



May 4, 2022

**Child Care Center Manual Transmittal Letter No. 33
Family Child Care Manual Transmittal Letter No. 23**

**TO: All Child Care Center Manual Holders
All Family Child Care Manual Holders**

FROM: Matt Damschroder, Director

SUBJECT: Ohio Administrative Code Rules 5101:2-12-03 and 5101:2-13-03 Revisions

Background: Amended Substitute House Bill 65 of the 133rd Ohio General Assembly enacted section 5104.043 of the Revised Code (ORC) regarding parental notice of serious risks to the health and safety of children receiving child care. The Ohio Department of Job and Family Services (ODJFS) initially amended rules 5101:2-12-03 and 5101:2-13-03 of the Ohio Administrative Code (OAC) to implement provisions of the bill on November 15, 2020. The new requirements were inadvertently omitted from the five-year review of rules 5101:2-12-03 and 5101:2-13-03 OAC when updated October 29, 2021.

The provisions of section 5104.043 ORC are still a requirement for child care centers and family child care providers. The rules were revised to include the requirement.

Rules 5101:2-12-03 and 5101:2-13-03 are effective May 15, 2022.

Existing ORC Requirements for Child Care Centers:

If ODJFS determines a serious risk non-compliance (SRNC), the center is to provide a written or electronic notice of the SRNC to all parents of enrolled children within fifteen days of the receipt of the non-compliance from ODJFS. The center is to also provide a copy of the notice to ODJFS. If the center requests a review of the finding, and the finding is upheld, the notice to parents is to be sent within five business days of receipt of the decision by ODJFS. Additionally, this rule does not apply if ODJFS suspends the license of the child care center.

Appendix A to rule 5101:2-12-03 has been revised to correct spelling and grammatical errors. Clarifications were made to the following moderate risk non-compliances:

Criteria for 5101:2-12-04 Moderate Risk Non-Compliance (3 Points):	Fire Inspection – Unable to complete inspection with no violations or update not requested at least 30 days prior to expiration.
Criteria for 5101:2-12-09 Moderate Risk Non-Compliance (3 Points):	Administrator, employee or child care staff member engaged in assigned duties or near

	children and preliminary approval not on file or in the Ohio professional registry (OPR). Child care staff member left alone with a child(ren) and JFS 01176 is not on file or in the OPR.
Criteria for 5101:2-12-25:	Changed the title of the rule to “Medication administration for a licensed child care center”

Existing ORC Requirements for Family Child Care Providers:

If ODJFS or the county agency determines a serious risk non-compliance (SRNC), the family child care provider is to provide a written or electronic notice of the SRNC to all parents of enrolled children within fifteen days of the receipt of the non-compliance from ODJFS or the county agency. The provider is to also provide a copy of the notice to ODJFS. If the provider requests a review of the finding, and the finding is upheld, the notice to parents is to be sent within five business days of receipt of the decision by ODJFS. Additionally, this rule does not apply if ODJFS suspends the license of the family child care provider.

Appendix A to rule 5101:2-13-03 has been revised to correct spelling and grammatical errors. Clarifications were made to the following moderate risk non-compliances:

Criteria for 5101:2-13-09 Moderate Risk Non-Compliance (3 Points):	Employee or child care staff member engaged in assigned duties or near children and preliminary approval is not on file or in the Ohio professional registry (OPR). Child care staff member left alone with child(ren) and JFS 01176 is not on file or in the OPR.
Criteria for 5101:2-13-25:	Changed the title of the rule to “Medication administration for a licensed family child care provider”

Please contact the Child Care Policy Helpdesk at childcarepolicy@jfs.ohio.gov or 1-877-302-2347, option 4, if you have any questions.

5101:2-12-03

Compliance inspection and complaint investigation of a licensed child care center.

(A) What compliance inspections are required for child care centers?

- (1) At least one inspection prior to the initial issuance of a provisional license.
- (2) At least two inspections during the provisional period.
- (3) At least one inspection each state fiscal year after the issuance of the continuous license. Compliance inspections completed in the state fiscal year pursuant to paragraph (A)(2) of this rule meet this requirement.
- (4) Any complaint investigations involving the center.

(B) Will inspections be announced or unannounced?

At least one inspection shall be unannounced and all inspections may be unannounced.

(C) What is required of a licensed center for an inspection and/or complaint investigation?

The licensed child care center shall allow the Ohio department of job and family services (ODJFS) to:

- (1) Complete an inspection of all areas where child care is provided, children have access to and all areas used to verify compliance with Chapter 5101:2-12 of the Administrative Code and Chapter 5104. of the Revised Code.
- (2) Review required records and documentation.
- (3) Interview or take statements from anyone pertinent to the investigation which may include any of the following:
 - (a) Building officials, fire department inspectors, sanitarians, public health or other state or local officials.
 - (b) Neighbors.
 - (c) Parents and relatives of children in care.
 - (d) Staff of the public children services agency (PCSA).
 - (e) Anyone mentioned by the complainant.
 - (f) Law enforcement personnel.

(g) Current and past center employees.

(h) Other witnesses.

(4) Document findings in writing or in photographs or by any other means.

(D) What are additional requirements for a licensed center as a result of an inspection and/or complaint investigation?

The center ~~shall~~ shall to:

(1) Complete and submit a corrective action plan in the Ohio child licensing and quality system (OCLQS) addressing the non-compliances detailed in the inspection report within the time frame requested in the inspection report.

(2) Not misrepresent, falsify or withhold information from ODJFS.

(3) Pursuant to section 5104.043 of the Revised Code, provide a written or electronic notice of the serious risk non-compliance (SRNC) to all parents of enrolled children within fifteen business days of receipt of the non-compliance, if ODJFS determines that an act or omission of a child care center constitutes a SRNC pursuant to appendix A to this rule.

(a) The notice is to include a statement informing each parent of the web site maintained by ODJFS and the location of further information regarding the determination.

(b) If the center requests a review of the finding pursuant to paragraph (F) of this rule, and the finding is upheld, the notice to parents is to be sent within five business days of receipt of the decision by ODJFS.

(c) The center will need to provide a copy of the notice to ODJFS.

(d) The requirements of section 5104.043 of the Revised Code do not apply if ODJFS suspends the license of the child care center.

(E) Will a licensed center have additional inspections based on non-compliances found?

All non-compliances may lead to additional inspections or compliance materials required by ODJFS.

(F) What if the center does not agree with the licensing findings?

The center may complete and submit a JFS 01155 "Request for Review for Licensing and Step Up To Quality" with any applicable documentation within seven business days from the receipt of the inspection report.

(G) Are licensing inspection records available to the public?

(1) Inspections may be viewed at <http://childcaresearch.ohio.gov/>.

(2) An individual may submit a written request to ODJFS for a copy of the center's licensing record.

Effective: 5/15/2022
Five Year Review (FYR) Dates: 10/29/2026

CERTIFIED ELECTRONICALLY

Certification

05/03/2022

Date

Promulgated Under: 119.03
Statutory Authority: 5104.015, 5104.043
Rule Amplifies: 5104.04, 5104.015, 5104.043
Prior Effective Dates: 03/01/1981, 09/01/1986, 01/02/1992 (Emer.),
04/01/1992, 04/01/2003, 09/01/2005, 09/01/2007,
05/01/2008, 09/29/2011, 12/31/2016, 10/29/2017,
11/15/2020, 10/29/2021

Moderate and Serious Risk Non-Compliances and Point Values for Child Care Centers

All non-compliances not identified as a moderate risk or serious risk below are valued as 1 point.

5101:2-12-03 Compliance inspection and complaint investigation of a licensed child care center**Serious Risk Non-Compliance (6 Points)**

- Owner, administrator, child care staff member, or employee refuses ODJFS access to program.
- Administrator/owner falsifies information to ODJFS.

5101:2-12-04 Building department, fire inspection and food service licensure for a licensed child care center**Moderate Risk Non-Compliance (3 Points)**

- Food Service License – Center unable to obtain or maintain license due to violations or is serving food with no license.
- Fire Inspection – Unable to complete inspection with no violations or update not requested at least 30 days prior to expiration.
- Center exceeds room/building occupancies; or cares for children on an unapproved floor, in a room not approved for care or in a room not approved for age group.

5101:2-12-09 Background check requirements for a licensed child care center**Moderate Risk Non-Compliance (3 Points)**

- Background check request not submitted, or fingerprints not submitted.
- Administrator, employee or child care staff member engaged in assigned duties or near children and preliminary approval not on file or in the Ohio professional registry (OPR).
- Child care staff member left alone with a child(ren) and JFS 01176 is not on file or in the OPR.
- Background check is expired and not updated.

Serious Risk Non-Compliance (6 Points)

- Owner has an ineligible background check.
- Administrator, employee or child care staff member is not eligible for employment and remains employed.
- Owner, owner's representative, administrator, employee or child care staff member refuses to submit a background check request or refuses to submit fingerprints.

5101:2-12-11 Indoor and outdoor space requirements for a licensed child care center**Moderate Risk Non-Compliance (3 Points)**

- "S" hooks not closed appropriately, equipment and/or ropes not securely anchored or entrapment hazards exist.
- Protective surfacing is required but inadequate or missing under equipment used for climbing, swinging, balancing, and sliding.
- Fence or barrier missing or inadequate.
- Unsafe route to off-site space.

5101:2-12-12 Safe equipment and environment for a licensed child care center**Moderate Risk Non-Compliance (3 Points)**

- Chemicals or unsafe equipment (lawnmowers, power tools accessible, etc.) are accessible to children.
- Children not protected from unsafe items, conditions or situations.
- Space heaters used without approval.
- No mats under indoor climbing equipment.
- Illegal drugs on premises or alcohol accessible in area used for child care.

Serious Risk Non-Compliance (6 Points)

- Weapons, firearms or ammunition materials are found on the premises and there's no valid exemption or are carried by someone with a valid exemption but are accessible to children.

5101:2-12-14 Transportation and field trip safety for a licensed child care center**Moderate Risk Non-Compliance (3 Points)**

- Inspection not completed or not updated annually, inspection not completed by Automotive Service Excellence (ASE) certified mechanic or approved entity, driving a vehicle without correcting the noted violations or vehicle type not permitted to be used.
- Exiting/entering vehicle not from the curb.

Appendix A to Rule 5101:2-12-03

- Transporting a child under 12 years old in the front seat; not using required seat belts and/or car seats; more than one child in a seat belt; children sitting on floor or standing in a moving vehicle; not ensuring that all passengers adhere to the state of Ohio's child restraint law when transporting children in care.
- Child's JFS 01236 and/or specific items required on the JFS 01236 not available on trip.
- Not meeting additional adult requirements.

Serious Risk Non-Compliance (6 Points)

- Driver not 18 years old.
- Driver is not appropriately licensed, has a suspended license or has a license that expired more than 6 months ago.
- Driver is under the influence of drugs, alcohol or other substances which could impair driving.

5101:2-12-15 Child record requirements for a licensed child care center

Moderate Risk Non-Compliance (3 Points)

- JFS 01236 incomplete, not implemented, not on file or not followed.
- No trained staff on-site when child is present or on field trip with child or non-trained staff performed procedure on child.

5101:2-12-18 Group size and ratios for a licensed child care center

Moderate Risk Non-Compliance (3 Points)

- Program is out of ratio.
- Program exceeds license capacity.
- Additional employee or child care staff member required but not present.

5101:2-12-19 Supervision of children and child guidance for a licensed child care center

Moderate Risk Non-Compliance (3 Points)

- Child left unattended.
- Child care staff member uses prohibited disciplinary techniques.
- Staff under the influence of a substance which impairs their ability to supervise children who are present.

Serious Risk Non-Compliance (6 Points)

- Child unattended outside of facility building, during a swimming activity or any time child is off site.
- Child completely alone in building (no adults).
- Program fails to report suspected abuse/neglect/endangerment.
- Owner or administrator uses prohibited disciplinary techniques.
- Substantiated public children's services agency finding of abuse, neglect or endangerment for any employee, child care staff member, owner or administrator.
- Child(ren) not protected from harm which resulted in a serious incident or injury.

5101:2-12-20 Sleeping and napping requirements for a licensed child care center

Moderate Risk Non-Compliance (3 Points)

- Child placed in crib with object which poses suffocation/strangulation risk (bibs, pacifier clips/ribbons, teething jewelry, blankets, pillows, boppies, bumper pads, etc.).
- Stacked cribs are used, cribs do not meet size requirements, cribs are unstable, or cribs do not meet the Consumer Product Safety Commission standards.
- Something other than a crib is used for sleeping or napping.
- JFS 01235 sleep position waiver needed but not on file.

5101:2-12-21 Evening and overnight care for a licensed child care center

Serious Risk Non-Compliance (6 Points)

- Staff responsible for supervising children are asleep.
- Child(ren) are asleep on unapproved floor of the building.

5101:2-12-22 Meal preparation/nutritional requirements for a licensed child care center

Moderate Risk Non-Compliance (3 Points)

- Supplemental food not onsite, meals or snacks provided do not meet the requirements of the rule.

5101:2-12-23 Infant care and diaper care for a licensed child care center

Moderate Risk Non-Compliance (3 Points)

Appendix A to Rule 5101:2-12-03

- Breast milk given to wrong child.
- Container used for heating bottles was accessible to children.

5101:2-12-24 Swimming and water safety requirements for a licensed child care center

Serious Risk Non-Compliance (6 Points)

- No lifeguard present during water activity or lifeguard is used to meet ratio.
- Staff not actively supervising.
- Swimming site accessible to child(ren) without staff supervision when not in use.
- Child(ren) swimming in lakes, ponds, rivers, etc.

5101:2-12-25 Medication administration for a licensed child care center

Moderate Risk Non-Compliance (3 Points)

- JFS 01217 incomplete, not on file or not followed, no current label or physician's instructions on prescription medication, medication not in original container.
- Medication accessible to child(ren).
- Medication instructions not followed, or the wrong dosage was administered to the child.

Serious Risk Non-Compliance (6 Points)

- Medication was administered to the wrong child.