

## TO BE RESCINDED

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) First review: No later than three hundred sixty-five days after the date of ODA's initial certification, ODA's designee shall conduct the first review of each provider.

(B) Subsequent reviews:

(1) ODA's designee shall conduct subsequent reviews of providers of personal emergency response systems; home maintenance and chores; home medical equipment and supplies; home modification; non-emergency medical transportation; and non-medical transportation no later than seven hundred thirty days after the date of the previous review.

(2) No later than three hundred sixty-five days after the date of the previous review, ODA's designee shall conduct subsequent reviews of providers of services not listed in paragraph (B)(1) of this rule.

(C) ODA may authorize ODA's designee to miss a deadline under paragraph (A) or (B) of this rule if ODA's designee provides ODA with a request for an extension that includes the rationale for a delay and the expected timeframe to conduct the review and is retained in the provider's file.

(D) The review may be an on-site or a desk review based on the following:

(1) In any of the following situations, ODA's designee shall conduct an on-site review in accordance with paragraph (E) of this rule, unless ODA's designee obtains ODA's authorization to conduct a desk review:

(a) The provider has at least one business site located within the designee's region. If the provider has multiple business sites in the designee's region, ODA's designee shall conduct an on-site review of each business site.

(b) The provider is certified in only one region of the state and the provider's business site(s) is located within Ohio but outside of the designee's region.

(c) The provider is an assisted living provider.

(d) The provider is a participant-directed provider. If a participant-directed provider provides services in multiple regions, ODA's designee in each region shall conduct an on-site review.

- (2) ODA's designee shall conduct a desk review of each provider in the designee's region when:
- (a) The provider does not have a business site located within Ohio. In such cases, ODA's designee shall review the following:
    - (i) Compliance with all requirements listed under paragraph (E) of this rule if ODA's designee conducting the review is in the region of the state in which the provider was first certified.
    - (ii) Compliance with all requirements listed under paragraph (E) of this rule except the requirements in paragraph (E)(2) of this rule if ODA's designee is not in the region where the provider was first certified.
  - (b) The provider is certified in multiple regions but does not have a business site located in the designee's region. In such cases, ODA's designee shall review the following:
    - (i) Compliance with all requirements listed under paragraph (E) of this rule if ODA's designee is in the region where the provider was first certified.
    - (ii) Compliance with all requirements listed under paragraph (E) of this rule except the requirements in paragraph (E)(2) of this rule if ODA's designee is not in the region where the provider was first certified.
- (E) Each review shall:
- (1) Be announced by ODA's designee to the provider before the visit and before conducting an introductory conference with the provider explaining the purpose and scope of the review, except as noted in paragraph (H) of this rule.
  - (2) Include a review of compliance with each applicable requirement in rule 173-39-02 of the Administrative Code.
  - (3) Include a review of compliance with each applicable requirement in rules 173-39-02.1 to 173-39-02.24 of the Administrative Code.
  - (4) 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.

- (5) Include an exit conference with the provider.
- (6) Be based on a sample of paid service units for ten per cent of the individuals the provider served during the calendar quarter preceding the date of the review so long as the sample is based on 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 expand the sample size, expand the time period the review covers, or require an independent audit to be conducted at the provider's expense.
  - (b) If the provider operates from multiple business sites, the review shall be based upon a sample of paid service units for ten per cent of the individuals the provider served from each business site.
  - (c) If the provider has fewer than three service delivery records for the preceding calendar quarter, ODA or its designee shall expand its review to include previous calendar quarters beginning from the date of the last completed review to gather sufficient service delivery records to meet the sample size in paragraph (E)(6) of this rule.
  - (d) If the provider has no service delivery records for the period in paragraph (E)(6)(c) of this rule, ODA or its designee shall note such in the review record and complete the remaining elements of the review required by this rule.
  - (e) If the provider is a participant-directed provider, ODA or its designee shall review records for each individual served during the calendar quarter preceding the review.
    - (i) If the provider has no service delivery records for the preceding calendar quarter, ODA or its designee shall expand its review to include previous calendar quarters beginning from the date of the last completed review.
    - (ii) If the provider has no service delivery records for the period in paragraph (E)(6)(e)(i) of this rule, ODA or its designee shall note such in the review record and complete the remaining elements of the review required by this rule.
  - (f) The review for certified providers of both personal care and homemaker services shall be a combined review and the total sample shall equal the sample size required in paragraph (E)(6) of this rule.

- (g) During a state of emergency declared by the governor or a federal public health emergency, ODA may determine a lesser review sample and issue by notice.
- (7) Include a review of the qualifications of employees providing services to individuals in the sample in paragraph (E)(6) of this rule according to the following standards:
- (a) The sample size of employees corresponds to the sample size of individuals in table 1 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 table 1 to this rule.
- (c) The sample of employees includes any employees providing services to individuals in the sample in paragraph (E)(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 (E)(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.

Table 1

IF THE SAMPLE OF INDIVIDUALS IS THIS SIZE	THEN THE SAMPLE OF EMPLOYEES IS THIS SIZE	AND, IF THE PROVIDER HIRED AN RN, OR LPN UNDER THE DIRECTION OF AN RN, THE SAMPLE OF EMPLOYEES INCLUDES THIS MANY RNs OR LPNs
0-3	3	2
4-7	4	2
8-11	5	3
12-15	6	3

16-19	7	3
20-23	8	4
24-27	9	4
28-30	10	5

- (8) Be conducted at the individual's home or as a desk review if the provider is a participant-directed provider, unless the individual agrees, in writing, to an alternate location and to not participate. An individual's authorization to conduct the review at an alternate location and to not be present shall be obtained by ODA's designee for each review.
- (F) If ODM or the department of developmental disabilities (ODODD) reviewed a provider during the past three hundred sixty-five days, ODA or its designee may use information gathered by ODM or ODODD to satisfy ODA's or its designee's oversight requirements.
- (G) At the conclusion of the review:
- (1) If ODA's designee conducted the review, the following apply:
    - (a) If ODA's designee determines a provider engaged in conduct determined injurious or posing a threat to the health or safety of an individual, ODA's designee shall notify the provider of the same at the exit interview, and ensure all of the following occur:
      - (i) ODA's designee shall notify ODA within one business day.
      - (ii) The provider shall demonstrate compliance within seven days after receiving notification from ODA's designee.
      - (iii) ODA or its designee shall determine if an immediate disciplinary action shall be imposed as established in rule 173-39-05 of the Administrative Code.
    - (b) Within sixty days after the review, ODA's designee shall issue a written or electronic structural compliance review report to the provider, including a summary of all areas of non-compliance and disciplinary action imposed by ODA or its designee.
    - (c) Within sixty days after the date ODA's designee issues the written or electronic structural compliance review report to the provider, the

provider shall provide 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.

- (d) 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. The repayment shall be completed using appropriate auditing procedures.
- (2) If ODA conducted a review under paragraph (A)(2) or (B)(3) of this rule, the following apply:
- (a) If ODA determines a provider engaged in conduct determined injurious or posing a threat to the health or safety of an individual, ODA shall notify the provider and ensure all of the following occur:
    - (i) The provider shall demonstrate compliance within seven days after receiving notification from ODA.
    - (ii) ODA shall determine if an immediate disciplinary action shall be imposed as established in rule 173-39-05 of the Administrative Code.
  - (b) Issue a written or electronic structural compliance review report to the provider.
  - (c) If a unit-of-service error is detected, direct repayment to ODA or its designee using appropriate auditing procedures.
- (H) ODA or its designee may exercise the right to conduct an unannounced review of a provider at any time to review compliance with this chapter.
- (I) ODA may suspend any review during a state of emergency declared by the governor or a federal public health emergency.
- (J) ODA or its designee may impose disciplinary action for non-compliance identified through any review under this rule in accordance with rule 173-39-05 of the Administrative Code.
- (K) As specified in rule 173-39-02 of the Administrative Code, all providers shall retain records to verify each episode of service delivery. Providers shall provide such records and documentation to ODA, its designee, the secretary of HHS, the auditor of state, and ODM upon request.

Effective:

Five Year Review (FYR) Dates: 4/14/2023

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Certification

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Date

Promulgated Under: 119.03

Statutory Authority: 121.07, 173.01, 173.02, 173.391, 173.52, 173.522,  
173.54, 173.543

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