

1 10A NCAC 43J .0102 is proposed for adoption as follows:

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3 **10A NCAC 43J .0102 DEFINITIONS**

4 For purposes of this Subchapter, the following definitions apply:

- 5 (1) “Administrative capability” means, in addition to the requirements of 7 C.F.R. Part 226, the status
6 of an institution or facility which has an adequate number and type of key staff to ensure operation
7 of the Program in accordance with 7 C.F.R. Part 226 and this Subchapter.
- 8 (2) “Agreement” means an agreement either required or which the state agency is authorized to
9 require pursuant to 7 C.F.R. Part 226 and whose purpose is to set forth the Program-related rights
10 and responsibilities of the parties.
- 11 (3) “Application for day care homes” means all forms or other documentation to be submitted by a
12 day care home provider seeking entry to or continued participation in the Program, including all
13 information required by 7 C.F.R. Part 226 and other applicable law, rule, or federal policy. The
14 application shall include:
- 15 (a) A certification that the agreement with the sponsoring organization is exclusive.
- 16 (b) A disclosure form indicating whether the provider is involved with any other entity
17 participating or applying to participate in the Program.
- 18 (c) A certification that all information on the application is true and complete.
- 19 (4) “Application for independent centers” means all forms or other documentation to be submitted by
20 an independent center seeking entry to or continued participation in the Program, including all
21 information required by 7 C.F.R. Part 226 and other applicable law, rule, or federal policy. The
22 application shall include:
- 23 (a) A management plan demonstrating financial viability, administrative capability, and
24 program accountability.
- 25 (b) A certification that the agreement with the state agency is exclusive.
- 26 (c) The name, mailing address, and date of birth of all principals, owner(s), and key staff.
- 27 (d) A disclosure form indicating whether any principal, owner and key staff is involved with
28 any other entity participating or applying to participate in the Program.
- 29 (5) “Application for sponsored centers” means all forms or other documentation to be submitted by a
30 sponsored center seeking entry to or continued participation in the Program, including all
31 information required by 7 C.F.R. Part 226 and other applicable law, rule, or federal policy. The
32 application shall include:
- 33 (a) A management plan demonstrating administrative capability, financial viability, and
34 program accountability.
- 35 (b) A program budget showing projected revenue and costs.
- 36 (c) A statement listing other publicly funded programs in which the sponsored center and its
37 principals have participated in the past seven years and either:

- 1 (i) A certification that, during the past seven years, neither the sponsored center nor
2 any of its principals have been declared ineligible to participate in any other
3 publicly funded program by reason of violating that program’s requirements; or
4 (ii) Documentation showing that the sponsored center or the principal previously
5 declared ineligible was later fully reinstated in, or determined eligible for, that
6 program, including documentation showing the payment of any debts owed.
7 (d) A certification that neither the sponsored center nor any of its principals have been
8 convicted of any activity that occurred during the past seven years indicating a lack of
9 business integrity. A lack of business integrity includes but is not limited to fraud,
10 antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of
11 records, making false statements, receiving stolen property, making false claims, and
12 obstruction of justice.
13 (e) A certification that all information on the application is true and complete.
14 (f) A certification that the agreement with the sponsoring organization is exclusive.
15 (g) The name, mailing address, and date of birth of all principals, owners, and key staff.
16 (h) A disclosure form indicating whether any key staff, principal, or owner is involved with
17 any other entity participating or applying to participate in the Program.
18 (6) “Application for sponsoring organizations” means all forms or other documentation to be
19 submitted by a sponsoring organization seeking entry to or continued participation in the Program,
20 including all information required by 7 C.F.R. Part 226 and other applicable law, rule, or federal
21 policy. The application shall include:
22 (a) A management plan demonstrating financial viability, administrative capability, and
23 program accountability.
24 (b) The name, mailing address, and date of birth of all principals, owner(s), and key staff.
25 (c) A disclosure form indicating whether any key staff, principal, or owner is involved with
26 any other entity participating or applying to participate in the Program.
27 (7) “Eligible meal service” means a meal served to a participant which may be claimed for
28 reimbursement, provided that the meal service is:
29 (a) Designated as a planned meal service on the institution’s or facility’s approved
30 application;
31 (b) Supported by all relevant documentation, as determined by 7 C.F.R. Part 226 and this
32 Subchapter; and
33 (c) Served in compliance with the meal pattern requirements of 7 C.F.R. § 226.20.
34 (8) “Excessive Program balance” means net cash resources in excess of three months average
35 expenditures.
36 (9) “Financial viability” means, in addition to the requirements of 7 C.F.R. Part 226, the status of an
37 institution or sponsored center which has:

- 1 (a) No outstanding debt to the state agency.
- 2 (b) No overdue taxes at the federal, state, or local level.
- 3 (c) The means to satisfy an overpayment demand by the state agency.
- 4 (d) The means to operate the Program for a period of 30 days when a new applicant or 60
- 5 days when a renewing applicant, regardless of any expected reimbursement from the
- 6 Program.
- 7 (e) A budget reflecting costs that are necessary, reasonable, allowable, and documented.
- 8 (10) “Fiscal year” means a period of 12 months beginning October 1 of any calendar year and ending
- 9 September 30 of the following calendar year..
- 10 (11) “Institution training” means an instructional course covering specific content areas of the Program
- 11 presented by personnel of the state agency.
- 12 (12) “Key staff” means the individual(s) responsible for ensuring an institution’s or facility’s
- 13 compliance with Program requirements.
- 14 (13) “Lapse in participation” means a break in participation resulting from a terminated agreement.
- 15 (14) “Menu” means a record stating the:
- 16 (a) Type of meal service (i.e., breakfast, lunch, supper, or snack);
- 17 (b) Type of food and beverage served to participants during the meal service; and
- 18 (c) Day, month, and year of the meal service.
- 19 (15) “New facility” means a facility that applies to the Program for the first time, applies to participate
- 20 under the auspices of a new sponsoring organization, or has a change in sponsorship. “New
- 21 facility” also means a facility that has experienced a lapse in participation.
- 22 (16) “Point of Service” means the point in the food service operation where a reimbursable meal has
- 23 been served to an eligible participant.
- 24 (17) “Program accountability” means, in addition to the requirements of 7 C.F.R. Part 226:
- 25 (a) The status of a sponsored center which has:
- 26 (i) Oversight of the Program by a governing board or other manager(s);
- 27 (ii) A financial system with management controls specified in writing; and
- 28 (iii) The ability to meet the requirements of 7 C.F.R. § 226.6(b)(1)(xviii)(C)(5) and 7
- 29 C.F.R. § 226.6(b)(2)(vii)(C)(5).
- 30 (b) The status of a day care home which has the ability to meet the requirements of 7 C.F.R.
- 31 § 226.6(b)(1)(xviii)(C)(5) and 7 C.F.R. § 226.6(b)(2)(vii)(C)(5).
- 32 (18) “Provider” means the individual(s) responsible for operating a day care home.
- 33 (19) “Site-level claim” means an individualized claim for reimbursement on behalf of a single facility.
- 34 (20) “Sponsored center” means a center that has a signed agreement with a sponsoring organization and
- 35 the sponsoring organization has a signed agreement with the State Agency.
- 36 (21) “State agency” means the North Carolina Department of Health and Human Services.
- 37 (22) “Time of Service” means point of service as defined in this section.

1 (23) “Update” to an application means the annual documentation requirements, based on 7 C.F.R. §
2 226.6(f), which apply to institutions operating under a permanent Agreement. An “updating”
3 institution is an institution subject to these documentation requirements.

4 (24) “Updating Institution” means an institution that has a permanent agreement with the State agency
5 to participate in the Child and Adult Care Food Program and is updating its application.

6

7 *History Note: Authority G.S. 130A-29; 130A-361; 7 C.F.R. 226*

8

1 10A NCAC 43J .0202 is proposed for adoption as follows:

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3 **10A NCAC 43J .0202 APPLICATIONS FOR SPONSORING ORGANIZATIONS**

4 (a) New and updating sponsoring organizations shall complete an application for sponsoring organizations and
5 submit the application to the state agency for approval under the applicable provisions of 7 C.F.R. Part 226 and this
6 Subchapter. The update application process occurs on an annual basis.

7 (b) For updating sponsoring organizations, the deadline for receipt of a completed application to the state agency is
8 the close of the business day on September 30. If September 30 falls on a weekend, the application shall be received
9 by the next business day after to September 30.

10 (c) The responsibility for ensuring timely receipt of a completed update application to the state agency rests with the
11 applicant. Failure to meet the receipt deadline may result in the Sponsoring Organization being declared seriously
12 deficient.

13 (d) Applications shall be submitted on the forms provided by the state agency. New sponsoring organizations shall
14 not be approved for participation until all parts of the application have been completed.

15 (e) New sponsoring organizations shall complete an Agreement and submit the Agreement to the state agency with
16 the application materials. The Agreement shall be signed by an individual legally empowered to bind the sponsoring
17 organization. The Agreement is not effective until the Agreement is signed by an authorized agent of the state
18 agency. Eligibility for reimbursement shall be governed by Rule .0301 of this Subchapter.

19

20 *History Note: Authority G.S. 130A-29; 130A-361; 7 C.F.R. 226*

21

1 10A NCAC 43J .0203 is proposed for adoption as follows:
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3 **10A NCAC 43J .0203 APPLICATIONS FOR SPONSORED CENTERS**

4 (a) New and renewing sponsored centers shall complete an application for sponsored centers and submit the
5 application to the sponsoring organization for preliminary approval. The state agency is responsible for making
6 final approval decisions under the applicable provisions of 7 C.F.R. Part 226 and this Subchapter. The renewal
7 application process occurs on a triennial basis.

8 (b) Applications shall be submitted on the forms provided by the state agency. The sponsoring organization shall
9 not forward an application to the state agency for final approval until the sponsored center has submitted all required
10 information and satisfied all eligibility requirements.

11 (c) Sponsored centers shall enter into an Agreement with the sponsoring organization. An individual legally
12 empowered to bind the sponsored center shall sign the Agreement. However, an Agreement is not required where
13 the sponsored center is part of the same legal entity as the sponsoring organization. Eligibility for reimbursement
14 shall be governed by Rule .0301 of this Subchapter.

15 (d) The agreement is not effective until approved by the State agency.
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17 *History Note: Authority G.S. 130A-29; 130A-361; 7 C.F.R. 226*
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1 10A NCAC 43J .0204 is proposed for adoption as follows:
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3 **10A NCAC 43J .0204 APPLICATIONS FOR DAY CARE HOMES**

4 (a) New and updating day care homes shall complete an application for day care homes and submit the application
5 to the sponsoring organization for preliminary approval. The state agency is responsible for making final approval
6 decisions under the applicable provisions of 7 C.F.R. Part 226 and this Subchapter. The updating application
7 process occurs on an annual basis.

8 (b) Applications shall be submitted on the forms provided by the state agency. The sponsoring organization shall
9 not forward an application to the state agency for final approval until the day care home has submitted all required
10 information and satisfied all eligibility requirements.

11 (c) New day care homes shall enter into an Agreement with the sponsoring organization. The provider shall sign
12 the Agreement. Eligibility for reimbursement shall be governed by Rule .0301 of this Subchapter.

13 (d) The agreement is not effective until approved by the State agency.
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15 *History Note: Authority G.S. 130A-29; 130A-361; 7 C.F.R. 226*
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1 10A NCAC 43J .0205 is proposed for adoption as follows:

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3 **10A NCAC 43J .0205 APPLICATION UPDATE REQUIREMENTS**

4 (a) If, upon entering a new fiscal year, an institution's Agreement remains valid and the institution desires to
5 continue participation, the institution shall submit an update to its application, including all information required by
6 7 C.F.R. § 226.6(f).

7 (b) As part of the update application, the institution shall ensure the continued accuracy of all information submitted
8 to the state agency in connection with the most recent application, including all information submitted on behalf of
9 any sponsored facilities. If there are any changes, the institution shall provide the up-to-date information to the state
10 agency.

11 (c) Completed application updates shall be received by the close of the business day on September 30. If
12 September 30 falls on a weekend, a completed application update shall be received by the next business day after
13 September 30.

14 (d) The responsibility for ensuring timely receipt of a completed update application to the state agency rests with
15 the updating institution. Failure to meet the receipt deadline may result in the Institution being declared seriously
16 deficient.

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18 *History Note: Authority G.S. 130A-29; 130A-361; 7 C.F.R. 226*

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1 10A NCAC 43J .0302 is proposed for adoption as follows:

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3 **10A NCAC 43J .0302 RATE ASSIGNMENT**

4 (a) With each month's claim for reimbursement, each independent center shall submit the number of enrolled
5 participants who are eligible for free, reduced-price, and paid meals for the time period corresponding to the claim.

6 (b) Sponsoring organizations shall submit a site-level claim for each sponsored center. The site-level claim shall
7 state the number of enrolled participants who are eligible for free, reduced-price, and paid meals for the time period
8 corresponding to the claim.

9 (c) Sponsoring organizations shall submit a site-level claim for each day care home indicating as applicable:

10 (1) The tier status of the day care home;

11 (2) The number of enrolled participants who are eligible for free, reduced-price, and paid meals for
12 the time period corresponding to the claim; or

13 (3) The combined information of subparagraphs (c)(1) and (c)(2).

14

15 *History Note: Authority G.S. 130A-29; 130A-361; 7 C.F.R. 226*

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1 10A NCAC 43J .0303 is proposed for adoption as follows:

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3 **10A NCAC 43J .0303 ADVANCE PAYMENT**

4 Advance payments will not be issued to institutions participating in the Child and Adult Care Food Program in
5 North Carolina.

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7 *History Note: Authority G.S. 130A-29; 130A-361; 7 C.F.R. 226*

8

1 10A NCAC 43J .0304 is proposed for adoption as follows:

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3 **10A NCAC 43J .0304 OVERCLAIM REPAYMENT**

4 Institutions shall repay overclaims to the State agency within 30 days of receipt of notice of the overclaim.

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6 *History Note: Authority G.S. 130A-29; 130A-361; 7 C.F.R. 226*

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1 10A NCAC 43J .0402 is proposed for adoption as follows:

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3 **10A NCAC 43J .0402 MAINTAINING A NONPROFIT FOOD SERVICE**

4 Institutions shall maintain a nonprofit food service, ensuring that all Program reimbursement funds are used solely
5 for the conduct of the food service operation or to improve such food service operations for the benefit of the
6 enrolled participants. To meet this requirement, institutions shall not have an excessive Program balance.

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8 *History Note: Authority G.S. 130A-29; 130A-361; 7 C.F.R. 226*

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1 10A NCAC 43J .0403 is proposed for adoption as follows:
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3 **10A NCAC 43J .0403 RECORD KEEPING**

4 (a) Where the state agency has developed a specific form for maintaining a record required under 7 C.F.R. Part 226
5 or this Subchapter, each institution and facility shall use the state-developed form.

6 (b) Any day care home providing care for more than 12 children in a single day shall maintain time of service meal
7 counts.

8 (c) Any day care home declared to be seriously deficient due to violations involving meal counts or claims shall
9 maintain time-of-service meal counts for twelve months following the notice of serious deficiency.

10 (d) Day care homes shall maintain on-site and have available for immediate review all records that support their
11 Program activities for the current month and the previous twelve months of operation. Day care homes may use off-
12 site storage for the required maintenance of records older than twelve months. If requested by the state agency or
13 the U.S. Department of Agriculture, off-site records must be produced within 2 business days of the request.
14 Whether maintained on-site or off-site, all records must be maintained in accordance with and for the durations
15 specified under 7 C.F.R. § 226.10.

16 (e) Institutions and sponsored centers shall maintain on-site and have available for immediate review all records that
17 support their Program activities for the current month and the previous 24 months of operation. Institutions and
18 sponsored centers may use off-site storage for the required maintenance of records older than 24 months. If
19 requested by the state agency or the U.S. Department of Agriculture, off-site records must be produced within 1
20 business day of the request. Whether maintained on-site or off-site, all records must be maintained in accordance
21 with and for the durations specified under 7 C.F.R. § 226.10.

22 (f) Institutions and facilities shall report the legal name of all enrolled participants on required CACFP forms.
23

24 *History Note: Authority G.S. 130A-29; 130A-361; 7 C.F.R. 226*
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1 10A NCAC 43J .0404 is proposed for adoption as follows:

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3 **10A NCAC 43J .0404 FREE AND REDUCED-PRICE APPLICATION**

4 A new free and reduced-price application shall be completed for each enrolled participant no less frequently than
5 annually. The free and reduced-price application shall expire on the last day of the same calendar month in the year
6 following the year in which the application was signed and dated by the Institution representative.

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8 *History Note: Authority G.S. 130A-29; 130A-361; 7 C.F.R. 226*

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1 10A NCAC 43J .0405 is proposed for adoption as follows:

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3 **10A NCAC 43J .0405 TIME RESTRICTIONS FOR MEAL SERVICE**

4 (a) At least two and one-half hours shall elapse between the beginning of one meal service and the beginning of the
5 next meal service, except that at least four hours shall elapse between the service of lunch and supper when no snack
6 is served between lunch and supper. This requirement applies to all types of meal service (breakfast, lunch, supper,
7 and snacks).

8 (b) A breakfast or snack service shall last not more than one and one-half hours.

9 (c) A lunch or supper service shall last not more than two hours.

10 (d) No meal or snack service shall begin later than 9:00 p.m.

11 (e) All enrolled participants in attendance shall be served within the meal service times designated on the
12 institution's or facility's application. Meals served outside of the designated time frame are not eligible for
13 reimbursement.

14 (f) This Rule does not apply to meals served at emergency shelters and meals served to infants (0 to 11 months).

15

16 *History Note: Authority G.S. 130A-29; 130A-361; 7 C.F.R. 226*

17

1 10A NCAC 43J .0406 is proposed for adoption as follows:

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3 **10A NCAC 43J .0406 TRAINING REQUIREMENTS**

4 (a) Prior to submitting an application for participation, each new institution shall complete the training for potential
5 institutions provided by the state agency.

6 (b) Each institution's key staff shall complete at least one institution training per fiscal year. To satisfy this
7 requirement, the institution's representative(s) shall attend the entire training. Trainings related to the Program
8 application process do not satisfy the requirement of this paragraph.

9 (c) Each sponsoring organization shall conduct a minimum of one training per fiscal year for each employee
10 having monitoring responsibilities. Documentation shall be maintained showing the attendance of the employee and
11 that training has been completed in the following Program areas:

- 12 (1) meal patterns;
- 13 (2) meal counts;
- 14 (3) claim review and submission procedures;
- 15 (4) recordkeeping requirements; and
- 16 (5) reimbursement system.
- 17 (6) civil rights.

18 (d) Any newly hired key staff and any newly hired employee having monitoring responsibilities shall be trained by
19 his/her respective institution within four weeks of employment in the areas set forth in paragraphs (c)(1) – (5) of this
20 Rule.

21 (e) Each sponsoring organization shall conduct a minimum of one training per fiscal year for key staff from each
22 sponsored child care and adult day care facility. Attendance by key staff is mandatory. Documentation shall be
23 maintained showing the attendance of the key staff and that training has been completed in the Program areas set
24 forth in subparagraphs (c)(1) through (c)(5) of this Rule.

25
26 *History Note: Authority G.S. 130A-29; 130A-361; 7 C.F.R. 226*

1 10A NCAC 43J .0407 is proposed for adoption as follows:

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3 **10A NCAC 43J .0407 MONITORING RATIOS**

4 The state agency determines the appropriate level of staffing for monitoring for each sponsoring organization
5 pursuant to 7 C.F.R. § 226.16, except that:

6 (1) A sponsoring organization of centers shall employ the equivalent of one full-time staff person with
7 monitoring responsibilities for each 25 to 100 centers it sponsors.

8 (2) A sponsoring organization of day care homes shall employ the equivalent of one full-time staff person
9 with monitoring responsibilities for each 50 to 100 day care homes it sponsors.

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11 *History Note: Authority G.S. 130A-29; 130A-361; 7 C.F.R. 226*

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1 10A NCAC 43J .0408 is proposed for adoption as follows:

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3 **10A NCAC 43J .0408 EDIT CHECK REQUIREMENTS**

4 Prior to submitting a facility's claim for reimbursement to the state agency, each sponsoring organization shall
5 perform edit checks on the claim. The edit check process shall comply with 7 C.F.R. Part 226 and shall also ensure
6 that:

- 7 (1) Menus are in compliance with the Program's meal pattern requirements;
- 8 (2) Income eligibility applications are accurately classified and up-to-date;
- 9 (3) Enrollment forms are complete and up-to-date;
- 10 (4) Each for-profit center meets the definitional criteria set forth in 7 C.F.R. § 226.2; and
- 11 (5) Meal counts do not exceed daily attendance.

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13 *History Note: Authority G.S. 130A-29; 130A-361; 7 C.F.R. 226*

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1 10A NCAC 43J .0409 is proposed for adoption as follows:

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3 **10A NCAC 43J .0409 SERIOUS DEFICIENCIES**

4 In addition to the categories of serious deficiencies set forth in 7 C.F.R. Part 226, the violation of an Agreement or a
5 Rule of this Subchapter is ground for a serious deficiency determination.

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7 *History Note: Authority G.S. 130A-29; 130A-361; 7 C.F.R. 226*

8

1 10A NCAC 43J .0410 is proposed for adoption as follows:

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3 **10A NCAC 43J .0410 APPEAL PROCESS FOR DAY CARE HOMES**

4 (a) Each sponsoring organization of day care homes shall conduct administrative reviews for the homes under its
5 sponsorship and shall develop the necessary administrative review procedures in accordance with 7 C.F.R. §
6 226.6(l).

7 (b) Administrative reviews shall be limited to circumstances where a day care home is seeking to appeal either:

8 (1) Proposed termination and disqualification, or

9 (2) Suspension.

10

11 *History Note: Authority G.S. 130A-29; 130A-361; 7 C.F.R. 226*

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1 10A NCAC 43J .0411 is proposed for adoption as follows:

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3 **10A NCAC 43J .0411 ADDITION OF NEW FACILITIES PROHIBITED**

4 The state agency shall deny any application submitted by a sponsoring organization on behalf of a new facility if,
5 prior to the facility's approval, the sponsoring organization is declared seriously deficient pursuant to 7 C.F.R. §
6 226.6(c).

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8 *History Note: Authority G.S. 130A-29; 130A-361; 7 C.F.R. 226*

9