**§ 131D-10.3. Licensure required.**

(a) No person shall operate, establish or provide foster care for children or receive and place children in residential care facilities, family foster homes, or adoptive homes without first applying for a license to the Department and submitting the required information on application forms provided by the Department.

(b) Persons licensed or seeking a license under this Article shall permit the Department access to premises and information required to determine whether the person is in compliance with licensing rules of the Commission.

(c) Persons licensed pursuant to this Article shall be periodically reviewed by the Department to determine whether they comply with Commission rules and whether licensure shall continue.

(d) This Article shall apply to all persons intending to organize, develop or provide foster care for children or receive and place children in residential child-care facilities, family foster homes or adoptive homes irrespective of such persons having applied for or obtained a certification, registration or permit to carry on work not controlled by this Article except persons exempted in G.S. 131D-10.4.

(d1) Notwithstanding any other provision of law, the Department shall grant or deny a license to provide foster care or therapeutic foster care within three months from the date of application.

(e) Unless revoked or modified to a provisional or suspended status, the terms of a license issued by the Department shall be in force for a period not to exceed 24 months from the date of issuance under rules adopted by the Commission.

(f) Persons licensed or seeking a license who are temporarily unable to comply with a rule or rules may be granted a provisional license. The provisional license can be issued for a period not to exceed six months. The noncompliance with a rule or rules shall not present an immediate threat to the health and safety of the children, and the person shall have a plan approved by the Department to correct the area(s) of noncompliance within the provisional period. A provisional license for an additional period of time to meet the same area(s) of noncompliance shall not be issued.

(g) In accordance with Commission rules, a person may submit to the Department documentation of compliance with the standards of a nationally recognized accrediting body, and the Department on the basis of such accreditation may deem the person in compliance with one or more Commission licensing rules.

(h) Except as provided in subsection (i) of this section, the Secretary shall not enroll any new provider for Medicaid Home or Community Based services or other Medicaid services, as defined in 42 C.F.R. 440.90, 42 C.F.R. 440.130(d), and 42 C.F.R. 440.180, or issue a license for a new facility or a new service to any applicant meeting any of the following criteria:

(1) The applicant was the owner, principal, or affiliate of a licensable facility under Chapter 122C, Chapter 131D, or Article 7 of Chapter 110 that had its license revoked until 60 months after the date of the revocation.

(2) The applicant is the owner, principal, or affiliate of a licensable facility that was assessed a penalty for a Type A or Type B violation under Article 3 of Chapter 122C, or any combination thereof, and any one of the following conditions exist:

a. A single violation has been assessed in the six months prior to the application.

b. Two violations have been assessed in the 18 months prior to the application and 18 months have not passed from the date of the most recent violation.

c. Three violations have been assessed in the 36 months prior to the application and 36 months have not passed from the date of the most recent violation.

d. Four or more violations have been assessed in the 60 months prior to application and 60 months have not passed from the date of the most recent violation.

(3) The applicant is the owner, principal, or affiliate of a licensable facility that had its license summarily suspended or downgraded to provisional status as a result of violations under G.S. 122C-24.1(a) until 60 months after the date of reinstatement or restoration of the license.

(4) The applicant is the owner, principal, or affiliate of a licensable facility that had its license summarily suspended or downgraded to provisional status as a result of violations under Article 1A of Chapter 131D, or had its license summarily suspended or denied under Article 7 of Chapter 110 until 60 months after the date of reinstatement or restoration of the license.

(i) The Secretary may enroll a provider described in subsection (h) of this section if any of the following circumstances apply:

(1) The applicant is an area program or county program providing services under G.S. 122C-141, and there is no other provider of the service in the catchment area.

(2) The Secretary finds that the area program or county program has shown good cause by clear and convincing evidence why the enrollment should be allowed.

(j) For purposes of subdivision (h)(2) of this section, fines assessed prior to October 23, 2002, are not applicable to this provision. However, licensure or enrollment shall be denied if an applicant's history as a provider under Chapter 131D, Chapter 122C, or Article 7 of Chapter 110 is such that the Secretary has concluded the applicant will likely be unable to comply with licensing or enrollment statutes, rules, or regulations. In the event the Secretary denies licensure or enrollment under this subsection, the reasons for the denial and appeal rights pursuant to Article 3 of Chapter 150B shall be given to the provider in writing. (1983, c. 637, s. 2; 2002-164, s. 4.4; 2003-294, s. 4; 2017-41, s. 9.1.)