RRC STAFF OPINION

*Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.*

AGENCY: NC CHILD CARE COMMISSION

RULE CITATION: 10A NCAC 09 .3004

RECOMMENDED ACTION:

 Return the rule to the agency for failure to comply with the Administrative Procedure Act

 Approve, but note staff’s comment

X Object, based on:

 X Lack of statutory authority

X Unclear or ambiguous

 Unnecessary

 Failure to adopt the rule in accordance with the APA

 Extend the period of review

COMMENT:

*I have asked the agency to provide specific authority for the restrictions in this rule which prohibit “[a]ctivities, instruction, or communications, which promote religious beliefs” from being “directed toward children participating in the NC Pre-K program (formerly the “More at Four” program) during the NC Pre-K day.”*

*Part of my concern over this provision is that I am under the impression that these programs can be operated by any child care facility that are covered by these rules, including child care programs run by religious groups, and are not restricted to programs operated by a public school system. If that is so, then there needs to be explicit authority to restrict any religious component of a school curriculum that might normally be offered by the child care program.*

*If “religious sponsored child care facilities” are eligible to operate under the NC Pre-K program and receive funding under it, then this rule would seem to violate G.S. 110-106 (attached at the end of this opinion).*

*If they are unable to provide that authority then I shall likely recommend an objection to this rule based on lack of authority.*

*In addition this rule is potentially ambiguous in that it is not abundantly clear what constitutes “activities, instruction, or communications which promote religious beliefs.” Would the presence of any religious art, pictures, signs or symbols on or within a building or room housed in a religious building or room constitute a violation?*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2011

SESSION LAW 2011-145

CONSOLIDATE MORE AT FOUR PROGRAM INTO DIVISION OF CHILD DEVELOPMENT

SECTION 10.7.(a)  The Department of Public Instruction, Office of Early Learning, and the Department of Health and Human Services are directed to consolidate the More At Four program into the Division of Child Development.  The Division of Child Development is renamed the Division of Child Development and Early Education (DCDEE).  The DCDEE is directed to maintain the More At Four program's high programmatic standards. The Department of Health and Human Services shall assume the functions of the regulation and monitoring system and payment and reimbursement system for the More At Four program.

All regulation and monitoring functions shall begin July 1, 2011. The More At Four program shall be designated as "prekindergarten" on the five‑star rating scale. All references to "prekindergarten" in this section shall refer to the program previously titled the "More At Four" program. All references to "non‑prekindergarten" shall refer to all four‑ and five‑star rated facilities.

The Office of State Budget and Management shall transfer positions to the Department of Health and Human Services to assume the regulation, monitoring, and accounting functions within the Division of Child Development's Regulatory Services Section. This transfer shall have all the elements of a Type I transfer as defined in G.S. 143A‑6. All funds transferred pursuant to this section shall be used for the funding of prekindergarten slots  for four‑year‑olds and for the management of the program. The Department of Health and Human Services shall incorporate eight consultant positions into the regulation and accounting sections of DCDEE, eliminate the remaining positions, and use position elimination savings for the purpose of funding prekindergarten students. DCDEE may use funds from the transfer of the More At Four program for continuing the teacher mentoring program and contracting for the environmental rating scale assessments.

SECTION 10.7.(b)  The Childcare Commission shall adopt rules for programmatic standards for regulation of prekindergarten classrooms. The Commission shall review and approve comprehensive, evidenced‑based early childhood curricula with a reading component. These curricula shall be added to the currently approved "More At Four" curricula.

SECTION 10.7.(c)  G.S. 143B‑168.4(a) reads as rewritten:

"(a)       The Child Care Commission of the Department of Health and Human Services shall consist of 15 17 members. Seven of the members shall be appointed by the Governor and eight 10 by the General Assembly, four five upon the recommendation of the President Pro Tempore of the Senate, and four five upon the recommendation of the Speaker of the House of Representatives. Four of the members appointed by the Governor, two by the General Assembly on the recommendation of the President Pro Tempore of the Senate, and two by the General Assembly on the recommendation of the Speaker of the House of Representatives, shall be members of the public who are not employed in, or providing, child care and who have no financial interest in a child care facility. Two of the foregoing public members appointed by the Governor, one of the foregoing public members recommended by the President Pro Tempore of the Senate, and one of the foregoing public members recommended by the Speaker of the House of Representatives shall be parents of children receiving child care services. Of the remaining two public members appointed by the Governor, one shall be a pediatrician currently licensed to practice in North Carolina. Three of the members appointed by the Governor shall be child care providers, one of whom shall be affiliated with a for profit child care center, one of whom shall be affiliated with a for profit family child care home, and one of whom shall be affiliated with a nonprofit facility. Two of the members appointed by the General Assembly on the recommendation of the President Pro Tempore of the Senate, and two by the General Assembly on recommendation of the Speaker of the House of Representatives, shall be child care providers, one affiliated with a for profit child care facility, and one affiliated with a nonprofit child care facility. The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, and the General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint two early childhood education specialists. None may be employees of the State."

SECTION 10.7.(d)  The additional curricula approved and taught in prekindergarten classrooms shall also be taught in four‑ and five‑star rated facilities in the non‑prekindergarten four‑year‑old classrooms. The Child Care Commission shall increase standards in the four‑ and five‑star‑rated facilities for the purpose of placing an emphasis on early reading. The Commission shall require the four‑ and five‑star‑rated facilities to teach from the Commission's approved curricula. The Division of Child Development may use funds from the Child Care Development Fund Block Grant to assist with the purchase of curricula or adjust rates of reimbursements to cover increased costs.

SECTION 10.7.(e)  The Division of Child Development and Early Education shall adopt a policy to encourage all prekindergarten classrooms to blend private pay families with prekindergarten subsidized children in the same manner that regular subsidy children are blended with private pay children. The Division may implement a waiver or transition period for the public classrooms.

SECTION 10.7.(f)  The prekindergarten program may continue to serve at‑risk children identified through the existing "child find" methods in which at‑risk children are currently served within the Division of Child Development. The Division of Child Development shall serve at‑risk children regardless of income. However, the total number of at-risk children served shall constitute no more than twenty percent (20%) of the four‑year‑olds served within the prekindergarten program. Any age‑eligible child who is a child of either of the following shall be eligible for the program: (i) an active duty member of the Armed Forces of the United States, including the North Carolina National Guard, State military forces, or a reserve component of the Armed Forces, who was ordered to active duty by the proper authority within the last 18 months or is expected to be ordered within the next 18 months or (ii) a member of the Armed Forces of the United States, including the North Carolina National Guard, State military forces, or a reserve component of the Armed Forces, who was injured or killed while serving on active duty. Eligibility determinations for prekindergarten participants may continue through local education agencies and local North Carolina Partnership for Children, Inc., partnerships.

SECTION 10.7.(g)  The Division of Child Development and Early Education (DCDEE) shall adopt policies that improve the quality of childcare for subsidized children.  The DCDEE shall phase in a new policy in which child care subsidies will be paid, to the extent possible, for child care in the higher quality centers and homes only.  The DCDEE shall define higher quality, and subsidy funds shall not be paid for one‑ or two‑star‑rated facilities.  For those counties with an inadequate number of three‑, four‑, and five‑star‑rated facilities, the DCDEE shall establish a transition period that allows the facilities to continue to receive subsidy funds while the facilities work on the increased star ratings. The DCDEE may allow  exemptions in counties where there is an inadequate number of three‑, four‑, and five‑star-rated facilities for nonstar‑rated programs, such as religious programs.

SECTION 10.7.(h)  The Division of Child Development and Early Education shall implement a parent co‑payment requirement for prekindergarten classrooms the same as what is required of parents subject to regular child care subsidy payments. All at‑risk children and age‑eligible children of military personnel as described in subsection (g) of this section are exempt from the co‑payment requirements of this subsection.

Fees for families who are required to share in the cost of care shall be established based on a percent of gross family income and adjusted for family size. Fees shall be determined as follows:

FAMILY SIZE                         PERCENT OF GROSS FAMILY INCOME

1‑3                                                                        10%

4‑5                                                                          9%

6 or more                                                                8%.

SECTION 10.7.(i)  All prekindergarten classrooms regulated pursuant to this section shall be required to participate in the Subsidized Early Education for Kids (SEEK) accounting system to streamline the payment function for these classrooms with a goal of eliminating duplicative systems and streamlining the accounting and payment processes among the subsidy reimbursement systems. Prekindergarten funds transferred may be used to add these programs to SEEK.

SECTION 10.7.(j)  Based on market analysis and within funds available, the Division of Child Development and Early Education shall establish reimbursement rates based on newly increased requirements of four‑ and five‑star‑rated facilities and the higher teacher standards within the prekindergarten class rooms, specifically More At Four teacher standards, when establishing the rates of reimbursements. Additionally, the prekindergarten curriculum day shall cover six and one‑half to 10 hours daily and no less than 10 months per year. The public classrooms will have a one‑year transition period to become licensed through the Division of Child Development and may continue to operate prekindergarten, formerly "More At Four," classrooms during the 2011‑2012 fiscal year.

§ 110‑91.  Mandatory standards for a license.

All child care facilities shall comply with all State laws and federal laws and local ordinances that pertain to child health, safety, and welfare. Except as otherwise provided in this Article, the standards in this section shall be complied with by all child care facilities. However, none of the standards in this section apply to the school‑age children of the operator of a child care facility but do apply to the preschool‑age children of the operator. Children 13 years of age or older may receive child care on a voluntary basis provided all applicable required standards are met. The standards in this section, along with any other applicable State laws and federal laws or local ordinances, shall be the required standards for the issuance of a license by the Secretary under the policies and procedures of the Commission except that the Commission may, in its discretion, adopt less stringent standards for the licensing of facilities which provide care on a temporary, part‑time, drop‑in, seasonal, after‑school or other than a full‑time basis.

(1)        Medical Care and Sanitation. – The Commission for Public Health shall adopt rules which establish minimum sanitation standards for child care centers and their personnel. The sanitation rules adopted by the Commission for Public Health shall cover such matters as the cleanliness of floors, walls, ceilings, storage spaces, utensils, and other facilities; adequacy of ventilation; sanitation of water supply, lavatory facilities, toilet facilities, sewage disposal, food protection facilities, bactericidal treatment of eating and drinking utensils, and solid‑waste storage and disposal; methods of food preparation and serving; infectious disease control; sleeping facilities; and other items and facilities as are necessary in the interest of the public health. The Commission for Public Health shall allow child care centers to use domestic kitchen equipment, provided appropriate temperature levels for heating, cooling, and storing are maintained. Child care centers that fry foods shall use commercial hoods. These rules shall be developed in consultation with the Department.

The Commission shall adopt rules for child care facilities to establish minimum requirements for child and staff health assessments and medical care procedures. These rules shall be developed in consultation with the Department. Each child shall have a health assessment before being admitted or within 30 days following admission to a child care facility. The assessment shall be done by: (i) a licensed physician, (ii) the physician's authorized agent who is currently approved by the North Carolina Medical Board, or comparable certifying board in any state contiguous to North Carolina, (iii) a certified nurse practitioner, or (iv) a public health nurse meeting the Departments Standards for Early Periodic Screening, Diagnosis, and Treatment Program. However, no health assessment shall be required of any staff or child who is and has been in normal health when the staff, or the child's parent, guardian, or full‑time custodian objects in writing to a health assessment on religious grounds which conform to the teachings and practice of any recognized church or religious denomination.

Organizations that provide prepared meals to child care centers only are considered child care centers for purposes of compliance with appropriate sanitation standards.

(2)        Health‑Related Activities. – The Commission shall adopt rules for child care facilities to ensure that all children receive nutritious food and beverages according to their developmental needs. The Commission shall consult with the Division of Child Development of the Department of Health and Human Services to develop nutrition standards to provide for requirements appropriate for children of different ages. In developing nutrition standards, the Commission shall consider the following recommendations:

a.         Limiting or prohibiting the serving of sweetened beverages, other than 100% fruit juice, to children of any age.

b.         Limiting or prohibiting the serving of whole milk to children two years of age or older or flavored milk to children of any age.

c.         Limiting or prohibiting the serving of more than six ounces of juice per day to children of any age.

d.         Limiting or prohibiting the serving of juice from a bottle.

e.         Creating an exception from the rules for parents of children who have medical needs, special diets, or food allergies.

f.          Creating an exception from the rules to allow a parent or guardian, or to allow the center upon the request of a parent or guardian, to provide to a child food and beverages that may not meet the nutrition standards.

Each child care facility shall have a rest period for each child in care after lunch or at some other appropriate time and arrange for each child in care to be out‑of‑doors each day if weather conditions permit.

(3)        Location. – Each child care facility shall be located in an area which is free from conditions which are considered hazardous to the physical and moral welfare of the children in care in the opinion of the Secretary.

(4)        Building. – Each child care facility shall be located in a building which meets the appropriate requirements of the North Carolina Building Code under standards which shall be developed by the Building Code Council, subject to adoption by the Commission specifically for child care facilities, including facilities operated in a private residence. These standards shall be consistent with the provisions of this Article. A local building code enforcement officer shall approve any proposed alternate material, design, or method of construction, provided the building code enforcement officer finds that the alternate, for the purpose intended, is at least the equivalent of that prescribed in the technical building codes in quality, strength, effectiveness, fire resistance, durability, or safety. A local building code enforcement officer shall require that sufficient evidence or proof be submitted to substantiate any claim made regarding the alternate. The Child Care Commission may request changes to the Building Code to suit the special needs of preschool children. Satisfactorily written reports from representatives of building inspection agencies shall be required prior to the issuance of a license and whenever renovations are made to a child care center, or when the operator requests licensure of space not previously approved for child care.

(5)        Fire Prevention. – Each child care facility shall be located in a building that meets appropriate requirements for fire prevention and safe evacuation that apply to child care facilities as established by the Department of Insurance in consultation with the Department. Except for child care centers located on State property, each child care center shall be inspected at least annually by a local fire department or volunteer fire department for compliance with these requirements. Child care centers located on State property shall be inspected at least annually by an official designated by the Department of Insurance.

(6)        Space and Equipment Requirements. – There shall be no less than 25 square feet of indoor space for each child for which a child care center is licensed, exclusive of closets, passageways, kitchens, and bathrooms, and this floor space shall provide during rest periods 200 cubic feet of airspace per child for which the center is licensed. There shall be adequate outdoor play area for each child under rules adopted by the Commission which shall be related to the size of center and the availability and location of outside land area. In no event shall the minimum required exceed 75 square feet per child. The outdoor area shall be protected to assure the safety of the children receiving child care by an adequate fence or other protection. A center operated in a public school shall be deemed to have adequate fencing protection. A center operating exclusively during the evening and early morning hours, between 6:00 P.M. and 6:00 A.M., need not meet the outdoor play area requirements mandated by this subdivision.

Each child care facility shall provide indoor area equipment and furnishings that are child size, sturdy, safe, and in good repair. Each child care facility that provides outdoor area equipment and furnishings shall provide outdoor area equipment and furnishings that are child size, sturdy, free of hazards that pose a threat of serious injury to children while engaged in normal play activities, and in good repair. The Commission shall adopt standards to establish minimum requirements for equipment appropriate for the size of child care facility. Space shall be available for proper storage of beds, cribs, mats, cots, sleeping garments, and linens as well as designated space for each child's personal belongings.

The Division of Child Development of the Department of Health and Human Services shall establish and implement a policy that defines any building which is currently approved for school occupancy and which houses a public or private elementary school to include the playgrounds and athletic fields as part of the school building when that building is used to serve school‑age children in after‑school child care programs. Playgrounds and athletic fields referenced in this section that do not meet licensure standards promulgated by the North Carolina Child Care Commission shall be noted on the program's licensure and rating information.

(7)        Staff‑Child Ratio and Capacity for Child Care Facilities. – In determining the staff‑child ratio in child care facilities, all children younger than 13 years old shall be counted.

a.         The Commission shall adopt rules for child care centers regarding staff‑child ratios, group sizes and multi‑age groupings other than for infants and toddlers, provided that these rules shall be no less stringent than those currently required for staff‑child ratios as enacted in Section 156(e) of Chapter 757 of the 1985 Session Laws.

1.         Except as otherwise provided in this subdivision, the staff‑child ratios and group sizes for infants and toddlers in child care centers shall be no less stringent than as follows:

Age                  Ratio Staff/

                         Children                 Group Size

0 to 12 months                 1/5                             10

12 to 24 months               1/6                             12

2 to 3 years                       1/10                           20.

No child care center shall care for more than 25 children in one group. Child care centers providing care for 26 or more children shall provide for two or more groups according to the ages of children and shall provide separate supervisory personnel and separate identifiable space for each group.

2.         When any preschool‑aged child is enrolled in a child care center and the licensed capacity of the center is six through 12 children, the staff‑child ratios shall be no less stringent than as follows:

Age                               Ratio Staff/Children

0 to 12 months            1/5 preschool children plus 3 additional school‑aged children

12 to 24 months          1/6 preschool children plus 2 additional school‑aged children.

The following shall also apply:

I.          There is no specific group size.

II.        When only one caregiver is required to meet the staff‑child ratio, the operator shall make available to parents the name, address, and phone number of an adult who is nearby and available for emergency relief.

III.       Children shall be supervised at all times. All children who are not asleep or resting shall be visually supervised. Children may sleep or rest in another room as long as a caregiver can hear them and respond immediately.

b.         Family Child Care Home Capacity. – Of the children present at any one time in a family child care home, no more than five children shall be preschool‑aged, including the operator's own preschool‑age children.

(8)        Qualifications for Staff. – All child care center administrators shall be at least 21 years of age. All child care center administrators shall have the North Carolina Early Childhood Administration Credential or its equivalent as determined by the Department. All child care administrators performing administrative duties as of the date this act becomes law and child care administrators who assume administrative duties at any time after this act becomes law and until September 1, 1998, shall obtain the required credential by September 1, 2000. Child care administrators who assume administrative duties after September 1, 1998, shall begin working toward the completion of the North Carolina Early Childhood Administration Credential or its equivalent within six months after assuming administrative duties and shall complete the credential or its equivalent within two years after beginning work to complete the credential. Each child care center shall be under the direction or supervision of a person meeting these requirements. All staff counted toward meeting the required staff‑child ratio shall be at least 16 years of age, provided that persons younger than 18 years of age work under the direct supervision of a credentialed staff person who is at least 21 years of age. All lead teachers in a child care center shall have at least a North Carolina Early Childhood Credential or its equivalent as determined by the Department. Lead teachers shall be enrolled in the North Carolina Early Childhood Credential coursework or its equivalent as determined by the Department within six months after becoming employed as a lead teacher or within six months after this act becomes law, whichever is later, and shall complete the credential or its equivalent within 18 months after enrollment.

For child care centers licensed to care for 200 or more children, the Department, in collaboration with the North Carolina Institute for Early Childhood Professional Development, shall establish categories to recognize the levels of education achieved by child care center administrators and teachers who perform administrative functions. The Department shall use these categories to establish appropriate staffing based on the size of the center and the individual staff responsibilities.

Effective January 1, 1998, an operator of a licensed family child care home shall be at least 21 years old and have a high school diploma or its equivalent. Operators of a family child care home licensed prior to January 1, 1998, shall be at least 18 years of age and literate. Literate is defined as understanding licensing requirements and having the ability to communicate with the family and relevant emergency personnel. Any operator of a licensed family child care home shall be the person on‑site providing child care.

No person shall be an operator of nor be employed in a child care facility who has been convicted of a crime involving child neglect, child abuse, or moral turpitude, or who is an habitually excessive user of alcohol or who illegally uses narcotic or other impairing drugs, or who is mentally or emotionally impaired to an extent that may be injurious to children.

The Commission shall adopt standards to establish appropriate qualifications for all staff in child care centers. These standards shall reflect training, experience, education and credentialing and shall be appropriate for the size center and the level of individual staff responsibilities. It is the intent of this provision to guarantee that all children in child care are cared for by qualified people. Pursuant to G.S. 110‑106, no requirements may interfere with the teachings or doctrine of any established religious organization. The staff qualification requirements of this subdivision do not apply to religious‑sponsored child care facilities pursuant to G.S. 110‑106.

(8a)      Expired pursuant to Session Laws 2010‑178, s. 2, as amended by Session Laws 2011‑145, s. 10.4A, effective July 1, 2011.

(9)        Records. – Each child care facility shall keep accurate records on each child receiving care in the child care facility and on each staff member or other person delegated responsibility for the care of children in accordance with a form furnished or approved by the Commission, and shall submit records as required by the Department.

All records of any child care facility, except financial records, shall be available for review by the Secretary or by duly authorized representatives of the Department or a cooperating agency who shall be designated by the Secretary and shall be submitted as required by the Department.

(10)      Each operator or staff member shall attend to any child in a nurturing and appropriate manner, and in keeping with the child's developmental needs.

Each child care facility shall have a written policy on discipline, describing the methods and practices used to discipline children enrolled in that facility. This written policy shall be discussed with, and a copy given to, each child's parent prior to the first time the child attends the facility. Subsequently, any change in discipline methods or practices shall be communicated in writing to the parents prior to the effective date of the change.

The use of corporal punishment as a form of discipline is prohibited in child care facilities and may not be used by any operator or staff member of any child care facility, except that corporal punishment may be used in religious sponsored child care facilities as defined in G.S. 110‑106, only if (i) the  religious sponsored child care facility files with the Department a notice stating that corporal punishment is part of the religious training of its program, and (ii) the religious sponsored child care facility clearly states in its written policy of discipline that corporal punishment is part of the religious training of its program. The written policy on discipline of nonreligious sponsored child care facilities shall clearly state the prohibition on corporal punishment.

(11)      Staff Development. – The Commission shall adopt minimum standards for ongoing staff development for facilities but limited to the following topic areas:

a.         Planning a safe, healthy learning environment;

b.         Steps to advance children's physical and intellectual development;

c.         Positive ways to support children's social and emotional development;

d.         Strategies to establish productive relationships with families;

e.         Strategies to manage an effective program operation;

f.          Maintaining a commitment to professionalism;

g.         Observing and recording children's behavior;

h.         Principles of child growth and development; and

i.          Learning activities that promote inclusion of children with special needs.

These standards shall include annual requirements for ongoing staff development appropriate to job responsibilities. A person may carry forward in‑service training hours that are in excess of the previous year's requirement to meet up to one‑half of the current year's required in‑service training hours.

(12)      Developmentally Appropriate Activities. – Each facility shall have developmentally appropriate activities and play materials. The Commission shall establish minimum standards for developmentally appropriate activities for child care facilities. Each child care facility shall have a planned schedule of developmentally appropriate activities displayed in a prominent place for parents to review and the appropriate materials and equipment available to implement the scheduled activities. Each child care center shall make four of the following activity areas available daily: art and other creative play, children's books, blocks and block building, manipulatives, and family living and dramatic play.

(13)      Transportation. – When a child care facility staff person or a volunteer of a child care facility transports children in a vehicle, each adult and child shall be restrained by an appropriate seat safety belt or restraint device when the vehicle is in motion. Children may never be left unattended in a vehicle.

The ratio of adults to children in child care vehicles may not be less than the staff/child ratios prescribed by G.S. 110‑91(7). The Commission shall adopt standards for transporting children under the age of two, including standards addressing this particular age's staff/child ratio during transportation.

(14)      Any effort to falsify information provided to the Department shall be considered by the Secretary to be evidence of violation of this Article on the part of the operator or sponsor of the child care facility and shall constitute a cause for revoking or denying a license to such child care facility.

(15)      Safe Sleep Policy. – Operators of child care facilities that care for children ages 12 months or younger shall develop and maintain a written safe sleep policy, in accordance with rules adopted by the Commission. The safe sleep policy shall address maintaining a safe sleep environment and shall include the following requirements:

a.         A caregiver in a child care facility shall place a child age 12 months or younger on the child's back for sleeping, unless: (i) for a child age 6 months or younger, the operator of the child care facility obtains a written waiver of this requirement from a health care professional, as defined in rules adopted by the Commission; or (ii) for a child older than 6 months, the operator of the child care facility obtains a written waiver of this requirement from a health care professional, as defined in rules adopted by the Commission, a parent, or a legal guardian.

b.         The operator of the child care facility shall discuss the safe sleep policy with the child's parent or guardian before the child is enrolled in the child care facility. The child's parent or guardian shall sign a statement attesting that the parent or guardian received a copy of the safe sleep policy and that the policy was discussed with the parent or guardian before the child's enrollment.

c.         Any caregiver responsible for the care of children ages 12 months or younger shall receive training in safe sleep practices.

(1971, c. 803, s. 1; 1973, c. 476, s. 128; 1975, c. 879, s. 15; 1977, c. 1011, s. 4; c. 1104; 1979, c. 9, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1382, ss. 1, 2; 1983, c. 46, s. 2; cc. 62, 277, 612; 1985, c. 757, ss. 155(h), (i), 156(c)‑(h); 1987, c. 543, s. 3; c. 788, s. 6; c. 827, s. 234; 1989 (Reg. Sess., 1990), c. 1004, s. 56; 1991, c. 273, s. 5; c. 640, s. 1; 1993, c. 185, s. 3; c. 321, s. 254(c); c. 513, s. 9; c. 553, s. 32; 1995, c. 94, s. 32; 1997‑443, s. 11A.44; 1997‑456, s. 43.1(a); 1997‑506, s. 8(a); 1998‑217, s. 11; 1999‑130, s. 2; 2003‑407, s. 1; 2007‑182, s. 2; 2009‑64, s. 1; 2009‑244, s. 1; 2010‑117, s. 1; 2010‑178, s. 1; 2011‑145, s. 10.4A.)

§ 110‑106.  Religious sponsored child care facilities.

(a)        The term "religious sponsored child care facility" as used in this section shall include any child care facility or summer day camp operated by a church, synagogue or school of religious charter.

(b)        Procedure Regarding Religious Sponsored Child Care Facilities. –

(1)        Religious sponsored child care facilities shall file with the Department a notice of intent to operate a child care facility and the date it will begin operation at least 30 days prior to that date. Within 30 days after beginning operation, the facility shall provide to the Department written reports and supporting data which show the facility is in compliance with applicable provisions of G.S. 110‑91. After the religious sponsored child care facility has filed this information with the Department, the facility shall be visited by a representative of the Department to ensure compliance with the applicable provisions of G.S. 110‑91.

(2)        Each religious sponsored child care facility shall file with the Department a report indicating that it meets the minimum standards for facilities as provided in the applicable provisions of G.S. 110‑91 as required by the Department. The reports shall be in accordance with rules adopted by the Commission. Each religious sponsored child care facility shall be responsible for supplying with its report the necessary supporting data to show conformity with those minimum standards, including reports from the local and district health departments, local building inspectors, local firemen, volunteer firemen, and other, on forms which shall be provided by the Department.

(3)        It shall be the responsibility of the Department to notify the facility if it fails to meet the minimum requirements. The Secretary shall be responsible for carrying out the enforcement provisions provided by the General Assembly in Article 7 of Chapter 110 including inspection to ensure compliance. The Secretary may issue an order requiring a religious sponsored child care facility which fails to meet the standards established pursuant to this Article to cease operating. A religious sponsored child care facility may request a hearing to determine if it is in compliance with the applicable provisions of G.S. 110‑91. If the Secretary determines that it is not, the Secretary may order the facility to cease operation until it is in compliance.

(4)        Religious sponsored child care facilities including summer day camps shall be exempt from the requirement that they obtain a license and that the license be displayed and shall be exempt from any subsequent rule or regulatory program not dealing specifically with the minimum standards as provided in the applicable provisions of G.S. 110‑91. Nothing in this Article shall be interpreted to allow the State to regulate or otherwise interfere with the religious training offered as a part of any religious sponsored child care program. Nothing in this Article shall prohibit any religious sponsored child care facility from becoming licensed by the State if it so chooses.

(5)        Religious sponsored child care facilities found to be in violation of the applicable provisions of G.S. 110‑91 shall be subject to the injunctive provisions of G.S. 110‑104, except that they may not be enjoined for operating without a license. The Secretary may seek an injunction against any religious sponsored child care facility under the conditions specified in G.S. 110‑104 with the above exception and when any religious sponsored child care facility operates without submitting the required forms and following the procedures required by this Article.

(c)        G.S. 110‑91(8), 110‑91(11), 110‑91(12) do not apply to religious sponsored child care facilities, and these facilities are exempt from any requirements prescribed by subsection (b) of this section that arise out of these provisions. *[G.S. 110-91 in its entirety is set out above and the relevant passages cited here are highlighted above.]*

(d)       No person shall be an operator of nor be employed in a religious sponsored child care facility who has been convicted of a crime involving child neglect, child abuse, or moral turpitude, or who is a habitually excessive user of alcohol or who illegally uses narcotic or other impairing drugs, or who is mentally or emotionally impaired to an extent that may be injurious to children.

(e)        Each religious sponsored child care facility shall be under the direction or supervision of a literate person at least 21 years of age. All staff counted toward meeting the required staff/child ratio shall be at least 16 years old, provided that persons younger than 18 years old work under the direct supervision of a literate staff person at least 21 years old. Effective January 1, 1998, a person operating a religious sponsored child care home must be at least 21 years old and literate. Persons operating religious sponsored child care homes prior to January 1, 1998, shall be at least 18 years old and literate. The definition of literate in G.S. 110‑91(8) shall apply to this subsection. (1983, c. 283, ss. 1, 2; 1985, c. 757, ss. 155(p), 156(k); 1987, c. 788, s. 20; 1997‑506, s. 26.)

RRC STAFF OPINION

*Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.*

AGENCY: NC CHILD CARE COMMISSION

RULE CITATION: 10A NCAC 09 .3005

RECOMMENDED ACTION:

 Return the rule to the agency for failure to comply with the Administrative Procedure Act

 Approve, but note staff’s comment

X Object, based on:

 Lack of statutory authority

X Unclear or ambiguous

 Unnecessary

 Failure to adopt the rule in accordance with the APA

Extend the period of review

COMMENT:

*In (b) it is unclear what constitutes “necessary [health assessment related] referrals” or how it is determined that a referral is “necessary.” The health assessment related referrals would be derived from the “health assessment” requirements in (a)(1 –(5). Other than the ability to read an immunization history required by (a)(2) and comparing it to a chart that lists various immunizations required at or by certain ages, it is unclear that the other four assessments would necessarily list the “necessity” for a given “referral.” It is not clear whether a referral that might be recommended would be considered a “necessary” referral or how “necessity” is determined.*

*It is also unclear what constitutes satisfying the requirement that the administrator of a Pre-K program “ensure that ... referrals ... have been made.” It is unclear whether that means simply making sure that parents or guardians are aware of the need for a referral or actually making the referral to a provider directly or making sure a parent or guardian meets with a provider. It does not seem that a program administrator would have any authority to make an appointment or any enforcement authority to “ensure” that an appointment was kept.*

RRC STAFF OPINION

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AGENCY: NC CHILD CARE COMMISSION

RULE CITATION: 10A NCAC 09 .3006

RECOMMENDED ACTION:

 Return the rule to the agency for failure to comply with the Administrative Procedure Act

 Approve, but note staff’s comment

X Object, based on:

 Lack of statutory authority

X Unclear or ambiguous

 Unnecessary

 Failure to adopt the rule in accordance with the APA

Extend the period of review

COMMENT:

*In (b) it is unclear what an “approved screening instrument” is or how the approval is made. There is no authority to make the “approved” determination outside rulemaking.*

*In (c), just as in the previous rule, it is unclear what a “necessary referral” is, how the administrator is to “ensure that all necessary referrals ... have been made” or what constitutes satisfying the requirement to “ensure” that something is done.*

RRC STAFF OPINION

*Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.*

AGENCY: NC CHILD CARE COMMISSION

RULE CITATION: 10A NCAC 09 .3008

RECOMMENDED ACTION:

 Return the rule to the agency for failure to comply with the Administrative Procedure Act

 Approve, but note staff’s comment

X Object, based on:

 Lack of statutory authority

X Unclear or ambiguous

 Unnecessary

 Failure to adopt the rule in accordance with the APA

Extend the period of review

COMMENT:

*In this rule, just as in rule .3006, it is unclear what an “approved assessment instrument” is or how the approval is made. There is no authority to make the “approved” determination outside rulemaking.*