

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 185
HOUSE BILL 627

AN ACT TO IMPROVE ENFORCEMENT OF THE CHILD DAY CARE
REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. 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~~ 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~~ 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~~ day care homes and will recognize the vital role that parents and guardians play in the monitoring of the care provided in child ~~day-care~~ day care 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- (4) Repealed by Session Laws 1975, c. 879, s. 15.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~~ day care facility and a provisional registration certificate to a child day care home that does not conform in every respect with the standards established in this Article and rules adopted by the Commission pursuant to this Article, provided that the Secretary finds that the operator is making a reasonable effort to conform to the standards, except that a provisional license or provisional registration certificate shall not be issued for more than ~~one year~~ 12 consecutive months and shall not be renewed.
- (6a) To make rules for administrative action against a child day care facility or child day care home when the Secretary's investigations pursuant to

G.S. 110-105(a)(3) or 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~~any 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 no more than six months from imposition and ~~may~~shall 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~~an unannounced visit at least every eight weeks during the period the special provisional license or registration certificate is in effect. Specific corrective action required by a written warning, special provisional license or special provisional registration certificate, or any other administrative penalty authorized by this Article 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 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 shall furnish ~~such~~those forms as may be required for implementation of this Article.
- (9) Repealed by Session Laws 1985, c. 757, s. 156(66).
- (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.

(11) To develop rules for the care of sick children in facilities and homes."

Sec. 2. G.S. 110-90 reads as rewritten:

"§ 110-90. Powers and duties of Secretary of Human Resources.

The Secretary of Human Resources shall have the following powers and duties under the policies and rules of the Commission:

- (1) To administer the licensing program for ~~day-care~~ child day care facilities and the registration system for ~~day-care~~ child day care homes.
- (2) To obtain and coordinate the necessary services from other State departments and units of local government which are necessary to implement the provisions of this Article.
- (3) To employ ~~such~~ the administrative personnel and staff as may be necessary to implement this Article where required services, inspections or reports are not available from existing State agencies and units of local government.
- (4) To issue a license effective for one year to any ~~day-care~~ child day care facility which meets the standards established by this Article.
- (5) To revoke the license of any child day care facility or the registration certificate of any child day care home which ceases to meet the standards established by this Article and rules on these standards adopted by the Commission, or which demonstrates a pattern of noncompliance with this Article or the rules, or to deny a license or registration certificate to any applicant that fails to meet the standards or the rules. 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.
- (6) To prosecute or defend on behalf of the State, through the office of the Attorney General, any legal actions arising out of the administration or enforcement of this Article.
- (7) To promote and coordinate educational programs and materials for operators of ~~day-care~~ child day care facilities and ~~day-care~~ child day care homes which are designed to improve the quality of day care available in the State, using the resources of other State and local agencies and educational institutions where appropriate.
- (8) To issue a rated license when any operator of a ~~day-care~~ child day care facility required to be licensed hereunder or requiring licensure pursuant to subdivision (11) of this section has satisfied the ~~Commission~~ Secretary that it has met the voluntary standards developed and adopted by the Commission.
- (9) To levy a civil penalty pursuant to G.S. 110-103.1, or an administrative penalty pursuant to G.S. 110-102.2, or to order summary suspension of a license or registration. ~~Such~~ These actions

shall be done in accordance with the procedures set out in G.S. 150B and this Article and rules adopted by the Commission.

- (10) To issue final agency decisions in all G.S. 150B contested cases proceedings filed as a result of actions taken under this Article including, but not limited to the denial, revocation or suspension of a license or the levying of a civil or administrative penalty.
- (11) To issue a license or registration certificate to any child care arrangement that does not meet the definition of child day care facility or child day care home in G.S. 110-86 whenever the operator of the arrangement chooses to comply with the requirements of this Article and the rules adopted by the Commission, and voluntarily applies for a child day care facility license or child day care home registration certificate. The Commission shall adopt rules for the issuance or removal of the licenses or registration certificates."

Sec. 3. 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~~ child 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 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~~ child 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; 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 health assessment before being admitted or within 30 days following admission to a ~~day-care~~ child day care facility. The assessment shall be done by: (i) a licensed physician, (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. A record of each child's assessment shall be on file in the records of the facility. However, no 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 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 a manner that meets the requirements of Article 6 of Chapter 130A of the General Statutes and the pertinent rules adopted by the Commission for Health Services.

Each ~~day care~~ child 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. 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~~ child day care facility 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.

- (2) Health-Related Activities. – Each child in a ~~day care~~ child 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~~ child day care facility shall arrange for each child in care to be out-of-doors each day if weather conditions permit.

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

No ~~day care~~ child 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~~ child 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~~ child 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~~ child day care facilities, including facilities operated in a private residence. ~~Such~~ These 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.~~ Each child day care facility shall be located in a building that meets the requirements for fire prevention and safe evacuation that apply to child day care facilities as established by the Department of Insurance, subject to adoption by the Commission. Each child day care facility shall be inspected at least annually by a local fire department or volunteer fire department for compliance with these requirements, except that child day care facilities located on State property shall be inspected by an official designated by the Department of Insurance.
- (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~~ child day care facility is licensed, exclusive of closets, passageways, kitchens, and bathrooms, and ~~such~~ this 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~~ child 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~~ these 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~~ child 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~~ child 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~~ child day care facility shall keep accurate records on each child receiving care in the ~~day-care~~ child 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-child~~ child 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-child~~ child day care facility, except financial records, shall be subject to review by the Secretary 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-child~~ child day care facility and shall constitute a cause for revoking or denying a license to ~~sueh this~~ day-care-child day care facility.

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

Each ~~day-care-child~~ child day care facility shall have a written policy on discipline, describing 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.

The use of corporal punishment as a form of discipline is prohibited in ~~day-care-child~~ child day care facilities and may not be used by any operator or staff member of any ~~day-care-child~~ child day care facility, except that corporal punishment may be used in ~~church-day-care~~ religious sponsored child day care facilities as defined in G.S. 110-106, only if (i) the ~~church-day-care~~ religious sponsored child day care facility files with the Department a notice stating that corporal punishment is part of the religious training of its program, and (ii) the ~~church-day-care~~ religious sponsored child day care facility clearly states in its written policy of discipline that corporal punishment is part of the religious training of its program. The written policy on discipline of ~~nonchurch-day-care~~ nonreligious sponsored child day care facilities shall clearly state the prohibition on corporal punishment.

- (11) Staff Development. – The Commission shall adopt minimum standards for ongoing staff development for facilities. These standards shall include requirements for ongoing inservice training for all staff.
- (12) Planned Age Appropriate Activities. – Each ~~day-care-child~~ child day care facility shall have a planned schedule of activities posted in a prominent place to enable parents to review it, and a written plan of age appropriate activities available to parents. Each facility shall have age appropriate activities and play materials to implement the written plan. The Commission shall establish minimum standards for age-

appropriate activities appropriate for each category of facility as defined in G.S. 110-86(3).

- (13) Transportation. – All ~~day-care~~ child day care facilities shall abide by North Carolina law regulating the use of seat belts and child passenger restraint devices. All vehicles operated by any facility staff person or volunteer to transport children shall be properly equipped with appropriate seat belts or child restraint devices as approved by the Commissioner of Motor Vehicles. Each adult and child shall be restrained by an appropriate seat safety belt or restraint device when the vehicle is in motion. These restraint regulations do not apply to vehicles not required by federal law to be equipped with seat restraints. All vehicles used to transport children shall meet and maintain the safety inspection standards of the Division of Motor Vehicles of the Department of Transportation and the facility shall comply with all other applicable State and federal laws and regulations concerning the operation of a motor vehicle. Children may never be left unattended in a vehicle.

The ratio of adults to children in ~~day-care~~ child day care vehicles may not be less than the staff/child ratios prescribed by G.S. 110-91(7). The Commission shall adopt standards for transporting children under the age of two, including standards addressing this particular age's staff/child ratio during transportation."

Sec. 4. This act becomes effective October 1, 1993, and applies to requirements imposed on or after that date.

In the General Assembly read three times and ratified this the 21st day of June, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives