10A NCAC 10.0309 is readopted with changes as published in 32:02 NCR 58-59 as follows:

10A NCAC 10.0309 CORRECTION OF OVERPAYMENTS AND UNDERPAYMENTS

(a) For purposes of this Rule, “agency” shall mean the Local Purchasing Agency or the Division.

(b) An overpayment made to an [operator] owner as a result of an inadvertent error by the agency or the operator shall be recouped by withholding the amount overpaid from monies due to the [operator] owner for services provided pursuant to the state’s Subsidized Child Care Assistance Program in an amount not to exceed 20 percent of each payment to the [operator] owner.

(c) Should the [operator] owner cease to participate in the Subsidized Child Care Assistance Program before the overpayment is fully repaid, the remaining monies shall be recouped by:
   (1) Repayment agreement made with the [local purchasing agency] Local Purchasing Agency; however, the [local purchasing agency] Local Purchasing Agency shall prosecute the [operator] owner for failure to make timely payments as required to comply with the terms of the agreement;
   (2) Involuntary repayment by pursuing court action; or
   (3) Wage garnishment as permitted by law.

(a) An overpayment made as a result of inadvertent error or fraudulent misrepresentation by the recipient or provider as described in Rule .0308(a) of this Section shall be recouped as follows:
   (1) From the recipient if the recipient at the time the overpayment occurred was at least 18 years of age or older; and
   (2) By:
      (A) voluntary repayment by the recipient or provider by;
      (B) involuntary repayment by pursuing court action; or
      (C) wage garnishment as permitted by law.

(b) An overpayment made to an [operator] owner as a result of fraudulent misrepresentation by the recipient or [operator] owner shall be recouped by:
   (1) Withholding up to the entire amount overpaid from monies due to the [operator] owner for services provided pursuant to the state’s Subsidized Child Care Assistance Program;
   (2) Repayment agreement made with the [local purchasing agency] Local Purchasing Agency; however, the [local purchasing agency] Local Purchasing Agency shall prosecute the [operator] owner for failure to make timely payments as required to comply with the terms of the agreement;
   (3) Involuntary repayment by pursuing court action; or
   (4) Wage garnishment as permitted by law.

(c) An underpayment made due to agency or provider [operator] owner error in complying with program rules and statutes shall be corrected by adjusting the state’s Subsidized Child Care Assistance payment system.

(d) An underpayment made due to agency or provider [operator] owner error in complying with program rules and statutes shall be corrected in the Subsidized Child Care Assistance Program records and by remitting payment to the owner within 30 days of discovery of the error, but in no event shall an underpayment be corrected.
more than 90 days from the date of the underpayment unless the owner was unaware of the underpayment because the director or other person having primary responsibility for operation of the child care facility failed to notify the owner. In no event shall the agency correct an underpayment more than one year from the date of the underpayment. The local purchasing agency is not required to correct the underpayment if it is discovered more than 45 days from the date the payment is made.

Appeals pursuant to this Rule shall be in accordance with 10A NCAC 10.0311 and 10A NCAC 10.0312.

History Note: Authority G.S. 143B-153;
Eff. April 1, 2001;
Amended Eff. December 1, 2011;
Readoption Eff. February 1, 2018.
10A NCAC 10.0313 is readopted with changes as published in 32:02 NCR 59 as follows:

10A NCAC 10.0313 TERMINATION OF APPROVAL BASED UPON AN EFFECT OF ADMINISTRATIVE ACTION ISSUED AGAINST PROVIDER OPERATOR

(a) Approval to participate in the Subsidized Child Care Assistance Program all child care subsidy payments made pursuant to a Provider Agreement shall terminate 45 days after issuance of an administrative action revoking, summarily suspending, revoking, or denying a license to operate a child care facility issued pursuant to G.S. 110-90.(5) and (9).

(b) An appeal of an administrative action revoking, summarily suspending, or denying a license does shall not stay the termination of approval to participate in the state's Subsidized Child Care Program, Assistance Program.

(c) If under appeal, If the [operator] owner appeals the termination of approval, the maximum time period during which payments from the state's Subsidized Child Care Assistance Program may shall be made is 45 days from the date on the notice of the administrative action.

(d) A provider An [operator] owner subject to administrative action as described in this Rule Paragraph shall not be paid with subsidized child care funds for any new children enrolled during the 45 day period after the date on the notice of the administrative action.

(e) A child care provider [operator] owner who has received an administrative action revoking or denying a license by the Division of Child Development and Early Education, or who is currently under summary suspension, is shall be ineligible to participate in the state’s Subsidized Child Care Assistance Program as a nonlicensed child care home. This includes facilities that are exempt from licensure pursuant to G.S. 110-106, facilities operating in other states, and facilities certified by the United States Department of Defense.

History Note: Authority G.S. 143B-153; Eff. December 1, 2011; Readopted Eff. February 1, 2018.
10A NCAC 10.0602 is readopted with changes as published in 32:02 NCR 59-60 as follows:

10A NCAC 10.0602 APPROVAL AND CONTINUED PARTICIPATION IN THE SUBSIDIZED CHILD CARE ASSISTANCE PROGRAM

(a) Application for approval to participate in the state's Subsidized Child Care Program shall be made to the local purchasing agency. Owners wishing to participate in the Subsidized Child Care Assistance Program shall:

(1) enroll in the State's Subsidized Child Care Assistance Program through the State’s automated provider portal located at providerportal.nc.gov;

(2) enter into and maintain a contract for payment through the State’s Subsidized Child Care Assistance Program vendor; and

(3) enter into the Subsidized Child Care Assistance Program’s Provider Agreement annually.

(b) Any center approved for participation in the Subsidized Child Care Assistance Program shall continue to be eligible for as long as the center maintains compliance with all of the requirements set forth in this Subchapter.

(b) For purposes of this Rule, “complete records” shall mean records having an indication of absent or present for each day a child is scheduled to attend the facility and “accurate records” shall mean attendance records with an error rate no greater than 10 percent.

(c) For purposes of this Rule, “error” shall mean that for each child the operator marks as present for a particular day on attendance sheets submitted to the Local Purchasing Agency for purposes of reimbursement from the Subsidized Child Care Program:

(1) neither the daily attendance records required to be kept in accordance with 10A NCAC 09.0302(d)(3) and 10A NCAC 09.1721(e)(6) nor the records of arrival and departure times required to be kept in accordance with 10A NCAC 09.0302(d)(4) and .1721(e)(6) show the child marked present; or

(2) either the daily attendance records required to be kept in accordance with 10A NCAC 09.0302(d)(3) and 10A NCAC 09.1721(e)(6) or the records of arrival and departure times required to be kept in accordance with 10A NCAC 09.0302(d)(4) and .1721(e)(6) show the child marked absent.

(d) For purposes of this Rule, “error rate” shall mean the total number of errors divided by the total number of entries showing the daily attendance of children on attendance sheets submitted to the Local Purchasing Agency for the purpose of reimbursement from the Subsidized Child Care Program.

(e) For purposes of this Rule, “requirements for participation” in the Subsidized Child Care Assistance Program shall include:

(1) maintaining complete and accurate daily attendance records in accordance with 10A NCAC 09.0302(d)(3) and .1721(e)(6);

(2) maintaining complete and accurate records of arrival and departure times for each child in accordance with 10A NCAC 09.0302(d)(4) and .1721(e)(6);
submitting accurate records of attendance for each child participating in the Subsidized Child Care Assistance Program to the Subsidized Child Care Assistance Program;

maintaining compliance with all of the requirements set forth in this Chapter; and

complying with the terms and conditions of the Subsidized Child Care Assistance Program’s Provider Agreement.

To be eligible to participate in the Subsidized Child Care Assistance Program, facilities that are exempt from licensure pursuant to G.S. 110-106 must comply with all staff orientation and training requirements of the Child Care and Development Block Grant Act, 42 U.S.C. 9858, et seq., set forth in 10A NCAC 09.1101, .1102, and .0304, in accordance with the Child Care and Development Block Grant Act, 42 U.S.C. 9858, et seq.

When a center is found to be out of compliance with any requirement for participation, the Division shall set a time limit for compliance. The Division shall base the time limit on the length of time projected to be needed for the center to comply with the requirement. If the center fails to comply within the set time limit, approval may be terminated. Upon the first instance that the Division or the Local Purchasing Agency determines a facility is out of compliance with any requirement for participation the Division shall:

(1) notify the operator of the non-compliance; and

(2) issue a corrective action plan to address the areas of non-compliance and assist the facility to come into compliance; and

(3) set a time limit for the operator to complete the corrective action plan depending upon the nature of non-compliance.

Upon the second instance in a two-year period that the Division or the Local Purchasing Agency determines a facility is out of compliance with any requirement for participation, the operator shall be prohibited from enrolling new children who receive subsidized child care for one year, and the Division shall:

(1) notify the operator of the non-compliance; and

(2) issue a corrective action plan to address the areas of non-compliance and assist the facility to come into compliance; and

(3) set a time limit for the operator to complete the corrective action plan depending upon the nature of non-compliance.

An operator who fails to maintain compliance in accordance with Paragraphs (c) and (d) of this Rule three times in a two-year period shall be terminated from and permanently ineligible to participate in the Subsidized Child Care Assistance Program.

When an operator is subject to a corrective action plan, the operator shall be prohibited from accepting any new Subsidized Child Care Assistance Program children.

If the operator fails to fully complete the corrective action plan within the required timeframe, the Division shall terminate the owner participation in the Subsidized Child Care Assistance Program and the owner...
or any operator who is not an owner shall be permanently ineligible to participate in the Subsidized Child Care Assistance Program.

Upon request for review by a local, state, or federal agency representative, the operator of a child care center shall immediately provide all records pertaining to his or her participation in the state's Subsidized Child Care Assistance Program. These records include:

1. daily attendance records kept in accordance with 10A NCAC 09.0302(d)(3) and .1721(e)(6);
2. records of arrival and departure times for each child kept in accordance with 10A NCAC 09.0302(d)(4) and .1721(e)(6);
3. records of attendance maintained for purposes of the federal Child and Adult Care Food Program;
4. any other records that show children’s attendance at the facility.

If the [LPA] Local Purchasing Agency determines a facility to be out of compliance with any requirement for participation in the Subsidized Child Care Assistance Program, the [LPA] Local Purchasing Agency shall notify the Division of the noncompliance within five days of its determination.

An operator may appeal a determination of noncompliance or permanent ineligibility under this Rule as follows:

1. pursuant to 10A NCAC 10.0311 if Local Purchasing Agency makes the determination of non-compliance or permanent ineligibility; or
2. pursuant to 10A NCAC 10.0312 if the Division makes the determination of non-compliance or permanent ineligibility.

[According to 10A NCAC 10.0311 and 10A NCAC 10.0312, however, if the Division issues the determination, the operator may appeal directly to the Division pursuant to 10A NCAC 10.0312.]

History Note: Authority G.S. 143B-153(2a);
Eff. February 1, 1986;
Amended Eff. April 1, 2001; February 1, 1996;
Emergency Amended Eff. August 22, 2016;
Temporary Amendment Eff. October 28, 2016;
Readopted Eff. February 1, 2018.