

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, as defined in G.S. 110-90.2, shall submit the following to the Division prior to the issuance of a license or prior to beginning employment:

- (1) any forms required by the State Bureau of Investigation or Federal Bureau of Investigation to process a state and national fingerprint check as required by G.S. 110-90.2; and
- (2) fingerprint impressions submitted on an FD-258 applicant fingerprint card or other form required by the Division and State Bureau of Investigation;
- (3) any applicant who has lived outside of North Carolina in the previous five years, shall submit an affidavit attesting that the applicant has requested a background check from:
 - (A) the state criminal registry or repository, with use of fingerprints,
 - (B) the state sex offender registry or repository, and
 - (C) the state-based child abuse and neglect registry and database for each state in which the applicant has lived, at any time and for whatever length of time, within the five years preceding the application.

All forms referenced in this Paragraph are available through the Automated Background Check Management System (ABCMS) at <https://ncabcms.nc.gov/DCDEE/Applicant/>

(b) If the child care provider has a criminal history of convictions, pending indictment of a crime, or pending criminal charges, they may submit to the Division additional information concerning the conviction or charges 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;
- (7) the age of the child care provider at the time of occurrence; and
- (8) any additional information the applicant wishes the Division to consider regarding the applicant's criminal history.

(c) If the owner of a child care license 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.

(e) Child care providers, as defined in G.S. 110-90.2(a), shall have a valid qualification letter prior to employment or living in a child care facility and the qualification letter shall be kept on file at the facility for review by representatives of the Division.

(f) Provisional child care providers are eligible for employment at a child care facility and are eligible to reside in a family child care home, nonlicensed home, or child care center in a residence and shall be counted in staff/child ratio. Provisional child care providers shall be supervised at all times by an individual who received a qualifying result on a criminal background check within the past five years and may not be left alone with children. Child care facilities found to be in violation of this Paragraph may be issued an administrative action up to and including revocation of their child care license or notice of compliance in accordance with Section .2200 of this Chapter.

(g) When applying for provisional status, the applicant shall complete and submit any documents specific to their former state(s) of residence that are necessary to complete the out-of-state portion of their background check. When requested by the Division, the applicant shall submit a copy and proof of submission of the documents necessary to complete the out-of-state portion of their background check. The Division shall provide to the applicant the necessary information to make these requests, if applicable.

(h) Within 45 days of issuing a provisional status to an applicant, the Division shall issue a qualification letter to a provisional child care provider if no criminal background check results that would disqualify the applicant are returned or if there is no response to the applicant's or the Division's request for the state sex offender registry check, the state abuse and neglect registry, or the state criminal history check from the state or states in which the provisional provider currently resides or has resided at any time during the preceding five years.

- (i) Child care providers found to be disqualified pursuant to G.S. 110-90.2, G.S. 110-105.6, or 10A NCAC 09 .2703 by the Division shall not be eligible for employment in child care until a qualification letter has been issued by the Division.
- (j) A child care facility shall terminate the employment of any child care provider upon receipt of a notice of disqualification of the provider from the Division notwithstanding any appeal by provider of the disqualification.
- (k) Disqualification of a child care provider living in a child care facility shall be grounds for issuance of a summary suspension of the license in accordance with 10A NCAC 09 .2213.
- (l) Refusal on the part of the employer to dismiss a child care provider who has been found to be disqualified shall be grounds for suspension, denial, or revocation of the license or any other administrative action or civil penalty permitted by Section .2200 of this Chapter. If an applicant appeals the disqualification, the child care provider shall not be employed during the appeal process.
- (m) Operators, as defined by G.S. 110-86(7), shall include the criminal history mandatory reporting requirement in all new employee orientation information. All child care providers, as defined in G.S. 110-90.2(a)(2), who have incurred any pending charges, indictments, or convictions (other than minor traffic offenses) since the last qualification letter was issued by the Division shall notify the operator of such charges within five business days or before returning to work, whichever comes first. The operator shall notify the Division of any such pending charges, indictments, or convictions within one business day of being notified.
- (n) The qualification letter shall be valid for a maximum of five years from the date of issuance.
- (o) Prior to the expiration date of the qualification letter, the child care provider shall complete and submit the forms listed in Paragraph (a) of this Rule.
- (p) After a child care provider has been qualified, the Division shall complete a new criminal history record check if the Division of Child Development and Early Education conducts an investigation in accordance with G.S. 110-90.2, G.S. 110-105.3, or 10A NCAC 09 .0201 involving alleged criminal activity by the child care provider.
- (q) Any individual over the age of 15 who resides, as defined in 10A NCAC 09 .0102(40), in a child care facility on either a temporary or permanent basis shall comply with the requirements of Paragraph (a) of this Rule within 5 days of either moving into the facility or within 5 days after their 16th birthday.
- (r) Operators shall notify the Division of all new child care providers, as defined in G.S. 110-90.2(a)(2), who are hired or have moved into the child care facility within five business days.
- (s) Any application for a criminal background check that is not complete, including the required components in Paragraph (a) of this Rule, within 30 days of beginning the application, will expire and be withdrawn by the Division.
- (t) The Division shall not issue, and shall revoke any previously issued, qualification letters to an individual who fails to comply with Paragraph (g) of this Rule, or if the Division determines that the individual provided false information in connection with either an application or a criminal background check required by this Rule, or if the Division determines that the individual is not qualified to be a child care provider pursuant to G.S. 110-90.2 or 42 USC 9858f.

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