

**PUBLIC HEARING NOTICE  
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES**

**DATE: 9/1/2021****TIME: 10:00am****LOCATION: Teleconference**

**Due to COVID-19 precautions this meeting will be held by teleconference. If you would like to submit oral testimony, please call in at the above date and time to 1-614-721-2972. Then enter the meeting I.D. which is 283 843 92#. Written testimony may also be submitted electronically to [rules@jfs.ohio.gov](mailto:rules@jfs.ohio.gov).**

Pursuant to sections 5104.041, 5104.042, 5104.043, 5104.052, 5104.017, 5104.018, and Chapter 119 of the Revised Code, the director of the Ohio Department of Job and Family Services (ODJFS) gives notice of the department's intent to consider rescission and adoption of the rules as identified below and of a public hearing thereon. These rules are being rescinded and adopted as a result of the five year review and to implement federal requirements.

**Proposed amended rules:**

5101:2-13-01 "Definitions for licensed family child care" is being proposed for amendment with the following changes:

- Clarify definition of child care staff member to include that a substitute child care staff member may replace a child care staff member on a temporary basis
- Clarify definitions of moderate risk non-compliance and serious risk non-compliance
- Add definition of corrective action plan and resident

5101:2-13-02 "Application and amendments for a family child care provider license" is being proposed for amendment with the following changes:

- Clarify the application process, including pre-licensing training requirements, application fee amount and requirements for voluntary withdraw of an application
- Clarify FCC license visibility to parents, issuance of license to an address that is currently licensed, and that the license is to be continuous unless the corporation or partnership no longer exists
- Clarify that if the owner of the type A home program is a corporation, the agent(s) of the corporation includes the provider
- Clarify requirements and procedures for permanent and temporary change of location amendments
- Remove requirement that the provider shall submit all required compliance materials prior to licensure at the new location as it is duplicative
- Clarify that the provider is to keep the name of the program, the Ohio secretary of state entity number, and private pay rates updated in OCLQS, if applicable
- Clarify procedures if the owner of the Type A home changes
- Clarify the procedures and timelines for county agencies to review documents submitted as part of the application and conduct the prelicensing visit

- Clarify that the deadline for approval or denial of a change of location or temporary closure status

#### Appendix A to Rule 5101:2-13-02:

- Add written disaster plan to list of documents required to be submitted with the application
- Remove the JFS 00598 form as it is to be completed/submitted in OCLQS
- Remove requirement to submit documentation of completed health and safety trainings and medical statement at the time of the first prelicensing visit as it is duplicative of 5101:2-13-07

#### Appendix B to Rule 5101:2-13-02

- Clarify the medical statement needs to include documentation of immunizations against tetanus, diphtheria, and pertussis (Tdap)
- Clarify exemptions to immunizations for religious or medical reasons

#### Appendix C to Rule 5101:2-13-02

- Create a new appendix, for ease of use, which lists the required documents needed for a permanent change of location

5101:2-13-03 "Compliance inspection and complaint investigation of a licensed family child care provider" is being proposed for amendment with the following changes:

- Clarify complaint and compliance inspection requirements
- Add that if children are enrolled, the inspection is to only be completed if at least one child for whom the provider is receiving compensation is present and if no children are enrolled, the inspection will still be completed, with an additional inspection when at least one child for whom the provider is receiving compensation is present
- Remove requirement for county agencies to complete JFS 01926, JFS 01526, JFS 01306, and JFS 01215 as this is all automated in OCLQS
- Clarify timelines for county agencies to provide copies of inspections reports
- Add clarification for county agencies when completing complaint investigations
- Clarify that if the county agency receives a report that an unlicensed home may be caring for too many children, the county agency is to refer the report to ODJFS for investigation, as the county agencies no longer conduct these investigations

#### Appendix A to Rule 5101:2-13-03

- Amend appendix to add moderate risk non-compliances
- Reduce the number of points given for each non-compliance by combining them into one infraction
- Criteria for 5101:2-13-03 Serious risk Non-Compliance (6 points)
  - Add falsifying information to ODJFS or county agency
- Criteria for rule 5101:2-13-09 Moderate Risk Non-Compliance (3 points)
  - Clarify 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
  - Add employee or child care staff member working in the home and preliminary approval not on file
  - Add child care staff member alone with children and preliminary approval not on file

- Criteria for 5101:2-13-09 Serious risk Non-Compliance (6 points)
  - Add provider has an ineligible background check
  - Add provider refuses to submit a background check request or fingerprints
- Criteria for 5101:2-13-11 Moderate Risk Non-Compliance (3 points)
  - Add clarification to equipment to include used for climbing, swinging, balancing, and sliding
- Criteria for 5101:2-13-12 Moderate Risk Non-Compliance (3 points)
  - Move illegal drugs on premises or alcohol accessible while children are present from the serious risk section
- Criteria for 5101:2-13-12 Serious Risk Non-Compliance (6 points)
  - Add a clarifier to when firearms, weapons, or ammunition is not secure
- Criteria for 5101:2-13-12 Moderate Risk Non-Compliance (3 points)
  - Change the risk level of the non-compliance for illegal drugs and alcohol from serious to moderate
- Criteria for 5101:2-13-14 Moderate Risk Non-Compliance (3 points)
  - Add not adhering to Ohio's child restraint law
  - Add supplies required by the JFS 1236 not available on trip
- Criteria for 5101:2-13-14 Serious Risk Non-Compliance (6 points)
  - Added other substances which could impair driving
- Criteria for 5101:2-13-19 Serious Risk Non-Compliance (6 points)
  - Add "child completely left alone in home (no adults)"
  - Remove "physical abuse/neglect/endangerment by any child care staff member, employee, resident or provider" as this is duplicative
- Criteria for 5101:2-13-20 Moderate Risk Non-Compliance (3 points)
  - Clarified objects which pose suffocation or strangulation risks, cribs, and playpens
  - Add something other than a crib or playpen used for sleeping or napping
- Criteria for 5101:2-13-22 Moderate Risk Non-Compliance (3 points)
  - Add "supplemental food not onsite, meals or snacks provided do not meet the requirements of the rule"

5101:2-13-04 "Building department inspection and fire inspection for a licensed family child care provider" is being proposed for amendment with the following changes:

- Amend the question in paragraph (A) to state "What are the type A home requirements for building inspections?"
- Clarify type A home requirements for building and fire inspections
- Clarify type B home building requirements and procedures for approved spaces
- Clarify type B home fire safety requirements
- Remove requirement about written evacuation plans as it is covered in rule 5101:2-13-16

Appendix A to Rule 5101:2-13-04

- Remove requirement that Type B home providers who are certified or licensed after September 1, 2008 shall not use any room or space higher than the second floor of the home for child as it was clarified in this rule
- Remove requirement that all stairways shall have lighting and a hand rail on at least one side if there are four or more stairs as lighting and safety is already covered in this appendix

Appendix B to Rule 5101:2-13-04

- Clarify procedures for storing flammable and combustible materials in type B homes

5101:2-13-05 "Denial, revocation and suspension of a family child care application or license" is being proposed for amendment with the following changes:

- Clarify situations when an application may be denied or a license can be revoked
- Remove requirement that an application may be denied or a license revoked if the provider has accumulated eighteen or more points from moderate or serious risk non-compliances as the license can be denied or revoked for non-compliances with the rule
- Add that if the home provider has been issued a notice of intent to revoke the program's license, they are to notify the families of all enrolled children and post the notice of intent in a noticeable location within forty-eight hours of receipt of the notice
- Remove requirement that a provider shall not be licensed until five years have elapsed from the date the certification was revoked as this is already covered in this rule
- Clarify the conditions of licensing actions that are not subject to administrative hearings when the Type A home owner or provider has changed and when the provider does not have children in attendance at the end of the provisional period

5101:2-13-06 "Procedures for a family child care provider operating under a provisional license" is being proposed for amendment with the following changes:

- Clarify that the provider is to have children, for whom the provider receives compensation, enrolled and attending the home
- Clarify that if the provider has not served any children during the provisional period, the provisional period will continue for up to twelve additional months or until children have been enrolled, whichever comes first

5101:2-13-07 "Provider responsibilities, requirements and qualifications for a licensed family child care provider" is being proposed for amendment with the following changes:

- Relocate from appendix A of rule 5101:2-13-02, the requirement that the provider is to have written documentation on file of current immunization against tetanus, diphtheria and pertussis (Tdap) unless exempt
- Relocate that the provider is not to be involved in any activities that interfere with the care, safety, and health of the children
- Remove requirement that the provider shall not have had any child removed from his or her home due to abuse or neglect caused by the provider or have a prohibited offense as this is covered in 5101:2-13-09
- Clarify that the provider and anyone in the home, including any child care staff members is not to demonstrate physical or mental conditions potentially harmful to children or be under the influence of alcohol or other drugs while child care is being provided
- Clarify timelines for when the provider is to update household composition in OCLQS
- Clarify that the provider is responsible for all information provided to the county agency or ODJFS including information provided by a child care staff member, employee, administrator, or resident
- Relocate from rule 5101:2-13-08 the provider's Ohio Professional Registry (OPR) requirements and documentation and recordkeeping responsibilities

- Add the provider's OPR management requirements for residents who currently reside in the home and turned eighteen or for residents who are new to the home
- Add that the provider is to cooperate with other government agencies as necessary and ensure compliance with Chapter 5104 of the Revised Code and Chapter 5101:2-13 of the Administrative Code

#### Appendix A to Rule 5101:2-13-07

- Clarify requirements for verification of a high school education for home schooled or non-chartered non-public school students

#### Appendix C to Rule 5101:2-13-07

- Revise format of appendix for ease of use
- Clarify appendix language for required policies and procedures to match rule
- Clarify the home is to include policies and procedures about supervision of children, including a separate supervision policy for older school-age children, if applicable.
- Clarify child guidance is a separate policy from supervision
- Add that the home is to include policies and procedures about suspension and expulsion and compliance with the Americans with Disabilities Act
- Add that the home is to include food and dietary policies and procedures

#### Appendix D to Rule 5101:2-13-07

- Add where the public can find inspection reports, how to receive notification when new inspections are available online
- Add contact information for Health and Human Services or ODJFS Bureau of Civil Rights to file a discrimination complaint

5101:2-13-10 "Training and professional development requirements for a licensed family child care provider and child care staff members is being proposed for amendment with the following changes:

- Clarify requirements for training in management of communicable disease and child abuse and neglect recognition and prevention
- Clarify that providers and child care staff members are to select one child abuse and neglect recognition and prevention training to complete
- The child abuse and neglect recognition and prevention trainings are the ODJFS child abuse training which is valid for two years and the child abuse and neglect recognition and prevention training as described in appendix A to the rule
- Clarify that the child care staff members are to complete these trainings within ninety days of employment and cannot be left alone with children until completed
- Add that the child care staff member meeting trainer requirements in appendix A to this rule is considered to meet the training requirement for first aid, CPR, or management of communicable disease. Staff members are not exempt from completing child abuse and neglect recognition and prevention training
- Clarify trainer qualifications and audiovisual or electronic media requirements
- Add professional development and documentation requirements for substitute child care staff members used more than 90 days in a fiscal year
- Clarify health training documentation requirements

#### Appendix A to Rule 5101:2-13-10

- Clarify course content for first aid, CPR, and management of communicable disease trainings

- Add race, equity and diversity including how implicit biases may impact reporting as required course content for child abuse and neglect recognition and prevention training
- Clarify documentation requirements for first aid and CPR
- Add list of topics that first aid courses must include
- Clarify requirements and qualifications for health training approved trainers including removing the requirement to be a trainer for an ODJFS approved health organization
- Remove licensed physicians, physician's assistants, advance practice registered nurses, and registered nurses from the list of approved trainers for CPR
- Add licensed athletic trainer to the list of approved trainers for first aid

#### Appendix B to Rule 5101:2-13-10

- Clarify course content for professional development training
- Add to list of approved professional development trainers an individual that currently serves in a professional capacity, for at least two years, that directly relates to the subject of the training and that the individual is to only train within the jurisdiction of his or her job

5101:2-13-14 "Transportation and field trip safety for a licensed family child care provider" is being proposed for amendment with the following changes:

- Clarify that supplies and medications may need to be taken on trips
- Remove requirement that an adult must be present with the vehicle any time children are in the vehicle and at no time are children to be left unattended as this is duplicative of rule 5101:2-13-19
- Clarify requirements passengers and for employee or child care staff members who are drivers
- Clarify child care transportation training requirements
- Clarify driver requirements for public transportation drivers and contract drivers

#### Appendix A to Rule 5101:2-13-14

- Remove requirement that the provider shall secure written permission for all field trip(s) and shall inform the parent about each trip in advance as this is covered in the rule

#### Appendix B to Rule 5101:2-13-14

- Remove Type A home vehicle requirements that expired January 1, 2017
- Clarify that drivers are considered passengers

#### Appendix C to Rule 5101:2-13-14

- Clarify that drivers are considered passengers

5101:2-13-15 "Child record requirements for a licensed family child care provider" is being proposed for amendment with the following changes:

- Clarify the requirement for medical statement dates and expiration dates
- Clarify provider and child care staff member responsibilities for the JFS 01236
- Clarify the accessibility of the JFS 01236 in the FCC home
- Add definition of medical foods
- Clarify training requirements for providers and staff members for each child's JFS 01236
- Add that each JFS 01305, JFS 01217, JFS 01234 and JFS 01236 as well as all written permission from parents or physicians is to be kept on file for twelve months from the

date the form is signed, even if the child no longer attends the program or the form is no longer required for the child

5101:2-13-22 "Meal preparation/nutritional requirements for a licensed family child care provider" is being proposed for amendment with the following changes:

- Clarify requirements for fruit and vegetable juice if served to meet fruit and vegetable requirements or as a beverage alternative
- Add that the provider is to ensure supplemental food is onsite at the home and that no child goes more than four hours without at least a snack or meal, except when sleeping
- Move all requirements for serving fluid milk in the FCC home into new appendix C to this rule
- Remove requirements for meals and snacks when parents provide the food as all supplemental food requirements are now addressed in paragraph (A) of this rule

Appendix A to Rule 5101:2-13-22

- Remove references to child care centers
- Revise the food content list to add "fluid" milk
- Revise fruit and vegetable requirements for meals. A vegetable may be used to meet the entire fruit requirement. When two vegetables are served at lunch or dinner, two different kinds of vegetables are to be served.

Appendix B to Rule 5101:2-13-22

- Add meat or meat alternative to the breakfast section of portion size for meals chart. This is optionally served, but if served, portion sizes are listed

Appendix C to Rule 5101:2-13-22

- Consolidate fluid milk requirements found throughout the current rule and appendices into its own appendix for ease of use

5101:2-13-25 "Medication administration for a licensed family child care provider" is being proposed for amendment with the following changes:

- Revise title of rule to "Medication administration for a licensed family child care provider"
- Combine requirements for when a JFS 01217 "Request for Administration of Medication for Child Care" is needed into one place in rule for ease of use
- Clarify the requirements for administering and storing non-prescription medications, including household and child medications, medical foods, topical products, and lotions
- Remove references to food supplements
- Clarify that the documentation requirement for each administration of medication includes when school-age children administer their own medication
- Clarify requirements about the administration of medications on the JFS 01236 "Child Medical/Physical Care Plan for Child Care"

### **Proposed Rescind and New Rule:**

5101:2-13-08 "Employees, child care staff members and substitute responsibilities and qualifications for a licensed family child care provider" is being rescinded and filed as a new rule with the following changes:

- Revise title of rule to "Employees and child care staff members responsibilities and qualifications for a licensed family child care provider"

- Clarify entire rule to include substitute child care staff members where appropriate
- Clarify documentation that employees are to have on file
- Relocate from appendix A of rule 5101:2-13-02, that employees and child care staff members are to have written documentation on file of current immunization against tetanus, diphtheria and pertussis (Tdap), unless exempt
- Add that employees and child care staff members are to create and maintain their profile in the OPR
- Remove requirement that all child care staff members shall meet training requirements of rule 5101:2-13-10, as this is duplicative
- Move documentation requirements to rule 5101:2-13-07 for child care staff members as this information is now required to be managed by the provider if not verified in the OPR

Appendix A to Rule 5101:2-13-08

- Clarify that a child care staff member, includes substitute child care staff members
- Clarify acceptable verification of high school education, diploma or equivalence diploma
- Remove requirement to meet eligibility for employment based on background check requirements as this is covered in rule 5101:2-13-09
- Remove requirement to provide a safe, healthy environment and to ensure that any individuals whose behavior or health endangers the health, safety and well-being of children are not present while child care is being provided as this is covered in 5101:2-13-12
- Clarify employee and child care staff member whistleblower protection

Appendix B to Rule 5101:2-13-08

- Remove entire appendix from rule as substitute child care staff members are to meet the requirements in appendix A

A copy of the proposed rules is available, without charge, to any person affected by the rules at the address listed below. These rules are also available on the internet at <http://www.registerofohio.state.oh.us/>. A public hearing on the proposed rules will be held at the date, time, and location listed at the top of this notice. Either written or oral testimony will be taken at the public hearing. Additionally, written comments submitted or postmarked no later than the date of the public hearing will be treated as testimony.

Requests for a copy of the proposed rules or comments on the rules should be submitted by mail to the Ohio Department of Job and Family Services, Office of Legal and Acquisition Services, 30 East Broad Street, 31<sup>st</sup> Floor, Columbus, Ohio 43215-3414, by fax at (614) 752-8298, or by e-mail at [rules@jfs.ohio.gov](mailto:rules@jfs.ohio.gov).