

## TO BE RESCINDED

173-39-04

**Provider structural compliance review.**

(A) Agency, non-agency, and assisted living providers: Each ODA-certified long-term care agency provider, ODA-certified non-agency provider, and ODA-certified assisted living provider is subject to a regular provider structural compliance review to ascertain if it complies with Chapter 173-39 of the Administrative Code. These are the regulations on that review:

(1) ODA's designees shall conduct the reviews. If a provider furnishes services in two or more geographic regions of the state, ODA's designee for each geographic region may monitor the provider. If a business site is located outside the geographic region of the state in which the provider's administrative offices are located, including those with business sites outside of Ohio, ODA (or ODA's designee) shall determine whether to perform a desk review or an on-site review.

(2) On-site provider structural compliance reviews:

- (a) Must occur at least annually, from the first date of service delivery as a certified provider through the second year of service delivery;
- (b) Must occur at least once every two years after the first two years of service, if the provider furnishes a pest-control service, emergency response services, chore services, home medical equipment services, minor home maintenance services, or transportation services;
- (c) Must occur at least annually for those providers of services not listed in paragraph (A)(2)(b) of this rule;
- (d) May be conducted on an as-needed basis to ascertain whether the provider meets the conditions of participation set forth in rule 173-39-02 of the Administrative Code, and the applicable service requirements listed in rules 173-39-02.1 to 173-39-02.20 of the Administrative Code;
- (e) Must be announced by ODA's designee by placing a telephone call, or sending a written announcement, to the provider before the visit and on-site introductory conference with the provider, except as noted in paragraph (A)(10) of the rule;
- (f) Must include an evaluation of compliance with each applicable condition of participation set forth in rule 173-39-02 of the Administrative Code,

and each applicable service specification listed in rules 173-39-02.1 to 173-39-02.20 of the Administrative Code;

- (g) Must include verification that a sample of paid service units were furnished according to the requirements set forth in rules 173-39-02 and 173-39-02.1 to 173-39-02.20 of the Administrative Code, as appropriate; and,
  - (h) Must include an exit conference with the provider.
- (3) The evaluation described in paragraph (A)(2)(f) of this rule must be based on a review of a ten per cent sample of the provider's current certified service delivery records for each service the provider furnished, with a minimum of three and a maximum of thirty records reviewed for each certified the provider furnished during the quarter preceding the date of the on-site structural compliance review. If problems are identified, ODA's designee may expand the sample or may require that an outside audit to be conducted at the provider's expense.
- (4) The structural compliance review for certified providers that furnish both personal care and homemaker services must be a combined review and the total sample must equal the sample size required in paragraph (A)(3) of this rule.
- (5) ODA's designee must notify ODA within one business day when the health and/or safety of one or more consumers is at imminent risk.
- (a) If a provider is determined to be out of compliance in an area that poses a serious threat to the health and/or safety of one or more consumers, the provider must demonstrate compliance within five business days.
  - (b) If ODA's designee determines an imminent risk to the health and/or safety of one or more consumers, ODA may impose immediate sanctions as set forth in rule 173-39-05 of the Administrative Code.
- (6) Within forty-five business days of the on-site review, ODA's designee must issue to the provider a written structural compliance review report, including a summary of areas of non-compliance.
- (7) Within forty-five business days from the date the structural compliance review report is mailed by ODA's designee, the provider must submit evidence of compliance with the regulations that were determined to have been violated during the on-site structural compliance review.

- (8) If a unit of service error is detected during a unit of service verification, the provider shall return the overpayment of funds to ODA (or ODA's designee). The repayment must be completed using acceptable state auditing procedures.
- (9) ODA's designee may conduct a follow-up on-site review to evaluate the provider's compliance.
- (10) ODA (or ODA's designee) may exercise the right to conduct an unannounced on-site review of a provider at any time to evaluate any consumer complaint or concern, and/or to determine whether the health and/or safety of one or more consumers is at imminent risk.
- (11) A provider has the right to challenge structural compliance review findings by ODA's designee and to request a review by ODA.
- (12) As specified in rule 173-39-02 of the Administrative Code, all certified long-term care providers are required to retain records to verify each episode of service delivery. Certified providers are required to provide such records and documentation to ODA, ODA's designee, the secretary of the United States department of health and human services, the auditor of state, and the Ohio department of job and family services upon request. Various methods of audit and review will be utilized in all cases of suspected waste and abuse. If waste and abuse are apparent, ODA shall take action to gain compliance and recoup inappropriate payments. The provider must retain all records as stipulated in this rule and rule 173-39-02 of the Administrative Code.
  - (a) The provider must retain all records as stipulated in this rule and rule 173-39-02 of the Administrative Code.
  - (b) Records, documentation, and information must be available regarding any services for which payment has been or will be claimed to determine that payment has been or will be made in accordance with applicable federal and state requirements. For purposes of this rule, an invoice constitutes a business transaction but does not constitute a record which is documentation of a medical service.
  - (c) All records, documentation, and/or information requested in accordance with paragraph (A)(2) of this rule shall be submitted to ODA (or ODA's designee), in an appropriate manner as determined by ODA. Records subject to audit and review must be produced at no cost to ODA (or ODA's designee).

- (i) Records subject to audit and review must be made available for examination in the time period determined by ODA (or ODA's designee). Failure to supply the requested records, documentation, and/or information as indicated in this rule will result in no payment for outstanding services.
  - (ii) In all situations, ODA has the authority to conduct an on-site visit with the provider at the provider's location for the examination or collection of records, and/or for compliance verification. Upon such occasions, as deemed necessary by ODA (or ODA's designee), a member of the provider's staff is to be assigned to assist in collecting the information. Upon request from ODA, the provider shall photocopy or make the applicable records available for photocopying.
  - (iii) Services billed to and reimbursed by ODA, which are not validated in the consumer record, are subject to recoupment through the audit and review process described in this rule.
- (B) Consumer-directed individual providers and consumer-directed personal care providers: Each certified consumer-directed individual provider or consumer-directed personal care provider is subject to a regular provider structural compliance review to ascertain if it complies with Chapter 173-39 of the Administrative Code. These are the regulations on that review:
- (1) Reviewer:
    - (a) ODA's designee shall conduct the review.
    - (b) If a provider furnishes a service in the geographic region of one of ODA's designees and also the geographic region of one or more of ODA's other designees, the designee of each geographic region may monitor the provider.
  - (2) Announcement: Although ODA's designee usually notifies the provider of an upcoming review and introductory conference by telephone or in writing, ODA or its designee may conduct an unannounced, unscheduled review or follow-up review at any time.
  - (3) Minimum frequency: ODA's designee shall conduct the review of each provider at least annually.
  - (4) Location: ODA's designee shall conduct the review at a location that is mutually agreeable to ODA's designee, the consumer, and the provider.

- (5) Components: In each review, ODA's designee shall evaluate the provider's compliance with rule 173-39-02 of the Administrative Code; and rule 173-39-02.4, if the provider furnishes a home care attendant service; or 173-39-02.11 of the Administrative Code if the provider furnishes a personal care service. Each review includes verification of a sample of paid service units.
- (6) Sample size:
- (a) ODA's designee shall review records for each consumer served during the quarter preceding the review.
  - (b) If, during the course of a review, ODA's designee identifies problems, it may expand the time period the review covers.
- (7) Exit conference and report:
- (a) ODA's designee shall furnish the provider and the consumer with an exit conference immediately after it concludes the review.
  - (b) ODA's designee shall issue to the provider and the consumer a written review report no later than forty-five business days after it reviewed the provider.
- (8) Follow-up review: ODA's designee may conduct a follow-up review.
- (9) Sanctions: ODA or ODA's designee may impose sanctions pursuant to rule 173-39-05 of the Administrative Code:
- (a) If ODA's designee determines that the provider doesn't comply in an area that does not place the health or safety of one or more consumers at imminent risk, the provider shall demonstrate compliance to ODA's designee in no more than forty-five days. If ODA's designee determines that the provider does not comply because of unit of service errors, by using acceptable state auditing procedures, the provider shall return overpaid funds to ODA or ODA's designee.
  - (b) ODA's designee shall notify ODA no more than one business day after it determines that the health or safety of one or more of a provider's consumers is at imminent risk. ODA may, in turn, impose immediate sanctions against the provider, in accordance with rule 173-39-05 of the Administrative Code.

- (c) If the provider refuses to supply any records that ODA's designee requests to conduct its review, ODA's designee shall not pay the provider for any outstanding services.

(C) Definitions for this rule:

- (1) "Audit" means a formal post-payment examination, made in accordance with generally accepted auditing standards, of a certified provider's records and documentation to determine program compliance, the extent and validity of services paid for and to identify any inappropriate payments. ODA must have the authority to use statistical methods to conduct audits and to determine the amount of overpayment. An audit may result in a final adjudication order by ODA.
- (2) "Review" means an informal, prepayment or post-payment, limited scope investigation, special project and/or special analysis, examination, or monitoring of a certified provider's records, claims, and/or supporting documentation to determine quality of care, compliance with accepted standards of care, program compliance, and/or validity of services rendered, billed, or paid for. A review may result in an educational letter, the denial of invalid services or claims, a corrective action plan subject to ODA approval, and/or the collection of overpayments.
- (3) "Notice of operational deficiency" means a formal written notice issued by ODA, pursuant to an audit and review, that identifies provider conduct, treatment or practices that are determined by ODA not to be in the best interests of the consumer or the long term care service program, and/or are noncompliant with the regulations governing the long term care service program, that must be corrected. The notice states the nature of the deficiency, the time period that the provider has to correct the deficiency and the person within ODA the provider is to contact to verify that the deficiency has been corrected.

Effective:

Five Year Review (FYR) Dates: 4/12/2019

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Certification

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Date

Promulgated Under: 119.03  
Statutory Authority: 173.01, 173.02, 173.391, 173.52, 173.522, 173.54, 173.543  
Rule Amplifies: 173.543; 42 C.F.R. 441.352, 173.39, 173.391, 173.52, 173.522, 173.54  
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