

173-39-04

**Provider structural compliance review.**

(A) Certified long-term care agencies, long-term care non-agencies and assisted living service providers must undergo regular structural compliance reviews to ascertain whether they continue to meet the conditions of participation and service specifications set forth in Chapter 173-39. of the Administrative Code. The reviews will be conducted by the entity designated by ODA to administer programs within the geographic region of the state in which the provider's administrative offices are located, and must include verification of a sample of paid service units. Service providers that deliver services in two or more geographic regions of the state may be monitored by the ODA-designees operating in those geographic regions where the providers' consumers reside. Business sites 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, must undergo a desk review or an on-site review as determined by ODA or it's designee.

(B) On-site provider structural compliance reviews:

- (1) Must occur at least annually, from the first date of service delivery as a certified provider through the second year of service delivery;
- (2) Must occur at least once every two years beginning the third year of service delivery for those providers certified to provide emergency response services, chore services, home medical equipment services, minor home maintenance services and transportation services;
- (3) Must occur at least annually for those providers of services not listed in paragraph (B)(2) of this rule; and,
- (4) 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 173-39-02.17 of the Administrative Code.
- (5) Must be announced by ODA's designee by placing a telephone call, or sending a written announcement, to the provider prior to the visit and on-site introductory conference with the provider;
- (6) 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 173-39-02.17 of the Administrative Code.
- (7) Must include verification that a sample of paid service units were delivered according to the requirements set forth in rules 173-39-02 and 173-39-02.1 to 173-39-02.17 of the Administrative Code, as appropriate; and,
- (8) Must include an exit conference with the provider.

- (C) The evaluation described in paragraph (B)(6) 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 delivered, with a minimum of three and a maximum of thirty records reviewed for each certified service delivered by the provider 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 be conducted at the provider's expense.
- (D) The structural compliance review for certified providers that provide both personal care and homemaker services must be a combined review and the total sample must equal the sample size required in paragraph (C) of this rule.
- (E) 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.
- (1) 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.
- (2) 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.
- (F) 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.
- (G) 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.
- (H) If unit of service errors are detected during a unit of service verification, providers must return the overpayment of funds to ODA or its designee. The repayment must be completed using acceptable state auditing procedures.
- (I) ODA's designee may conduct a follow-up on-site review to evaluate the provider's compliance.
- (J) ODA and/or its 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.
- (K) A provider has the right to challenge structural compliance review findings by ODA's designee and to request a review by ODA.

(L) As specified in rule 173-39-03 of the Administrative Code, all certified long-term care providers are required to keep records for each episode of service delivery. Certified providers are required to provide such records and documentation to ODA, 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, the department will take action to gain compliance and recoup inappropriate payments. The provider must maintain all records as stipulated in this rule and rule 173-39-03 of the Administrative Code.

- (1) The provider must maintain all records as stipulated in this rule and rule 173-39-03 of the Administrative Code.
- (2) 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.
- (3) All records, documentation and/or information requested in accordance with paragraph (B) of this rule shall be submitted to the department of its designee, in an appropriate manner as determined by the department. Records subject to audit and review must be produced at no cost to the department.
  - (a) Records subject to audit and review must be made available for examination in the time period determined by the department of its designee. Failure to supply the requested records, documentation and/or information as indicated in this rule will result in no payment for outstanding services.
  - (b) In all situations the department 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 the department of its designee, a member of the provider's staff is to be assigned to assist in collecting the information. Upon request from the department, the provider will photocopy or make the applicable records available for photocopying.
  - (c) Services billed to and reimbursed by the department, which are not validated in the consumer record, are subject to recoupment through the audit and review process described in this rule.
  - (d) For purposes of this rule, the following definitions apply:

- (i) “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.
- (ii) “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.
- (iii) “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:

R.C. 119.032 review dates:

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Certification

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Date

Promulgated Under:	119.03
Statutory Authority:	173.02, 173.391
Rule Amplifies:	173.39, 173.391