5 ~~criminal penalty in accordance with G.S. 110-103, or both. The Secretary may also seek injunctive relief in accordance~~
6 ~~with G.S. 110-104.~~

7
8 *History Note: Authority G.S. 110-88; 110-90; 110-102.2; 143B-168.3; 150B-3;*

9 *Eff. July 1, 1988;*

10 *Amended Eff. April 1, 2001; August 1, 1990; November 1, 1989;*

11 *Readopted Eff. October 1, 2018 (Transferred from 10A NCAC 09 .2206).*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .2213

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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:

Please consider adding some language at the beginning of the Rule such as "If the agency finds that the public health, safety, or welfare requires emergency action..." to provide when a summary suspension may occur.

Please delete the cross-reference to .2201.

On line 7, please add "or on service of the certified copy of the order at the last known address of the licensee, whichever is later" after "on the date specified in the order" to conform with 1500-3. Currently the language of the Rule and the 150B-3 conflict.

Please delete 110-102.2 in your History note – it does not provide authority for summary suspensions.

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: April 30, 2018

1 10A NCAC 09 .2213 is readopted with changes as published in 32:14 NCR 1348 as follows:

2
3 **10A NCAC 09 .2207 .2213 SUMMARY SUSPENSION**

4 Summary suspension of a child care facility may be ordered to a child care facility licensee in accordance with the
5 provisions of 10A NCAC 09 .2201 and G.S. 150B-3(c) when, in the Division's determination, immediate action is
6 required to protect the health and safety of children in a child care facility regulated by the Division. The order shall
7 be effective on the date specified in the order. The order shall be effective during proceedings to suspend or revoke
8 the child care facility license or during proceedings to cease operation of a facility with a notice of compliance.
9 Administrative actions summarily suspending a child care facility license, notice of compliance, or other permit to
10 operate a child care facility shall not be stayed during the pendency of an appeal pursuant to G.S. 150B-3(c).

11 ~~(a) Summary suspension of a permit may be ordered in accordance with G.S. 150B-3(c) when, in the Division's~~
12 ~~determination, emergency action is required to protect the health, safety, or welfare of children in a child care facility~~
13 ~~regulated by the Division.~~

14 ~~(b) The suspension order shall specify the reasons for its issuance including identification of the specific section of~~
15 ~~the statutes and rules violated and the determination of the need for emergency action. The order shall be effective on~~
16 ~~the date specified in the order. The order shall be effective during proceedings to suspend or revoke the permit.~~

17 ~~(c) The operator shall surrender the permit on the effective date of the order and shall refrain from operating a center~~
18 ~~or home until final action is determined.~~

19 ~~(d) Failure to comply with the summary suspension order shall result in civil action in accordance with G.S.~~
20 ~~110-103.1, and/or criminal penalty in accordance with G.S. 110-103. The Division may also seek injunctive relief in~~
21 ~~accordance with G.S. 110-104.~~

22
23 *History Note: Authority G.S. 110-88; 110-90; 110-102.2; 110-105.6; 143B-168.3; 150B-3;*
24 *Eff. July 1, 1988;*
25 *Amended Eff. April 1, 2001; November 1, ~~1989~~, 1989;*
26 *Readopted Eff. October 1, 2018 (Transferred from 10A NCAC 09 .2207).*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .2216

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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:

How do the factors in (a) go with the factors contained in .2201(b)?

G.S. 110-103.1 appears to provide the factors in determining how much penalty shall be addressed – 110-103.1(b) says that “the threat of or extent of harm to children in care as well as consistency of violations shall be considered.” These appear to be different than those contained in (a). Is (a) actually going to whether a civil penalty will be assessed at all, rather than the amount?

How do Rules .2216 and .2217 go together? Is .2216 intended for all facilities (including centers), but .2217 is only applicable to centers? Is .2216 intended to give an overview, but .2217 is intended to give specifics? Are they both necessary? Would it make sense to combine these Rules? I will note that some of the questions I have regarding .2216 are answered by .2217.

In (b), how is it determined whether a violation endangers a child? When read with .2217, I assume that it is based upon the Rule violated?

In (b)(1), please delete or define “clear and imminent”

In (b)(2), what is the difference between “endangers” in (b)(2) and “presents a clear and imminent danger” in (b)(1)? They appear to say the same thing in different ways.

In (b)(3), please delete or define “directly.”

In (c), how is it determined whether a separate penalty will be imposed? Is this based upon the factors (a)?

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: April 30, 2018

1 10A NCAC 09 .2216 is readopted with changes as published in 32:14 NCAC 1348 as follows:

2
3 10A NCAC 09 ~~.2209~~ .2216 AMOUNT OF ~~PENALTY~~ CIVIL PENALTIES FOR CHILD CARE
4 FACILITIES

5 (a) The amount of the penalty assessed to a child care facility by the Secretary shall be based upon the following
6 factors:

7 (1) willful or negligent ~~non-compliance~~ noncompliance by the ~~operator~~, operator;

8 ~~(2) [history of non-compliance;]~~

9 ~~(3) (2)~~ extent of deviation from the ~~regulation~~, rule or law;

10 ~~(4) (3)~~ evidence of ~~good-faith~~ effort to ~~comply~~, comply; and

11 ~~(5) (4)~~ any other factors relevant to the ~~unique~~ situation.

12 (b) The amount of the penalty, within the limitation established by G.S. 110-103.1, shall be in accordance with the
13 following ~~schedule~~: schedule and with consideration of the factors set forth in Paragraph (a) of this Rule:

14 (1) ~~Where~~ where a violation presents a clear and imminent danger to the safety of the children, a civil
15 penalty up to one thousand dollars (\$1000) may be imposed;

16 (2) ~~Where~~ where a violation endangers, or has the potential to endanger the children's health, safety, or
17 well-being, a civil penalty up to five hundred dollars (\$500.00) may be imposed; or

18 (3) ~~Where~~ where a violation does not directly endanger the children, a civil penalty of up to two hundred
19 and fifty dollars (\$250.00) may be imposed.

20 (c) A separate penalty may be imposed for each violation.

21
22 *History Note:* Authority G.S. 110-88; 110-90(9); 110-103.1; 143B-168.3;

23 Eff. January 1, 1986; 1989;

24 Readopted Eff. October 1, 2018 (Transferred from 10A NCAC 09 .2209).

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .2217

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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:

Please delete the cross-reference to .2201.

In (a), please consider either deleting “as defined in G.S. 110-86(3)” or move that language before “by the Secretary.” As written, it’s not clear that it’s defining “centers”

Regarding (a), G.S. 110-103.1 appears to provide the factors in determining how much penalty shall be addressed – 110-103.1(b) says that “the threat of or extent of harm to children in care as well as consistency of violations shall be considered.” These appear to be different than those contained in (a).

Would it be helpful to provide specific rule citations for each violation?

Are (b)(3) and (4) Rules that would be appropriate to include in (b)(1)?

In (b)(6), what is the difference in “willful, repeated noncompliance” and a “pattern of noncompliance”?

In (b)(6), please delete or define “extended period of time.” If you keep “extended”, please add “an” before it.

In (b)(7), who is an “authorized representative”?

In (d)(2), what “other permit to operate a child care facility” could there be? Also, this Rule seems applicable only to centers. Please be consistent.

In (d)(2), please add a comma in between “notice of compliance” and “or other permit...”

Would (d)(3) not fall into the category of (d)(1)? Maybe even (d)(2)?

In (e), what are these “standards”?

Amber May
Commission Counsel
Date submitted to agency: April 30, 2018

In the History Note, is 110-102.2 necessary? It speaks to your other administrative penalty options, but does not give authority for the summary suspension (which is contained elsewhere.) Please delete.

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

10A NCAC 09 .2217 is readopted as published in 32:14 NCR 1348-1349 as follows:

10A NCAC 09 .2213 .2217 SCHEDULE OF CIVIL PENALTIES FOR CHILD CARE CENTERS

(a) The following penalties may be assessed against child care centers by the Secretary as defined in G.S. 110-86(3). 110-86(3) for each violation documented. The Division shall consider the factors set forth in Rule .2216(a) of this Section when determining the amount of civil penalties assessed.

(b) A civil penalty in an amount up to one thousand dollars (\$1,000) may be imposed for the following violations:

(1) ~~Non-compliance~~ Noncompliance with the ~~standards~~ rules and laws for:

(A) ~~Staff-child~~ staff-child ratios;

(B) ~~Adequate~~ adequate supervision of children;

(C) ~~Transportation~~ transportation of children; ~~or~~

(D) ~~Use~~ use of swimming pools and other swim areas;

(E) administration of medication;

(F) discipline, nurture, or care of children; or

(G) medical action plan requirements;

(2) Disapproved fire safety, building or sanitation inspection reports;

(3) Exceeding licensed capacity of center, or use of unauthorized space;

(4) Change of ownership or relocation of center without prior notification to the Division;

(5) Determination of child maltreatment at the center as set forth in G.S. 110-105.3; ~~Substantiation that a child (or children) was abused or neglected while in the care of the center; or~~

(6) Willful, repeated ~~pattern of non-compliance~~ noncompliance with any requirement over extended period of ~~time.~~ time; or

(7) Denial of entry to an authorized representative of the Department or Division.

(c) A civil penalty in an amount up to five hundred dollars (\$500.00) may be imposed for the following violations:

(1) ~~Non-compliance~~ Noncompliance with the ~~standards~~ rules and laws for:

(A) ~~Staff~~ staff health requirements;

(B) ~~Staff~~ staff qualifications;

(C) ~~Children's~~ children's health requirements;

(D) ~~Proper~~ proper nutrition;

(E) ~~Sanitation~~ sanitation and personal hygiene practices;

(F) ~~Discipline of children;~~

(G)(F) ~~Indoor~~ indoor or outdoor space; ~~or~~

(H)(G) ~~Emergency~~ emergency medical plan; or

(2) Failure to comply with a corrective action ~~plan;~~ plan.

(3) ~~Denial of entry to an authorized representative of the department or Division.~~

(d) A civil penalty in an amount up to two hundred and fifty dollars (\$250.00) may be imposed for the following violations:

- 1 (1) ~~Non-compliance~~ Noncompliance with the ~~standards to provide~~ rules and laws for:
- 2 (A) safe environment;
- 3 (A)(B) ~~Age-appropriate~~ age-appropriate activities; or
- 4 (B)(C) ~~Staff development~~ staff development;
- 5 (2) Failure to post ~~provisional permit~~; current child care license, notice of compliance or other permit
- 6 to operate a child care facility; or
- 7 (3) Failure to maintain ~~accurate records~~; records as set forth in Rule .2318 of this Chapter.
- 8 (e) Violation of other standards may result in the assessment of a penalty according to the effect or potential effect of
- 9 the violation on the safety and well-being of the child.

10

11 *History Note:* Authority G.S. 110-88; 110-90(9); 110-103.1; 143B-168.3;

12 Eff. January 1, 1986;

13 Amended eff. April 1, 2001, October 1, ~~1991~~. 1991;

14 Readopted Eff. October 1, 2018 (Transferred from .2213).