

SECTION .2200 - ADMINISTRATIVE ACTIONS AND CIVIL PENALTIES

10A NCAC 09 .2201 ADMINISTRATIVE ACTIONS GENERAL PROVISIONS

(a) Upon a finding that a child care facility operator has violated any provision of G.S. 110, Article 7, the rules of this Chapter, or 10A NCAC 10, the Secretary or his or her designee may order one or more administrative actions. The administrative actions include:

- (1) a written reprimand as set forth in Rule .2202 of this Section;
- (2) a written warning as set forth in Rule .2203 of this Section;
- (3) a provisional child care facility license or provisional notice of compliance not to exceed 12 months as set forth in Rule .2204 of this Section;
- (4) a special provisional child care facility license or special provisional notice of compliance not to exceed six months and may include a limited enrollment restriction as set forth in Rule .2207 of this Section;
- (5) a probationary child care facility license or probationary notice of compliance not to exceed 12 months as set forth in Rule .2205 of this Section;
- (6) revocation of the child care facility license, or an order to cease operation to operate a child care facility as set forth in Rule .2209 of this Section;
- (7) summary suspension of the child care facility license, notice of compliance, or other permit to operate a child care facility that results in immediate closure of the facility as set forth in Rule .2213 of this Section;
- (8) denial of an application or child care facility license as set forth in Rule .2215 of this Section; and
- (9) suspension of the child care facility license, notice of compliance, or other permit to operate a child care facility not to exceed 12 months and results in closure of the facility on the date of the order as set forth in Rule .2206 of this Section.

(b) The Division shall consider the following factors when determining whether to issue an administrative action or what type of administrative action to be issued, including:

- (1) the severity of the violation or incident;
- (2) the probability of recurrence of the violation or incident;
- (3) all prior administrative actions issued to the facility;
- (4) all prior incidents where the Division has determined that abuse, neglect, or child maltreatment occurred at the facility;
- (5) the operator's response to the violation or incident, including actions taken to prevent recurrence, such as revision to facility policies and procedures or additional staff training;
- (6) a self-report of the violation or incident was submitted to the Division by the operator; and
- (7) information or records received from local, State, or federal agencies relevant to the violation or incident.

(c) For purposes of this Section, the following definitions shall apply:

- (1) "Pattern of noncompliance" means violations of G.S. 110, Article 7, this Chapter, or 10A NCAC 10 documented during a time period of 18 months or less involving situations or incidents for which technical assistance has been provided and the operator continues to demonstrate noncompliance.
- (2) "Harm" as referenced in G.S. 110-105.3(b)(3) means:
 - (A) physical, psychological, or emotional injury to a child by a caregiver;
 - (B) an act of omission or commission to a child by a caregiver that is likely to result in or that results in permanent limitations or disability;
 - (C) sexual abuse; or
 - (D) the death of a child.

(d) In accordance with G.S. 150B-3(b) the Division shall issue a prior notice of administrative action to the operator or prospective operator regarding the determination to issue a provisional child care facility license or notice of compliance, special provisional child care facility license or notice of compliance, probationary child care facility license or notice of compliance, revocation of the child care facility license, order to cease operation, suspension of the child care facility license or notice of compliance, or denial of a child care facility license or notice of compliance. The operator or prospective operator shall be given an opportunity to respond in writing as to why the administrative action should not be taken. The written response shall be submitted to the Division within 15 days of receiving the prior notice of administrative action. Upon receiving a written request from an owner or operator, the

Division shall grant an extension of time not to exceed an additional 15 days, so long as the request is received before the initial response time has ended.

(e) The Division may issue a different type of administrative action based upon the operator's or prospective operator's written response in accordance with Paragraph (d) of this Rule.

(f) The Division shall issue a final notice of administrative action to the operator or prospective operator. The final notice of administrative action shall describe the reasons for its issuance including identification of the statutes or rules violated.

(g) When a corrective action plan is included in the notice of administrative action, it shall describe those actions necessary for the operator to be in full compliance with requirements of G.S. 110, Article 7, this Chapter, or 10A NCAC 10, and shall specify a time period for completion of additional requirements that may prevent recurrence, such as training or policy implementation. Corrective action plans may be issued only with a written warning, provisional child care facility license or notice of compliance, special provisional child care facility license or notice of compliance, and probationary child care facility license or notice of compliance. Subject to the exceptions in Paragraph (i) of this Rule, corrective action plans are stayed during the pendency of an appeal.

(h) Protection plans and immediate corrective action plans as set forth in G.S. 110-105.3(e) and (f) and restrictions that prohibit new enrollment as set forth in G.S. 110-105.6(f) shall not be stayed during the pendency of an appeal.

(i) Following the issuance of any administrative action the operator shall post the administrative action, cover letter, and corrective action plan, if applicable, received from the Division in a location visible to parents and visitors near the entrance of the child care facility during the pendency of an appeal and throughout the effective time period of an administrative action. The effective time period shall end as follows:

- (1) three months from receipt of a final notice of administrative action containing a written reprimand;
- (2) three months and upon receipt of a closure letter from the Division stating that the corrective action plan has been completed for a final notice of administrative action containing a written warning;
- (3) upon issuance of a star rated license following a final notice of administrative action containing a special provisional child care facility license, a provisional child care facility license, or a probationary child care facility license; or
- (4) upon re-issuance of a notice of compliance following a final notice of administrative action containing a special provisional notice of compliance, a provisional notice of compliance, or a probationary notice of compliance.

(j) Following the issuance of an administrative action other than a written reprimand, the Division shall monitor the child care facility for compliance with:

- (1) the following health and safety requirements:
 - (A) supervision of children;
 - (B) discipline, nurture, or care of children;
 - (C) staff/child ratio;
 - (D) group size;
 - (E) licensed capacity;
 - (F) permit restriction;
 - (G) CPR training;
 - (H) First Aid training;
 - (I) ITS-SIDS training; and
 - (J) criminal record check requirements regarding pre-service and three-year reassessments in accordance with G.S. 110-90.2(b).
- (2) protection plans and immediate corrective action plans as set forth in G.S. 110-105.3(e) and (f), restrictions that prohibit new enrollment as set forth in G.S. 110-105.6(f), and license restrictions during the time period of the administrative action, including administrative actions that may be stayed pending appeal; and
- (3) the terms of the administrative action, including license restrictions and completion of the corrective action plan, except for administrative actions that are stayed pending appeal.

(k) If the operator fails to achieve compliance during the specified time period of an administrative action, the Division may assess a civil penalty or take additional administrative action to achieve compliance.

History Note: Authority G.S. 110-85; 110-88; 110-90; 110-102.2; 110-103.1; 110-105.3; 110-105.5; 110-105.6; 143B-168.3; 150B-3; Eff. July 1, 1988;

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