

§ 110-105.3. Child maltreatment.

(a) The purpose of this section is to assign the authority to investigate instances of child maltreatment in child care facilities to the Department of Health and Human Services, Division of Child Development and Early Education. The General Assembly recognizes that the ability to properly investigate child maltreatment in licensed child care facilities is dependent upon the cooperation of State and local law enforcement agencies, as well as county departments of social services.

(b) The following definitions shall apply in this Article:

(1) Caregiver. – The operator of a licensed child care facility or religious-sponsored child care facility, a child care provider, as defined in G.S. 110-90.2(a)(2), a volunteer, or any person who has the approval of the provider to assume responsibility for children under the care of the provider.

(2) Child care facilities. – Any of the following:

a. All facilities required to be licensed under this Article.

b. All religious-sponsored facilities operating pursuant to G.S. 110-106.

c. All locations where children are being cared for by someone other than their parent or legal guardian that require a license under this Article but have not been issued a license by the Department.

(3) Child maltreatment. – Any act or series of acts of commission or omission by a caregiver that results in harm, potential for harm, or threat of harm to a child. Acts of commission include, but are not limited to, physical, sexual, and psychological abuse. Acts of omission include, but are not limited to, failure to provide for the physical, emotional, or medical well-being of a child, and failure to properly supervise children, which results in exposure to potentially harmful environments.

(c) The Department, local departments of social services, and local law enforcement personnel shall cooperate with the medical community to ensure that reports of child maltreatment in child care facilities are properly investigated.

(d) When a report of child maltreatment is received, the Department shall make a prompt and thorough assessment to ascertain the facts of the case, the extent of the maltreatment, and the risk of harm to children enrolled at the child care facility. When the report alleges maltreatment meeting the definition of abuse or neglect as defined in G.S. 14-318.2 and G.S. 14-318.4, the Department shall contact local law enforcement officials to investigate the report.

(e) During the pendency of an investigation, the Department may issue a protection plan restricting an individual alleged to have maltreated a child from being on the premises of the facility while children are in care. The Department may also suspend activities at a facility under investigation, including, but not limited to, transportation, aquatic activities, and field trips.

(f) At any time during the pendency of a child maltreatment investigation, the Department may order immediate corrective action as required to protect the health, safety, or welfare of children in care. If the corrective action does not occur within the period specified in the corrective action order, the Department may take administrative action to protect the health, safety, or welfare of the children at the child care facility.

(g) The Department may, in accordance with G.S. 150B-3(c), summarily suspend the license of a child care facility if the Department determines that emergency action is required to protect the health, safety, or welfare of the children in a child care facility regulated by the Department.

(h) In the event the Department determines child maltreatment did not occur in a child care facility, nothing in this section shall prevent the Department from citing a violation or G.S. 110-105.3

issuing an administrative action based upon violations of child care licensure law or rules based upon its investigation. Citations of violations or administrative actions issued pursuant to this subsection shall not be confidential.

(i) During the pendency of an investigation, all matters regarding the investigation, including, but not limited to, any complaint, allegation, or documentation regarding inspections or the identity of the reporter, shall be held in strictest confidence as provided by subsection (j) of this section. Following a determination that maltreatment has occurred, the investigation findings shall be made public, as well as the date of any visits made pursuant to the investigation, and any corrective action taken, if applicable. DCDEE shall not post on its Internet Web site that a maltreatment investigation occurred if the allegation of maltreatment was unsubstantiated.

(j) Regardless of the Department's final determination regarding child maltreatment, all information received by the Department during the course of its investigation shall be held in the strictest confidence by the Department, except for the following:

- (1) The Department shall disclose confidential information, other than the identity of the reporter, to any federal, State, or local government entity or its agent in order to protect a juvenile from child maltreatment, abuse, or neglect. Any confidential information disclosed to any federal, State, or local government entity or its agent pursuant to this subdivision shall remain confidential with the other government entity or its agent and shall only be redisclosed for purposes directly connected with carrying out that entity's mandated responsibilities.
- (2) The Department shall only disclose information identifying the reporter pursuant to a court order, except that the Department may disclose information identifying the reporter without a court order only to a federal, State, or local government entity that demonstrates a need for the reporter's name to carry out the entity's mandated responsibilities.
- (3) A district court, superior court, or administrative law judge of this State presiding over a civil matter in which the Department is not a party may order the Department to release confidential information. The court may order the release of confidential information after providing the Department with reasonable notice and an opportunity to be heard and then determining that the information is relevant, necessary to the trial of the matter before the court, and unavailable from any other source.

(k) When a report of child maltreatment alleges facts that indicate that a report is required under G.S. 7B-301, the Department shall contact the local department of social services in the county where the juvenile resides or is found and make the necessary report.

(l) In performing any duties related to the assessment of a report of child maltreatment, the Department may consult with any public or private agencies or individuals, including the available State or local law enforcement officers, probation and parole officers, and the director of any county department of social services who shall assist in the assessment and evaluation of the seriousness of any report of child maltreatment when requested by the Department. The Department or the Department's representatives may make a written demand for any information or reports, whether or not confidential, that may in the Department's opinion be relevant to the assessment of the report. Upon the Department or the Department's representative's request and unless protected by attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and the records required by this subsection, to the extent permitted by federal law and regulations.

(m) The North Carolina Child Care Commission shall adopt, amend, and repeal all rules necessary for the implementation of this section. Rules promulgated subject to this section shall be exempt from the provisions of G.S. 150B-19.1(e) and (f). (2015-123, s. 8.)