Impact Analysis – Proposed Rule Change

November 2017

Agency: DHHS/Division of Child Development & Early Education
Contact: Heather Laffler (919) 527-6516/Dedra Alston (919) 527-6502
Rule Title: 10A NCAC 09 Child Care Rules - Administrative Actions, Civil Penalties and Criminal Records Check (Two through Five Star Rated Licenses)

Statutory Authority:
G.S. 110-85; 110-88(6); 110-90(9); 110-99; 110-102.2; 110-103.1; 143B-168.3; 150B-3; 150B-23

State Impact: Yes
Local Impact: No
Substantial Economic Impact: Unlikely but unquantified
Private Sector Impact: Yes

I. Necessity, Purpose, and Background:
The NC Child Care Commission proposes to readopt rules in 10A NCAC 09 .2200, .2700 and adopt Rule .4001 in accordance with G.S. 150B-21.3A as part of the periodic review of rules process. The rules in Section .2200 pertain to the implementation of administrative actions and civil penalties that a facility could be penalized for if the regulations aren’t practiced. These changes add clarification to the existing rules. Rules .0401, .1904, and .2208 are proposed for repeal. Rules in Section .2700 Criminal Records Check sets the standards for obtaining background checks for potential owners and employees that choose to work in child care. The proposed rules promote the quality of child care for children enrolled in child care facilities that choose to participate in the two through five star rated license process.

Adoptions:
.4001 - Administrative Actions for Child Care Trainers

Readoptions:
.2201 - Administrative Penalties: General Provisions
.2202 - Written Reprimands
.2203 - Written Warnings
.2204 - Probationary License
.2205 - Suspension
.2206 - Revocation
.2207 - Summary Suspension
.2209 - Amount of Penalty
.2213 - Schedule of Civil Penalties for Child Care Centers
.2216 - Amount of Civil Penalties for Child Care Facilities
.2217 - Schedule of Civil Penalties for Child Care Centers
.2701 - Scope
.2702 - Definitions
.2703 - Criminal History Record Check Requirements for Child Care Providers
.2704 - Criminal History Record Check Requirements for Non-Licensed Child Care Providers

Repeals:
.2208 - Civil Penalties: Scope and Purpose
.0401 - Provisional Licenses for Facilities
.1904 - Administrative Sanctions
II. Summary of Proposed Rule Changes:

Summary of Proposed Rules with No Fiscal Impact

<table>
<thead>
<tr>
<th>Rule</th>
<th>Changes</th>
<th>Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td>.2202 Written Reprimand</td>
<td>Minor wording changes</td>
<td>This is not a new type of administrative action.</td>
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<tr>
<td></td>
<td>Reference to .2201 added.</td>
<td>No fiscal impact</td>
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<td></td>
<td>Duplicative language moved to .2201.</td>
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<tr>
<td>.2208 Civil Penalties: Scope</td>
<td>Duplicative language moved to .2201.</td>
<td>No fiscal impact</td>
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<td>and Purpose</td>
<td>This rule is recommended for repeal.</td>
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<tr>
<td>.2213 Summary Suspension</td>
<td>This was previously .2207.</td>
<td>This is not a new type of administrative action.</td>
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<tr>
<td></td>
<td>Reference to .2201 added.</td>
<td>No substantive change to criteria.</td>
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<td></td>
<td>Duplicative language moved to .2201.</td>
<td>Division expects that the number of summary suspension orders issued to</td>
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<tr>
<td></td>
<td>Minor wording changes</td>
<td>remain approximately the same.</td>
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<tr>
<td>.2216 Amount of Civil Penalties for Child Care Facilities</td>
<td>This was previously .2209.</td>
<td>No fiscal impact</td>
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<tr>
<td></td>
<td>Minor wording changes</td>
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<td></td>
<td>Some language in (a) was included in .2201(b) and not needed in this rule.</td>
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<tr>
<td>.0401 Provisional Licenses for Facilities</td>
<td>This information was moved to .2204.</td>
<td>No fiscal impact</td>
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<td></td>
<td>This rule is recommended for repeal.</td>
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</table>
Summary of Proposed Rules with Substantive Impact:

Overall, most of the changes to the rules are the addition of clarifying language intended to set clear expectations for the provider regarding the provision of administrative actions and civil penalties with the ultimate goal of increasing compliance and decreasing the number of actions over time. The relative impact of the changes is expected to be minimal; however, it is important to acknowledge that, to any individual provider, any administrative action may be costly. When administrative actions are issued, they can be disruptive to a business. Administrative actions are automatically posted on the website for parents to see when they are making their decisions about child care. The amount a provider’s business is compromised as a result is non-quantifiable, but that does not mean it is not considerable.

While acknowledging the potential implications of any administrative action, it is also important to note that the changes will not necessarily result in an increase in the quantity of administrative actions and/or civil penalties. Any discussion of the impact of changes to the administrative action and civil penalties rules must be placed in the context of the relative infrequency of these actions. There are currently 6000 licensed child care facilities in North Carolina, and in 2016-2017, there was a total of 344 administrative actions (5.7%). As stated above, most of the changes below add clarifying language and/or description of existing policy and practice, which would mean no expected change in occurrence. Several changes do include additions to the existing rules, which could result in an increase in the number of actions; however, myriad factors that are considered when determining administrative actions, so additions to the criteria do not automatically mean there will be an increase in the number of actions.

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| .2201 General Provisions | (a) Clarifies what types of actions are available to the Division in list form as the introduction to this Section. There were no new types of administrative actions proposed.  
(b) Factors for consideration by the Division were moved from .1904 to this Rule and new language was added at the Commission’s request to be more specific. (b)(4), (5) and (6) reflects those additions. | Addition of .2201(b)(4), (5) and (6) offer specific examples that the Division must consider in determining what type of administrative action and civil penalty are issued to a child care operator. The Division and Commission agree that these additions are a benefit to the operator and would likely result in some administrative actions being less stringent upon issuance than would have been possible without those considerations. |
(c) Defines terms that are used in criteria for the issuance of the various types of actions. This was proposed to ensure that operators understand the terms used in this Section.

(f) Language regarding when the Division offers prior notice to child care operators was added to this rule. In addition, an option for extension of time for operator response was added to the rule text to inform child care operators.

(l) Revised to require posting of the administrative action in a prominent location of the child care facility for parent notification. In addition, the time frame for posting was revised as appropriate to the type and stringency of the administrative action.

Other subparagraphs of this rule were added or revised to clarify and organize existing procedure. In addition, requirements that were duplicative across various types of administrative actions were moved to this general provision section rather than being repeated numerous times throughout the section. This section is referenced in all subsequent rules to ensure that child care operators understand that .2201 applies to all types of administrative actions and civil penalties.

Addition of .2201(f) reflects the administrative action process in place and ensures that child care operators have complete knowledge and understanding of the process and options available.

Revision of .2201(l) requirements eliminate administrative time for child care operators while maintaining transparency for parents and the general public that may visit a child care facility. Previous requirements mandated written notification to parents and maintenance of documents in a binder for 3 years. Those documents also included substantiated complaints which are no longer required to be included. Overall, this revision should result in a cost savings of administrative time and overall effect of an administrative action on the business of the child care facility. While the amount of savings cannot be quantified, the burden has been significantly diminished for facilities. Previously they were required to keep a binder with every complaint and action for three years and they were required to have every parent sign that they had seen the binder. Now, the parent signatures are no longer required and only actions must be posted for the time of the action.

| .2203 Written Warning | Wording changes to reflect child maltreatment law rather than abuse/neglect investigations.  
Reference to .2201 added.  
Duplicative language moved to .2201  
Specific criteria were added to this rule that reflects the Division’s current process. The rule was vaguely worded and it was not clear under what conditions a written warning would be issued to a child care operator. |
|---|---|
| | This is not a new type of administrative action.  
Language provides  
• structure for the Division  
• information and expectations to child care operators  
The Division is unable to determine the fiscal impact for this rule for the following reasons:  
1. The Division cannot predict the occurrence and frequency of violations incurred by child care operators.  
2. The addition of criteria for issuing this type of action may result in more situations that are reviewed for a Written Warning. However, the Division has added factors for consideration when issuing actions that may impact the final decision.  
3. Current rules are written generally which means that the Division has more flexibility to issue an action now than would occur with the proposed rule. The proposed rules, even with |
| .2204 Provisional License or Notice of Compliance | This was previously .0401. Wording changes to reflect child maltreatment law rather than abuse/neglect investigations. Reference to .2201 added. Duplicative language moved to .2201. Specific criteria were added to this rule that reflects the Division’s current process. The rule was vaguely worded and it was not clear under what conditions a provisional license or notice of compliance would be issued to a child care operator. This is not a new type of administrative action. Language provides • structure for the Division • information and expectations to child care operators The Division is unable to determine the fiscal impact for this rule for the following reasons: 1. The Division cannot predict the occurrence and frequency of violations incurred by child care operators. 2. The addition of criteria for issuing this type of action may result in more situations that are reviewed for a Provisional. However, the Division has added factors for consideration when issuing actions that may impact the final decision. 3. Current rules are written generally which means that the Division has more flexibility to issue an action now than would occur with the proposed rule. The proposed rules, even with the addition of specific criteria, overall limit the situations for which each type of administrative action could be issued. |
| .2205 Probationary License or Notice of Compliance | This was previously .2204. Wording changes to reflect child maltreatment law rather than abuse/neglect investigations. Reference to .2201 added. Duplicative language moved to .2201. Specific criteria were added to this rule that reflects the Division’s current process. The rule was vaguely worded and it was not clear This is not a new type of administrative action. Language provides • structure for the Division • information and expectations to child care operators The Division is unable to determine the fiscal impact for this rule for the following reasons: 1. The Division cannot predict the occurrence and frequency of violations incurred by child care operators. 2. The addition of criteria for issuing this type of action may result in more situations that are reviewed for a Probationary. |
under what conditions a probationary license or notice of compliance would be issued to a child care operator. However, the Division has added factors for consideration when issuing actions that may impact the final decision.  
3. Current rules are written generally which means that the Division has more flexibility to issue an action now than would occur with the proposed rule. The proposed rules, even with the addition of specific criteria, overall limit the situations for which each type of administrative action could be issued.

| .2206 Suspension | This was previously .2205.  
Reference to .2201 added.  
Duplicative language moved to .2201.  
Three criteria were specified regarding when this type of administrative action will be issued. The rule was vaguely worded and it was not clear under what conditions a suspension would be issued to a child care operator.  
Rule text was revised to match G.S. 110-102.2 regarding the length of time allowed for suspension. |
| This is not a new type of administrative action.  
Language provides  
• structure for the Division  
• information and expectations to child care operators  
The Division is unable to determine the fiscal impact for this rule for the following reasons:  
1. The Division cannot predict the occurrence and frequency of violations incurred by child care operators.  
2. The addition of criteria for issuing this type of action may result in more situations that are reviewed for a Suspension. However, the Division has added factors for consideration when issuing actions that may impact the final decision.  
3. Current rules are written generally which means that the Division has more flexibility to issue an action now than would occur with the proposed rule. The proposed rules, even with the addition of specific criteria, overall limit the situations for which each type of administrative action could be issued. |

| .2207 Special Provisional License or Notice of Compliance | This was previously .1904.  
Wording changes to reflect child maltreatment law rather than abuse/neglect investigations.  
Reference to .2201 added.  
Duplicative language moved to .2201.  
This is not a new type of administrative action.  
No substantive change to criteria.  
The Division is unable to determine the fiscal impact for this rule for the following reasons:  
1. The Division cannot predict the occurrence and frequency of violations incurred by child care operators.  
2. The addition of criteria for issuing this type of action may result in more situations that are reviewed for a Special Provisional. However, the Division has added factors for consideration when issuing actions that may impact the final decision.  
3. Current rules are written generally which means that the Division has more flexibility to issue an action now than would occur with the proposed rule. The proposed rules, even with the addition of specific criteria, overall limit the situations for which each type of administrative action could be issued. |
### .2209
**Revocation or Order to Cease Operation**

This was previously .2206.

- Wording changes to reflect child maltreatment law rather than abuse/neglect investigations.
- Reference to .2201 added.
- Duplicative language moved to .2201.
- Specific criteria were added to this rule that reflects the Division’s current process. The rule was vaguely worded and it was not clear under what conditions a revocation or order to cease operation would be issued to a child care operator.

This is not a new type of administrative action.

- Language provides
  - structure for the Division
  - information and expectations to child care operators

The Division is unable to determine the fiscal impact for this rule for the following reasons:

1. The Division cannot predict the occurrence and frequency of violations incurred by child care operators.
2. The addition of criteria for issuing this type of action may result in more situations that are reviewed for a Revocation. However, the Division has added factors for consideration when issuing actions that may impact the final decision.
3. Current rules are written generally which means that the Division has more flexibility to issue an action now than would occur with the proposed rule. The proposed rules, even with the addition of specific criteria, overall limit the situations for which each type of administrative action could be issued.

### .2217
**Schedule of Civil Penalties for Child Care Centers**

This was previously .2213.

- Minor wording changes.
- Some criteria revised to match revisions to other rules in this Chapter, including the Schedule of Civil Penalties for Family Child Care Homes in .2214. (adopted as of October 1, 2017)

The amount of civil penalties has not changes.

- Changes to criteria reflect newly revised rules of this Chapter.
- Division expects that the type and number of civil penalties issued to remain approximately the same. Six new criteria have been made explicit for Child Care Centers that were not previously in Rule; however, in practice, they may have been cited under existing rule and the overall number of civil penalties administered to Centers would not increase. Civil penalties may include $250, $500, or $1000 penalties depending on the action.
Administrative Actions for Child Care Trainers

This is a new rule for trainers approved by the Division to provide training to child care operators and their staff.

When an approved trainer does not fulfill the expectations of the Division regarding the training provided, limitations may be placed on their training or they may be disqualified from training child care operators and their caregiving staff.

This ensures training that operators receive is accurate and promotes quality of child care as well as a safe and healthy environment for children in care.

While the disqualification of a trainer could potentially result in loss of wages and costs of retraining, in a new vocation, the amount is not able to be quantified. In addition, the incidence of his occurrence is exceedingly rare; only a single documented disqualification of a trainer has occurred in the last five years.

This would protect child care operators from investing administrative time, staff time and money with a trainer that is providing inaccurate or incomplete information to child care caregiving staff.

Economic impact unquantified

Criminal Record Checks

This section is proposed to be re-adopted with one change.

10A NCAC 09 .2703(h) specifies that a disqualification of a child care provider living in a family child care home shall be grounds for issuance of a summary suspension of the child care license. The Division recommends the addition of centers in a residence to this requirement.

This change includes a type of facility that operates in a personal residence but was not previously noted in this rule. This change is not expected result in a significant increase in summary suspensions. While not explicitly stated in the existing Rule for Centers in a residence, the practice already existed. In addition, there are an estimated 10 summary suspensions per year in Family Child Care Homes (n=2000). Therefore, there would only be an estimated 1-2 summary suspensions for the estimated 300 centers in residence.

Economic impact unquantified

III. Impact

As stated previously, any discussion of the impact of changes to the administrative action and civil penalties rules must be placed in the context of the relative infrequency of these actions. There are currently 6000 licensed child care facilities in North Carolina, and in 2016-2017, there were a total of 344 administrative actions (5.7%). Overall, most of the changes to the rules add clarification to the existing rule or describe in the rule what is essentially already in policy and practice. Therefore, it is expected that the overall impact will be minimal in terms of increasing the quantity of actions and penalties. However, it must be acknowledged that any individual action has the potential of resulting in cost to a provider. A provider may lose business or the ability to receive funding through grant agencies, which could ultimately result in the closing of the business altogether. The overarching goal is to set clear expectations for providers resulting in greater compliance and fewer administrative actions and civil penalties.