



**STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS**

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September 21, 2012

Dedra Alston  
2201 Mail Service Center  
Raleigh, NC 27699-2201  
Address

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

Dear Ms. Alston:

At its September 20, 2012 meeting the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10.

The Commission objected to these rules based on ambiguity. It is unclear whether the opt-out provisions apply to only the entire supplemental nutrition program or whether a parent may opt-out of individual components of the program.

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 action, please let me know.

Sincerely,

Joseph J. DeLuca, Jr.  
Commission Counsel

JJD:jbe

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COPY

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) Children ages two years and older shall be served either skim or low fat milk.]~~

17 (c) When children bring their own food for meals or snacks to the center, if the food does not meet the nutritional  
18 requirements specified in Paragraph (a) of this Rule, the center must provide additional food necessary to meet those  
19 ~~requirements. requirements unless the child's parent or guardian opts out of the supplemental food provided by the~~  
20 ~~center as set forth in G.S.110-91(2)h.1. A statement acknowledging the parental decision to opt out of the~~  
21 ~~supplemental food provided by the center signed by the child's parent or guardian shall be kept on file at the center.~~

22 ~~[Food brought from home may reflect cultural and ethnic preferences such as a vegetarian diet.]~~

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

26 (e) Children shall be served only the following beverages:

27 (1) breast milk;

28 (2) formula;

29 (3) water;

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

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

32 (6) 100 percent fruit juice, limited to 6 ounces per day.

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

35 (f)(g) The food required by special diets for medical, religious or cultural reasons, may be provided by the center or  
36 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~~ dietitian/nutritionist. If the diet is not  
2 prescribed by a health care professional, written instructions shall be provided by the child's parent and shall be on  
3 file at the center.

4 ~~(g)(h)~~ Food and beverages ~~with little or no nutritional value served as a snack, that does not meet the nutritional~~  
5 ~~requirements specified in Paragraph (a) of this Rule,~~ such as cookies, chips, donuts, sweets, fruit drinks, soft drinks,  
6 etc., shall be available only for special occasions: occasions such as holidays, birthdays, and other celebrations.

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

9 ~~[(i)]~~ (i) Staff shall role model appropriate eating behaviors by consuming only food or beverages that meet the  
10 nutritional requirements specified in Paragraph (a) of this Rule ~~[with little or no nutritional value]~~ in the presence of  
11 children in care.

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

16  
17 *History Note: Authority G.S. 110-85; 110-91(2); 143B-168.3;*

18 *Eff. January 1, 1986;*

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

1 10A NCAC 09 .0902 has been amended with changes 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 dietitian/nutritionist.

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

16 *Eff. January 1, 1986;*

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

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

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

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

- (1) Only one licensed family child care home shall operate at the location address of any home.
- (2) The applicant shall list each location address where a licensed family child care home will operate.

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

- (1) One parent whose home is used as a location address shall be designated the coordinating parent and shall co-sign the application with the applicant.
- (2) The coordinating parent shall know the current location address at all times and shall provide the information to the Division upon request.

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

- (1) The structure complies with the North Carolina Building Code for family child care homes or has written approval for use as a family child care home by the local building inspector.
- (2) The structure meets North Carolina Residential Building Code or is a manufactured home bearing a third party inspection label certifying compliance with the Federal Manufactured Home Construction and Safety Standards or certifying compliance with construction standards adopted and enforced by the State of North Carolina. Homes shall be installed in accordance with North Carolina Manufactured/Mobile Home Regulations adopted by the NC Department of Insurance. Exception: Single wide manufactured homes are limited to a maximum of three preschool-age children (not more than two may be two years of age or less) and two school-age children.
- (3) All children are kept on the ground level with an exit at grade.
- (4) All homes are equipped with an electrically operated (with a battery backup) smoke detector, or one electrically operated and one battery operated smoke detector located next to each other.
- (5) All homes are provided with at least one five pound 2-A: 10-B: C type extinguisher readily accessible for every 2,500 square feet of floor area.
- (6) ~~Fuel burning space heaters, fireplaces and floor furnaces which are listed and approved by the Department of Insurance for that installation and are provided with a protective screen attached securely to supports are allowed. Unvented fuel burning heaters and portable electric space heaters of all types are prohibited.~~ Heating appliances shall be installed and maintained according to NC Building Code Chapter 603.5.3.
- (7) All indoor areas used by children are heated when the temperature is below 65 degrees and ventilated when the temperature is above 85 degrees.

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

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

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

8 (1) a copy of the certified criminal history check from the Clerk of Superior Court's office in the  
9 county or counties where the applicant and any household member(s) over age 15, have resided  
10 during the previous 12 months;

11 (2) a copy of documentation of completion of a first aid and cardiopulmonary resuscitation (CPR)  
12 course;

13 (3) proof of negative results of the applicant's tuberculosis test completed within the past 12 months;

14 (4) a completed health questionnaire;

15 (5) a copy of current pet vaccinations for any pet in the home;

16 (6) a negative well water bacteriological analysis if the home has a private well;

17 (7) copies of any inspections required by local ordinances; and

18 (8) any other documentation required by the Division according to the rules in this Section to support  
19 the issuance of a license.

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

24 (1) If all applicable requirements of G.S. 110 and this Section are met, a license shall be issued;

25 (2) If the applicable requirements are not met but the applicant has the potential to comply, the  
26 Division representative shall establish with the applicant a time period for the home to achieve  
27 compliance. If the Division representative determines that all applicable requirements are met  
28 within the established time period, a license shall be issued; or

29 (3) If all applicable requirements are not met or cannot be met within the established time, the  
30 Division shall deny the application. ~~Final disposition of the recommendation to deny is the~~  
31 ~~decision of the Division.~~

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

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

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

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

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

- 1           (4)     documentation of collaboration or mentorship with a licensed child care provider to obtain  
2                   additional knowledge and experience related to operation of a child care facility; and  
3           (5)     documentation explaining relationships with persons meeting the criteria listed in Subparagraph  
4                   (g)(4) of this Rule.
- 5   (i) The license shall not be bought, sold, or transferred from one individual to another.
- 6   (j) The license is valid only for the location address listed on it.
- 7   (k) The license must be returned to the Division in the event of termination, revocation, suspension, or summary  
8       suspension.
- 9   (l) The license shall be displayed in a prominent place that parents are able to view daily and shall be shown to each  
10   child's parent when the child is enrolled.
- 11   (m) A licensee shall notify the Division whenever a change occurs which affects the information shown on the  
12   license.

13

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

15                   *Eff. January 1, 1986;*

16                   *Amended Eff. October 1, 2012; August 1, 2011; July 1, 2010; April 1, 2003; April 1, 2001; July 1,*  
17                   *1998; January 1, 1991; November 1, 1989; January 1, 1987.*



COPY

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~~. requirements unless the child's parent or guardian opts out of the  
14 supplemental food provided by the operator as set forth in G.S. 110-91(2) h.1. A statement acknowledging the  
15 parental decision to opt out of the supplemental food provided by the operator signed by the child's parent or  
16 guardian shall be on file at the home. Food brought from home may reflect cultural and ethnic foods, such as  
17 vegetarian preferences.

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

24 (d) Food ~~with little or no nutritional value served as snack~~, that does not meet the nutritional requirements specified  
25 in Paragraph (a) of this Rule, such as cookies, chips, donuts; etc. shall be available only for special occasions.  
26 occasions such as holidays, birthdays and other celebrations.

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

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

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

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

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

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

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

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

10 (1) breast milk;

11 (2) formula;

12 (3) water;

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

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

15 (6) 100 percent fruit juice, limited to 6 ounces per day.

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

18  
19 *History Note: Authority G.S. 110-85; 110-91(2); 143B-168.3;*  
20 *Eff. October 1, 2012.*  
21

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;

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

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

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

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

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

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

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

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

(A) Offered only as a free choice activity,

(B) Used to meet a developmental goal, and

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

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

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

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

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

*History Note: Authority G.S. 110-85; 110-88; 110-91(2),(12);*

*Eff. July 1, 1998;*

*Amended Eff. October 1, 2012; July 1, 2010; March 1, 2006; May 1, 2004.*