

# **Subsidized Child Care Assistance Program Policy Manual**

## **Chapter 12. Licensing Requirements, Non-compliance, and Sanctions**

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## Chapter 12. Licensing Requirements, Non-compliance, and Sanctions

### I. CHAPTER OVERVIEW

General information about North Carolina's licensing requirements for childcare facilities is given in this chapter. For information about the requirements for childcare facilities to participate in the Subsidized Child Care Assistance (SCCA) Program, refer to Chapter 16: Approval and Enrollment Procedures for Licensed Facilities.

This chapter briefly describes the Division of Child Development and Early Education (DCDEE) licensing regulations, the two through five star rated license, complaints investigations, and determination of administrative actions for providers who are not in compliance with licensing regulations. Basic information about administrative actions for individual facilities can be found on the DCDEE website at <https://ncchildcare.ncdhhs.gov/>.

### II. STAR RATED LICENSE SYSTEM

North Carolina's star rated license system reflects the quality of childcare programs and allows programs to be recognized for providing higher quality care. Childcare facility providers can voluntarily apply for a two through five star rated license when they have been in operation for at least six (6) months. Facilities receive a one-star license unless they choose to be assessed for a higher-level license.

A star rating of two to five stars is based on program standards and staff education. The program standards component includes the environment and level of care a child receives at the center. The staff education component refers to the early childhood educational level and experience of the child care program staff.

Although not a component of the rated license, a childcare program must maintain a 75% compliance history.

The DCDEE website provides information about [child care licensing requirements](#) and information on the two through five star rated license as outlined in .2800 of the [chapter 9 child care rules](#).

### III. MANDATE FOR LICENSURE FOR CHILD CARE FACILITIES

#### A. Determining Need for Licensure

Child care is defined as a program or arrangement where three or more children less than 13 years old, who do not reside where the care is

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provided, receive care on a regular basis of at least once per week for more than four hours but less than 24 hours per day from persons other than their guardians or full-time custodians, or from persons not related to them by birth, marriage, or adoption.

Arrangements that meet the definition of childcare are required to be licensed by DCDEE.

The license is not transferable from one provider to another, nor can it be moved from one location to another. Failure to notify the Regulatory Services Section Licensing Consultant and the DSS/LPA when a licensed childcare facility moves to a new location may result in nonpayment until the Licensing Consultant approves the new location.

**NOTE:** Licensed providers must meet all childcare requirements and be enrolled by the local purchasing agency in order to participate in the SCCA Program and receive payment for services provided.

Providers who wish to participate in the SCCA Program must also comply with all federal civil rights laws. Refer to

<http://www.dhhs.gov/ocr/> for additional information about civil rights laws.

### **B. Exemptions from Licensing Requirements**

The following childcare arrangements are not considered childcare and are exempt from the licensing requirements of DCDEE:

1. Arrangements operated in the home of any child receiving care if all of the children in care are related to each other and no more than two additional children are in care.
2. Recreational programs operated for less than four consecutive months in a year;
3. Specialized activities or instruction such as athletics, dance, art, music lessons, horseback riding, gymnastics, or organized clubs for children, such as Boy Scouts, Girl Scouts, 4-H groups, or boys' and girls' clubs.
4. Drop-in or short-term care provided while parents participate in activities that are not employment related and where the parents are on the premises or otherwise easily accessible, such as drop-in or short-term care provided in health spas, bowling alleys, shopping malls, resort hotels, or churches;

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5. Drop-in or short-term care provided by an employer for its part-time employees where (i) the child is provided care not to exceed two and one-half hours during that day, (ii) the parents are on the premises, and (iii) there are no more than 25 children in any one group in any one room.
6. Public schools.
7. Nonpublic schools described in Part 2 of Article 39 of Chapter 115C of the General Statutes that are accredited by national or regional accrediting agencies with early childhood standards and that operate (i) a child care facility as defined in subdivision (3) of this section for less than six and one-half hours per day either on or off the school site or (ii) a child care facility for more than six and one-half hours per day, but do not receive NC Pre-K or child care subsidy funding;
8. Bible schools conducted during vacation periods.
9. Care provided by facilities licensed under Article 2 of Chapter 122C of the General Statutes.
10. Cooperative arrangements among parents to provide care for their own children as a convenience rather than for employment. This exemption shall include arrangements between a group of parents, regardless of whether the parents are working, to provide for the instructional needs of their children, provided the arrangement occurs in the home of one of the cooperative participants.
11. Any childcare program or arrangement consisting of two or more separate components, each of which operates for four hours or less per day with different children attending each component; and
12. Track-out programs provided to school-age children when they are out of school on a year-round school calendar.

**NOTE:** A program must be licensed or have a Notice of Compliance in order for a provider to participate in the SCCA Program.

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### **C. Different Types of Regulated Child Care Centers: Child Care Centers (CCC) and Centers Located in a Residence (CLIAR)**

There are two types of regulated childcare centers identified in law, these centers are determined by the maximum number of children that may be in care at one time. The requirements for each center type are the same however, one can only be licensed up to 12 children and is located in a currently occupied residence. This is different from a larger center that can be licensed for more children. A summary of the childcare center licensing requirements can be found in the [Basic Information for Potential Providers Packet](#) located on the DCDEE website. For a full review of the childcare center licensing requirements please review the [Chapter 9 Child Care rules](#).

### **D. Family Child Care Homes (FCCH)**

Family childcare homes must be licensed by DCDEE when care is provided on a regular basis of at least once per week for more than four (4) hours per day for more than two (2) children who are not related to the provider. Licensed family childcare homes may provide care to a maximum of eight (8) children, but no more than five (5) may be preschool age, unless all the children are being cared for in their own home. The provider's own preschool aged children are counted in the maximum number of the five (5) preschool aged children, but the provider's own school-age children or school-age children who live in the home where care is provided are not counted. A preschool aged child is defined as any child five (5) years of age or younger, who is not enrolled in and attending a public or private grade school or kindergarten.

### **E. Religious-Sponsored Programs**

Religious-sponsored also known as [G.S. 110 – 106](#) programs are not required to obtain a license, but they must attend the required two-day Pre-licensing workshop and meet all of the licensing requirements except those that relate to staff qualifications, staff training, and age-appropriate activities to include activity plans and schedules. These programs must submit to DCDEE a Letter of Intent at least 30 days prior to the first day

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of operation of a new religious-sponsored childcare center, to provide childcare services. These programs may begin operating upon receipt of DCDEE's response to the provider's Letter of Intent. DCDEE issues a Notice of Compliance letter to these programs when the applicable licensing requirements have been met. Refer to Chapter 16: Payment Policies for information regarding payment.

**NOTE:** For religious sponsored programs accepting subsidy, the exemption of not having to meet the requirements in .1101 through .1103 would not be applicable.

### **IV. PROCEDURES FOR CHILD CARE LICENSURE**

#### **A. Applying for a License**

Anyone interested in operating a childcare facility should first contact the Regulatory Services Section of DCDEE. Basic information which summarizes the requirements for obtaining a license, is located on the DCDEE website for potential provider who may have never been through the pre-licensing process or who are not familiar with the current regulations.

Potential childcare owners/providers are required to attend a pre-licensing workshop. The workshops are offered throughout the year and typically throughout the state. Topics discussed in the pre-licensing workshops include site and building selection; building, fire, and sanitation codes; childcare requirements related to children's equipment and supplies; and staff education, experience and in-service training requirements. The workshops also focus on best practices regarding program start-up and operation as they relate to budgeting for quality childcare.

The DCDEE website provides information on the process for applying for a license. A Regulatory Services Section Lead Childcare Consultant works with the owner/provider of the childcare facility throughout the licensing process.

When a facility is found to be in satisfactory compliance with all applicable childcare requirements, a Temporary License is issued. This allows the owner/provider to begin operation. During the Temporary License period of six months, the Regulatory Services Section Licensing Consultant will assess the program and determine if a permanent license will be issued.

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### **B. Visits to Child Care Facilities**

A Regulatory Services Section Licensing Consultant makes an unannounced compliance visit at least once a year with an additional follow up visit. Unannounced visits are also made to facilities when DCDEE receives complaints. Information regarding noncompliance with licensing requirements is described later in section VII of this chapter.

### **V. REPORTING COMPLAINTS**

The complainant may call, write, or deliver the complaint to any staff member at DCDEE. Reports can be made to the Division by telephone by calling 919-814-6300, 1-800-859-0829, or call the Intake Unit's complaint line at 919-814-6450. The details of the complaint are documented, which begins the investigation procedure. Regardless of the administrative action taken, DCDEE has authority to permanently remove any adult perpetrator from the childcare facility where abuse or neglect has been substantiated.

### **VI. RESPONSE TO COMPLAINTS**

#### **A. Illegal Unlicensed Arrangements**

Sometimes complaints are reported about childcare arrangements that are operating illegally, i.e., they are not licensed to operate a childcare arrangement as required by the childcare law. The Regulatory Services Section Licensing Consultant for that area makes a visit. If the Regulatory Services Section Licensing Consultant does find more children in care than allowed, the provider/provider is informed of the law and the requirements for licensing or obtaining a Notice of Compliance (in the case of religious-sponsored programs who do not wish to receive a license). The Regulatory Services Section Licensing Consultant explains that the provider/provider must be in compliance with the requirements in order to operate legally.

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The Regulatory Services Section Licensing Consultant discusses with the provider the options available for complying with the law. Those options are to:

1. Become a licensed provider.
2. Care for no more than two (2) unrelated children.
3. Provide care for less than four (4) hours per day; or
4. Only care for children who are related to the provider.

If the Regulatory Services Section Licensing Consultant finds there are children in the illegal arrangement who are receiving subsidy assistance the consultant will notify the county department of social services.

### **B. Regulated Facilities**

When DCDEE receives a complaint about a childcare facility, the complaint is referred to the appropriate Regulatory Services Section Licensing Consultant assigned to the area in which the facility is located. The Regulatory Services Section Licensing Consultant will investigate the complaint, determine whether to substantiate it, and work with the provider to address noncompliance items determined during the investigation. The Regulatory Services Section Licensing Consultant may need to involve other agencies in the investigation.

## **VII. NON-COMPLIANCE WITH LICENSING**

Generally, when violations of childcare requirements are found, the Regulatory Services Section Licensing Consultant allows the program a reasonable time to make corrections. There are several types of administrative actions and civil penalties that may be imposed on a program that does not meet the requirements.

**NOTE:** The following actions described in this section also apply to religious-sponsored childcare programs operating under [G. S. 110-106](#). While these programs receive a Notice of Compliance instead of a license, DCDEE may impose any of these administrative actions for noncompliance with the licensing regulations that apply to them.

### **A. Administrative Actions**

1. A **written reprimand** may be issued to a provider for any of the criteria set forth in Rule .2203 of this Section for which the



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Division has determined that no corrective action plan is required using the factors contained in Rule .2201(b).

2. A **written warning** which shall include a corrective action plan, may be issued to an provider in regard to any violation including, but not limited to, these situations: a substantiation of one or more violations as a result of a complaint that do not meet the criteria for a maltreatment finding in accordance with G.S. 110-105.3(b)(3) but for which corrective action is needed; citation of 16 or more violations of separate rules in a single visit where the provider does not meet the criteria of other administrative actions; or citation of one of the following violations on two consecutive visits: supervision of children; discipline, nurture, or care of children; staff/child ratio; group size; licensed capacity; permit restriction; CPR training; First Aid training; ITS-SIDS training; and criminal record check requirements regarding pre-service and three-year reassessments.
  
3. A **provisional child care facility license or provisional notice of compliance** may be issued to an provider for any period of time not to exceed 12 months for, among other things, the following reasons: a substantiation of one or more violations as a result of a complaint that do not meet the criteria for a maltreatment, but for which more than three months is needed to monitor for corrective action implementation; to allow a time period for correcting a violation of the building, fire, or sanitation requirements; to allow a time period for remediation of an identified lead poisoning hazard, regardless of whether a provisional sanitation classification has been issued; to allow a time period for correction of an administratively dissolved corporation status from the North Carolina Secretary of State; when the compliance history of the facility drops below the minimum requirement, change of location of a child care facility without proper notification to the Division, or pattern of noncompliance.
  
4. A **probationary license** or probationary notice of compliance may be issued to an provider for any period of time not to exceed 12 months in accordance with the factors listed for the following reasons: a violation of any section that has been willful, continual,

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or hazardous to the health or safety of children; the provider has failed to comply with the terms of a corrective action plan issued with a written warning or provisional license or notice of compliance; or when the Division determines that child maltreatment occurred in a child care facility and there is a pattern of noncompliance.

5. A **special provisional license** when the Division determines that child maltreatment has occurred, the Division may issue a special provisional license or special provisional notice of compliance to a provider for a period not to exceed six months. A limited enrollment restriction may be included on the special provisional childcare facility license or special provisional notice of compliance that prevents new children from being enrolled during the special provisional time period until the Division is satisfied that unsafe conditions no longer exist.
6. A **suspension of the license** or suspension of a notice of compliance may be issued to an provider for a time period not to exceed one year for the following reasons: the provider of the child care facility is a corporate entity that has been placed under revenue suspension by the North Carolina Secretary of State; when the Division has issued a provisional child care facility license or notice of compliance related to building, fire, or sanitation requirements and the provider has failed to comply; to allow a specific time period for correcting a violation of building, fire, or sanitation requirements, provided that the appropriate inspector documents that closure of the child care facility is necessary to protect health or safety of children during correction; or when a disapproved sanitation classification is issued to a child care facility. The suspension of a childcare facility license or suspension of a notice of compliance shall not be stayed during the pendency of an appeal.
7. A summary suspension and injunctive relief the Division may issue a summary suspension of a childcare facility license or notice of compliance to a provider if the agency finds that the public health, safety, or welfare requires emergency action. The order shall be effective on the date, on the date specified in the

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order, or on service of the certified copy of the order, whichever is later. The order shall be effective during proceedings to suspend or revoke the childcare facility license or during proceedings to cease operation of a facility with a notice of compliance. Administrative actions summarily suspending a childcare facility license, notice of compliance, or other permit to operate a child care facility shall not be stayed during the pendency of an appeal.

8. **A revocation of the license**, revocation of a childcare facility license or an order to cease operation may be issued to an provider for the following reasons: child maltreatment has occurred in a child care facility and harm occurred, more than two determinations of child maltreatment have occurred at a child care facility within three years; violations have been willful or continual as evidenced by:
  - i. a pattern of noncompliance, and the provider has not made efforts to correct repeated violations or is unable to comply; or
  - ii. the provider has failed to comply with the terms of a corrective action plan issued with a special provisional or probationary license or notice of compliance; violation is hazardous to health or safety of children; the provider fails to comply with an implemented protection plan, the provider falsifies information in violation, the compliance history of the facility drops below the minimum requirement, and the conditions at the facility are hazardous to the health and safety of the children or staff, receipt of a disapproved sanitation classification that is not corrected with a superior or approved sanitation classification within 12 months of issuance of a Suspension, or the provider of the child care facility is a corporate entity that has been placed under revenue suspension from the North Carolina Secretary of State that has not been corrected within one year of issuance of a Suspension.

### **B. Civil Penalties**

A civil penalty may be levied against any provider of any childcare facility who violates any provision of this Article. The penalty shall not exceed one thousand dollars (\$1,000) for each violation documented on any given date. Every provider shall be provided a

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schedule of the civil penalties established. In determining the amount of the penalty, the threat of or extent of harm to children in care as well as consistency of violations shall be considered, and no penalty shall be imposed unless there is a specific finding that this action is reasonably necessary. A person who is assessed a penalty shall be notified of the penalty by registered or certified mail. The notice shall state the reasons for the penalty.

### **C. Denial of License**

The Division may deny an application for a childcare facility license or the issuance of any permit to operate a child care facility under the following circumstances:

1. If the applicant owned or operated a licensed childcare facility that was issued a denial, revocation, or summary suspension by the Division;
2. If the applicant owned or operated a licensed childcare facility against which the Division initiated denial, revocation, or summary suspension proceedings and the applicant voluntarily relinquished the license prior to the issuance of a final action; during the pendency of an appeal of a denial, revocation, or summary suspension of any other licensed child care facility license owned or operated by the applicant;
3. if the applicant owned or operated a facility that received a sanction for fraudulent misrepresentation pursuant of the Subsidized Child Care Rules.
4. if the applicant owned or operated a facility that was issued a Notice of Termination and Disqualification by the Child and Adult Care Food Program (CACFP);
5. if the Division determines that the applicant has a relationship with a provider or former provider who owned or operated a regulated child care facility. If an applicant has a relationship with a former provider if the former owner or provider would be involved with

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the applicant's childcare facility in one or more of the following ways:

- i. Would participate in the administration or operation of the facility.
  - ii. Has a financial interest in the operation of the facility, as evidenced by, among other things, a familial relationship with the former owner or provider, employment at the new facility, and ownership of the building or property where the facility is located; or entering into a lease for the building.
  - iii. Provides care to children at the facility, even as a volunteer.
  - iv. Resides in the facility.
  - v. Has an ownership interest in the facility, or would serve on the facility's board of directors, be a partner of the corporation, or otherwise have responsibility for the administration of the business.
6. Based on the applicant's previous non-compliance as a provider with the requirements, based on the provider's non-compliance with the requirements during a temporary licensure period.
  7. If abuse or neglect or child maltreatment has been substantiated against the applicant, or if the applicant is a disqualified childcare provider or has a disqualified household member residing in the childcare facility.

In determining whether denial of the application for a license is warranted, the Division shall consider: any documentation provided by the applicant that describes the steps the applicant will take to prevent reoccurrence of noncompliance, training certificates, original transcripts for any coursework from a nationally recognized regionally accredited

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institution of higher learning related to providing quality child care, and that was taken subsequent to any prior administrative action against a license previously held by the applicant.

Nationally recognized means that every state in this nation acknowledges the validity of the coursework taken at higher education institutions that meet the requirements of one of the accrediting bodies; proof of employment in a licensed child care facility and references from the administrator or licensee of the child care facility regarding work performance; documentation of collaboration or mentorship with a licensed child care provider to obtain additional knowledge and experience related to operation of a child care facility; or documentation explaining relationships with persons meeting the criteria.

Providers who held a childcare facility license or permit that was denied, revoked, subject to a cease operation order, or summarily suspended within the past five years shall be ineligible to apply for a new childcare license.

### **D. Appeals**

Any administrative action or civil penalty may be appealed. There are several levels of appeals, including judicial review. In most cases, the childcare provider may continue operating the childcare facility throughout the appeal process. Operation of the facility cannot continue when the action is a summary suspension or injunction unless a judge grants a stay.

## **VIII. NON-COMPLIANCE WITH SUBSIDY**

The Subsidy Services Provider Compliance Unit is responsible for conducting on-site monitoring visits to evaluate compliance with DCDEE's policies and procedures. A standardized monitoring procedure is used to evaluate provider records related to subsidized childcare assistance for accuracy.

When violations of SCCA Program requirements are found, providers will receive a report from the Subsidy Services Provider Compliance consultant once the attendance evaluation is complete. If applicable, a corrective action plan will be issued.

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If the provider has greater than ten (10) percent error rate a corrective action plan is issued. Providers will be required to repay any money paid as a result of the providers errors.

**NOTE:** The following penalties described in this section also apply to religious-sponsored childcare programs operating under [G. S. 110-106](#). While these programs receive a Notice of Compliance instead of a license, the DCDEE may impose any of these actions for noncompliance with the SCCA Program requirements that apply to them.

### A. Occurrences of Non-compliance with Subsidy

The following are three levels of penalties imposed on a program that does not meet the SCCA Program requirements.

1. Upon the first occurrence that DCDEE or the DDS/LPA determines a facility is out of compliance with any requirement for participation in the SCCA Program the DCDEE will:
  - i. Notify the provider of the non-compliance; and
  - ii. Issue a corrective action plan to address the areas of non-compliance and assist the facility to come into compliance; and
  - iii. Set a time limit for the provider to complete the corrective action plan depending upon the nature of non-compliance.
  
2. Upon the second occurrence in a two-year period that DCDEE or the DSS/LPA determines a facility is out of compliance with any requirement for participation, the provider shall be prohibited from enrolling new children who receive subsidized childcare for one year, and DCDEE will:
  - i. notify the provider of the non-compliance; and

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- ii. issue a corrective action plan to address the areas of non-compliance and assist the facility to come into compliance; and
  - iii. set a time limit for the provider to complete the corrective action plan depending upon the nature of non-compliance.
3. A facility who fails to maintain compliance three times in a two-year period will be terminated from and permanently ineligible to participate in the SCCA Program.

**NOTE:** If the facility fails to complete the corrective action plan within the required timeframe, the DCDEE will terminate the facility's participation in the SCCA Program and the owner or any provider who is not an owner shall be permanently ineligible to participate in the SCCA Program.

If the LPA determines a facility to be out of compliance with any requirement for participation in the SCCA Program, the LPA must notify the DCDEE of the noncompliance within five days of its determination.

### **IX. TERMINATION DUE TO NON-COMPLIANCE WITH SUBSIDY**

Subsidy payments can continue to be made to providers that have received one of the administrative actions described above except for revocation, summary suspension, or denial of license. The DSS/LPA shall not make subsidy payments to a provider who is no longer going to have a license to operate, whether the action is a denial, revocation, or summary suspension by DCDEE.

If under appeal, the maximum limit that subsidy payment may be made is 45 days from the date on the notice and new children cannot be enrolled in the facility during the 45 days or appeal process. Refer to Chapter 19: Fraudulent Misrepresentation, Improper Payments, Sanctions, and Appeals for policies about the appeals process. For policies about the process for notifying parents and providers of the termination of subsidy payments when this occurs, see Chapter 16: Payment Policies.



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For additional information on policy described in this chapter please refer to:

### **SCCA Manual**

Chapter 10: Waiting List Policies

Chapter 16: Payment Policies

Chapter 19: Fraudulent Misrepresentation, Improper Payments, Sanctions, and Appeals

### **SCCA Program Rules**

<a href="#"><u>10A NCAC 10 .0307</u></a>	Payment
<a href="#"><u>10A NCAC 10 .0308</u></a>	Fraudulent Misrepresentation
<a href="#"><u>10A NCAC 10 .0313</u></a>	Termination Of Approval Based Upon An Administrative Action Issued Against Operator
<a href="#"><u>10A NCAC 10 .0602</u></a>	Participation In The Subsidized Child Care Assistance Program
<a href="#"><u>10 A NCAC Chapter 9</u></a>	Child Care Rules