

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 273
HOUSE BILL 416

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND CORRECTIVE CHANGES
TO THE CHILD DAY CARE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 110-86 reads as rewritten:

"§ 110-86. Definitions.

Unless the context or subject matter otherwise requires, the terms or phrases used in this Article shall be defined as follows:

- (1) ~~'Commission' means the Commission.~~ The Child Day-Care Commission created under this Article.
- (2) ~~'Child Day Care' means any Child day care.~~ Any child care arrangement except seasonal recreational programs operated for less than four consecutive months in a year, wherein three or more children less than 13 years old receive care away from their own home by persons other than their parents, grandparents, aunts, uncles, brothers, sisters, first cousins, guardians or full-time custodians, or in the child's own home where other unrelated children are in care.
- (3) ~~'Day care facility' includes Child day care facility.~~ Includes any child day care center or child care arrangement which provides day care for more than five children, not including the operator's own school-aged children, under the age of 13 years, on a regular basis of at least once per week for more than four hours but less than 24 hours per day, regardless of the time of day and regardless of whether the same or different children attend. The following are not included: public schools; nonpublic schools whether or not accredited by the State Department of Public Instruction, which regularly and exclusively provide a course of grade school instruction to children who are of public school age; summer camps having children in full-time residence; Bible schools conducted during vacation periods; facilities licensed under Article 2 of Chapter 122C of the General Statutes; and cooperative arrangements among parents to provide care for their own children as a convenience rather than for employment.

~~Day-Child day~~ care facilities are separated by capacity into the following categories which determine applicable requirements and standards as established by the Commission pursuant to G.S. 110-88:

Facility Type

Large Home
Small Center
Medium Center
Large Center

The Commission shall establish the maximum capacity for each of the four categories of facilities.

- (4) ~~'Child Day Care Home' means any~~ Child day care home. Any day care program or child care arrangement wherein any person not excluded in G.S. 110-86(2) provides day care on a regular basis of at least once per week for more than four hours per day for more than two children under 13 years of age and fewer than six children age, but not to exceed a maximum of eight children at any one time, wherever operated, and whether or not operated for profit. Of the children present at any one time, no more than five children shall be preschool-aged, as defined in rules adopted by the Commission. The four hour limit applies regardless of the time of day and regardless of whether the same or different children attend. Cooperative arrangements among parents to provide care for their own children as a convenience rather than for employment are not included.

To determine whether a child care arrangement is a child day care home, all children shall be counted except the operator's own school-aged children and school-aged children who reside at the location of the day care home. ~~Notwithstanding the limitation to five children prescribed above, the day care home operator may care for three additional school-aged children.~~

(4.1) Department. Department of Human Resources.

(5) Repealed by Session Laws 1975, c. 879, s. 15.

(6) ~~'License' means a~~ License. A license issued by the Secretary to any day-care facility which meets the statutory standards established under this Article.

(7) ~~'Operator' includes~~ Operator. Includes the owner, director or other person having primary responsibility for operation of a child day care facility subject to licensing.

(8) Secretary. The Secretary of the Department of Human Resources."

Sec. 2. G.S. 110-88 reads as rewritten:

"§ 110-88. Powers and duties of the Commission.

The Commission shall have the following powers and duties:

- (1) To develop policies and procedures for the issuance of a license to any child day-care facility which meets all applicable standards established under this Article.
- (2) To require inspections by and satisfactory written reports from representatives of local or State health agencies and fire and building inspection agencies and from representatives of the Department prior to the issuance of a license to any child day care facility.

- (3) To make rules establishing minimum and reasonable standards for the operation of child day-care homes and the issuance of registration certificates. These rules shall establish minimum standards of health and safety that will be required in child day-care ~~plans-homes~~ and will recognize the vital role that parents and guardians play in the monitoring of the care provided in child day-care ~~plans-homes~~.
- (4) Repealed by Session Laws 1975, c. 879, s. 15.
- (5) To make rules and develop policies for implementation of this Article, including procedures for application, approval, renewal and revocation of licenses.
- (6) To make rules for the issuance of a provisional license to a child day-care facility ~~which~~that does not conform in every respect with the standards established in this Article provided that the Secretary of ~~Human Resources~~ finds that the operator is making a reasonable effort to conform to ~~such~~the standards, except that a provisional license shall not be issued for more than one year and shall not be renewed.
- (6a) To make rules for administrative action against a child day care facility or home when the Secretary's investigations pursuant to G.S. 110-105(a)(3) or ~~G.S. 110-105.1(4)~~ ~~[110-105.1(a)(4)]~~ G.S. 110-105.1(a)(4) substantiate that child abuse or neglect did occur in the facility or home. The type of sanction shall be determined by the severity of the incident and the probability of reoccurrence. The administrative actions shall include written warnings and special provisional licenses or registration certificates.

A written warning may be issued which shall specify the corrective action to be taken by the operator. The Department shall make an unannounced visit within one month after issuance of the written warning to determine whether the corrective action has occurred. If the corrective action has not occurred, a special provisional license or registration certificate may be issued.

When a special provisional license or registration certificate is issued, it shall require specific corrective action. It shall be in effect for six months from imposition and may not be renewed. The special provisional license or registration certificate and the letter which clearly states the reasons for the special provisional status shall be posted where parents can see them. Under the terms of the special provisional license or registration, the facility or home shall not enroll any new children until notified by the Department that it is satisfied the abusive or neglectful situation no longer exists. The Department shall make three unannounced visits during the period the special provisional license is in effect. Specific corrective action required by a written warning, special provisional license or special provisional registration may include the permanent removal from day care of the substantiated abuser or neglecter.

Nothing in this subdivision shall restrict the Secretary from using any other statutory or administrative remedies available.

- (7) To develop and promulgate standards which reflect higher levels of day care than required by the standards established by this Article, which will recognize better physical facilities, more qualified personnel, and higher quality programs. The Commission ~~shall be empowered to issue~~ may adopt rules for the issuance of two grades of licenses: an 'A' license for compliance with the provisions of the Article, and an 'AA' license for those licensees meeting the voluntary higher standards promulgated by the Commission.
- (8) To develop a procedure by which the Department ~~{of Human Resources}~~ shall furnish such forms as may be required for implementation of this Article.
- (9) Repealed by Session Laws 1985, c. 757, s. 156(66), effective October 1, 1985.
- (10) To develop rules for the issuance of a temporary license which shall expire in 90 days and which may be issued to the operator of a new facility or to the operator of a previously licensed facility when a change in ownership or location occurs, provided the operator applied for a license prior to the change in status. occurs.
- (11) To develop rules for the care of sick children in facilities and homes."

Sec. 3. G.S. 110-90(5) reads as rewritten:

- "(5) To revoke the license of any day care facility which ceases to meet the standards established by this ~~Article.~~ Article and rules on these standards adopted by the Commission, or to deny a license to any applicant that fails to meet the standards or the rules. Such ~~These~~ revocations and denials shall be done in accordance with the procedures set out in G.S. 150B and this Article and rules adopted by the Commission."

Sec. 4. G.S. 110-90.1 reads as rewritten:

"§ 110-90.1. Qualification for staff in a child day-care home.

No child day-care home shall be registered if that home is operated by or employs any person who has been convicted of a crime involving child abuse, child neglect, or moral turpitude, or who is an habitually excessive user of alcohol or who illegally uses narcotics or other impairing drugs, or who is mentally or emotionally impaired to an extent that may be injurious to children. The person registered to provide care in a child day-care home shall be at least 18 years of age and literate. A person who is less than 18 years of age, but at least 16 years of age, may work ~~on~~ in a child day-care home if under the direct supervision of the person registered to provide the care."

Sec. 5. G.S. 110-91 reads as rewritten:

"§ 110-91. Mandatory standards for a license.

The following standards shall be complied with by all day-care facilities, except as otherwise provided in this Article. These shall be the only required standards for the issuance of a license by the Secretary ~~of Human Resources~~ under the policies and

procedures of the Commission except that the Commission may, in its discretion, adopt less stringent standards for facilities subject to licensing but which provide care on a temporary, part-time, drop-in, seasonal, after-school or other than a full-time basis.

- (1) Medical Care and Sanitation. – The Commission for Health Services shall adopt rules which establish minimum sanitation standards for day-care facilities and their personnel. The sanitation rules adopted by the Commission for Health Services shall cover such matters as the cleanliness of floors, walls, ceilings, storage spaces, utensils, and other facilities; adequacy of ventilation; sanitation of water supply, lavatory facilities, toilet facilities, sewage disposal, food protection facilities, bactericidal treatment of eating and drinking utensils, and solid-waste storage and disposal; methods of food preparation and serving; ~~health of staff members;~~ infectious disease control; sleeping facilities; and such other items and facilities as are necessary in the interest of the public health. These rules shall be developed in consultation with the Department.

The Commission shall adopt rules to establish minimum requirements for child and staff health assessments and medical care procedures. These rules shall be developed in consultation with the Department of Environment, Health, and Natural Resources. Each child shall have a ~~medical examination by~~ health assessment before being admitted or within 30 days following admission to a day-care facility. The assessment shall be done by: (i) a licensed ~~physician~~ physician, ~~or his~~ (ii) the physician's authorized agent who is currently approved by the North Carolina Board of Medical Examiners, or comparable certifying board in any state contiguous to North Carolina, (iii) a certified nurse practitioner, or (iv) a public health nurse meeting the Department of Environment, Health, and Natural Resources' Standards for Early Periodic Screening, Diagnosis, and Treatment Program. ~~prior to being admitted or within 30 days following admission to a day care facility; a record of such examination~~ A record of each child's assessment shall be on file in the records of the facility, provided, however, that facility. However, no ~~medical certificate~~ health assessment shall be required of any child who is and has been in normal health and whose parent, guardian, or full-time custodian objects in writing to a ~~medical examination~~ health assessment on religious grounds which conform to the teachings and practice of any recognized church or religious denomination.

Each child shall be immunized in ~~such a manner as to meet that meets~~ the requirements of ~~Articles 9 and 9A of Chapter 130~~ Article 6 of Chapter 130A of the General Statutes. ~~Statutes and the pertinent rules adopted by the Commission for Health Services.~~

Each day-care facility shall have a plan of emergency medical care which shall include provisions for communication with and

transportation to a specified medical resource, unless otherwise previously instructed. No child receiving day care shall be administered any drug or other medication without specific written instructions from a physician or the child's parent, guardian or full-time custodian. Medical Emergency information on each child in care, including the names, addresses, and telephone numbers of the child's physician and parents, legal guardian or full-time custodian shall be readily available to the staff of the day-care facility ~~in the records of the facility in accordance with a form approved by the Commission for this purpose. while children are in care.~~

Nonprofit, tax-exempt organizations that provide prepared meals to day care centers only are considered day care centers for purposes of compliance with appropriate sanitation standards.

~~There shall be a separate bed, cot or mat, equipped with individual linen, for each child to use during rest periods, except for school aged children; if a mat is used, it shall be of a waterproof, washable material at least two inches thick and shall be stored so that the floor side does not touch the sleeping side. Beds and linens used by members of the household of the operator shall not be used for children receiving care in the day care facility.~~

- (2) Health-Related Activities. – Each child in a day-care facility shall receive nutritious food and refreshments under rules to be adopted by the Commission. After consultation with the Division of Health Services of the Department of Environment, Health, and Natural Resources, nutrition standards shall provide for specific requirements for infants. Nutrition standards shall provide for specific requirements for children older than infants, including a daily food plan for meals and snacks served that shall be adequate for good nutrition. The number and size of servings and snacks shall be appropriate for the ages of the children and shall be planned according to the number of hours the child is in care. Menus for meals and snacks shall be planned at least one week in advance, dated, and posted where they can be seen by parents.

Each day-care facility shall arrange for each child in care to be out-of-doors each day if weather conditions permit.

Each day-care facility shall have a rest period for each child in care after lunch or at some other appropriate time.

No day-care facility shall care for more than 25 children in one group. Facilities providing care for 26 or more children shall provide for two or more groups according to the ages of children and shall provide separate supervisory personnel for each group.

- (3) Location. – Each day-care facility shall be located in an area which is free from conditions which are deemed hazardous to the physical and moral welfare of the children in care in the opinion of the Commission.

- (4) Building. – Each day-care facility shall be located in a building which meets the requirements of the North Carolina Building Code under standards which shall be developed by the Building Code Council, subject to adoption by the Commission specifically for day-care facilities, including facilities operated in a private residence. Such standards shall be consistent with the provisions of this Article.
- (5) Fire Prevention. – All day-care facilities shall be inspected annually by a local fire department or a volunteer fire department, using fire-prevention standards which shall be developed by the State Insurance Department after consultation with local fire departments and volunteer fire departments, subject to adoption by the Commission.
- (6) Space and Equipment Requirements. – There shall be no less than 25 square feet of indoor space for each child for which a day-care facility is licensed, exclusive of closets, passageways, kitchens, and bathrooms, and such floor space shall provide during rest periods 200 cubic feet of airspace per child for which the facility is licensed. There shall be adequate outdoor play area for each child under rules adopted by the Commission which shall be related to the size and type of facility, availability and location of outside land area, except in no event shall the minimum required exceed 75 square feet per child, which area shall be protected to assure the safety of the children receiving day care by an adequate fence or other protection; provided, however, that a facility operated in a public school shall be deemed to have adequate fencing protection; provided, also, that a facility operating exclusively during the evening and early morning hours, between 6:00 P.M. and 6:00 A.M., need not meet the outdoor play area requirements mandated by this subdivision.

Each day-care facility shall provide equipment and furnishings that are child size, sturdy, safe, and in good repair. The Commission shall adopt standards to establish minimum requirements for equipment appropriate for the size facility being operated pursuant to G.S. 110-86(3). Space shall be available for proper storage of beds, cribs, mats, cots, sleeping garments, and linens as well as designated space for each child's personal belongings.

- (7) Staff-Child Ratio. – In determining the staff-child ratio, all children younger than 13 years shall be counted. The Commission shall adopt rules regarding staff-child ratios, group sizes and multi-age groupings for each category of facility provided that such rules and regulations shall be no less stringent than those currently required for staff-child ratios as enacted in Section 156(e) of Chapter 757 of the 1985 Session Laws.
- (8) Qualifications for Staff. – Each day-care facility shall be under the direction or supervision of a literate person at least 21 years of age. All staff counted in determining the required staff-child ratio shall be at

least 16 years of age, provided that persons younger than 18 years of age work under the direct supervision of a literate staff person who is at least 21 years of age. No person shall be an operator of nor be employed in a day-care facility who has been convicted of a crime involving child neglect, child abuse, or moral turpitude, or who is an habitually excessive user of alcohol or who illegally uses narcotic or other impairing drugs, or who is mentally or emotionally impaired to an extent that may be injurious to children.

The Commission shall adopt standards to establish minimum qualifications for operators, supervisors, caregivers and other staff who have direct contact with the children. These standards shall reflect training, experience, education or credentialing and shall be appropriate for the size facility being operated according to the categories defined in G.S. 110-86(3). It is the intent of this provision to guarantee that all children in day care are cared for by qualified people but also to recognize that qualifications for good child care may not be limited to formal education or training standards. To this end, the standards adopted by the Commission pertaining to training and educational requirements shall include provision that these requirements may be met by informal as well as formal training and educational experience. No requirements may interfere with the teachings or doctrine of any established religious organization.

- (9) Records. – Each day-care facility shall keep accurate records on each child receiving care in the day-care facility in accordance with a form furnished or approved by the Commission, and shall submit attendance reports as required by the Department.

Each day-care facility shall keep accurate records on each staff member or other person delegated responsibility for the care of children in accordance with a form approved by the Commission.

All records of any day-care facility, except financial records, shall be subject to review by the Secretary ~~of Human Resources~~ or by duly authorized representatives of the Department or a cooperating agency who shall be designated by the Secretary.

Any effort to falsify information provided to the Department shall be deemed by the Secretary to be evidence of violation of this Article on the part of the operator or sponsor of the day-care facility and shall constitute a cause for revoking or denying a license to such day-care facility.

- (10) Each operator or staff member shall truly and honestly show each child in his care true love, devotion and tender care.

Each day-care facility shall have a written policy on discipline, which policy describes the methods and practices used to discipline children enrolled in that facility. This written policy shall be discussed with, and a copy given to, each child's parent prior to the first time the

child attends the facility. Subsequently, any change in discipline methods or practices shall be communicated in writing to the parents prior to the effective date of the change.

- (11) Staff Development. – The Commission shall adopt minimum standards for ongoing staff development for facilities. These standards shall include ~~a requirement that each day care facility shall have a written staff development plan that shall include training activities for each staff member.~~ requirements for ongoing inservice training for all staff."

Sec. 6. G.S. 110-92 reads as rewritten:

"§ 110-92. Duties of State and local agencies.

When requested by an operator of a day-care facility or by the Secretary ~~of Human Resources~~, it shall be the duty of local and district health departments to visit and inspect a day-care facility to determine whether the facility complies with the health and sanitation standards required by this Article and with the minimum ~~health and sanitation~~ standards adopted as rules by the Commission for Health Services as authorized by G.S. 110-91(1), and to submit written reports on such visits or inspections to the Department ~~of Human Resources~~ on forms approved and provided by the Department of Environment, Health, and Natural Resources.

When requested by an operator of a day-care facility or by the Secretary, it shall be the duty of the local and district health departments, and any building inspector, fire prevention inspector, or fireman employed by local government, or any fireman having jurisdiction, or other officials or personnel of local government to visit and inspect a day-care facility for the purposes specified in this Article, including plans for evacuation of the premises and protection of children in case of fire, and to report on such visits or inspections in writing to the Secretary ~~of Human Resources on forms provided by the Department~~ so that such reports may serve as the basis for action or decisions by the Secretary or Department as authorized by this Article."

Sec. 7. G.S. 110-93(c) reads as rewritten:

"(c) Each licensed operator of ~~fa~~ a child day-care facility must annually apply in order to renew ~~his~~ the license and must accompany such renewal application with such supporting data and reports as are required to show conformity with the standards established under this Article."

Sec. 8. G.S. 110-94 reads as rewritten:

"§ 110-94. Administrative Procedure Act.

The provisions of General Statutes Chapter 150B known as the Administrative Procedure Act shall be applicable to the ~~Child Day Care~~ Commission and to the rules it adopts. The Administrative Procedure Act shall also apply to child day care contested cases. However, a child day care operator shall have 30 days to file a petition for a contested case pursuant to G.S. 150B-23. The case hearing shall be scheduled to be held within 120 days of the date the petition for a hearing is received, pursuant to G.S. 150B-23(a), in any contested case resulting from administrative action taken by the Department to revoke a license, registration certificate, or Letter of Compliance or from administrative action taken in a situation in which child abuse or neglect in a child day

care facility or home has been substantiated. A request for continuance of a hearing shall be granted upon a showing of good cause by either party."

Sec. 9. G.S. 110-103.1(a) reads as rewritten:

"(a) A civil penalty of ~~not more than one thousand dollars (\$1,000)~~ may be levied against any ~~licensee operator of any child day care facility or home~~ 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 ~~licensee operator~~ shall be provided a schedule of the civil penalties established by the Commission pursuant to this Article."

Sec. 10. G.S. 110-105(a) reads as rewritten:

"§ 110-105. Authority to inspect facilities.

(a) The Commission shall adopt standards and rules under this subsection which provide for the following types of inspections:

- (1) An initial licensing or certification inspection, which shall not occur until the administrator of the facility receives prior notice of the initial inspection or certification visit;
- (2) A plan for routine inspections of all facilities, which shall be confidential unless a court orders its disclosure, and which shall be conducted without prior notice to the facility;
- (3) An inspection that may be conducted without notice, if there is probable cause to believe that an emergency situation exists or there is a complaint alleging a violation of licensure law. When the Department is notified by the county director of social services that the director has received a report of child abuse or neglect in a child day-care facility, or when the Department is notified by any other person that alleged abuse or neglect has occurred in a facility, the Commission's rules shall provide for an inspection conducted without notice to the child day-care facility to determine whether the alleged abuse or neglect has occurred. This inspection shall be conducted within seven calendar days of receipt of the report, and when circumstances warrant additional visits, the second inspection shall be conducted within one month of the first visit.

The Secretary or ~~his~~ the Secretary's designee, upon presenting appropriate credentials to the operator of the child day-care facility, is authorized to perform inspections in accordance with the standards and rules promulgated under this subsection. The Secretary or the Secretary's designee may inspect any area of a building in which there is reasonable evidence that children are in care."

Sec. 11. G.S. 7A-517(5) reads as rewritten:

- "(5) Caretaker. – Any person other than a parent who has the care of a juvenile. Caretaker includes any blood relative, stepparent, foster parent, house parent, cottage parent, or other person supervising a juvenile in a child-care facility. 'Caretaker' also means any person who has the responsibility for the care of a juvenile in a ~~day-care plan~~ child day care home or facility as defined in G.S. 110-86 and includes any person who has the approval of the care provider to

assume responsibility for the juveniles under the care of the care provider."

Sec. 12. G.S. 143B-168.5 reads as rewritten:

"§ 143B-168.5. ~~Child Day-Care Commission~~ Day Care – special unit.

There is established within the ~~North Carolina Child Day Care Commission~~ Department of Human Resources a special unit to deal primarily with ~~day-care licensing and registration~~ violations involving child abuse and neglect. ~~neglect in child day care arrangements.~~ The Child Day Care Commission shall make rules ~~suffieient to define the duties of the special unit and to describe how it is to function as a special unit within the Commission as a whole.~~ for the investigation of reports of child abuse or neglect and for administrative action when child abuse or neglect is substantiated, pursuant to G.S. 110-88(6a), 110-105, and 110-105.1."

Sec. 13. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 12th day of June, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives