

**Impact Analysis – Proposed Rule Change
November 2022**

Agency: DHHS/Division of Child Development & Early Education

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Rule citation: 10A NCAC 09 .2703 **Criminal History Record
Check Requirements for Child Care
Providers**
(Proposed for Amendment)

Statutory Authority: G.S. 110-90.2, Session Law 2022-74

State Gov. Impact: Yes, minimal

Local Gov. Impact: No

Substantial Economic Impact: No

Private Sector Impact: Yes, minimal

Background and Necessity for Proposed Rule Changes

The proposed changes to Rule 10A NCAC 09 .2703 are necessary to align the rule with recent changes to child care statute. Session Law 2022-74 (Sections 9C.3.(a) and (b), Align State Criminal Background Checks for Prospective Child Care Providers with Federal Block Grant Requirements/Report) amended [G.S. 110-90.2](#) (Mandatory child care providers' criminal history checks) and brought North Carolina into alignment with [45 CFR § 98.43](#) (Criminal background checks). Specifically, the session law changed the frequency at which criminal background checks are required for child care providers from every three years to every five years. The session law also established a 45-day timeline for qualifying a child care provider that is under provisional status, as long as there are no disqualifying results from the criminal background checks. Currently, Rule .2703 has a timeframe of six months for provisional status.

Proposed changes to the Rule

- Proposed changes to .2703(a)(3) remove the requirement for out-of state applicants to submit a certified local history from their county of residence and adds a requirement to submit an affidavit verifying they have requested any applicable out of state background checks for any states in which they worked during the preceding five years. Applicants will still be required to pay fees associated with requesting background checks, and any cost associated with submitting an affidavit will be negligible. This rule also proposes that any applicant who has lived outside of North Carolina in the previous five years must comply with this affidavit requirement. Currently, the rule only requires a certified local history from applicants who are living out of state at the time of application. This change could result in more child care provider applicants being required to pay for and provide background checks from out of state. The costs of background checks vary from state to state, and county to county. For reference, the processing fee for a criminal history background check in North Carolina is \$14¹. DCDEE has no way of knowing how many future applicants will have lived outside of North Carolina; as such, we are unable to quantify the total impact.

¹ <https://www.ncdps.gov/our-organization/law-enforcement/background-checks>

- Proposed changes to .2703(f) will align the requirements for the completion of the criminal background checks for child care providers with recent changes to statute. Session Law 2022-74 changed the frequency at which criminal background checks are required for child care providers from every three years to every five years. Because these changes are already in effect in statute, there will be no impact from the proposed change to Rule .2703.
- Proposed changes to .2703(g) require that an applicant applying for provisional status submit documents specific to their former state(s) of residence at the time of application rather than within five days of application. This should streamline the application process and potentially decrease the possibility that an application will be rejected due to an applicant missing the five-day deadline. DCDEE does not have data to suggest that this is a frequent or likely occurrence; as such, we are unable to quantify this impact.
- Proposed changes to .2703(h) adjust the timeframe for the issuance of a qualification letter to an application on a provisional status from six months to 45 days. This change aligns the rule with recent changes to statute. There will be no impact from this proposed change as compared to the baseline.
- Proposed changes to .2703(q) seek to clarify that individuals who use the address of a family child care home or center located inside of a residence on a temporary or permanent basis must complete the criminal background check process. These changes are for clarity and will not result in changes to current practices.
- Proposed change to .2703(s) adds a provision that any application for a criminal background check that is not completed by the applicant within 30 days will be withdrawn by DCDEE. This should make tracking applications more efficient, thereby saving DCDEE staff time. The amount of time savings is expected to be minimal. In general, applicants who have not completed these requirements within a timely manner are unlikely to ever complete the application process. As such, this change is unlikely to have an impact on a significant number of applicants.
- Proposed change to .2703(t) adds a provision to disqualify any applicants who fail to comply with Paragraph (g). Specifically, if the applicant failed to submit the appropriate out of state documentation and/or provided false information, their application will be disqualified. This change is for clarity only and will not result in a change to current practice.

Summary

The proposed rule changes are primarily for the purpose of aligning the rule with recent changes to statute. Other changes are for the purpose of making the application process more efficient and to provide clarity. There are possible, but minimal, costs to out-of-state child care provider applicants in the form of background check fees. There are also possible, but minimal, benefits to DCDEE in the form of time savings from a streamlined application process.

Attachment of Rules

10A NCAC 09 .2703 CRIMINAL HISTORY RECORD CHECK REQUIREMENTS FOR CHILD CARE PROVIDERS

(a) In addition to the requirements in Rules .0302 and .1702 of this Chapter, a child care provider shall submit the following to the Division prior to the issuance of a license or prior to beginning employment:

- (1) a signed and completed Authority for Release of Information form; and
- (2) fingerprint impressions submitted on the forms required by the Division and State Bureau of Investigation;
- (3) ~~if a child care provider is an out-of-state resident, he or she shall also submit a certified local history from the Clerk of Superior Court in his or her county of residence. any applicant who has lived outside of North Carolina in the previous five years, shall submit an affidavit verifying they have completed a request for an out-of-state background check for each state in which they resided in the preceding five years.~~

All required forms can be found on the Division's website at http://ncchildcare.dhhs.state.nc.us/general/dhhsrsc_childcare.asp.

(b) If the child care provider has a criminal history of convictions, pending indictment of a crime, or pending criminal charges, ~~he or she~~ they may submit to the Division additional information concerning the conviction or charges ~~that~~ the Division shall use in making the determination of the child care provider's qualification. The Division shall also consider the following in making its decision:

- (1) the length of time since conviction;
- (2) whether the child care provider is currently on probation;
- (3) the nature of the offense;
- (4) the circumstances surrounding the commission of the offense or offenses;
- (5) the evidence of rehabilitation;
- (6) the number and type of prior offenses; and
- (7) the age of the child care provider at the time of occurrence.

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

(d) If a Letter of Intent to Operate pursuant to G.S. 110-106 is submitted to the Division, the person signing the Letter of Intent shall submit all forms as required in Paragraph (a) of this Rule.

- 1 (e) Child care providers shall have a valid qualification letter prior to employment or living in the family
2 child care home, and the qualification letter shall be kept on file at the facility for review by representatives
3 of the Division.
- 4 (f) Provisional child care providers may be employed at a child care facility or reside in a family child care
5 home, nonlicensed home, or child care center in a residence and shall be counted in staff/child ratio.
6 Provisional child care providers shall be supervised at all times by an individual who received a qualifying
7 result on a criminal background check within the past ~~three~~ five years and may not be left alone with
8 children. Owners found to be in violation of this Paragraph may be issued an administrative action up to
9 and including revocation of their child care license or notice of compliance in accordance with Section
10 .2200 of this Chapter.
- 11 (g) ~~Within five days of~~ When applying for provisional status through the Division's online portal, the
12 applicant shall complete and submit any documents specific to their former state(s) of residence that are
13 necessary to complete the out-of-state portion of their background check. ~~The applicant shall also certify in~~
14 ~~writing within five days to the Division that they have made the required requests.~~ When requested by the
15 Division, the applicant shall submit a copy and proof of submission of the documents necessary to complete
16 the out-of-state portion of their background check. The Division shall provide to the applicant the necessary
17 information to make these requests, if applicable.
- 18 (h) ~~After six months,~~ Within 45 days of issuing a provisional status to an applicant, the Division shall issue
19 a qualification letter to a provisional child care provider if ~~the Division does not receive a response to its~~
20 ~~request~~ no criminal background check results that would disqualify the applicant are returned or if there is
21 no response to the applicant's or the Division's request for the state sex offender registry check, the state
22 abuse and neglect registry, or the state criminal history check from the state or states in which the
23 provisional provider currently resides or has resided at any time during the preceding five years, ~~years prior~~
24 ~~to submitting documents for a criminal history check. However, nothing in this Rule shall prevent the~~
25 ~~Division from disqualifying a provisional child care provider at a later date based upon failure to comply~~
26 ~~with the requirements of Paragraph (g) of this Rule or if the Division determines the applicant has submitted~~
27 ~~false information to the Division or if information is received from any other state after the qualification~~
28 ~~letter has been issued. six months have elapsed.~~
- 29 (i) Child care providers found to be disqualified shall not be eligible for employment in child care until a
30 qualification letter has been issued by the Division.
- 31 (j) Child care providers determined by the Division to be disqualified shall ~~be~~ have their employment
32 terminated by the center or family child care home immediately upon receipt of the disqualification notice.

- 1 (k) Disqualification of a child care provider living in a family child care home or a center located in a
2 residence shall be grounds for issuance of a summary suspension of the license in accordance with 10A
3 NCAC 09 .2213.
- 4 (l) Refusal on the part of the employer to dismiss a child care provider who has been found to be disqualified
5 shall be grounds for suspension, denial, or revocation of the license or any other administrative action or
6 civil penalty permitted by law or rule. If an applicant appeals the disqualification, the child care provider
7 shall not be employed during the appeal process.
- 8 (m) Operators, as defined by G.S. 110-86(7), shall include the criminal history mandatory reporting
9 requirement in all new employee orientation information. All child care providers and household members
10 who have incurred any pending charges, indictments, or convictions (other than minor traffic offenses)
11 since the last qualification letter was issued by the Division shall notify the operator of such charges within
12 five business days or before returning to work, whichever comes first. The operator shall notify the Division
13 of any such pending charges, indictments, or convictions within one business day of being notified.
- 14 (n) The qualification letter shall be valid for a maximum of ~~three~~ five years from the date of issuance.
- 15 (o) Prior to the expiration date of the qualification letter, the child care provider shall complete and submit
16 the forms listed in Paragraph (a) of this Rule.
- 17 (p) After a child care provider has been qualified, the Division shall complete a new criminal history record
18 check if the Division of Child Development and Early Education conducts an investigation involving
19 alleged criminal activity by the child care provider.
- 20 (q) Individuals who live in the household use a family child care home or center located in a residence on
21 a permanent or temporary basis as their place of residence, including those who have had their 16th birthday
22 after the initial licensing of a family child care home or center located in a residence, shall complete and
23 submit the forms listed in Paragraph (a) of this Rule to the Division within five business days of using the
24 home as their permanent or temporary residence or their 16th birthday.
- 25 (r) Child care operators shall notify the Division of all new child care providers who are hired or have
26 moved into the home or center located with a residence within five business days by submitting the form
27 provided by the Division.
- 28 (s) Any application for a criminal background check that is not complete, including the required
29 components in Paragraph (a) of this Rule, within 30 days of beginning the application, will expire and be
30 withdrawn by the Division.
- 31 (t) The Division shall disqualify any child care provider or household member of a family child care home
32 or center located in a residence if they fail to comply with the requirements of Paragraph (g) of this Rule or
33 if the Division determines the applicant has submitted false information in connection with their criminal

1 background check or application to the Division or if information that disqualifies the child care provider
2 is received from any state during the qualification time period.

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4 *History Note: Authority G.S. 110-85; 110-86(7); 110-90.2; 110-106; 114-19.5; 143B-168.3;*

5 *Temporary Adoption Eff. January 1, 1996;*

6 *Eff. April 1, 1997;*

7 *Amended Eff. March 1, 2014; November 1, 2007;*

8 *Readopted Eff. January 1, 2019;*

9 *Amended Eff. _____; February 1, 2021.*