TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the NC Child Care Commission intends to amend the rules cited as 10A NCAC 09 .0102, .0708, .1403, .2701 - .2702, .2704.*

Proposed Effective Date: *September 1, 2007*

Public Hearing:
Date: *April 26, 2007*
Time: *11 a.m. – 12 p.m.*
Location: *NC Division of Child Development, 319 Chapanoke Road, Suite 120, Raleigh, NC*

Reason for Proposed Action: *The NC Child Care Commission is initiating rule-making regarding the requirements for safety of children in child care facilities. These amendments will ensure the safety and welfare of children when they are participating in aquatic activities while in child care. Other rule changes are to amend the criminal record check requirements and to clarify the requirements for in-service training for child care providers. Other changes simply recodify language within the rules for clarity, consistency and ease of reading.*

Procedure by which a person can object to the agency on a proposed rule: *Anyone wishing to comment on these proposed rules or would like to request copies of the rules, should contact Dedra Alston, Rule-making Coordinator, NC Division of Child Development, 2201 Mail Service Center, Raleigh, NC 27699-2201, at (919) 662-4543, or Dedra.Alston@ncmail.net. Written comments will be accepted through June 1, 2007. Oral comments may be made during the public hearing. The Commission Chairperson may impose time limits for oral remarks.*

Comments may be submitted to: *Dedra Alston, 2201 Mail Service Center, Raleigh, NC 27699-2201, phone (919) 662-4543, fax (919) 662-4568, email Dedra.Alston@ncmail.net.*

Comment period ends: *June 1, 2007*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:
☐ **State**
☐ **Local**
☐ **Substantive (**≥$3,000,000**)**
☒ **None**

CHAPTER 09 - CHILD CARE RULES

SECTION .0100 – DEFINITIONS

10A NCAC 09 .0102 DEFINITIONS

The terms and phrases used in this Chapter shall be defined as follows except when the content of the rule clearly requires a different meaning. The definitions prescribed in G.S. 110-86 also apply to these Rules.

(1) "Agency" as used in Section .2200 of this Chapter, means Division of Child Development, Department of Health and Human Services located at 319 Chapanoke Road, Suite 120, Raleigh, North Carolina 27603.
(2) "Appellant" means the person or persons who request a contested case hearing.
(3) "Basic School-Age Care Training" (BSAC Training) means the seven clock hours of training developed by the North Carolina State University Department of 4-H Youth Development for the Division of Child Development on the elements of quality school-age care.
(4) "Child Care Program" means a single center or home, or a group of centers or homes or both, which are operated by one owner or supervised by a common entity.
(5) "Child care provider" as defined by G.S. 110-90.2 (a) (2) a. and used in Section .2700 of this Chapter, includes but is not limited to the following employees who have contact with the children in a child care program: facility directors, administrative staff, teachers, teachers' aides, cooks, maintenance personnel and drivers.
(6) "Child Development Associate Credential" means the national early childhood credential administered by the Council for Early Childhood Professional Recognition.

(7) "Developmentally appropriate" means suitable to the chronological age range and developmental characteristics of a specific group of children.

(8) "Division" means the Division of Child Development within the Department of Health and Human Services.

(9) "Drop-in care" means a child care arrangement where children attend on an intermittent, unscheduled basis.

(10) "Early Childhood Environment Rating Scale - Revised edition" (Harms, Cryer, and Clifford, 1998, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are two and a half years old through five years old, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in August 2006 is sixteen dollars and ninety-five cents ($16.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.

Deleted: 2005 is fourteen dollars and ninety-five cents ($14.95).

(11) "Family Day Care Rating Scale" (Harms and Clifford, 1989, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by children in family child care homes to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in August 2006 is fifteen dollars and ninety-five cents ($15.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.

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(12) "Group" means the children assigned to a specific caregiver, or caregivers, to meet the staff/child ratios set forth in G.S. 110-91(7) and this Chapter, using space which is identifiable for each group.

(13) "Household member" means a person who resides in a family home as evidenced by factors including, but not limited to, maintaining clothing and personal effects at the household address, receiving mail at the household address, using identification with the household address, or eating and sleeping at the household address on a regular basis.

(14) "Infant/Toddler Environment Rating Scale - Revised edition" (Harms, Cryer, and Clifford, 1990, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are younger than thirty months old, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in August 2006 is sixteen dollars and ninety-five cents ($16.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.

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(15) "ITS-SIDS Training" means the Infant/Toddler Safe Sleep and SIDS Risk Reduction Training developed by the NC Healthy Start Foundation for the Division of Child Development for caregivers of children ages 12 months and younger.

(16) "Licensed or Approved Space" as used in 10A NCAC 09 .0512 includes "primary space" as described in 10A NCAC 09 .1401(a), outdoor space as described in 10A NCAC 09 .1402, single use rooms or other administrative areas.

(17) "Licensee" means the person or entity that is granted permission by the State of North Carolina to operate a child care facility.

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(18) "North Carolina Early Childhood Credential" means the state early childhood credential that is based on completion of coursework and standards found in the North Carolina Early Childhood Instructor Manual (published by the NC Community College System Office). These standards are incorporated by reference and include subsequent amendments. A copy of the North Carolina Early Childhood Credential requirements is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection or copying at no charge during regular business hours.

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(19) "Operator" means the person or entity held legally responsible for the child care business. The terms "operator", "sponsor" or "licensee" may be used interchangeably.

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(20) "Over 15 years old", as referenced in Section .2700 of this Chapter, means an individual who has had their 15th birthday.

(21) "Owner" means any person with a five percent or greater equity interest in a child care facility.

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(22) "Parent" means a child's parent, legal guardian, or full-time custodian.

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(23) "Part-time care" means a child care arrangement where children attend on a regular schedule but less than a full-time basis.

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(24) "Passageway" means a hall or corridor.

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(25) "Person" means any individual, trust, estate, partnership, corporation, joint stock company, consortium, or any other group, entity, organization, or association.

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(26) "Preschooler" or "preschool-aged child" means any child who does not fit the definition of school-aged child in this Rule.

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(27) "School-Age Care Environment Rating Scale" (Harms, Jacobs, and White, 1996, published by Teachers College Press) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of the children in the group are older than five years, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy for may call Teachers College Press at 1-800-575-6566. The cost of this scale in August 2006 is fifteen dollars and ninety-five cents ($15.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.

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(28) "School-aged child" means any child who is at least five years old on or before October 16 of the current school year and who is attending, or has attended, a public or private grade school or kindergarten; or any child who is not at least five years old on or before October 16 of that school year, but has been attending school during that school year in another

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state in accordance with the laws or rules of that state before moving to and becoming a resident of North Carolina; or any child who is at least five years old on or before April 16 of the current school year, is determined by the principal of the school to be gifted and mature enough to justify admission to the school, and is enrolled no later than the end of the first month of the school year.

(29) "Seasonal Program" means a recreational program as set forth in G.S. 110-86(2)(b).

(30) "Section" means Division of Child Development.

(31) "Substitute" means any person who temporarily assumes the duties of a staff person for a time period not to exceed two consecutive months.

(32) "Temporary care" means any child care arrangement which provides either drop-in care or care on a seasonal or other part-time basis and is required to be regulated pursuant to G.S. 110-86.

(33) "Volunteer" means a person who works in a child care facility and is not monetarily compensated by the facility.

Authority G.S. 110-85; 110-88; 143B-168.3.

SECTION .0700 - HEALTH AND OTHER STANDARDS FOR CENTER STAFF

10A NCAC 09 .0708 IN-SERVICE TRAINING APPROVAL

Staff may meet the in-service training requirements by attending child-care workshops, conferences, seminars, or courses, provided each training activity satisfies the following criteria:

(1) Prior approval from the Division is not required for training offered by a college or university with nationally recognized regional accreditation, by a government agency, or by a state or national professional organization or its affiliates as recognized by the Division, provided the content complies with G.S. 110-91(11). An annual training plan submitted on a form provided by the Division, is required for review by the Division for training provided by a government agency or by a state or national professional organization. The plan is not required for any state, national or international conferences sponsored by professional child care organizations or other similar organizations recognized by the Division.

(2) Prior approval from the Division is required for any agencies, organizations or individuals not specified in Item (1) of this Rule who wish to provide training for child care operators and staff. To obtain such approval, the agency, organization or individual shall complete and submit the in-service training approval forms provided by the Division at least 20 business days prior to the training event. A training roster listing the attendees' name, the county of employment and day time phone number shall be submitted to the Division no later than 15 days after the training event. The event sponsor shall provide training evaluations to be completed by attendees and shall keep the evaluations on file for three years.

(3) Prior approval shall be determined based upon:

(a) The trainer's education, training and experience relevant to the training topic;

(b) Best practice in adult learning principles;

(c) Content that is in compliance with G.S. 110-91(11); and

(d) Contact hours, reasonable for the proposed content and scope of the training session.

(4) The Division may decline to approve:

(a) Agencies, organizations or individuals not meeting the standards listed in this Rule and in G.S. 110-91-(11); and

(b) Agencies, organizations or individuals who intentionally falsify any information submitted to the Division.

Authority G.S. 110-85; 110-91(11); 143B-168.3.

SECTION .1400 - SPACE REQUIREMENTS

10A NCAC 09 .1403 AQUATIC ACTIVITIES

(a) The requirements in this Rule apply to aquatic activities, which are defined as activities that take place in or on a body of water such as swimming, swimming instruction, wading, visits to water parks, and boating. Aquatic activities do not include water play activities such as water table play, slip and slide activities or playing in sprinklers.

(b) When children participate in aquatic activities, a person who has a current life guard training certificate, issued by the Red Cross or other training determined by the Division to be equivalent to the Red Cross training, appropriate for both the type of body of water and type of aquatic activities, shall accompany the group and shall be present at all times to supervise the children in or near the water and shall not be counted in the staff-child ratio.

(c) One person with a current life guard training certificate is required for each group of 25 or fewer children.

(d) Children under the age of three shall not participate in aquatic activities.

(e) The following staff-child ratios shall be maintained whenever children participate in aquatic activities:

Age of Children	Ratio Staff/Children
3 to 4 Years	1/8
4 to 5 Years	1/10
5 Years and Older	1/13

Notwithstanding the staff-child ratios, at no time shall there be fewer than two staff members supervising the aquatic activity.

(f) Children shall be adequately supervised by center staff at all times while participating in aquatic activities. Adequate supervision shall mean that half of the center staff present is in the water and the other half is out of the water and stationed in pre-assigned areas that will enable them to hear, see, and respond quickly to the children at all times. Children shall not enter the water before center staff are stationed in their pre-assigned areas. Center staff shall devote their full attention to supervising the children in their pre-assigned areas of coverage.

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(g) Prior to children participating in aquatic activities, the center shall develop policies that address the following:

(1) aquatic safety hazards;
(2) pool and aquatic activity area supervision including restroom or changing room use;
(3) how discipline is handled during aquatic activities;
(4) aquatic area staff-child ratios; and
(5) the facility's specific field trip and transportation policies and procedures.

(h) Prior to accompanying children on aquatic activities all center staff responsible for supervising children during an aquatic activity shall have reviewed:

(1) the center policies as specified in Paragraph (g) of this Rule; and
(2) any specific guidelines provided by the pool operator or other off-site aquatic facility.

The center shall maintain a signed and dated statement verifying staff review of the center and aquatic facility policies for the duration of the staff person's employment.

(i) Any outdoor swimming pool which is located on the child care facility premises shall be enclosed by a fence and shall be separated from the remaining outdoor play area by that fence.

(j) Swimming pool safety rules shall be posted near any swimming pool located on the child care facility premises. At a minimum, these rules shall address:

(1) the location of a first-aid kit;
(2) that non-water toys are prohibited;
(3) that children shall not run or push one another;
(4) that no swimming is allowed without an adult present; and
(5) that glass objects are not allowed.

(k) All swimming pools used by children shall meet the "Rules Governing Public Swimming Pools", in accordance with 15A NCAC 18A .2500 which are incorporated by reference, including subsequent amendments. A copy of these Rules is on file with the Division of Child Development, 319 Chapanoke Road, Raleigh, NC 27626, or may be obtained at no cost by writing the North Carolina Division of Environmental Health, 1630 Mail Service Center, Raleigh, NC 27699-1630.

Authority G.S. 110-85; 110-88(5); 110-91(1),(6); 143B-168.3.

SECTION .2700 - CRIMINAL RECORDS CHECKS

10A NCAC 09 .2701 APPLICATION FOR PERMITS

(a) In addition to the requirements set forth in Rules .0302 and .1702, of this Chapter the prospective child care provider shall submit to the Division at the time of application the following forms:

(1) a certified criminal history check from the Clerk of Superior Court's office in the county or counties where the individual has resided during the previous 12 months;
(2) a signed Authority for Release of Information using the form provided by the Division; and
(3) a completed fingerprint card using SBI form FD-258.

If the prospective child care provider has lived in North Carolina for less than five consecutive years immediately preceding the date the fingerprint card is completed, a national check shall be completed.

(b) The prospective child care provider shall sign a statement declaring under penalty of perjury if he or she has been convicted of a crime other than a minor traffic violation. The prospective child care provider shall maintain this statement on file to be available for review by a representative of the Division until the notice of qualification is received by the provider. If the prospective child care provider has been convicted, has pending charges or indictments, is under deferred prosecution, has received a Prayer For Judgment, or is on probation for a crime including, but not limited to, those specified in G.S. 110-90.2, the prospective child care provider shall acknowledge that he or she is aware that the issuance of a permit is conditional pending approval by the Division.

(c) If the prospective child care provider has been convicted, has pending charges or indictments, is under deferred prosecution, has received a Prayer For Judgment, or is on probation for a crime including, but not limited to, those specified in G.S. 110-90.2, he or she may submit to the Division additional information concerning the conviction or charges that could be used by the Division in making the determination of the prospective child care provider's qualification. The Division may consider the following in making their decision: length of time since conviction; nature of the crime; circumstances surrounding the commission of the offense or offenses; evidence of rehabilitation; number of prior offenses; and age of the individual at the time of occurrence.

(d) A prospective child care provider's refusal to complete the required criminal history record check paperwork is reasonable cause to deny issuance of a permit.

(e) The Division shall notify the prospective child care provider in writing of the determination by the Division of the individual's fitness to have responsibility for the safety and well-being of children based on the criminal history.

(f) Determination by the Division that the prospective child care provider is disqualified is reasonable cause to deny issuance of a permit.

(g) If the prospective child care provider is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity, or a person designated by the chief executive officer as responsible for the operation of the facility, shall complete the criminal history record check as specified in Paragraph (a) of this Rule.

(h) When a Letter of Intent to Operate pursuant to G.S. 110-106 is submitted to the Division, the person signing the Letter of Intent shall also submit all forms as required in Rule .2702(a) of this Section.

(i) Determination by the Division that the person submitting the Letter of Intent is disqualified is reasonable cause to issue a Notice to Cease Operation.

(j) Any child care provider who owns or operates an existing child care program, and who is applying for a permit for an additional child care program within one year from the date of qualification that was based on fingerprinting, shall submit a certified criminal history check

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from the Clerk of Superior Court's office in the county or counties where the individual has resided during the previous 12 months. A new fingerprint card shall not be required unless deemed necessary by the Division in making the determination of qualification. If the criminal history check was completed more than one year prior to the application for an additional child care program, the applicant shall complete all forms as required in Paragraph (a) of this Rule.

Authority G.S. 110-85; 110-90.2; 114-19.5; 143B-168.3; S.L. 1995, c. 507, s. 23.25.

10A NCAC 09 .2702 CRIMINAL RECORD CHECK REQUIREMENTS FOR CHILD CARE PROVIDERS

(a) Child care providers shall submit the following to their employer no later than five business days after beginning work:

(1) a certified criminal history check from the Clerk of Superior Court's office in the county where the individual resides;
(2) a signed Authority for Release of Information using the form provided by the Division;
(3) a fingerprint card using SBI form FD-258; and
(4) a signed statement declaring under penalty of perjury if he or she has been convicted of a crime other than a minor traffic violation.

If the child care provider has been convicted, has pending charges or indictments, is under deferred prosecution, has received a Prayer For Judgment, or is on probation for a crime, including, but not limited to, those specified in G.S. 110-90.2, the child care provider shall acknowledge on the statement that he or she is aware that the employment is conditional pending approval by the Division. If the child care provider has lived in North Carolina for less than five consecutive years immediately preceding the date the fingerprint card is completed, a national check shall be completed.

(b) If the child care provider has been convicted, has pending charges or indictments, is under deferred prosecution, has received a Prayer For Judgment, or is on probation for a crime including, but not limited to, those specified in G.S. 110-90.2, he or she may submit to the Division additional information concerning the conviction or charges that could be used by the Division in making the determination of the provider's qualification for employment. The Division may consider the following in making a decision: length of time since conviction; nature of the crime; circumstances surrounding the commission of the offense or offenses; evidence of rehabilitation; number and type of prior offenses; and age of the individual at the time of occurrence.

(c) The child care provider's employer shall mail a complete and accurate packet that includes a certified criminal history check from the Clerk of Superior Court's office in the county where the individual resides, Authority for Release of Information using the form provided by the Division, and a fingerprint card to the Division no later than three business days after receipt. A copy of the submitted information, and the declaration statement, shall be maintained in the child care provider's personnel file, and shall be available for review by a representative of the Division until the notice of qualification is received by the provider. At that time the submitted information and the declaration statement may be discarded. The notice of qualification shall be maintained in the child care provider's personnel file, and shall be available for review by a representative of the Division.

(d) The child care provider shall be on probationary status pending the determination of qualification or disqualification by the Division.

(e) The Division shall notify the child care provider in writing of the determination by the Division of the individual's qualification to have responsibility for the safety and well-being of children based on the criminal history. The Division shall notify the employer, if any, in writing of the Division's determination concerning the child care provider; however, the employer shall not be told the specific information used in making the determination.

(f) If the child care provider changes employers within one year from the date of qualification that was based on fingerprinting, he or she shall submit a certified criminal history check from the Clerk of Superior Court's office in the county where the individual resides. This local check shall be submitted to his or her employer no later than five business days after beginning work. The employer shall complete the steps as defined in Paragraphs (c), (d) and (h) of this Rule, except that the fingerprint card and the Authority for Release of Information as referenced in Paragraph (c) is not required. If the criminal history check was completed more than one year prior to employment, the child care provider shall complete all forms as required in Paragraph (a) of this Rule.

(g) If a family child care home changes the location of operation, the family child care home providers and household members over 15 years old, including family members and non-family members who use the home, on a permanent or temporary basis, as their primary residence, shall submit a certified criminal history check from the Clerk of Superior Court's office in the county or counties where the provider and household members had lived during the previous 12 months. This local check shall be submitted to the child care consultant no later than 10 business days after the location change. A new fingerprint card shall not be required unless deemed necessary by the Division in making its determination of qualification.

(h) Child care providers determined by the Division to be disqualified shall be terminated by the center or family child care home immediately upon receipt of the disqualification notice.

(i) Refusal on the part of the employer to dismiss a child care provider who has been found to be disqualified shall be grounds for suspension, denial or revocation of the permit in addition to any other administrative action or civil penalties pursued by the Division. If an employer appeals the administrative action, the child care provider shall not be employed during the appeal process.

(j) A substitute child care provider who is employed for more than five days, whether working full or part-time, shall submit all forms as required in Paragraph (a) of this Rule to the employer by the end of the fifth working day. The employer shall complete the steps as defined in Paragraphs (c), (d) and (h) of this Rule.

(k) If a child care provider or household member is employed or remains at the same facility for three consecutive years, a modified criminal record check shall be conducted by using the Administrative Office of the Courts (AOC) System. On each three year anniversary date of employment, the child care provider or household member shall complete and submit the form provided by the Division. The Division may request a certified criminal history check from the Clerk of Superior Court's office in the county where the individual resides, from the provider or household member to verify the AOC results.

(l) For persons employed at the same facility for more than three consecutive years, as of the effective date of this Rule, the required form will be mailed to the provider by the Division on a schedule determined by the Division. These existing staff members shall complete and submit the form to the Division within 10 business days of Division notification.

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(m) Existing family child care home providers and household members who were qualified more than three years prior to January 1, 2008 will be notified by a separate mailing and shall complete and submit the required form to the Division within 10 business days of receipt of Division notification.

(n) After a child care provider or household member has received their letter of qualification, the Division may complete a new criminal record check at any time there has been an investigation that references the child care provider or household member conducted by the Department of Social Services or the Division of Child Development.

The rule also allows that the Division may complete a new criminal record check for the discovery or indication of any charges or indictments (pending or otherwise) that occurred after the initial qualification. When requested, the child care provider or household member shall complete and submit the packet as described in Paragraph (c) of this Rule to the Division within five business days of the request for a new criminal record check.

(o) Any individual over 15 years old who moves into the household or any individuals who lives in the household who has their 15th birthday after the initial licensing of a family child care home, including family members and non-family members who use the home on a permanent or temporary basis as their primary residence shall complete and submit the packet as described in Paragraph (c) of this Rule to the Division within five business days of moving into the home or their 15th birthday.

Authority G.S. 110-85; 110-90.2; 114-19.5; 143B-168.3; S.L. 1995, c. 507, s. 23.25.

10A NCAC 09 .2704 CRIMINAL RECORD CHECK REQUIREMENTS FOR NONLICENSED HOME PROVIDERS

(a) The nonlicensed home provider and household members over 15 years old, including family members and non-family members who use the home on a permanent or temporary basis as their primary residence, shall submit the following to the local purchasing agency:

(1) a certified criminal history check from the Clerk of Superior Court's office in the county or counties where the individual has resided during the previous 12 months;
(2) a signed Authority for Release of Information using the form provided by the Division;
(3) a fingerprint card using SBI form FD-258; and
(4) a signed statement declaring under penalty of perjury if he or she has been convicted of a crime other than a minor traffic violation.

This Rule also includes any individual over 15 years old who moves into the household, or any individuals who lives in the household who has their 15th birthday after initial approval, including family members and non-family members who use the home either on a permanent or temporary basis as their primary residence. These persons shall submit items in Subparagraphs (a)(1) through (a)(4) of this Rule to the local purchasing agency within five business days of moving into the home or their 15th birthday.

(b) New nonlicensed home providers and any household member over 15 years old shall submit the complete and accurate packet no later than five business days after applying for enrollment as a nonlicensed home provider of subsidized child care. If more than 12 months have elapsed since the criminal record check has been completed and subsidy funds were not received, then a new criminal record check must be submitted by the nonlicensed home provider and any household member over 15 years old.

(c) Any individual over 15 years old, including family members and non-family members who use the home, either on a permanent or temporary basis as their primary residence, shall submit all criminal record check forms as required in 10A NCAC 09 .2704, Subparagraphs (a)(1) through (a)(4) of this Rule within 10 business days of joining the household.

(d) If the nonlicensed home provider or household member has been convicted, has pending charges or indictments, is under deferred prosecution, has received a Prayer For Judgment, or is on probation for a crime including, but not limited to, those specified in G.S. 110-90.2, the nonlicensed home provider shall acknowledge on the statement that he or she is aware that payment is conditional pending approval by the Division. If the nonlicensed home provider has lived in North Carolina for less than five consecutive years immediately preceding the date the fingerprint card is completed, a a national check shall be completed.

(e) If the nonlicensed home provider or household member has been convicted, has pending charges or indictments, is under deferred prosecution, has received a Prayer For Judgment, or is on probation for a crime including, but not limited to, those specified in G.S. 110-90.2, he or she may submit to the Division additional information concerning the conviction or charges that could be used by the Division in making the determination of the provider's qualification. The Division may consider the following in making a decision: length of time since conviction; nature of the crime; circumstances surrounding the commission of the offense or offenses; evidence of rehabilitation; number of prior offenses; and age of the individual at the time of occurrence.

(f) The local purchasing agency shall mail the certified criminal history check from the Clerk of Superior Court's office in the county where the individual resides, Authority for Release of Information using the form provided by the Division, and a fingerprint card to the Division no later than five business days after receipt. A copy of the submitted information, and the declaration statement, shall be maintained in the nonlicensed home provider's file until the notice of qualification is received by the nonlicensed home provider. At that time the submitted information and the declaration statement may be discarded. The notice of qualification shall be maintained in the nonlicensed home provider's file.

(g) A nonlicensed home provider may receive payment during the period in which the state or national criminal history check is being completed if the applicant would otherwise receive approval or temporary approval from the local purchasing agency for enrollment in the subsidized child care program, subject to the provisions referenced in 10A NCAC 10 .0803(b), .0810, and .0811.

(h) The Division shall notify the nonlicensed home provider in writing of the qualification by the Division of the individual's fitness to have responsibility for the safety and well-being of children based on the criminal history. The Division shall notify the local purchasing agency in writing of the Division's determination concerning the nonlicensed home provider; however, the local purchasing agency shall not be told the specific information used in making the determination.

(i) Disqualification of a nonlicensed home provider by the Division shall be reasonable cause for the local purchasing agency to deny further payment.

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(j) If a nonlicensed home provider disagrees with the decision of disqualification and files a civil action in district court, the provider may continue to operate as a nonlicensed home provider only but shall not receive payment during the proceedings. If the determination is that the nonlicensed home provider is qualified, the nonlicensed provider shall receive retroactive payment for the care that was provided.

(k) If a nonlicensed home provider or household member is employed or remains open for three consecutive years, a modified criminal record check shall be conducted using the Administrative Office of the Courts (AOC) System. On each three year anniversary date of approval by the local purchasing agency to receive subsidy funds, the provider or household member shall complete and submit the form provided by the Division. The Division may request a certified criminal history from Clerk of Superior Court, from the provider or household member to verify the AOC results.

(l) Existing nonlicensed home providers who have been operating for more than three consecutive years, as of the effective date of this Rule, will be notified by a separate mailing and shall complete and submit the form to the Division within 10 business days of receipt.

(m) After a nonlicensed home provider or household member has been qualified,

the Division may complete a new criminal record check at any time there has been an investigation that references the nonlicensed home provider or household member conducted by the Department of Social Services or the Division of Child Development.

The rule also allows that the Division may complete a new criminal record check for the discovery or indication of any charges or indictments (pending or otherwise) that occurred after the initial qualification. When requested, the nonlicensed home provider or household member shall complete and submit the packet as described in Subparagraphs (a)(1) through (a)(3) of this Rule to the Division within five business days of the request for a new criminal record check.

Authority G.S. 110-85; 110-90.2; 114-19.5; 143B-168.3; S.L. 1995, c. 507, s. 23.25.