

**10A NCAC 09 .2704 CRIMINAL HISTORY RECORD CHECK REQUIREMENTS FOR NONLICENSED CHILD CARE PROVIDERS**

(a) A nonlicensed child care provider shall submit the following to the local purchasing agency prior to caring for children and receiving subsidy payments:

- (1) a signed Authority for Release of Information using the form provided by the Division;
- (2) fingerprint impressions submitted on the forms required by the Division and State Bureau of Investigation; and
- (3) if a prospective 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.

This Rule applies to any individual over 15 years old who moves into the household, or any individual who lives in the household who has had his or her 16<sup>th</sup> birthday whichever is earlier after the initial approval, including family members and non-family members who use the home either on a permanent or temporary basis as their primary residence. The individual shall submit the items in this Paragraph to the local purchasing agency within five business days of moving into the home or their 16<sup>th</sup> birthday.

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

(c) Any individual over 15 years old, including family members and non-family members who use the home either on a permanent or temporary basis as their primary residence, shall submit all criminal history record check forms as required in Subparagraphs (a)(1) and (a)(2) of this Rule within five business days of joining the household.

(d) If a nonlicensed child care provider has a criminal history of convictions, pending indictment of a crime, or pending criminal charges, he or she 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 consider the following in making a decision:

- (1) the length of time since conviction;
- (2) whether the nonlicensed 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 nonlicensed child care provider at the time of occurrence.

(e) The local purchasing agency shall mail the Authority for Release of Information, using the form provided by the Division, and fingerprint impressions to the Division no later than five business days after receipt. A copy of the submitted information shall be maintained in the nonlicensed child care provider's file until the notice of qualification is received by the nonlicensed child care provider. The notice of qualification shall be maintained in the nonlicensed child care provider's file. The local purchasing agency shall keep the child care provider's file.

(f) A nonlicensed child care provider shall not receive payment during the period in which the State and federal criminal history record check is being completed.

(g) Disqualification of a nonlicensed child care provider by the Division shall be reasonable cause for the local purchasing agency to deny payment.

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

(i) After a nonlicensed child care provider is qualified, the Division shall complete a new criminal history record check if the Division of Child Development and Early Education conducts an investigation involving alleged criminal activity by the child care provider. If the Division requests a new criminal history record check, the child care provider shall complete and submit the forms listed in Paragraph (a) of this Rule to the Division within five business days of the Division's request.

(j) The qualification letter shall be valid for a maximum of three years from the date of issuance.

(k) Prior to the expiration date of the qualification letter, the nonlicensed child care provider shall complete and submit the forms described in Paragraph (a) of this Rule.

(l) Nonlicensed child care providers and household members shall have a valid qualification letter prior to receiving subsidy payments.

*History Note:* Authority G.S. 110-90.2; 114-19.5; 143B-168.3; S.L. 2012-160, s. 1;  
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