



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
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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.

5101:2-13-03

Compliance inspection and complaint investigation of a licensed family child care provider.

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

- (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 in each half of the 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 regarding the licensed family child care provider.

(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 family child care provider for an inspection and/or complaint investigation?

The family child care provider shall allow the county agency and the Ohio department of job and family services (ODJFS) to:

- (1) Complete an inspection of all areas of the family child care home where child care is provided, children have access to, and all areas used to verify compliance with Chapter 5101:2-13 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) Residents of the home.
 - (e) Staff of the public children services agency (PCSA).

- (f) Staff of the county agency and the ODJFS.
- (g) Anyone mentioned by the complainant.
- (h) Law enforcement personnel.
- (i) Current and past family child care staff employees.
- (j) Other witnesses.

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

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

The family child care provider ~~shall~~ is 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 the county agency or 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 family child care home 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 provider 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 family child care provider 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 family child care provider.

- (E) Will a licensed family child care provider have additional inspections based on non-compliances found?

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

- (F) What if a licensed family child care provider does not agree with the licensing findings?

The family child care provider 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) What are the county agency requirements for compliance inspection and complaint investigation of a family child care provider?

- (1) All inspections are to be completed during the operating hours of the family child care home.

- (a) The county agency is to complete at least one of the two unannounced annual inspections when a child(ren) for whom the provider is receiving compensation is present.

- (b) If no child(ren) is enrolled, the inspection will still be completed. When at least one child for whom the provider is receiving compensation is present, a monitoring inspection is to be completed.

- (2) For each inspection, the county agency shall:

- (a) Complete the inspection report in OCLQS.

- (b) Provide a hard copy or electronic copy of the inspection report and supporting documents to the provider by close of business the next business day, and within five business days of the date of the addition or revision, if additional information is added to the report or it is revised in any way.

- (3) The county agency shall investigate any complaints alleging rule noncompliance against a provider. The county agency may inspect the family child care home as part of the complaint investigation.

- (a) Investigations of all complaints shall begin within five business days of the receipt of a complaint by the county agency.

- (b) If the complaint alleges an immediate risk to children, the county agency shall begin the investigation by the next business day of receipt of the complaint.
 - (c) For each investigation, the county agency is to:
 - (i) Document the complaint in OCLQS.
 - (ii) Send to the provider a copy of the OCLQS inspection and/or complaint report within ten business days of the completion of the investigation, and within five business days of the date of the addition or revision, if additional information is added to the report or it is revised in any way.
 - (4) The county agency is to take the following action when a serious incident is reported in OCLQS as required in paragraph (G) of rule 5101:2-13-16 of the Administrative Code:
 - (a) When a complaint is received on the same non-compliance, complete a complaint investigation pursuant to paragraphs (G)(3) and (H) of this rule.
 - (b) When a complaint is not received, issue an inspection within ten days for the non-compliances reported.
 - (5) The county agency shall provide a copy of the inspection report to anyone who submits a request to the county agency. The county agency shall remove all confidential information prior to providing a copy.
 - (6) The county agency shall provide technical assistance for complying with the requirements of Chapter 5104. of the Revised Code and Chapter 5101:2-13 of the Administrative Code.
- (H) What other requirements shall the county agency follow for complaints?
- (1) If the complaint alleges child abuse or neglect, the county agency shall report the complaint within the same business day to the public children services agency (PCSA). The oral report shall be followed with a written report to the PCSA, if requested by the PCSA. The written report shall contain the following:
 - (a) A summary of allegations.
 - (b) The name of the reporter, unless anonymity is requested.

- (c) A summary of actions taken by the county agency or plans to initiate an investigation of non-compliance with the regulations contained in Chapter 5101:2-13 of the Administrative Code.
 - (d) A request for clarification of joint or parallel investigatory roles.
 - (2) A PCSA investigation does not relieve the county agency of its responsibility to investigate provider non-compliance with regulations contained in Chapter 5101:2-13 of the Administrative Code unless the PCSA indicates that the county agency complaint investigation would interfere with the PCSA's investigation of the case.
 - (3) If the county agency receives a report that an unlicensed home may be caring for too many children in violation of section 5104.02 of the Revised Code, the county agency shall refer the report to ODJFS for investigation.
- (I) 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 family child care home 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: 5104.017, 5104.018, 5104.043
Rule Amplifies: 5104.03, 5104.018, 5104.02, 5104.017, 5104.04, 5104.043
Prior Effective Dates: 04/01/1982, 05/20/1983, 09/01/1986, 09/05/1986, 02/15/1988, 05/01/1989, 03/15/1996, 10/01/1997 (Emer.), 12/30/1997, 04/01/2003, 07/01/2003, 09/01/2005, 09/01/2007, 08/14/2008, 11/15/2010, 09/29/2011, 01/01/2014, 12/31/2016, 10/29/2017, 11/15/2020, 10/29/2021

Moderate and Serious Risk Non-compliances and Point Values for Family Child Care**All non-compliances not identified as a moderate risk or serious risk below are valued as 1 point.****5101:2-13-03 Compliance inspection and complaint investigation of a licensed family child care provider****Serious Risk Non-Compliance (6 Points)**

- Provider, resident, child care staff member or employee refuses Ohio Department of Job and Family Services (ODJFS) or county agency access to program.
- Provider falsifies information to ODJFS or county agency.

5101:2-13-04 Building department inspection and fire inspection for a licensed family child care provider**Moderate Risk Non-Compliance (3 Points)**

- Care is provided for children on an unapproved floor or in an unapproved area of the home (Type A and Type B); room/building occupancy is exceeded (Type A only); children are cared for in room not approved for age group (Type A only).
- Fire Approval – Unable to obtain approval due to violations or update not requested at least 30 days prior to expiration (Type A only).
- Flammable or combustible materials and substances are stored near heaters, furnaces, water heaters or gas appliances (Type B only).
- The home's primary or alternate escape route is blocked or inaccessible (Type B only).

5101:2-13-09 Background check requirements for a licensed family child care provider**Moderate Risk Non-Compliance (3 Points)**

- Background check request not submitted, or fingerprints not submitted or resident of the home turns 18 or moves into the home and background check request not submitted or fingerprints not submitted.
- 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.
- Background check is expired and not updated.

Serious Risk Non-Compliance (6 Points)

- Provider has an ineligible background check.
- Resident, employee or child care staff member is not eligible for employment or residency and remains employed or residing in the home.
- Provider, resident, employee or child care staff member refuses to submit information for a background check request or refuses to submit fingerprints.

5101:2-13-11 Indoor and outdoor space requirements for a licensed family child care provider**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 is inadequate or missing under equipment used for climbing, swinging, balancing, and sliding.
- Fence or barrier missing or inadequate.
- Unsafe route used to off-site space.

5101:2-13-12 Safe equipment and environment for a licensed family child care provider**Moderate Risk Non-Compliance (3 Points)**

- Chemicals or unsafe equipment (lawnmowers, power tools accessible, etc.) are accessible while a child(ren) is present.
- Child(ren) present is not protected from unsafe items, conditions or situations.
- No mats under indoor climbing equipment.
- Home does not have required or working carbon monoxide detector (Type B only).

Serious Risk Non-Compliance (6 Points)

- Firearms, weapons or ammunition materials are not secure and there's no valid exemption or are carried by someone with a valid exemption but are accessible while child(ren) is present.
- Illegal drugs on premises or alcohol accessible while child(ren) is present.

5101:2-13-14 Transportation and field trip safety for a licensed family child care provider**Moderate Risk Non-Compliance (3 Points)**

- Driving a vehicle without correcting the noted violations, vehicle type not permitted to be used.
- 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.

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.

5101:2-13-15 Child record requirements for a licensed family child care provider**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.

5101:2-13-18 Group size and ratios for a licensed family child care provider.**Moderate Risk Non-Compliance (3 Points)**

- Program is out of ratio.
- Program exceeds license capacity.

5101:2-13-19 Supervision of children and child guidance for a licensed family child care provider**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 off-site.
- Child completely left alone in home (no adults).

<ul style="list-style-type: none"> • Child unattended outside (not school-age). • Provider fails to report suspected abuse/neglect/endangerment. • Provider uses prohibited disciplinary techniques. • Substantiated public children's services agency finding of abuse, neglect or endangerment by any child care staff member, employee, resident or provider. • Child not protected from harm which resulted in a serious incident or injury.
<p>5101:2-13-20 Sleeping and napping requirements for a licensed family child care provider</p> <p>Moderate Risk Non-Compliance (3 Points)</p> <ul style="list-style-type: none"> • Child placed in crib or playpen with object which poses suffocation/strangulation risk (bibs, pacifier clips/ribbons, teething jewelry, blankets, pillows, boppies, bumper pads, etc.). • Stacked cribs are used, cribs or playpens do not meet size requirements, cribs or playpens are unstable, or cribs do not meet the Consumer Product Safety Commission standards. • Something other than a crib or playpen used for sleeping or napping. • JFS 01235 sleep position waiver needed but not on file.
<p>5101:2-13-21 Evening and overnight care for a licensed family child care provider</p> <p>Moderate Risk Non-Compliance (3 Points)</p> <ul style="list-style-type: none"> • Provider or child care staff member are asleep before all children are asleep. • Children under 5 are not on the same floor as the provider or child care staff member. • Child(ren) asleep on unapproved floor of home.
<p>5101:2-13-22 Meal preparation/nutritional requirements for a licensed family child care provider.</p> <p>Moderate Risk Non-Compliance (3 Points)</p> <ul style="list-style-type: none"> • Supplemental food not onsite, meals or snacks provided do not meet the requirements of the rule.
<p>5101:2-13-23 Infant care and diaper care for a licensed family child care provider</p> <p>Moderate Risk Non-Compliance (3 Points)</p> <ul style="list-style-type: none"> • Breast milk given to wrong child. • Container used for heating bottles was accessible to children.
<p>5101:2-13-24 Swimming and water safety requirements for a licensed family child care provider</p> <p>Serious Risk Non-Compliance (6 Points)</p> <ul style="list-style-type: none"> • No lifeguard present during water activity or lifeguard is used to meet ratio. • Staff not actively supervising or swimming site accessible to children without staff supervision. • Child(ren) swimming in lakes, ponds, rivers, etc.
<p>5101:2-13-25 Medication administration for a licensed family childcare provider</p> <p>Moderate Risk Non-Compliance (3 Points)</p> <ul style="list-style-type: none"> • 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 child. <p>Serious Risk Non-Compliance (6 Points)</p> <ul style="list-style-type: none"> • Medication was administered to the wrong child.