

Article 7.

Child Care Facilities.

**§ 110-85. Legislative intent and purpose.**

Recognizing the importance of the early years of life to a child's development, the General Assembly hereby declares its intent with respect to the early care and education of children:

- (1) The State should protect children in child care facilities by ensuring that these facilities provide a physically safe and healthy environment where the developmental needs of these children are met and where these children are cared for by qualified persons of good moral character.
- (2) Repealed by Session Laws 1997-506, s. 2, effective September 16, 1997.
- (3) Achieving this level of protection and early education requires the following elements: mandatory licensing of child care facilities; promotion of higher quality child care through the development of enhanced standards which operators may comply with on a voluntary basis; and a program of education to help operators improve their programs and to deepen public understanding of child care needs and issues. (1971, c. 803, s. 1; 1987, c. 788, s. 1; 1997-506, ss. 1, 2.)

**§ 110-86. Definitions.**

Unless the context or subject matter otherwise requires, the terms or phrases used in this Article shall be defined as follows:

- (1) Commission. – The Child Care Commission created under this Article.
- (2) Child care. – A program or arrangement where three or more children less than 13 years old, who do not reside where the care is provided, receive care on a regular basis of at least once per week for more than four hours but less than 24 hours per day from persons other than their guardians or full-time custodians, or from persons not related to them by birth, marriage, or adoption. Child care does not include the following:
  - a. Arrangements operated in the home of any child receiving care if all of the children in care are related to each other and no more than two additional children are in care;
  - b. Recreational programs operated for less than four consecutive months in a year;
  - c. Specialized activities or instruction such as athletics, dance, art, music lessons, horseback riding, gymnastics, or organized clubs for children, such as Boy Scouts, Girl Scouts, 4-H groups, or boys and girls clubs;
  - d. Drop-in or short-term care provided while parents participate in activities that are not employment related and where the parents are on the premises or otherwise easily accessible, such as drop-in or short-term care provided in health spas, bowling alleys, shopping malls, resort hotels, or churches;
  - d1. Drop-in or short-term care provided by an employer for its part-time employees where (i) the child is provided care not to exceed two and one-half hours during that day, (ii) the parents are on the premises, and (iii) there are no more than 25 children in any one group in any one room;

- e. Public schools;
  - f. Nonpublic schools described in Part 2 of Article 39 of Chapter 115C of the General Statutes that are accredited by national or regional accrediting agencies with early childhood standards and that operate
    - (i) a child care facility as defined in subdivision (3) of this section for less than six and one-half hours per day either on or off the school site or
    - (ii) a child care facility for more than six and one-half hours per day, but do not receive NC Pre-K or child care subsidy funding;
  - g. Bible schools conducted during vacation periods;
  - h. Care provided by facilities licensed under Article 2 of Chapter 122C of the General Statutes;
  - i. Cooperative arrangements among parents to provide care for their own children as a convenience rather than for employment;
  - j. Any child care program or arrangement consisting of two or more separate components, each of which operates for four hours or less per day with different children attending each component; and
  - k. Track-out programs provided to school-age children when they are out of school on a year-round school calendar.
- (2a) Child care administrator. – A person who is responsible for the operation of a child care facility and is on-site on a regular basis.
- (3) Child care facility. – Includes child care centers, family child care homes, and any other child care arrangement not excluded by G.S. 110-86(2), that provides child care, regardless of the time of day, wherever operated, and whether or not operated for profit.
- a. A child care center is an arrangement where, at any one time, there are three or more preschool-age children or nine or more school-age children receiving child care.
  - b. A family child care home is a child care arrangement located in a residence where, at any one time, more than two children, but less than nine children, receive child care.
- (4) Repealed by Session Laws 1997-506, s. 3.
- (4a) Department. – Department of Health and Human Services.
- (5) Repealed by Session Laws 1975, c. 879, s. 15.
- (5a) Lead teacher. – An individual who is responsible for planning and implementing the daily program of activities for a group of children in a child care facility.
- (6) License. – A permit issued by the Secretary to any child care facility which meets the statutory standards established under this Article.
- (7) Operator. – Includes the owner, director or other person having primary responsibility for operation of a child care facility subject to licensing.
- (8) Secretary. – The Secretary of the Department of Health and Human Services. (1971, c. 803, s. 1; 1975, c. 879, s. 15; 1977, c. 4, ss. 1-3; 1983, c. 46, s. 1; c. 297, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1034, s. 78; 1985, c. 589, s. 36; c. 757, s. 155(c); 1987, c. 788, s. 2; 1989, c. 234; 1991, c. 273, s. 1; 1991 (Reg. Sess., 1992), c. 904, ss. 1, 2; c. 1024, s. 1; c. 1030, s. 51.12; 1997-443, ss.

11A.118(a), 11A.122; 1997-506, s. 3; 2005-416, s. 1; 2013-360, s. 8.29(b); 2014-49, s. 8; 2016-7, s. 1.)

**§ 110-87. Repealed by Session Laws 1975, c. 879, s. 15.**

**§ 110-88. Powers and duties of the Commission.**

The Commission shall have the following powers and duties:

- (1) To develop policies and procedures for the issuance of a license to any child care facility that meets all applicable standards established under this Article.
- (1a) To adopt applicable rules and standards based upon the capacity of a child care facility.
- (2) To require inspections by and satisfactory written reports from representatives of local or State health agencies, fire and building inspection agencies, and from representatives of the Department prior to the issuance of an initial license to any child care center.
- (2a) To require annually, inspections by and satisfactory written reports from representatives of local or State health agencies and fire inspection agencies after a license is issued.
- (3) Repealed by Session Laws 1997-506, s. 4.
- (4) Repealed by Session Laws 1975, c. 879, s. 15.
- (5) To adopt rules and develop policies for implementation of this Article, including procedures for application, approval, annual compliance visits for centers, and revocation of licenses.
- (6) To adopt rules for the issuance of a provisional license that shall be in effect for no more than 12 consecutive months to a child care facility that does not conform in every respect with the standards established in this Article and rules adopted by the Commission pursuant to this Article but that is making a reasonable effort to conform to the standards.
- (6a) To adopt rules for administrative action against a child care facility when the Secretary's investigations pursuant to G.S. 110-105(a)(3) substantiate that child abuse or neglect did occur in the facility. The rules shall provide for types of sanctions which shall depend upon the severity of the incident and the probability of reoccurrence. The rules shall also provide for written warnings and special provisional licenses.
- (7) To develop and adopt voluntary enhanced program standards which reflect higher quality child care than the mandatory standards established by this Article. These enhanced program standards must address, at a minimum, staff/child ratios, staff qualifications, parent involvement, operational and personnel policies, developmentally appropriate curricula, and facility square footage.
- (8) To develop a procedure by which the Department shall furnish those forms as may be required for implementation of this Article.
- (9) Repealed by Session Laws 1985, c. 757, s. 156(66).
- (10) To adopt rules for the issuance of a temporary license which shall expire in six months and which may be issued to the operator of a new center or to the

operator of a previously licensed center when a change in ownership or location occurs.

- (11) To adopt rules for child care facilities which provide care for children who are mildly sick.
- (12) To adopt rules regulating the amount of time a child care administrator shall be on-site at a child care center.
- (13) To adopt rules for child care facilities that provide care for medically fragile children.
- (14) To adopt rules establishing standards for certification of child care centers providing Developmental Day programs.

The Division and the Commission shall permit individual facilities to make curriculum decisions and may not require the standards, policies, or curriculum of any single accrediting child care organization. If Division inquiries to providers include database fields or questions regarding accreditation, the inquiry shall permit daycare providers to fill in any accrediting organization from which they have received accreditation. (1971, c. 803, s. 1; 1975, c. 879, s. 15; 1985, c. 757, s. 155(d), (e), 156(a), (z), (aa), (bb); 1987, c. 543, s. 2; c. 788, s. 3; c. 827, s. 232; 1991, c. 273, s. 2; 1993, c. 185, s. 1; 1997-506, ss. 4(a), 28.3; 1999-130, ss. 1, 5; 2004-124, s. 10.35; 2009-187, s. 2.)

**§ 110-88.1. Commission may not interfere with religious training offered in religious-sponsored child care facilities.**

Nothing in this Article shall be interpreted to allow the State to determine the training or curriculum offered in any religious-sponsored child care facility as defined in G.S. 110-106(a). (1999-130, s. 6.)

**§ 110-89. Repealed by Session Laws 1975, c. 879, s. 15.**

**§ 110-90. Powers and duties of Secretary of Health and Human Services.**

The Secretary shall have the following powers and duties under the policies and rules of the Commission:

- (1) To administer the licensing program for child care facilities.
- (1a) To establish a fee for the licensing of child care facilities. The fee does not apply to a religious-sponsored child care facility operated pursuant to a letter of compliance. The amount of the fee may not exceed the amount listed in this subdivision.

<b>Capacity of Facility</b>	<b>Maximum Fee</b>
12 or fewer children	\$ 52.00
13-50 children	\$187.00
51-100 children	\$375.00
101 or more children	\$600.00

- (2) To obtain and coordinate the necessary services from other State departments and units of local government which are necessary to implement the provisions of this Article.
- (3) To employ the administrative personnel and staff as may be necessary to implement this Article where required services, inspections or reports are not available from existing State agencies and units of local government.

- (4) To issue a rated license to any child care facility which meets the standards established by this Article. The rating shall be based on the following:
  - a. Before January 1, 2008, for any child care facility currently holding a license of two to five stars, the rating shall be based on program standards, education levels of staff, and compliance history of the child care facility. By January 1, 2008, the rating shall be based on program standards and education levels of staff.
  - b. Effective January 1, 2006, for any new license issued to a child care facility with a rating of two to five stars, the rating shall be based on program standards and education levels of staff.
  - c. By January 1, 2008, for any child care facility to maintain a license or Notice of Compliance, the child care facility shall have a compliance history of at least seventy-five percent (75%), as assessed by the Department. When a child care facility fails to maintain a compliance history of at least seventy-five percent (75%) for the past 18 months or during the length of time the facility has operated, whichever is less, as assessed by the Department, the Department may issue a provisional license or Notice of Compliance.
  - d. Effective January 1, 2006, for any new license or Notice of Compliance issued to a child care facility, the facility shall maintain a compliance history of at least seventy-five percent (75%), as assessed by the Department. When a child care facility fails to maintain a compliance history of at least seventy-five percent (75%) for the past 18 months or during the length of time the facility has operated, whichever is less, as assessed by the Department, the Department may issue a provisional license or Notice of Compliance.
  - e. The Department shall provide additional opportunities for child care providers to earn points for program standards and education levels of staff.
- (5) To revoke the license of any child care facility that ceases to meet the standards established by this Article and rules on these standards adopted by the Commission, or that demonstrates a pattern of noncompliance with this Article or the rules, or to deny a license to any applicant that fails to meet the standards or the rules. These revocations and denials shall be done in accordance with the procedures set out in G.S. 150B and this Article and rules adopted by the Commission.
- (6) To prosecute or defend on behalf of the State, through the office of the Attorney General, any legal actions arising out of the administration or enforcement of this Article.
- (7) To promote and coordinate educational programs and materials for operators of child care facilities which are designed to improve the quality of child care available in the State, using the resources of other State and local agencies and educational institutions where appropriate.
- (8) Repealed by Session Laws 1997-506, s. 5.
- (9) To levy a civil penalty pursuant to G.S. 110-103.1, or an administrative penalty pursuant to G.S. 110-102.2, or to order summary suspension of a

license. These actions shall be done in accordance with the procedures set out in G.S. 150B and this Article and rules adopted by the Commission.

- (10) To issue final agency decisions in all G.S. 150B contested cases proceedings filed as a result of actions taken under this Article including, but not limited to the denial, revocation, or suspension of a license or the levying of a civil or administrative penalty.
- (11) To issue a license to any child care arrangement that does not meet the definition of child care facility in G.S. 110-86 whenever the operator of the arrangement chooses to comply with the requirements of this Article and the rules adopted by the Commission and voluntarily applies for a child care facility license. The Commission shall adopt rules for the issuance or removal of the licenses.

Notwithstanding any other provision of law, rules adopted by the Commission regarding a public school that voluntarily applies for a child care facility license shall provide that a classroom that meets the standards set out in G.S. 115C-521.1 shall satisfy child care facility licensure requirements as related to the physical classroom. (1971, c. 803, s. 1; 1975, c. 879, s. 15; 1985, c. 757, ss. 155(g), 156(cc), (dd); 1987, c. 788, s. 4; c. 827, s. 233; 1991, c. 273, s. 3; 1993, c. 185, s. 2; 1997-443, s. 11A.118(a); 1997-506, s. 5; 2003-284, s. 34.12(a); 2005-36, s. 1; 2009-123, s. 2; 2009-451, s. 10.11.)

**§ 110-90.1: Repealed by Session Laws 1997-506, s. 6.**

**§ 110-90.2. Mandatory child care providers' criminal history checks.**

- (a) For purposes of this section:
  - (1) "Child care", notwithstanding the definition in G.S. 110-86, means any child care provided in child care facilities required to be licensed or regulated under this Article and nonlicensed child care homes approved to receive or receiving State or federal funds for providing child care.
  - (2) "Child care provider" means a person who:
    - a. Is employed by or seeks to be employed by a child care facility providing child care as defined in subdivision (1) of this subsection, whether in temporary or permanent capacity, including substitute providers;
    - b. Owns or operates or seeks to own or operate a child care facility or nonlicensed child care home providing child care as defined in subdivision (1) of this subsection; or
    - c. Is a member of the household in a family child care home, nonlicensed child care home, or child care center in a residence and who is over 15 years old, including family members and nonfamily members who use the home on a permanent or temporary basis as their place of residence.
  - (3) "Criminal history" means a county, state, or federal criminal history of conviction or pending indictment of a crime or criminal charge, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children. Such crimes include,

but are not limited to, the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7B, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary; Article 16, Larceny; Article 17, Robbery; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19C, Identity Theft; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 29, Bribery; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 52, Miscellaneous Police Regulations; and Article 59, Public Intoxication. Such crimes also include cruelty to animals in violation of Article 3 of Chapter 19A of the General Statutes, possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

- (4) "Substitute provider" means a person who temporarily assumes the duties of a staff person for a time period not to exceed two consecutive months and may or may not be monetarily compensated by the facility.
- (5) "Uncompensated provider" means a person who works in a child care facility and is counted in staff/child ratio or has unsupervised contact with children, but who is not monetarily compensated by the facility.

(a1) No person shall be a child care provider or uncompensated child care provider who has been any of the following:

- (1) Convicted of a misdemeanor or a felony crime involving child neglect or child abuse.
- (2) Adjudicated a "responsible individual" under G.S. 7B-311(b).
- (3) Convicted of a "reportable conviction" as defined under G.S. 14-208.6(4).

(b) Effective January 1, 1996, the Department shall ensure that, prior to employment and every three years thereafter, the criminal history of all child care providers is checked and a determination is made of the child care provider's fitness to have responsibility for the safety and well-being of children based on the criminal history. The Department shall ensure that all child care providers are checked for county, State, and federal criminal histories.

(b1) The Department may prevent an individual from being a child care provider if the Department determines that the individual is a habitually excessive user of alcohol, illegally uses narcotic or other impairing drugs, or is mentally or emotionally impaired to an extent that may be injurious to children.

(c) The Department of Public Safety shall provide to the Division of Child Development, Department of Health and Human Services, the criminal history from the State and National Repositories of Criminal Histories of any child care provider as requested by the Division.

The Division shall provide to the Department of Public Safety, along with the request, the fingerprints of the provider to be checked, any additional information required by the Department of Public Safety, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories signed by the child care provider to be checked. The fingerprints of the provider shall be forwarded to the State Bureau of Investigation for a search of their criminal history record file and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a federal criminal history record check.

At the time of application the child care provider whose criminal history is to be checked shall be furnished with a statement substantially similar to the following:

### **NOTICE**

#### **CHILD CARE PROVIDER MANDATORY CRIMINAL HISTORY CHECK**

NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY RECORD CHECK BE CONDUCTED ON ALL PERSONS WHO PROVIDE CHILD CARE IN A LICENSED CHILD CARE FACILITY, AND ALL PERSONS PROVIDING CHILD CARE IN NONLICENSED CHILD CARE HOMES THAT RECEIVE STATE OR FEDERAL FUNDS.

"Criminal history" means a county, state, or federal criminal history of conviction, pending indictment of a crime, or criminal charge, whether a misdemeanor or a felony, that bears on an individual's fitness to have responsibility for the safety and well-being of children. Such crimes include, but are not limited to, the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7B, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary; Article 16, Larceny; Article 17, Robbery; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19C, Identity Theft; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 29, Bribery; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication. Such crimes also include cruelty to animals in violation of Article 3 of Chapter 19A of the General Statutes, violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this notice, such crimes also include similar crimes under federal law or under the laws of other states. Your fingerprints will be used to check the criminal history records of the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI).

If it is determined, based on your criminal history, that you are unfit to have responsibility for the safety and well-being of children, you shall have the opportunity to complete, or challenge the accuracy of, the information contained in the SBI or FBI identification records.

If you disagree with the determination of the North Carolina Department of Health and Human Services on your fitness to provide child care, you may file a civil lawsuit within 60 days after receiving written notification of disqualification in the district court in the county where you live.



Any child care provider who intentionally falsifies any information required to be furnished to conduct the criminal history record check shall be guilty of a Class 2 misdemeanor.

Refusal to consent to a criminal history record check or intentional falsification of any information required to be furnished to conduct a criminal history record check is grounds for the Department to prohibit the child care provider from providing child care. Any child care provider who intentionally falsifies any information required to be furnished to conduct the criminal history shall be guilty of a Class 2 misdemeanor.

(d) The Department shall notify in writing the child care provider, and the child care provider's employer, if any, or for nonlicensed child care homes the local purchasing agency, of the determination by the Department whether the child care provider is qualified to provide child care based on the child care provider's criminal history. In accordance with the law regulating the dissemination of the contents of the criminal history file furnished by the Federal Bureau of Investigation, the Department shall not release nor disclose any portion of the child care provider's criminal history to the child care provider or the child care provider's employer or local purchasing agency. The Department shall also notify the child care provider of the procedure for completing or challenging the accuracy of the criminal history and the child care provider's right to contest the Department's determination in court.

A child care provider who disagrees with the Department's decision may file a civil action in the district court of the county of residence of the child care provider within 60 days after receiving written notification of disqualification. Review of the Department's determination disqualifying a child care provider shall be de novo. No jury trial is available for appeals to district court under this section.

(e) All the information that the Department receives through the checking of the criminal history is privileged information and is not a public record but is for the exclusive use of the Department and those persons authorized under this section to receive the information. The Department may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(f) There shall be no liability for negligence on the part of an employer of a child care provider, an owner or operator of a child care facility, a State or local agency, or the employees of a State or local agency, arising from any action taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection is waived to the extent of indemnification by insurance, indemnification under Article 31A of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Torts Claim Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(g) The child care provider shall pay the cost of the fingerprinting and the federal criminal history record check in accordance with G.S. 143B-934. The Department of Public Safety shall perform the State criminal history record check. The Department of Health and Human Services shall pay for and conduct the county criminal history record check. Child care providers who reside outside the State bear the cost of the county criminal history record check and shall provide the county criminal history record check to the Division of Child Development as required by this section.

(h) Repealed by Session Laws 2013-410, s. 46, effective August 23, 2013. (1995, c. 507, s. 23.25(a); c. 542, s. 25.2; 1997-443, s. 11A.118(a); 1997-506, s. 7; 2012-160, s. 1; 2013-410, s.

46; 2013-413, s. 12; 2014-100, ss. 17.1(o), (pp); 2014-115, s. 17; 2015-181, s. 47; 2015-264, s. 55.)

**§ 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. –

a. through f. Repealed by Session Laws 2012-142, s. 10.1(c1), effective July 1, 2012.

g. Nutrition standards. – The Commission shall adopt rules for child care facilities to ensure that food and beverages provided by a child care facility are nutritious and align with children's developmental needs. The Commission shall consult with the Division of Child Development and Early Education 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:

1. Limiting or prohibiting the serving of sweetened beverages, other than one hundred percent (100%) fruit juice to children of any age.
2. Limiting or prohibiting the serving of whole milk to children two years of age or older or flavored milk to children of any age.
3. Limiting or prohibiting the serving of more than six ounces of juice per day to children of any age.
4. Limiting or prohibiting the serving of juice from a bottle.

h. Parental exceptions. –

1. Parents or guardians of a child enrolled in a child care facility may (i) provide food and beverages to their child that may not meet the nutrition standards adopted by the Commission and (ii) opt out of any supplemental food program provided by the child care facility. The child care facility shall not provide food or beverages to a child whose parent or guardian has opted out of any supplemental food program provided by the child care facility and whose parent or guardian is providing food and beverages for the child.
2. The Commission, the Division of Child Development and Early Education of the Department of Health and Human Services, or any State agency or contracting entity with a State agency shall not evaluate the nutritional value or adequacy of the components of food and beverages provided by a parent or guardian to his or her child enrolled in a child care facility as an indicator of environmental quality ratings.

i. Rest time. – 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.

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; 2012-142, 10.1(c1); 2012-160, s. 2.)

**§ 110-92. Duties of State and local agencies.**

When requested by an operator of a child care center or by the Secretary, it shall be the duty of local and district health departments to visit and inspect a child care center to determine whether the center complies with the health and sanitation standards required by this Article and with the minimum sanitation standards adopted as rules by the Commission for Public Health as authorized by G.S. 110-91(1), and to submit written reports on these visits or inspections to the Department on forms approved and provided by the Department of Environmental Quality.

When requested by an operator of a child care center or by the Secretary, it shall be the duty of the building inspector, fire prevention inspector, or fireman employed by local government, or any fireman having jurisdiction, or other officials or personnel of local government to visit and inspect a child care center for the purposes specified in this Article, including plans for evacuation of the premises and protection of children in case of fire, and to report on these visits or inspections in writing to the Secretary so that these reports may serve as the basis for action or decisions by the Secretary or Department as authorized by this Article. (1971, c. 803, s. 1; 1973, c. 476, ss. 128, 138; 1975, c. 879, s. 15; 1985, c. 757, s. 155(j); 1987, c. 543, s. 4; 1989, c. 727, s. 31; 1989 (Reg. Sess., 1990), c. 1024, s. 21; 1991, c. 273, s. 6; 1997-443, s. 11A.45; 1997-506, s. 9; 2007-182, s. 2; 2015-241, s. 14.30(u).)

**§ 110-93. Application for a license.**

(a) Each person who seeks to operate a child care facility shall apply to the Department for a license. The application shall be in the form required by the Department. Each applicant seeking a license shall be responsible for supplying with the application the necessary supporting data and reports to show conformity with rules adopted by the Commission for Public Health pursuant to G.S. 110-91(1) and with the standards established or authorized by this Article, including any required reports from the local and district health departments, local building inspectors, local firemen, voluntary firemen, and others, on forms which shall be provided by the Department.

(b) If an applicant conforms to the rules adopted by the Commission for Public Health pursuant to G.S. 110-91(1) and with the standards established or authorized by this Article as shown in the application and other supporting data, the Secretary shall issue a license that shall remain valid until the Secretary notifies the licensee otherwise pursuant to G.S. 150B-3 or other provisions of this Article, subject to suspension or revocation for cause as provided in this Article. If the applicant fails to conform to the required rules and standards, the Secretary may issue a provisional license under the policies of the Commission. The Department shall notify the applicant in writing by registered or certified mail the reasons the Department issued a provisional license.

(c) Repealed by Session Laws 1997-506, s. 10, effective September 16, 1997.

(d) Repealed by Session Laws 1977, c. 929, s. 1. (1971, c. 803, s. 1; 1975, c. 879, s. 15; 1977, c. 4, s. 4; c. 929, s. 1; 1985, c. 757, s. 155(k), (l); 1987, c. 543, ss. 5, 6; c. 788, s. 7; 1991, c. 273, s. 7; 1997-443, s. 11A.118(a); 1997-506, s. 10; 1999-130, s. 3; 2007-182, s. 2.)

**§ 110-93.1:** Repealed by Session Laws 2006-66, s. 10.2(a), (b), effective July 1, 2006.

#### **§ 110-94. Administrative Procedure Act.**

The provisions of Chapter 150B of the General Statutes shall be applicable to the Commission, to the rules the Commission adopts, and to child care contested cases. However, a child care operator shall have 30 days to file a petition for a contested case pursuant to G.S. 150B-23. The contested case hearing shall be scheduled to be held within 120 days of the date the petition for a hearing is received, pursuant to G.S. 150B-23(a), in any contested case resulting from administrative action taken by the Secretary to revoke a license or Letter of Compliance or from administrative action taken in a situation in which child abuse or neglect in a child care facility has been substantiated. A request for continuance of a hearing shall be granted upon a showing of good cause by either party. (1971, c. 803, s. 1; 1975, c. 879, s. 15; 1977, c. 929, s. 2; 1985, c. 757, s. 155(m); 1987, c. 788, s. 8; 1989, c. 429; 1991, c. 273, s. 8; 1997-506, s. 11.)

**§§ 110-95 through 110-97. Repealed by Session Laws 1977, c. 929, s. 1.**

#### **§ 110-98. Mandatory compliance.**

It shall be unlawful for any person to:

- (1) Offer or provide child care without complying with the provisions of this Article; or
- (2) Advertise without disclosing the child care facility's identifying number that is on the license or the letter of compliance. (1971, c. 803, s. 1; 1985, c. 757, s. 156(ee); 1987, c. 788, s. 9; 1997-506, s. 12.)

**§ 110-98.1. Prima facie evidence of existence of child care.**

A child care arrangement providing child care for more than two children for more than four hours per day on two or more consecutive days shall be prima facie evidence of the existence of a child care facility. (1977, c. 4, s. 6; 1987, c. 788, s. 10; 1997-506, s. 13.)

**§ 110-99. Possession and display of license.**

(a) It shall be unlawful for a child care facility to operate without a current license authorized for issuance under G.S. 110-88.

(a1) Each child care facility shall display its current license in a prominent place at all times so that the public may be on notice that the facility is licensed and may observe any rating which may appear on the license. Any license issued to a child care facility under this Article shall remain the property of the State and may be removed by persons employed or designated by the Secretary in the event that the license is revoked or suspended, or in the event that the rating is changed.

(b) A person who provides only drop-in or short-term child care as described in G.S. 110-86(2)d. and G.S. 110-86(2)d1., excluding drop-in or short-term child care provided in churches, shall register with the Department that the person is providing only drop-in or short-term child care. Any person providing only drop-in or short-term child care as described in G.S. 110-86(2)d. and G.S. 110-86(2)d1., excluding drop-in or short-term child care provided in churches, shall display in a prominent place at all times a notice that the child care arrangement is not required to be licensed and regulated by the Department and is not licensed and regulated by the Department. (1971, c. 803, s. 1; 1997-506, s. 14; 1999-130, s. 4; 2003-192, s. 2; 2005-416, s. 2.)

**§ 110-100: Repealed by Session Laws 1997-506, s. 15.**

**§ 110-101: Repealed by Session Laws 1997-506, s. 16.**

**§ 110-101.1. Corporal punishment banned in certain "nonlicensed" homes.**

The use of corporal punishment as a form of discipline is prohibited in those child care homes that are not required to be licensed under this Article but that receive State or federal subsidies for child care unless this care is provided to children by their parents, stepparents, grandparents, aunts, uncles, step-grandparents, or great-grandparents. Care provided children by their parents, stepparents, grandparents, aunts, uncles, step-grandparents, or great-grandparents is not subject to this section. Religious sponsored nonlicensed homes are also exempt from this section. (1993, c. 268, s. 1; 1997-506, s. 17.)

**§ 110-102. Information for parents.**

The Secretary shall provide to each operator of a child care facility a summary of this Article for the parents, guardian, or full-time custodian of each child receiving child care in the facility to be distributed by the operator. Operators of child care facilities shall provide a copy of the summary to each child's parent, guardian, or full-time custodian before the child is enrolled in the child care facility. The child's parent, guardian, or full-time custodian shall sign a statement attesting that he or she received a copy of the summary before the child's enrollment. The summary shall include the name and address of the Secretary and the address of the Commission.

The summary shall explain how parents may obtain information on individual child care facilities maintained in public files by the Division of Child Development. The summary shall also include a statement regarding the mandatory duty prescribed in G.S. 7B-301 of any person suspecting child abuse or neglect has taken place in child care, or elsewhere, to report to the county Department of Social Services. The statement shall include the definitions of child abuse and neglect described in the Juvenile Code in G.S. 7B-101 and of child abuse described in the Criminal Code in G.S. 14-318.2 and G.S. 14-318.4. The statement shall stress that this reporting law does not require that the person reporting reveal the person's identity.

The summary of this Article shall be posted with the facility's license in accordance with G.S. 110-99. Religious-sponsored programs operating pursuant to G.S. 110-106 shall post the summary in a prominent place at all times so that it is easily reviewed by parents. (1971, c. 803, s. 1; 1975, c. 879, s. 15; 1977, c. 1011, s. 3; 1985, c. 757, ss. 155(o), 156(v); 1997-443, s. 11A.118(a); 1997-506, s. 18; 1998-202, s. 13(w); 2003-196, s. 1.)

#### **§ 110-102.1. Reporting of missing or deceased children.**

(a) Notwithstanding G.S. 14-318.5, operators and staff, as defined in G.S. 110-86(7), and G.S. 110-91(8), or any adult present with the approval of the care provider in a child care facility as defined in G.S. 110-86(3) and G.S. 110-106, upon learning that a child which has been placed in their care or presence is missing, shall immediately report the missing child to law enforcement. For purposes of this Article, a child is anyone under the age of 16.

(b) If a child dies while in child care, or of injuries sustained in child care, a report of the death must be made by the child care operator to the Secretary within 24 hours of the child's death or on the next working day. (1985, c. 392; 1987, c. 788, s. 12; 1997-506, s. 19; 2013-52, s. 4.)

#### **§ 110-102.1A. Unauthorized administration of medication.**

(a) It is unlawful for an employee, owner, household member, volunteer, or operator of a licensed or unlicensed child care facility as defined in G.S. 110-86, including child care facilities operated by public schools and nonpublic schools as defined in G.S. 110-86(2)(f), to willfully administer, without written authorization, prescription or over-the-counter medication to a child attending the child care facility. For the purposes of this section, written authorization shall include the child's name, date or dates for which the authorization is applicable, dosage instructions, and signature of the child's parent or guardian. For the purposes of this section, a child care facility operated by a public school does not include kindergarten through twelfth grade classes.

(b) In the event of an emergency medical condition and the child's parent or guardian is unavailable, it shall not be unlawful to administer medication to a child attending the child care facility without written authorization as required under subsection (a) of this section if the medication is administered with the authorization and in accordance with instructions from a bona fide medical care provider. For purposes of this subsection, the following definitions apply:

- (1) A bona fide medical care provider means an individual who is licensed, certified, or otherwise authorized to prescribe the medication.
- (2) An emergency medical condition means circumstances where a prudent layperson acting reasonably would have believed that an emergency medical condition existed.

(c) A violation of this section that results in serious injury to the child shall be punished as a Class F felony.

(d) Any other violation of this section where medication is administered willfully shall be punished as a Class A1 misdemeanor. (2003-406, s. 2.)

### **§ 110-102.2. Administrative penalties.**

For failure to comply with this Article, the Secretary may:

- (1) Issue a written warning and a request for compliance;
- (2) Issue an official written reprimand;
- (3) Place a licensee upon probation until his compliance with this Article has been verified by the Commission or its agent;
- (4) Order suspension of a license for a specified length of time not to exceed one year;
- (5) Permanently revoke a license issued under this Article.

The issuance of an administrative penalty may be appealed as provided in G.S. 110-90(5) and G.S. 110-90(9). (1985, c. 757, s. 156(ff); 1987, c. 788, s. 13; c. 827, s. 235.)

### **§ 110-103. Criminal penalty.**

(a) Any person who violates the provisions of G.S. 110-98 shall be guilty of a Class 1 misdemeanor. Violations of G.S. 110-98(2), 110-99(b), 110-99(c), and 110-102 are exempted from the provisions of this subsection.

(b) It shall be a Class I felony for any person who operates a child care facility to:

- (1) Willfully violate the provisions of G.S. 110-99(a), or
- (2) Willfully violate the provisions of this Article while providing child care for three or more children, for more than four hours per day on two consecutive days.

(c) Any person who violates the provisions of this Article and, as a result of the violation, causes serious injury to a child attending the child care facility, shall be guilty of a Class H felony.

(d) Any person who violates subsection (a) of this section, and has a prior conviction for violating subsection (a), shall be guilty of a Class H felony. (1971, c. 803, s. 1; 1983, c. 297, s. 3; 1985, c. 757, s. 156(gg); 1987, c. 788, s. 14; 1993, c. 539, s. 824; 1994, Ex. Sess., c. 24, s. 14(c); 1997-506, s. 20; 2003-192, s. 1.)

### **§ 110-103.1. Civil penalty.**

(a) A civil penalty may be levied against any operator of any child care facility who violates any provision of this Article. The penalty shall not exceed one thousand dollars (\$1,000) for each violation documented on any given date. Every operator shall be provided a schedule of the civil penalties established by the Commission pursuant to this Article.

(b) In determining the amount of the penalty, the threat of or extent of harm to children in care as well as consistency of violations shall be considered, and no penalty shall be imposed under this section unless there is a specific finding that this action is reasonably necessary to enforce the provisions of this Article or its rules.

(c) A person who is assessed a penalty shall be notified of the penalty by registered or certified mail. The notice shall state the reasons for the penalty. If a person fails to pay a penalty, the Secretary shall refer the matter to the Attorney General for collection.

(d) The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1985, c. 757, s. 156(gg); 1987, c. 788, s. 15; c. 827, s. 236; 1991, c. 273, s. 9; 1997-506, s. 21; 1998-215, s. 75.)

**§ 110-104. Injunctive relief.**

The Secretary or the Secretary's designee may seek injunctive relief in the district court of the county in which a child care facility is located against the continuing operation of that child care facility at any time, whether or not any administrative proceedings are pending. The district court may grant injunctive relief, temporary, preliminary, or permanent, when there is any violation of this Article or of the rules promulgated by the Commission or the Commission for Public Health that threatens serious harm to children in the child care facility, or when a final order to deny or revoke a license has been violated, or when a child care facility is operating without a license, or when a child care facility repeatedly violates the provisions of this Article or rules adopted pursuant to it after having been notified of the violation. (1977, c. 4, s. 5; c. 929, s. 3; c. 1011, s. 1; 1985, c. 757, s. 156(hh); 1987, c. 543, s. 7; c. 788, s. 16; c. 827, s. 237; 1997-506, s. 22; 2007-182, s. 2.)

**§ 110-105. Authority to inspect facilities.**

(a) The Department shall have authority to inspect facilities without notice when it determines there is cause to believe that an emergency situation exists or there is a complaint alleging a violation of licensure law. When the Department is notified by the county director of social services that the director has received a report of child maltreatment in a child care facility, or when the Department is notified by any other person that alleged child maltreatment has occurred in a facility, the Commission's rules shall provide for an inspection conducted without notice to the child care facility to determine whether the alleged child maltreatment has occurred. The inspection shall be conducted within seven calendar days of receipt of the report. Additional visits shall be conducted, as warranted.

(a1) The Commission shall adopt standards and rules under this subsection which provide for the following types of inspections:

- (1) An initial licensing inspection, which shall not occur until the administrator of the facility receives prior notice of the initial inspection visit;
- (2) A plan for visits to all facilities, including announced and unannounced visits, which shall be confidential unless a court orders its disclosure;
- (3) An inspection that may be conducted without notice, if there is cause to believe that an emergency situation exists or there is a complaint alleging a violation of licensure law.

The Department, upon presenting appropriate credentials to the operator of the child care facility, may perform inspections in accordance with the standards and rules promulgated under this subsection. The Department may inspect any area of a building in which there is reasonable evidence that children are in care or in which the Department has cause to believe that conditions in that area of a building pose a potential risk to the health, safety, or well-being of children in care.

(b) If an operator refuses to allow the Secretary or the Secretary's designee to inspect the child care facility, the Secretary shall seek an administrative warrant in accordance with G.S. 15-27.2. (1983, c. 261, s. 1; 1985, c. 757, s. 156(ii); 1987, c. 788, s. 17; c. 827, s. 238; 1991, c. 273, s. 10; 1997-506, s. 23; 2015-123, s. 6.)

**§ 110-105.1: Repealed by Session Laws 1997-506, s. 24.**

**§ 110-105.2: Repealed by Session Laws 2015-123, s. 7, effective January 1, 2016.**

**§ 110-105.3. Child maltreatment.**

(a) The purpose of this section is to assign the authority to investigate instances of child maltreatment in child care facilities to the Department of Health and Human Services, Division of Child Development and Early Education. The General Assembly recognizes that the ability to properly investigate child maltreatment in licensed child care facilities is dependent upon the cooperation of State and local law enforcement agencies, as well as county departments of social services.

(b) The following definitions shall apply in this Article:

- (1) Caregiver. – The operator of a licensed child care facility or religious-sponsored child care facility, a child care provider, as defined in G.S. 110-90.2(a)(2), a volunteer, or any person who has the approval of the provider to assume responsibility for children under the care of the provider.
- (2) Child care facilities. – Any of the following:
  - a. All facilities required to be licensed under this Article.
  - b. All religious-sponsored facilities operating pursuant to G.S. 110-106.
  - c. All locations where children are being cared for by someone other than their parent or legal guardian that require a license under this Article but have not been issued a license by the Department.
- (3) Child maltreatment. – Any act or series of acts of commission or omission by a caregiver that results in harm, potential for harm, or threat of harm to a child. Acts of commission include, but are not limited to, physical, sexual, and psychological abuse. Acts of omission include, but are not limited to, failure to provide for the physical, emotional, or medical well-being of a child, and failure to properly supervise children, which results in exposure to potentially harmful environments.

(c) The Department, local departments of social services, and local law enforcement personnel shall cooperate with the medical community to ensure that reports of child maltreatment in child care facilities are properly investigated.

(d) When a report of child maltreatment is received, the Department shall make a prompt and thorough assessment to ascertain the facts of the case, the extent of the maltreatment, and the risk of harm to children enrolled at the child care facility. When the report alleges maltreatment meeting the definition of abuse or neglect as defined in G.S. 14-318.2 and G.S. 14-318.4, the Department shall contact local law enforcement officials to investigate the report.

(e) During the pendency of an investigation, the Department may issue a protection plan restricting an individual alleged to have maltreated a child from being on the premises of the facility while children are in care. The Department may also suspend activities at a facility under investigation, including, but not limited to, transportation, aquatic activities, and field trips.

(f) At any time during the pendency of a child maltreatment investigation, the Department may order immediate corrective action as required to protect the health, safety, or welfare of children in care. If the corrective action does not occur within the period specified in

the corrective action order, the Department may take administrative action to protect the health, safety, or welfare of the children at the child care facility.

(g) The Department may, in accordance with G.S. 150B-3(c), summarily suspend the license of a child care facility if the Department determines that emergency action is required to protect the health, safety, or welfare of the children in a child care facility regulated by the Department.

(h) In the event the Department determines child maltreatment did not occur in a child care facility, nothing in this section shall prevent the Department from citing a violation or issuing an administrative action based upon violations of child care licensure law or rules based upon its investigation. Citations of violations or administrative actions issued pursuant to this subsection shall not be confidential.

(i) During the pendency of an investigation, all matters regarding the investigation, including, but not limited to, any complaint, allegation, or documentation regarding inspections or the identity of the reporter, shall be held in strictest confidence as provided by subsection (j) of this section. Following a determination that maltreatment has occurred, the investigation findings shall be made public, as well as the date of any visits made pursuant to the investigation, and any corrective action taken, if applicable. DCDEE shall not post on its Internet Web site that a maltreatment investigation occurred if the allegation of maltreatment was unsubstantiated.

(j) Regardless of the Department's final determination regarding child maltreatment, all information received by the Department during the course of its investigation shall be held in the strictest confidence by the Department, except for the following:

- (1) The Department shall disclose confidential information, other than the identity of the reporter, to any federal, State, or local government entity or its agent in order to protect a juvenile from child maltreatment, abuse, or neglect. Any confidential information disclosed to any federal, State, or local government entity or its agent pursuant to this subdivision shall remain confidential with the other government entity or its agent and shall only be redisclosed for purposes directly connected with carrying out that entity's mandated responsibilities.
- (2) The Department shall only disclose information identifying the reporter pursuant to a court order, except that the Department may disclose information identifying the reporter without a court order only to a federal, State, or local government entity that demonstrates a need for the reporter's name to carry out the entity's mandated responsibilities.
- (3) A district court, superior court, or administrative law judge of this State presiding over a civil matter in which the Department is not a party may order the Department to release confidential information. The court may order the release of confidential information after providing the Department with reasonable notice and an opportunity to be heard and then determining that the information is relevant, necessary to the trial of the matter before the court, and unavailable from any other source.

(k) When a report of child maltreatment alleges facts that indicate that a report is required under G.S. 7B-301, the Department shall contact the local department of social services in the county where the juvenile resides or is found and make the necessary report.

(l) In performing any duties related to the assessment of a report of child maltreatment, the Department may consult with any public or private agencies or individuals, including the



available State or local law enforcement officers, probation and parole officers, and the director of any county department of social services who shall assist in the assessment and evaluation of the seriousness of any report of child maltreatment when requested by the Department. The Department or the Department's representatives may make a written demand for any information or reports, whether or not confidential, that may in the Department's opinion be relevant to the assessment of the report. Upon the Department or the Department's representative's request and unless protected by attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and the records required by this subsection, to the extent permitted by federal law and regulations.

(m) The North Carolina Child Care Commission shall adopt, amend, and repeal all rules necessary for the implementation of this section. Rules promulgated subject to this section shall be exempt from the provisions of G.S. 150B-19.1(e) and (f). (2015-123, s. 8.)

#### **§ 110-105.4. Duty to report child maltreatment.**

(a) Any person who has cause to suspect that a child in a child care facility has been maltreated, as defined by G.S. 110-105.3, or has died as the result of maltreatment occurring in a child care facility, shall report the case of that child to the Department. The report may be made orally, by telephone, or in writing. The report shall include information as is known to the person making the report, including (i) the name and address of the child care facility where the child was allegedly maltreated, (ii) the name and address of the child's parent, guardian, or caretaker, (iii) the age of the child, (iv) the present whereabouts of the child if not at the home address, (v) the nature and extent of any injury or condition resulting from maltreatment, and (vi) any other information the person making the report believes might assist in the investigation of the report. If the report is made orally or by telephone, the person making the report shall give the person's name, address, and telephone number. Refusal of the person making the report to give a name shall not preclude the Department's assessment of the alleged maltreatment.

(b) Upon receipt of any report of maltreatment involving sexual abuse of the child in a child care facility, the Department shall notify the State Bureau of Investigation within 24 hours or on the next workday. If sexual abuse in a child care facility is not alleged in the initial report, but during the course of the assessment there is reason to suspect that sexual abuse has occurred, the Department shall immediately notify the State Bureau of Investigation. Upon notification that sexual abuse may have occurred in a child care facility, the State Bureau of Investigation may form a task force to investigate the report. (2015-123, s. 8.)

#### **§ 110-105.5. Child maltreatment registry.**

(a) The Department shall establish and maintain a registry containing the names of all caregivers who have been confirmed by the Department of having maltreated a child pursuant to G.S. 110-105.3.

(b) Individuals who wish to contest findings under subsection (a) of this section are entitled to an administrative hearing as provided by the Administrative Procedure Act under Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days of the mailing of the written notice of the Department's intent to place its findings about the person in the Child Maltreatment Registry.

(c) Individuals whose names are listed on the Registry shall not be a caregiver as defined in G.S. 110-105.3(b)(1) at any licensed child care facility or religious-sponsored child care facility.

(d) No person shall be liable for providing any information for the Child Maltreatment Registry if the information is provided in good faith. Neither an employer, potential employer, nor the Department shall be liable for using any information from the Child Maltreatment Registry if the information is used in good faith for the purpose of screening prospective applicants for employment or reviewing the employment status of an employee. The immunity established by this subsection does not extend to malicious conduct or intentional wrongdoing.

(e) Upon request, a child care facility, as defined in G.S. 110-105.3, is permitted to provide confidential or other identifying information to the Department, including social security numbers, taxpayer identification numbers, parent's legal surname prior to marriage, and dates of birth, for the purpose of verifying the identity of the accused caregiver.

(f) With the exception of the names of individuals listed on the Child Maltreatment Registry, all other information received by or pertaining to the Child Maltreatment Registry shall be confidential and is not a public record under Chapter 132 of the General Statutes.

(g) In order to determine an individual's fitness to care for or adopt a child, information from the Child Maltreatment Registry may be used by any of the Department's divisions responsible for licensing homes or facilities that care for children, and the Department may provide information from this list to child-caring institutions, child-placing agencies, group home facilities, and other providers of foster care, child care, or adoption services.

(h) The North Carolina Child Care Commission shall adopt, amend, and repeal all rules necessary for the implementation of this section. (2015-123, s. 8; 2015-264, s. 56(a).)

#### **§ 110-105.6. Penalties for child maltreatment.**

(a) For purposes of this Article, child maltreatment occurring in child care facilities is a violation of this Article, licensure standards, and licensure laws.

(b) Pursuant to G.S. 110-105.3, when an investigation confirms that child maltreatment did occur in a child care facility, the Department may issue an administrative action up to and including summary suspension and revocation of the facility's child care license.

(c) If the facility is permitted to remain open after an administrative action has been issued, the administrative action shall specify any corrective action to be taken by the operator.

(d) The Department shall make unannounced visits to determine whether the corrective action has occurred. If the corrective action has not occurred, then the Department may take further action against the facility as necessary to protect the health, safety, or welfare of the children at the child care facility.

(e) Administrative actions issued shall include a statement of the reasons for the action and shall specify corrective action that shall be taken by the operator.

(f) Under the terms of the administrative action, the Department may limit enrollment of new children until satisfied the situation giving rise to the confirmation of child maltreatment no longer exists.

(g) Specific corrective action required by an administrative action authorized by this Article may include the removal of the individual responsible for child maltreatment from child care pending a final determination or appeal of the individual's placement on the Child Maltreatment Registry.

(h) Nothing in this section shall restrict the Department from using any other statutory or administrative remedies available. (2015-123, s. 8.)

#### **§ 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.

(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.)

**§ 110-106.1: Repealed by Session Laws 1997-506, s. 27.**

**§ 110-106.2. Department of Defense-certified child care facilities.**

(a) As used in this section, the phrase "Department of Defense-certified child care facility" shall include child development centers, family child care homes, and school-aged child care facilities operated aboard a military installation under the authorization of the United States Department of Defense (Department of Defense) certified by the Department of Defense.

(b) Procedure Regarding Department of Defense-Certified Child Care Facilities. –

(1) Department of Defense-certified child care facilities shall file with the Department a notice of intent to operate a child care facility in a form determined by the Department of Defense.

(2) As part of its notice, each Department of Defense-certified child care facility shall file a report to the Department indicating that it meets the minimum standards for child care facilities as provided by the Department of Defense.

(3) Department of Defense-certified child care facilities that meet all the requirements of this section shall be exempt from all other requirements of this Article and shall not be subject to licensure.

(4) For purposes of the North Carolina Subsidized Child Care Program, Department of Defense-certified child care facilities shall be reimbursed as follows:

a. Department of Defense-certified child care facilities that are accredited by the National Association for the Education of Young Children (NAEYC) shall be reimbursed based on the five-star-rated license rate.

- b. All other Department of Defense-certified child care facilities shall be reimbursed based on the four-star-rated license rate. (2015-241, s. 12B.9(a).)

**§ 110-107. Fraudulent misrepresentation.**

(a) A person, whether a provider or recipient of child care subsidies or someone claiming to be a provider or recipient of child care subsidies, commits the offense of fraudulent misrepresentation when both of the following occur:

- (1) With the intent to deceive, that person makes a false statement or representation regarding a material fact, or fails to disclose a material fact.
- (2) As a result of the false statement or representation or the omission, that person obtains, attempts to obtain, or continues to receive a child care subsidy for himself or herself or for another person.

(b) If the child care subsidy is not more than one thousand dollars (\$1,000), the person is guilty of a Class 1 misdemeanor. If the child care subsidy is more than one thousand dollars (\$1,000), the person is guilty of a Class I felony.

(c) As used in this section:

- (1) "Child care subsidy" means the use of public funds to pay for day care services for children.
- (2) "Person" means an individual, association, consortium, corporation, body politic, partnership, or other group, entity, or organization. (1999-279, s. 1.)

**§ 110-108:** Repealed by Session Laws 2002-126, s. 10.58, effective July 1, 2002.

**§ 110-109:** Repealed by Session Laws 2001-424, s. 21.73(a).

**§§ 110-110 through 110-114. Reserved for future codification purposes.**