

Subsidized Child Care Assistance Program Policy Manual
Chapter 18. Fraudulent Misrepresentation, Improper Payments,
Sanctions, and Appeals

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I. CHAPTER OVERVIEW

This chapter provides procedures to comply with Federal and State requirements regarding error corrections, non-compliance, overpayments, fraudulent misrepresentation, sanctions, and appeals.

Lead agencies are federally mandated to have policies in place to ensure integrity and accountability across the program. Both the State and the local purchasing agencies (LPA) have a responsibility to assure proper administration of state and federal funds that pay for child care assistance for children and to take steps to detect and prevent fraudulent misrepresentation.

II. CHILD CARE PROVIDERS

Providers should establish good record-keeping methods and maintain all documentation in an orderly fashion. Providers are required to enter attendance accurately into the state provider portal. Evaluations for accuracy may be completed by DCDEE or the LPA. DCDEE or the LPA takes the same actions in many instances with providers. An attendance evaluation compares the facility/provider's, regulatory-required attendance against the attendance entered in the State Provider Portal to support the attendance entered in the State Provider Portal. Regulatory required facility attendance consists of daily classroom attendance records and daily arrival and departure times, pursuant to [10A NCAC 09 .0302](#) and [10A NCAC 09 .1721](#).

During the evaluation process, the Provider Compliance Consultant evaluates the following:

- Facility/Provider's current SCCA Program Provider Agreement.
- Approval Notice.
- Child Care Vouchers and Action Notices.
- The NC Fast roster, two months prior to the evaluation.
- Verifies if provider issues receipts for parent fees.
- Daily attendance records.
- Arrival and Departure records.

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When an evaluation of records indicates that the attendance recorded in the State Provider Portal, is unsupported by the facility-maintained records, action may be taken against the facility/provider.

NOTE: A facility/provider who does not maintain records or has inaccurate records may be required to repay funds if the facility/provider cannot provide documentation that the child attended the program.

III. DCDEE ACTIONS

Actions taken DCDEE and the county include:

1. Error Corrections
2. Non-compliance
3. Sanctions
4. Overpayments
5. Overpayment Recoupments

A. Error Corrections

The response to error corrections is the same as when errors are identified by the DSS/LPA or DCDEE.

An “error” means that for each child the facility/provider marks as present for a particular day on attendance entered into the state provider portal for purposes of payment from the Subsidized Child Care Assistance Program:

- Neither the daily attendance records nor the records of arrival and departure times show the child marked present; or
- Either the daily attendance records or the records of arrival and departure times show the child marked absent.

To determine the attendance error rate, divide the number of unsupported entry days by the total number of entries in the provider portal.

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For all unsupported attendance entries, make retroactive attendance corrections in NC FAST by following the SCCA Attendance Adjustment and Approval job aid.

If overpayments result from attendance corrections, refer to Section D of this chapter and follow procedures for overpayments.

Overpayments resulting from inadvertent errors are recouped. When fraudulent misrepresentation is determined, the LPA must permanently sanction the provider and recoup improperly expended funds.

B. Non-Compliance

The provider may be issued a Determination of Non-Compliance by the LPA or DCDEE when the provider does not adhere to the requirements for participation in the SCCA Program.

Determination of Non-Compliance may be issued when:

1. The provider does not maintain complete and accurate attendance records and when records are compared to provider's entries in NC FAST which shows the child marked present and the result is an attendance error rate greater than 10% (percent).
2. The provider does not maintain complete and accurate records of arrival and departure times for each child.
3. The provider fails to comply with the terms and conditions of the Subsidized Child Care Assistance Program's Provider Agreement.

Failure to provide accurate and complete information to the DSS/LPA or DCDEE is grounds for termination from the SCCA Program, up to and including a sanction. Non-compliance is identified when the result is an attendance error rate of unsupported attendance is greater than 10% (percent). The error rate is calculated by using the number of errors divided by the number of roster entries in the provider portal.

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Appeal rights are provided, in writing, to providers.

NOTE: Refer to Chapter 15 of the Subsidized Child Care Program Policy Manual for more information pertaining to the Provider Agreement.

1. Response to Non-Compliance

The response to non-compliance is the same when identified by the LPA or DCDEE.

Non-compliance occurs when the provider fails to comply with the provisions of the Provider Agreement and/or has an attendance error rate in excess of 10%.

Upon the first instance of non-compliance, the following actions will occur:

- i. Notify the provider of the non-compliance by certified mail with return receipt or personal delivery.
- ii. Issue a corrective action plan.
- iii. Set a time limit for the provider to complete the corrective action plan.

Upon the second instance of non-compliance, the provider is prohibited from enrolling new children for a period of one year.

Upon the third instance of non-compliance within a two-year period, the provider shall be terminated from and be permanently ineligible to participate in the Subsidized Child Care Assistance Program.

The following actions occur:

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- i. Issue a corrective action plan to address the areas of non-compliance. If the operator fails to complete the corrective action plan within the required timeframe, the Division shall terminate the owner's participation in the Subsidized Child Care Assistance Program and the provider shall be permanently ineligible to participate in the Subsidized Child Care Assistance Program.

The LPA/DSS shall notify the Division in writing within (5) five days of determining non-compliance.

2. Corrective Action Plan

The corrective action plan (CAP) is designed to ensure the provider comes into compliance with all requirements to participate in the SCCA program.

The corrective action plan should address:

- i. maintaining complete and accurate daily attendance records in accordance with [10A NCAC .0602](#) (e) (1-5).
- ii. maintaining complete and accurate records of arrival and departure times for each child in accordance.
- iii. submitting accurate records of attendance for each child participating in the Subsidized Child Care Assistance Program to the Subsidized Child Care Assistance Program;
- iv. maintaining compliance with all of the requirements set forth in this Chapter; and complying with the terms and conditions of the Subsidized Child Care Assistance Program's Provider Agreement.

Other items addressed in the CAP are determined by the findings.

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NOTE: Completion of the corrective action plan does not change the prohibition of new enrollment for one year.

C. Sanctions

The response to sanctions varies when applied by the county/LPA and DCDEE.

If the Division issues the sanction, prior to taking any action, the Division shall notify the provider of the proposed action and the operator shall have (15) fifteen days to provide information to the Division as to why the action should not be taken.

The LPA/DSS shall notify the Division in writing within (5) five days of issuing any sanction.

A sanction is a permanent ineligibility and sanctions are imposed when:

1. Financial Error Rate exceeds 10% (percent).
2. Determination of fraudulent misrepresentation is made.

The child care facility/provider must be sanctioned if the facility/provider has a financial error rate in excess of 10% (percent). Financial error rate is calculated by dividing the difference between the original payment and the correct payment by the original payment.

Example:

- Original payment of \$5,400 but should have been \$1,200.
- The difference between the original payment and the payment that should have been made is \$4,200.
- Take the \$4,200 and divide by \$5,400. The financial error rate is 77%.

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Fraudulent misrepresentation is determined when the provider makes a false statement or representation regarding a material fact, omits, or fails to disclose a material fact, or submits inaccurate records that results in the facility/provider obtaining, attempting to obtain, or continuing to receive a subsidy. A facility/provider may be sanctioned if the facility/provider has 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.

Upon the first instance of fraudulent misrepresentation by a provider, he or she must repay the amount of child care subsidy for which he or she was ineligible to receive payment, and the facility/provider shall be permanently ineligible to participate in the Subsidized Child Care Assistance Program.

If the LPA initiates an investigation, the LPA must notify DCDEE by submitting a SCCA Provider Program Integrity report to the DCDEE fraud account at dcdee.subsidy.fraud@dhhs.nc.gov. Send this form when an investigation is initiated, updates are provided, and when the investigation is closed.

If an appeal comes to DCDEE for a county-initiated action for a sanction, the county must provide the file to DCDEE within (5) days.

Appeal rights are provided, in writing, to facility/providers.

D. Overpayments

The response to overpayments is the same when identified by the LPA or DCDEE.

Overpayments may result from errors, non-compliance, or fraudulent misrepresentation.

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When a provider is deemed responsible for the child care overpayment, due to acts of commission or omission, the overpayment must be recovered from the facility/provider who received payment for such services. The overpayment will be reviewed back as far as necessary, depending on the situation. For example, if a referral claims a child hasn't attended in six (6) months, monitoring would look at that. If it's an underpayment, DCDEE will pay and inform the provider they are responsible for refunding the parent/responsible adult.

After the (30) thirty-day timeclock, follow procedures for overpayment recoupments. Refer to the following Job Aids SCCA- Overpayments and Recoupments: Managing Applied Deductions and SCCA- Overpayments and Recoupments: Receive Allocate and Reverse Payments.

Appeal rights are provided, in writing, to providers.

E. Overpayment Recoupments

When overpayments are generated as a result of retroactive roster corrections, the amounts are recouped.

Overpayments to a recipient date back to the point of origin. The recipient is responsible for paying DCDEE using the county check log. When a county worker finds the overpayment, the county worker will correct it at the point of discovery. When a TA finds an overpayment, the TA will correct it at the point of origin. Overpayments caused by the facility/provider will be reviewed back as far as necessary, depending on the situation, and the facility/provider is responsible for repaying the funds.

When the facility/provider continues to participate in the SCCA Program, overpayments are collected by deductions from the facility/provider's future payments. These deduction rates of 1-20% are configured in NC FAST by the LPA Provider Manager or DCDEE Provider Manager.

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Refer to the following job aids for system adjustment processes that address recoupment of payments: Overpayments and Recoupments: Managing Applied Deductions.

When the facility/provider no longer participates in the SCCA regardless of whether the overpayments were determined by the Local Purchasing Agency or the Division/DCDEE, the LPA must obtain a repayment agreement. When accepting a repayment by check or money order, utilize the SCCA Overpayments and Recoupments: Receive Allocate and Reverse Payments job aid.

The DSS/LPA shall pursue legal action if the provider fails to make timely payments.

Consultation related to enforcement is available from DCDEE. Submit requests to DCDEE.Subsidy.Fraud@dhhs.nc.gov.

IV. APPEALS PROCESS

Applicants of child care subsidy services have the right to appeal and receive a fair hearing on decisions made about their eligibility for and the authorization of child care subsidy amount of the overpayment, noncompliance, termination, and sanctions. Appeal instructions are included on the Child Care Application, recert packet, as well as the voucher.

The appeals processes vary between DSS/LPA and DCDEE-initiated actions. Appeal rights are provided, in writing, to facility/providers.

Appealing a decision to the LPA:

1. An initial review is the first step in an appeal to the LPA
 - i. The provider must contact the DSS/LPA in writing within (30) thirty calendar days after receiving notice of any appealable action.

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- ii. The LPA must hold the initial review and provide a determination decision within (10) ten business days of the initial review.

A. Local Appeal Hearing

Within (30) thirty calendar days of the Determination Decision of the initial review, the provider may request a local appeal hearing. The local appeal hearing must be held not more than (5) five days after the request for it is received. The facility/provider may, for good cause shown, petition the LPA, in writing, for a delay, but in no event shall the local appeal hearing be held more than (15) fifteen days after the receipt of the request for the hearing. This means that a delay of an additional (10) ten business days may be granted upon written request from the operator of the facility.

The LPA will decide based upon the evidence presented at the hearing and all applicable regulations and shall prepare a written statement of the decision citing the regulations and evidence to support it. If support is needed with preparation of the written statement, you may request assistance by contacting dcdee.subsidy.fraud@dhhs.nc.gov. This written statement of the decision will be served to the provider within (10) ten days of the determination made during the local appeal hearing. If the initial decision is affirmed the action shall be effective not earlier than the date the decision is made. Appeal rights will be included with the Written Statement of Decision.

Within (30) thirty calendar days of the receipt of the Written Statement of Decision, the facility/provider may request an appeal to the State Subsidy Appeals Panel.

B. DCDEE State Subsidy Panel Hearing

When DCDEE imposes an appealable action, the provider may appeal directly to the DCDEE State Subsidy Appeals Panel.

When a provider appeals a county-initiated appealable action, the county/LPA must provide the case file containing all information related to the case to DCDEE within (5) five days.

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Information contained in the appeal record must contain:

1. Copy of the final agency decision.
2. Signed agreement between the LPA and the facility/provider, if applicable.
3. All supplementary documentation considered during the local appeal process.

The panel shall complete its review and notify the appealing party and the LPA in writing within (30) thirty business days of the receipt of the appeal record by issuing an Administrative Review Decision.

The State Subsidy Appeals Panel Administrative Review Decision must include the facts and conclusions that support the decision. The Administrative Review Decision may direct the LPA to take an action or reverse a previously imposed action based on the State Subsidy Appeals Panel's review of the record. If the State Subsidy Appeals Panel does not have sufficient information to make a decision, an additional 15 business days is allowed to obtain additional information from the LPA. The Administrative Review Decision includes appeal rights for the facility/provider to file an application for a contested case hearing pursuant to [G.S. 150B-23](#).

C. Recipients

Recipients appeal in accordance with [G.S. 108A-79](#).

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For additional information on policy discussed in this chapter, please refer to:

SCCA Manual

Chapter 15: Approval and Enrollment Procedures for Licensed Facilities

NC FAST Help Job Aids

SCCA- Attendance Adjustment and Approval

SCCA- Overpayments and Recoupments: Managing Applied Deductions

SCCA- Overpayments and Recoupments: Receive Allocate and Reverse Payments

SCCA Child Care Rules

[10A NCAC 10 .0100](#) – Subsidized Child Care Rules

[10A NCAC 09 .1721](#) – Requirements for Records

[10A NCAC 10 .1204](#) - Appeal to The Local Purchasing Agency

[10A NCAC 09 .0302](#) (d)(3) Application for A License for A Child Care Center

[10A NCAC 10 .0308](#) - Fraudulent Misrepresentation

[10A NCAC 10 .0309](#) - Correction of Overpayments and Underpayments

[10A NCAC 10 .0601](#) - Requirements for Licensed Child Care Facilities

[10A NCAC 10 .0602](#) – Participation in The Subsidized Child Care Assistance Program.