

173-39-04

**ODA provider certification: structural compliance reviews.**

Introduction: Each ODA-certified provider is subject to a regular structural compliance review (review) to ascertain if it complies with this chapter.

(A) Deadline for ODA's designee to conduct the first review: The one-year anniversary of the provider's certification date.

(B) Deadlines for ODA's designee to conduct subsequent reviews:

(1) The one-year anniversary of the previous review if the provider is one of the following:

(a) A provider of an adult day service.

(b) A provider of an assisted living service.

(c) ~~An agency~~ A provider of personal care or enhanced community living that is neither certified by medicare nor accredited by the accreditation commission for health care, the community health accreditation partner, the joint commission, or another national accreditation organization that is approved by CMS and ODH.

(d) A provider of the choices home care attendant service.

(e) A provider of the home care attendant service.

(f) A provider of waiver nursing.

(2) The three-year anniversary of the previous review if the provider is not listed under paragraph (B)(1) of this rule.

(C) Deadline extensions: ODA may extend a deadline for ODA's designee under paragraph (A) or (B) of this rule if both of the following occur:

(1) ODA's designee provides ODA with a request for an extension that includes the rationale for a delay and a forecast on the time needed to complete the review.

(2) ODA's designee retains the request for an extension in the provider's file and makes a note in the provider contact section of ~~the PASSPORT information management system (PIMS)~~ PIMS.

(D) ODA or its designee may conduct an unannounced review of a provider at any time to review compliance with this chapter.

(E) ODA's designee may review a provider at any time without waiting for a deadline in paragraph (A), (B), or (C) of this rule to near.

(F) Responsible designees, type of reviews to conduct, and scope of reviews:

(1) Based on the provider type and situation, Appendix A to this rule establishes when a designee is responsible for conducting a review, the type of review it is responsible to conduct, and the scope of that review.

(2) ODA may authorize a designee to conduct a desk review even if Appendix A to this rule establishes a requirement for an on-site review.

(G) Review components: For each review, ODA's designee shall do the following:

(1) Inform the provider of the review in writing before beginning the review and before conducting an introductory conference with the provider, unless the review is an unannounced review under paragraph (D) of this rule.

(2) Conduct an introductory conference with the provider to explain the purpose and scope of the review.

(3) Review compliance with each applicable requirement in rule 173-39-02 of the Administrative Code other than the records and monitoring requirements in that rule, unless Appendix A to this rule determines that this paragraph is not a component of the review.

(4) Review compliance with each applicable requirement in rules 173-39-02.1 to 173-39-02.24 of the Administrative Code and the records and monitoring requirements in rule 173-39-02 of the Administrative Code.

(5) Verify that a sample of paid service units were provided according to the applicable requirements in rules 173-39-02.1 to 173-39-02.24 of the Administrative Code and the records and monitoring requirements in rule 173-39-02 of the Administrative Code.

(6) Review a sample of paid service units for ten per cent of the individuals that the provider served ~~since being certified (if an initial review) or since during the previous review~~ three months (if a subsequent review of a provider listed under paragraph (B)(1) of this rule) or the previous six months (if a subsequent review of a provider listed under paragraph (B)(2) of this rule), so long as the ten-per-cent sample contains no fewer than three individuals and no more than thirty individuals, with the following exceptions:

- (a) If non-compliance is identified, ODA or its designee may review a larger sample size or order an independent audit at the provider's expense.
  - (b) If the provider operates from multiple business sites, ODA's designee shall review a sample of paid service units for ten per cent of the individuals that the provider served from each business site.
  - (c) If the provider did not bill ODA for providing a service to any individual during the period in paragraph (G)(6) of this rule, ODA or its designee shall indicate in the review record that ODA did not pay the provider for providing a service to any individual during the review period, then complete the remaining elements of the review under this rule.
  - (d) If the provider is a participant-directed provider, ODA or its designee shall review records for each individual served during the review period in paragraph (G)(6) of this rule. If the provider did not bill ODA for providing any units of service during the review period in paragraph (G)(6) of this rule, ODA or its designee shall indicate in the review record that ODA did not pay the provider to provide any units of service during the review period, then complete the remaining elements of the review under this rule.
  - (e) If the provider is certified to provide both personal care and homemaker, ODA or its designee shall combine the review for each service so that the aggregate sample size for the combined services equals the sample size in paragraph (G)(6) of this rule.
  - (f) During a state of emergency declared by the governor or a federal public health emergency, ODA may determine a lesser review sample and issue this determination by notice.
- (7) Review the qualifications of the employees who provided services to individuals in the sample in paragraph (G)(6) of this rule according to the following standards:
- (a) The sample size of employees corresponds to the sample size of individuals in Appendix B to this rule.
  - (b) If the provider hired or subcontracted with RNs or LPNs under the direction of RNs, the number of RNs or LPNs in the sample corresponds to the sample size of individuals in Appendix B to this rule.

- (c) The sample of employees includes any employees providing services to individuals in the sample in paragraph (G)(6) of this rule that the provider hired since the previous review.
- (d) The sample of employees does not need to include an employee providing services to individuals in the sample in paragraph (G)(6) of this rule if one or more of ODA's designees already reviewed the employee's qualifications when conducting a review of the same provider at a different business site within the past three hundred sixty-five days.
- (e) For a provider that provides only home-delivered meals or a personal emergency response system, the maximum sample size is ten employees.

(H) At the conclusion of the review:

- (1) If ODA's designee determines a provider ~~engaged in conduct determined injurious or posing a threat to the health or safety of an individual~~ is out of compliance, then ODA's designee shall ensure all of the following occur:
  - (a) ODA's designee notifies the provider at the exit interview or, if the provider is unavailable for the exit interview, with a detailed ~~email communication~~ within one business day after the review.
  - (b) ODA's designee records the method of notification in paragraph (H)(1)(a) of this rule in PIMS.
  - ~~(c) ODA's designee notifies ODA within one day.~~
  - ~~(d)~~(c) The provider demonstrates compliance within ~~five~~ ten business days after receiving notification from ODA's designee.
  - ~~(e)~~(d) ODA or its designee determine whether to impose an immediate disciplinary action under rule 173-39-05 of the Administrative Code.
- (2) Within ~~sixty~~ ten business days after the review, ODA's designee shall issue a ~~written or electronic structural compliance review report~~ summary letter to the provider, including a summary of all areas of non-compliance, request for a plan of correction or evidence of compliance, and disciplinary action if imposed by ODA or its designee.
- (3) Within ~~sixty~~ ten business days after the date ODA's designee issues the written or electronic ~~structural compliance review report~~ summary letter to the provider, the provider shall provide a plan of correction or evidence of compliance with the laws, rules, or regulations determined to have been violated during the

review which were not subject to disciplinary action under rule 173-39-05 of the Administrative Code.

(4) ODA or its designee may impose a disciplinary action under rule 173-39-05 of the Administrative Code if either of the following occur:

(a) The provider did not provide ODA or its designee with a plan of correction or evidence of compliance.

(b) The provider remains out of compliance after ODA or its designee receives a plan of correction or evidence of compliance from the provider.

~~(4)~~(5) If a unit-of-service error is detected during unit-of-service verification, the provider shall return the overpayment of funds to ODA or its designee using appropriate auditing procedures.

(I) ODA may suspend any review during a state of emergency declared by the governor or a federal public health emergency.

~~(J) If any deadline in this rule occurs on a Saturday, Sunday, or legal holiday under section 1.14 of the Revised Code, the deadline is extended to the next day that is not a Saturday, Sunday, or legal holiday under section 1.14 of the Revised Code.~~

Effective:

Five Year Review (FYR) Dates: 3/26/2024

---

Certification

---

Date

Promulgated Under: 119.03  
Statutory Authority: 121.07, 173.01, 173.02, 173.391, 173.52, 173.522, 173.54, 173.543  
Rule Amplifies: 173.39, 173.391, 173.52, 173.522, 173.54, 173.543; 42 CFR 441.352  
Prior Effective Dates: 03/31/2006, 08/30/2010, 03/17/2011, 01/01/2020, 06/11/2020 (Emer.), 10/23/2020, 04/04/2022, 07/01/2023