

10A NCAC 10 .0308 FRAUDULENT MISREPRESENTATION

(a) Notwithstanding G.S. 110-107, the Local Purchasing Agency or the Division shall impose sanctions for fraudulent misrepresentation when a person, whether an operator or recipient or someone claiming to be an operator or recipient does the following:

- (1) With intent to deceive, makes a false statement or representation regarding a material fact, omits or fails to disclose a material fact, or submits inaccurate records; and as a result of the false statement or representation, omission, or submission of inaccurate records, obtains, attempts to obtain, or continues to receive a child care subsidy for himself or herself or for another person; or
- (2) Has an error rate in excess of 10 percent.

(b) For purposes of this Rule, the following definitions shall apply:

- (1) "Error rate" shall mean the correct monthly payment divided by the monthly payment paid. The "correct monthly payment" shall mean the amount that should have been paid if the records submitted had not contained any errors.
- (2) "Error" shall mean that for each child the operator marks as present for a particular day on attendance entered into the automated provider portal for purposes of payment from the Subsidized Child Care Assistance Program:
 - (A) Neither the daily attendance records required to be kept in accordance with 10A NCAC 09 .0302(d)(3) and .1721(e)(6) nor the records of arrival and departure times required to be kept in accordance with 10A NCAC 09 .0302(d)(4) and .1721(e)(6) show the child marked present; or
 - (B) Either the daily attendance records required to be kept in accordance with 10A NCAC 09 .0302(d)(3) and .1721(e)(6) or the records of arrival and departure times required to be kept in accordance with 10A NCAC 09 .0302(d)(4) and .1721(e)(6) show the child marked absent.

(c) Sanctions for fraudulent misrepresentation shall be as follows:

- (1) Upon the first instance of fraudulent misrepresentation by an operator, he or she must repay the amount of child care subsidy for which he or she was ineligible to receive, and the operator shall be permanently ineligible to participate in the Subsidized Child Care Assistance Program.
- (2) Upon the first instance of fraudulent misrepresentation by an operator who is not an owner, he or she must repay the amount of child care subsidy for which he or she was ineligible to receive, and the operator who is not an owner shall be permanently ineligible to participate in the Subsidized Child Care Assistance Program in the capacity of an operator.
- (3) Upon the first instance of fraudulent misrepresentation by a recipient, he or she must repay the amount of child care subsidy for which he or she was ineligible to receive, and the recipient shall be permanently ineligible to participate in the Subsidized Child Care Assistance Program.
- (4) Upon the first instance of fraudulent misrepresentation by someone claiming to be a provider or recipient of child care subsidies, the individual claiming to be a provider or recipient of child care subsidies shall be permanently ineligible to participate in the Subsidized Child Care Assistance Program.
- (5) Repayments required under this Paragraph shall be made in accordance with Rule 10A NCAC 10 .0309(d).

(d) A recipient or operator shall also be permanently ineligible to participate in the Subsidized Child Care Assistance Program if convicted of fraudulent misrepresentation pursuant to G.S. 110-107. When a court of competent jurisdiction finds a recipient or operator guilty of fraudulent misrepresentation pursuant to G.S. 110-107, the sanction imposed is not subject to appeal under this Rule.

(e) Sanctions pursuant to this Rule shall be effective 10 days from the date of notice of the sanction.

(f) If an operator subject to a sanction purchases an existing child care facility or opens a new facility, the sanction in effect against the operator shall attach to the new or existing child care facility.

(g) The Local Purchasing Agency shall assist the Division in investigating instances of suspected fraudulent misrepresentation or falsification by an operator.

(h) The Local Purchasing Agency shall notify the Division in writing within five days of issuing any sanction.

(i) An operator may appeal any sanction imposed in Paragraph (c) of this Rule pursuant to 10A NCAC 10 .0311 and 10A NCAC 10 .0312; however, if the Division issues any sanction pursuant to this Rule, the operator may appeal directly to the Division pursuant to 10A NCAC 10 .0312. A recipient may appeal any sanction imposed in Paragraph (c) of this Rule by following the appeals procedures pursuant to G.S. 108A-79.

(j) Nothing in this Rule shall prevent the Division from initiating its own investigation of suspected falsification, inaccurate records, or fraudulent misrepresentation related child care subsidy, and taking administrative action as a result of its findings and conclusions.

(k) If the Division issues a sanction in accordance with this Rule, prior to taking any action, the Division shall notify the operator of the proposed action and the operator shall have 15 days to provide information to the Division as to why the action should not be taken. This provision shall not apply to sanctions issued by the Local Purchasing Agency.

*History Note: Authority G.S. 143B-153;
Eff. April 1, 2001;
Amended Eff. December 1, 2011;
Readopted Eff. April 1, 2019.*