



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

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June 21, 2012

Dedra Alston
2201 Mail Service Center
Raleigh, NC 27603

Re: 10A NCAC 09 .0901, .0902, .1702, .1706, .1718

Dear Ms. Alston:

At its June 20, 2012 meeting the Rules Review Commission voted to extend the period of review on the above rules in accordance with G.S. 150B-21.13. It did this at the agency's request in order to allow the agency time to determine whether any legislation enacted during the current legislative session would have any effect on these rules and require or allow any changes. This would pertain in particular to the commission counsel's recommendation to object to rules 09 .0901, 1702 and .1706.

I would anticipate that the Commission would be willing to act on any rules that are rewritten to account for legislative changes or counsel's recommendations at the meeting they are submitted to the Commission. Of course you understand I cannot speak for the Commission.

However I would also need sufficient time to review any rewritten rules prior to the meeting. If you submitted them by the Friday prior to the meeting that should be sufficient time.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Joseph J. DeLuca, Jr.
Commission Counsel

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1 10A NCAC 09 .0901 has been amended with changes as published in 26:15 NCR 1072 as follows:

2
3 10A NCAC 09 .0901 GENERAL NUTRITION REQUIREMENTS

4 (a) Meals and snacks served to children in a child care center shall comply with the Meal Patterns for Children in
5 Child Care Programs from the United States Department of Agriculture (USDA) which are based on the
6 recommended nutrient intake judged by the National Research Council to be adequate for maintaining good
7 nutrition. The types of food, number and size of servings shall be appropriate for the ages and developmental levels
8 of the children in care. The Meal Patterns for Children in Child Care Programs are incorporated by reference and
9 include subsequent amendments. A copy of the Meal Patterns for Children in Child Care Programs is available free
10 of charge from the Division at the address in Rule .0102(1) of this Chapter.

11 (b) Menus for nutritious meals and snacks shall be planned at least one week in advance. At least one dated copy of
12 the current week's menu shall be posted where it can be seen easily by parents and food preparation staff when food
13 is prepared or provided by the center, except in centers with a licensed capacity of 3 to 12 children located in a
14 residence. A variety of food shall be included in meals and snacks. Any substitution shall be of comparable food
15 value and shall be recorded on the menu.

16 (c) When children bring their own food for meals or snacks to the center, if the food does not meet the nutritional
17 requirements specified in Paragraph (a) of this Rule, the center must provide additional food necessary to meet those
18 requirements. Food brought from home may reflect familial, cultural and ethnic preferences. [~~preferences, such as a~~
19 ~~vegetarian diet.~~]

20 (d) Drinking water must be freely available to children of all ages. Drinking fountains or individual drinking
21 utensils shall be provided. When a private water supply is used, it must be tested by and meet the requirements of
22 the Commission for Public Health.

23 (e) [~~Children ages two years and older shall be served either skim or low-fat milk.~~] Children shall be served only
24 the following beverages:

25 (1) breast milk;

26 (2) formula;

27 (3) water;

28 (4) whole milk, for children ages 12-24 months;

29 (5) skim or lowfat milk for children two years old and older; or

30 (6) 100 percent fruit juice, limited to 6 ounces per day.

31 [~~(f)~~] (f) Children shall not be served flavored milk or sugary drinks, including Kool-Aid, fruit drinks, sports drinks,
32 sweet tea and soda. [~~No more than 6 ounces of 100 percent fruit juice shall be offered per day.~~]

33 (e)[~~(f)~~](g) Children's special diets or food allergies shall be posted in the food preparation area and in the child's
34 eating area.

35 (f)[~~(g)~~](h) The food required by special diets for medical, religious or cultural reasons, may be provided by the center
36 or may be brought to the center by the parents. If the diet is prescribed by a health care professional, a statement
37 signed by the health care professional shall be on file at the center and written instructions shall be provided by the

1 child's parent, health care professional, or a licensed dietician/nutritionist. If the diet is not prescribed by a health
2 care professional, written instructions shall be provided by the child's parent and shall be on file at the center.

3 ~~(g) [(h)]~~ (i) Food and beverages with little or no nutritional value served as a snack, such as cookies, chips, donuts,
4 ~~sweets, fruit drinks, soft drinks, etc.,~~ shall be available only for special occasions.

5 (j) Staff shall role model appropriate eating behaviors by not consuming foods or beverages with little or no
6 nutritional value in the presence of children in care.

7 ~~(h)~~(k) Parents shall be allowed to provide breast milk for their children. Accommodations for breastfeeding mothers
8 shall be provided that include seating and an electrical outlet in a place other than a bathroom that is shielded from
9 view by staff and the public which may be used by mothers while they are breastfeeding or expressing milk.

10
11 *History Note: Authority G.S. 110-85; 110-91(2); 143B-168.3;*

12 *Eff. January 1, 1986;*

13 *Amended Eff. July 1, 2012; July 1, 2010; July 1, 1998; October 1, 1991; November 1, 1989.*

1 10A NCAC 09 .0902 has been amended as published in 26:15 NCR 1072 as follows:

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3 10A NCAC 09 .0902 GENERAL NUTRITION REQUIREMENTS FOR INFANTS

4 (a) The parent or health care provider of each child under 15 months of age shall provide the center an individual
5 written feeding schedule for the child. This schedule must be followed at the center. This schedule must include the
6 child's name, be signed by the parent or health care provider, and be dated when received by the center. Each
7 infant's schedule shall be modified in consultation, with the child's parent and/ or health care provider, to reflect
8 changes in the child's needs as he or she develops. The feeding instructions for each infant shall be posted for quick
9 reference by the caregivers, except in centers licensed for three to 12 children located in a residence.

10 (b) Each infant will be held for bottle feeding until able to hold his or her own bottle. Bottles will not be propped.
11 Each child will be held or placed in feeding chairs or other age-appropriate seating apparatus to be fed.

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

14
15 *History Note: Authority G.S. 110-85; 110-91(2); 143B-168.3;*

16 *Eff. January 1, 1986;*

17 *Amended Eff. July 1, 2012; July 1, 1998; October 1, 1991; November 1, 1989.*

1 10A NCAC 09 .1702 is has been amended as published in 26:15 NCR 1073-1075 as follows:

2
3 10A NCAC 09 .1702 APPLICATION FOR A LICENSE FOR A FAMILY CHILD CARE HOME

4 (a) Any person who plans to operate a family child care home shall apply for a license using a form provided by the
5 Division. The applicant shall submit the completed application, which complies with the following, to the Division:

6 (1) Only one licensed family child care home shall operate at the location address of any home.

7 (2) The applicant shall list each location address where a licensed family child care home will operate.

8 (b) When a family child care home will operate at more than one location address by cooperative arrangement
9 among two or more families, the following procedures apply:

10 (1) One parent whose home is used as a location address shall be designated the coordinating parent
11 and shall co-sign the application with the applicant.

12 (2) The coordinating parent shall know the current location address at all times and shall provide the
13 information to the Division upon request.

14 (c) The applicant shall assure that the structure in which the family child care home is located complies with the
15 following requirements:

16 (1) The structure complies with the North Carolina Building Code for family child care homes or has
17 written approval for use as a family child care home by the local building inspector.

18 (2) The structure meets North Carolina Residential Building Code or is a manufactured home bearing
19 a third party inspection label certifying compliance with the Federal Manufactured Home
20 Construction and Safety Standards or certifying compliance with construction standards adopted
21 and enforced by the State of North Carolina. Homes shall be installed in accordance with North
22 Carolina Manufactured/Mobile Home Regulations adopted by the NC Department of Insurance.

23 Exception: Single wide manufactured homes are limited to a maximum of three preschool-age
24 children (not more than two may be two years of age or less) and two school-age children.

25 (3) All children are kept on the ground level with an exit at grade.

26 (4) All homes are equipped with an electrically operated (with a battery backup) smoke detector, or
27 one electrically operated and one battery operated smoke detector located next to each other.

28 (5) All homes are provided with at least one five pound 2-A: 10-B: C type extinguisher readily
29 accessible for every 2,500 square feet of floor area.

30 (6) Fuel burning space heaters, fireplaces and floor furnaces which are listed and approved by the
31 Department of Insurance for that installation and are provided with a protective screen attached
32 securely to supports are allowed. Unvented fuel burning heaters and portable electric space
33 heaters of all types are prohibited.

34 (7) All indoor areas used by children are heated when the temperature is below 65 degrees and
35 ventilated when the temperature is above 85 degrees.

36 (8) Hot pipes or radiators which are hot enough to be capable of burning children and are accessible to
37 the children are covered or insulated.

1 ~~(9) Accommodations for breastfeeding mothers are provided that include seating and an electrical~~
2 ~~outlet, in a place other than a bathroom, that is shielded from view by staff and the public, which~~
3 ~~may be used by mothers while they are breastfeeding or expressing milk.~~

4 (d) The applicant shall also submit supporting documentation with the application for a license to the Division. The
5 supporting documentation shall include:

- 6 (1) a copy of the certified criminal history check from the Clerk of Superior Court's office in the
7 county or counties where the applicant and any household member(s) over age 15, have resided
8 during the previous 12 months;
- 9 (2) a copy of documentation of completion of a first aid and cardiopulmonary resuscitation (CPR)
10 course;
- 11 (3) proof of negative results of the applicant's tuberculosis test completed within the past 12 months;
- 12 (4) a completed health questionnaire;
- 13 (5) a copy of current pet vaccinations for any pet in the home;
- 14 (6) a negative well water bacteriological analysis if the home has a private well;
- 15 (7) copies of any inspections required by local ordinances; and
- 16 (8) any other documentation required by the Division according to the rules in this Section to support
17 the issuance of a license.

18 (e) Upon receipt of a complete application and supporting documentation, a Division representative shall make an
19 announced visit to each home unless the applicant meets the criteria in Paragraph (g) of this Rule to determine
20 compliance with the requirements, to offer technical assistance when needed, and to provide information about local
21 resources. The issuance of a license applies as follows:

- 22 (1) If all applicable requirements of G.S. 110 and this Section are met, a license shall be issued;
- 23 (2) If the applicable requirements are not met but the applicant has the potential to comply, the
24 Division representative shall establish with the applicant a time period for the home to achieve
25 compliance. If the Division representative determines that all applicable requirements are met
26 within the established time period, a license shall be issued; or
- 27 (3) If all applicable requirements are not met or cannot be met within the established time, the
28 Division shall deny the application. Final disposition of the recommendation to deny is the
29 decision of the Division.

30 (f) The Division shall allow the applicant to temporarily operate prior to the Division representative's visit described
31 in Paragraph (e) of this Rule when the applicant is currently licensed as a family child care home operator, needs to
32 relocate, and notifies the Division of the relocation; and the Division representative is unable to visit before the
33 relocation occurs. A person shall not operate until he or she has received from the Division either temporary
34 permission to operate or a license.

35 (g) When a person applies for a family child care home license, the Secretary may deny the application for the
36 license under the following circumstances:

- 1 (1) if any child care facility license previously held by that person has been denied, revoked or
2 summarily suspended by the Division;
- 3 (2) if the Division has initiated denial, revocation or summary suspension proceedings against any
4 child care facility license previously held by that person and the person voluntarily relinquished
5 the license;
- 6 (3) during the pendency of an appeal of a denial, revocation or summary suspension of any child care
7 facility license previously held by that person;
- 8 (4) if the Division determines that the applicant has a relationship with an operator or former operator
9 who previously held a license under an administrative action described in Subparagraph (g)(1),
10 (2), or (3) of this Rule. As used in this Rule, an applicant has a relationship with a former operator
11 if the former operator would be involved with the applicant's child care facility in one or more of
12 the following ways:
 - 13 (A) would participate in the administration or operation of the facility;
 - 14 (B) has a financial interest in the operation of the facility;
 - 15 (C) provides care to the children at the facility;
 - 16 (D) resides in the facility; or
 - 17 (E) would be on the facility's board of directors, be a partner of the corporation, or otherwise
18 have responsibility for the administration of the business;
- 19 (5) based on the person's previous non-compliance as an operator with the requirements of G.S. 110
20 and this Chapter; or
- 21 (6) if abuse or neglect has been substantiated against the person, or if abuse or neglect was
22 substantiated against a household member.

23 (h) In determining whether denial of the application for a license is warranted pursuant to Paragraph (g) of this
24 Rule, the Division shall consider:

- 25 (1) any documentation provided by the applicant which describes the steps the applicant will take to
26 prevent reoccurrence of noncompliance issues which led to any prior administrative action taken
27 against a license previously held by the applicant;
- 28 (2) training certificates or original transcripts from a nationally recognized regionally accredited
29 institution of higher learning related to providing quality child care for any coursework, and which
30 were taken subsequent to any prior administrative action taken against a license previously held by
31 the applicant. Nationally recognized means that every state in this nation acknowledges the
32 validity of the coursework taken at higher education institutions that meet the requirements of one
33 of the six regional accrediting bodies;
- 34 (3) proof of employment in a licensed child care facility and references from the administrator or
35 licensee of the child care facility regarding work performance;
- 36 (4) documentation of collaboration or mentorship with a licensed child care provider to obtain
37 additional knowledge and experience related to operation of a child care facility; and

1 (5) documentation explaining relationships with persons meeting the criteria listed in Subparagraph
2 (g)(4) of this Rule.

3 (i) The license shall not be bought, sold, or transferred from one individual to another.

4 (j) The license is valid only for the location address listed on it.

5 (k) The license must be returned to the Division in the event of termination, revocation, suspension, or summary
6 suspension.

7 (l) The license shall be displayed in a prominent place that parents are able to view daily and shall be shown to each
8 child's parent when the child is enrolled.

9 (m) A licensee shall notify the Division whenever a change occurs which affects the information shown on the
10 license.

11
12 *History Note: Authority G.S. 110-85; 110-88(5); 110-91; 110-93; 110-99; 143B-168.3;*

13 *Eff. January 1, 1986;*

14 *Amended Eff. July 1, 2012; August 1, 2011; July 1, 2010; April 1, 2003; April 1, 2001; July 1,*
15 *1998; January 1, 1991; November 1, 1989; January 1, 1987.*

1 10A NCAC 09 .1706 has been adopted with changes as published in 26:15 NCR 1075-1076 as follows:

2
3 10A NCAC 09 .1706 NUTRITION STANDARDS

4 (a) Meals and snacks served to children in a Family Child Care Home shall comply with the Meal Patterns for
5 Children in Child Care Programs from the United States Department of Agriculture (USDA) which are based on the
6 recommended nutrient intake judged by the National Research Council to be adequate for maintaining good
7 nutrition. The types of food, number and size of servings shall be appropriate for the ages and developmental levels
8 of the children in care. The Meal Patterns for Children in Child Care Programs are incorporated by reference and
9 include subsequent amendments. A copy of the Meal Patterns for Children in Child Care Programs is available free
10 of charge from the Division at the address in Rule .0102(1) of this Chapter.

11 (b) When children bring their own food for meals and snacks to the program, if the food does not meet the
12 nutritional requirements specified in Paragraph (a) of this Rule, the operator must provide the additional food
13 necessary to meet those requirements. Food brought from home may reflect familial, cultural and ethnic ~~foods~~;
14 ~~such as vegetarian~~ preferences.

15 (c) The food required by special diets for medical, religious or cultural reasons, may be provided by the operator or
16 may be brought to the program by the parents. If the diet is prescribed by a health care professional, a statement
17 signed by the health care professional shall be on file at the program and written instructions must be provided by
18 the child's parent, health care professional or a licensed dietician/nutritionist. If the diet is not prescribed by a health
19 care professional, written instructions shall be provided by the child's parent and shall be on file at the program.

20 (d) Food with little or no nutritional value ~~served as snack~~, such as cookies, chips, donuts; etc. shall be available
21 only for special occasions.

22 (e) For children ages 24 months and older a meal or snack must be provided at least every four hours.

23 (f) The parent or health care professional of each child under 15 months of age shall provide the operator an
24 individual written feeding schedule for the child. This schedule shall be followed at the home. This schedule shall
25 include the child's name, be signed by the parent or health care professional, and be dated when received by the
26 operator. Each infant's schedule shall be modified in consultation with the child's parent or health care professional
27 to reflect changes in the child's needs as he or she develops.

28 (g) Parents shall be allowed to provide breast milk for their children. Accommodations for breastfeeding mothers
29 are provided that include seating and an electrical outlet, in a place other than a bathroom, that is shielded from view
30 by staff and the public, which may be used by mothers while they are breastfeeding or expressing milk.

31 (h) Each infant shall be held for bottle feeding until able to hold his or her own bottle. Bottles shall not be propped.
32 Each child shall be held or placed in feeding chairs or other age-appropriate seating apparatus to be fed.

33 (i) Any formula which is prepared by the operator shall be prepared according to the instructions on the formula
34 package or label, or according to written instructions from the child's health care professional.

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

37 (k) Drinking water must be freely available and offered to children on a frequent basis.

1 (l) When milk, milk products, or fruit juices are provided by the operator, only pasteurized products or products
2 which have undergone an equivalent process to pasteurization shall be used.

3 (m) ~~Children ages two years and older shall be served either skim or low fat milk.~~ Children shall be served only the
4 following beverages:

5 (1) breast milk;

6 (2) formula;

7 (3) water;

8 (4) whole milk, for children ages 12-24 months;

9 (5) skim or lowfat milk for children two years old and older; or

10 (6) 100 percent fruit juice, limited to 6 ounces per day.

11 (n) Children shall not be served flavored milk or sugary drinks, including Kool-Aid, fruit drinks, sports drinks, sweet
12 tea and soda. ~~No more than 6 ounces of 100 percent fruit juice shall be offered per day.~~

13

14 *History Note: Authority G.S. 110-85; 110-91(2); 143B-168.3;*
15 *Eff. July 1, 2012.*

16

1 10A NCAC 09 .1718 has been amended as published in 26:15 NCR 1076-1077 as follows:

2
3 10A NCAC 09 .1718 REQUIREMENTS FOR DAILY OPERATIONS

4 (a) The operator shall provide the following on a daily basis for all children in care:

5 ~~(1)~~ — Meals and snacks which comply with the Meal Patterns for Children in Child Care Programs from
6 the United States Department of Agriculture (USDA) which are based on the recommended
7 nutrient intake judged by the National Research Council to be adequate for maintaining good
8 nutrition. The types of food and number and size of servings shall be appropriate for the ages and
9 developmental levels of the children in care. The Meal Patterns for Children in Child Care
10 Programs are incorporated by reference and include subsequent amendments. A copy of the Meal
11 Patterns for Children in Child Care Programs is available free of charge from the Division at the
12 address in Rule .0102 of this Chapter;

13 ~~(2)~~ — A meal or snack at least every four hours;

14 ~~(3)~~ — Drinking water freely available to children;

15 ~~(4)~~(1) Developmentally appropriate equipment and materials for a variety of outdoor activities which
16 allow for vigorous play, large and small muscle development, and social, emotional, and
17 intellectual development. Each child shall have the opportunity for outdoor play each day that
18 weather conditions permit. The operator shall provide space and time for vigorous indoor
19 activities when children cannot play outdoors;

20 ~~(5)~~(2) An individual sleeping space such as a bed, crib, play pen, cot, mat, or sleeping bag with
21 individual linens for each pre-school aged child in care for four hours or more, or for all children if
22 overnight care is provided, to rest comfortably. Individual sleep requirements for infants aged 12
23 months or younger shall be provided for as specified in 10A NCAC 09 .1724(a)(2). Linens shall
24 be changed weekly or whenever they become soiled or wet;

25 ~~(6)~~(3) A quiet, separate area which can be easily supervised for children too sick to remain with other
26 children. Parents shall be notified immediately if their child becomes too sick to remain in care;

27 ~~(7)~~(4) Adequate supervision as described below:

28 (A) For children who are awake, staff shall interact with the children while moving about the
29 indoor or outdoor area, and shall be able to hear and see the children at all times, except
30 when emergencies necessitate that direct supervision is impossible for brief periods of
31 time; and

32 (B) For children who are sleeping or napping, the staff are not required to visually supervise
33 them, but shall be able to hear and respond quickly to them. Children shall not sleep or
34 nap in a room with a closed door between the children and the supervising staff. The
35 staff shall be on the same level of the home where children are sleeping or napping.

36 ~~(8)~~(5) A safe sleep environment by ensuring that when a child is sleeping or napping, bedding or other
37 objects shall not be placed in a manner that covers the child's face;

1 ~~(9)~~(6) The opportunity each day for each child under the age of 12 months to play while awake while
2 positioned on his or her stomach;

3 ~~(10)~~(7) Developmentally appropriate activities as planned on a written schedule. Materials or equipment
4 shall be available indoors and outdoors to support the activities listed on the written schedule. The
5 written schedule shall:

6 (A) Show blocks of time usually assigned to types of activities and include periods of time
7 for both active play and quiet play or rest;

8 (B) Be displayed in a place where parents are able to view;

9 (C) Reflect daily opportunities for both free choice and guided activities;

10 (D) Include a minimum of one hour of outdoor play throughout the day, if weather conditions
11 permit; and

12 (E) Include a daily gross motor activity which may occur indoors or outdoors; and

13 ~~(11)~~(8) When screen time, including videos, video games, and computer usage, is provided, it shall be:

14 (A) Offered only as a free choice activity,

15 (B) Used to meet a developmental goal, and

16 (C) Limited to no more than two and a half hours per week for each child two years of age
17 and older.

18 Usage time periods may be extended for specific special events, projects, occasions such as a current event,
19 homework, on-site computer classes, holiday; and birthday celebration. Screen time is prohibited for
20 children under the age of two years. The operator shall offer alternate activities for children under the age
21 of two years.

22 ~~(b) When milk, milk products, or fruit juices are provided by the operator, only pasteurized products or products
23 which have undergone an equivalent process to pasteurization shall be used. Any formula which is prepared by the
24 operator shall be prepared according to the instructions on the formula package or label, or according to written
25 instructions from the child's health care professional.~~

26 ~~(c) Each infant shall be held for bottle feeding until able to hold his or her own bottle. Bottles shall not be propped.
27 Each child shall be held or placed in feeding chairs or other age appropriate seating apparatus to be fed.~~

28 ~~(d) The parent or health care professional of each child under 15 months of age shall provide the operator an
29 individual written feeding schedule for the child. This schedule shall be followed at the home. This schedule shall
30 include the child's name, be signed by the parent or health care professional, and be dated when received by the
31 operator. Each infant's schedule shall be modified in consultation with the child's parent or health care professional
32 to reflect changes in the child's needs as he or she develops.~~

33
34 History Note: Authority G.S. 110-85; 110-88; 110-91(2),(12);
35 Eff. July 1, 1998;
36 Amended Eff. July 1, 2012; July 1, 2010; March 1, 2006; May 1, 2004.