

Chapter 14: RULEMAKING PROCEDURES

Purpose Of These Requirements

The North Carolina General Assembly recognizes the importance of early care and education of children, and thereby declares its intent of the State of North Carolina to protect children in child care by ensuring these facilities provide a physically safe and healthy environment where the developmental needs of these children are met and where these children are cared for by qualified staff. Achieving this level of protection and early education requires mandatory licensing of child care facilities, promotion of higher quality child care through the development of enhanced standards which operators may comply with on a voluntary basis, and a program of education to help operators improve their programs and to deepen public understanding of child care needs and issues. This chapter identifies the procedures for creating, enacting, and enforcing rules to ensure children are receiving child care in a safe and healthy environment.

Definitions

Commission: the North Carolina Child Care Commission.

Function of a Commission: in general, Commissions are statutory based bodies within the executive branch of government. These appointive bodies are granted specific authority, usually including the authority to adopt rules.

Declaratory ruling: is required when a child care operator wishes to have the Commission review a rule for its relevance as it applies to the individual center or a specific situation at the center.

SECTION 1: NORTH CAROLINA CHILD CARE COMMISSION

The Commission is made up of fifteen members: seven are appointed by the Governor, four by the Speaker of the House of Representatives, and four by the President Pro Tempore of the Senate. Child Care Commission Members are appointed to serve two-year terms. Members may be reappointed and can serve up to four (4) consecutive terms for a total of eight consecutive years. The Commission meetings are held quarterly, generally in Raleigh at the main office of the Division.

The Commission is highly committed to ensuring quality child care across North Carolina. Commission members hear from parents, providers and the public about their opinions on child care in North Carolina's Child Care Rules. This is generally done at each Commission meeting during a time that is set aside for comments from the public. The Commission is responsible for adopting rules to implement the child care laws established by the NC General Assembly.

NORTH CAROLINA GENERAL STATUTE 110-88

Powers and Duties of the NC Child Care Commission



The NC Child Care Commission has the following powers and duties:

- To adopt applicable rules and standards for child care facilities.
- To develop policies and procedures for the issuance of a license to any child care facility.
- To require initial and annual sanitation, fire and building inspections of child care centers.
- To adopt rules for the issuance of provisional licenses, temporary licenses, and other types of licenses to child care facilities.
- To adopt rules for administrative action against child care facilities.
- To develop and adopt voluntary enhanced program standards which reflect higher quality child care.
- To develop a procedure by which the Department will furnish those forms as may be required for implementation of rules.
- To adopt rules for child care facilities which provide care for children who are mildly sick.
- To adopt rules regulating the amount of time a child care administrator must be on-site at a child care center.
- To adopt rules for child care facilities that provide care for children who are medically fragile.
- To adopt rules establishing standards for certification of child care centers providing Developmental Day programs.



Commission meetings are held quarterly, mostly in Raleigh at the main office of the Division.



A copy of the North Carolina General Statutes, Article 7, Chapter 110 can be located in Appendix A.



Links to the Commission member listing and its tentative meeting schedule are available on the homepage of the Division's website at www.ncchildcare.net. You can also sign up to be on the Commission mailing list to receive meeting notices.

SECTION 2: PETITIONS FOR RULEMAKING

PROCEDURAL RULE .2001 **Petitions for Rulemaking**

- ★ Any person wishing to request the adoption, amendment, or repeal of a rule made by the Commission must make the request in a written petition to the Division.
- ★ The request must contain either a draft of the proposed rule or a summary of its contents, the reasons for the proposal, and the name and address of the petitioner.

- ☑ The written petition should be sent to:
Administrative Procedures Coordinator
Division of Child Development
2201 Mail Service Center
Raleigh, NC 27699-2201
- ☑ The petition must include any of the following items known to the petitioner:
 - the statutory authority for the Commission to promulgate the rule;
 - the effect on existing rules;
 - any data supporting the proposal;
 - the effect of the proposed rule on existing practices in the area involved, including cost factors; and
 - the names and addresses of those most likely to be affected by the proposed rule

PROCEDURAL RULE .2001 **Commission Decisions Regarding Petitions**

- ★ The Division Director or designee will present the petition, plus any additional information or recommendations deemed relevant, to the Commission to determine whether the public interest will be served by granting the petition.
- ★ The Commission will render a decision as to whether to deny or grant the petition at its next scheduled meeting, which may be no later than 120 days after submission of the petition.

- ☑ The decision of the Commission to deny or grant a petition for rulemaking does not indicate whether they are in favor of the proposed rule or rule change.

- ☑ Granting the petition means the rule will be published in the NC Register. It does not mean the Commission approves and/or agrees with the proposed rule.
- ☑ If the Commission grants the petition, and begins the rulemaking process, the general public will be given the opportunity to comment on the proposed rule.
- ☑ If the decision is to deny the petition, the Division Director or designee shall notify the petitioner in writing, stating the reasons for the denial.
- ☑ If the decision is to deny the petition, the petitioner has the right to appeal to superior court.

SECTION 3: RULEMAKING PROCEDURES

PROCEDURAL RULE .2002 **Permanent Rulemaking Procedures**

★ The rulemaking procedures for the Division are governed by the Administrative Procedures Act [General Statute 150B], 10A NCAC 1A .0102-.0107 and apply to all actions of the Commission.

- ☑ The primary steps in the permanent rulemaking process are:
 - The Commission reviews a petition or proposed rule change.
 - The proposed rules are reviewed by the Department of Health and Human Services for legality, cost and justification.
 - The cost of the proposed rules are reviewed by the State Office of Budget and Management if State or Local funds are affected.
 - The proposed rules are published in the North Carolina Register, which is a document published twice a month to inform the public of proposed rules and action taken on rules by all state agencies.
 - The Commission holds a public hearing so that anyone who wishes to comment on the rules may do so. The Commission also accepts written comments during this period.
 - After a 60 day public comment period, the Commission votes on the proposed rule.
 - Rules adopted by the Commission are reviewed by the Rules Review Commission (RRC), which is a group of appointed persons whose task is to review all rules adopted by all state agencies.

- The proposed rule becomes effective on the first day of the month following the month that it's approved by the RRC, unless the RRC received 10 or more written objections to the rule in accordance with G.S. 150B-21.3(b2), or the adopting agency specifies a later effective date.
- Once approved by the RRC the rule is entered into the NC Administrative Code.



The Division tries to notify all licensed operators when there is going to be rulemaking action by the Commission. Operators can request to be added to the mailing list by contacting the Division. Operators may review proposed rules in the North Carolina Register, which is available at most public libraries or online at www.ncoah.com. Copies of proposed rules are always posted on the Division's web site at www.ncchildcare.net or can be obtained directly from the Division.



To visually see all the steps involved in the rulemaking process, refer to the **Permanent Rulemaking Process** flow chart located in the resource section.

SECTION 4: DECLARATORY RULINGS

PROCEDURAL RULE .2003 Declaratory Rulings

- ★ The Commission has the power to make declaratory rulings. All requests for declaratory rulings must be by written petition and must be submitted to the Division.
- ★ A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedure as may be deemed appropriate, at the discretion of the Commission, in the particular case.
- ★ A record of all declaratory ruling proceedings will be maintained by the Division and will be available for public inspection during regular business hours.



Every request for a declaratory ruling must include the following information:

- the name and address of the petitioner;
- the statute or rule to which the petition relates;
- a concise statement of the manner in which the petitioner is aggrieved by the rule or statute or its potential application to him or her; and

- the consequences of a failure to issue a declaratory ruling.
- The record of declaratory rulings will contain:
- the original request
 - the reasons for refusing to issue a ruling
 - all written memoranda and information submitted
 - any written minutes or audio tape or other record of the oral hearing
 - a statement of the ruling

RESOURCE SECTION

Chapter 14: RULEMAKING PROCEDURES

The following pages contain resource materials discussed in or related to the preceding chapter.

Some of the resources are forms created by the Division of Child Development and must be used by licensed child care centers. Other materials are provided as a resource only for child care centers and can be used at the discretion of the center.

Center operators may also wish to use this section to add any additional resource materials they have that are related to the chapter or information that is specific to their child care center.