

173-39-05**Disciplinary actions.**

(A) Introduction: Pursuant to section 173.391 of the Revised Code, ODA (or ODA's designee) may take disciplinary action against a provider for good cause, including misfeasance, malfeasance, nonfeasance, confirmed abuse or neglect, financial irresponsibility, or any conduct ODA determines is injurious, or poses a threat, to the health, safety, or welfare of the consumers of the provider's services.

(B) Disciplinary actions: ODA (or ODA's designee) may take the following disciplinary actions against any provider who does not comply with Chapter 173-39 of the Administrative Code:

(1) Level-one disciplinary action:

(a) ODA (or ODA's designee) may impose a level-one disciplinary action against any provider in the following situations:

(i) The provider violates any requirement in Chapter 173-39 of the Administrative Code, unless the violation would warrant a level-two or a level-three disciplinary action under this rule.

(ii) The provider is an agency provider or assisted-living provider and the provider fails to pay any of its employees.

(b) A level-one disciplinary action includes any one or more of the following four options:

(i) Warning: ODA (or ODA's designee) may issue a written warning.

(ii) Plan of correction or evidence of compliance: ODA (or ODA's designee) may require the provider to furnish ODA (or ODA's designee) with a plan or correction or evidence of compliance with the requirement in no more than forty-five calendar days after ODA (or ODA's designee) issues the level-one disciplinary action.

(iii) Hold and review: ODA (or ODA's designee) may withhold reimbursing a provider for the cost of services the provider has furnished until ODA (or ODA's designee) has completed the hold-and-review process described in rule 5101:3-1-27.2 of the Administrative Code.

(iv) Suspension of referrals: ODA (or ODA's designee) may discontinue referring consumers to the provider.

(2) Level-two disciplinary action:

(a) ODA may impose a level-two disciplinary action against any provider in any of the following situations:

(i) Unqualified: The provider ceases to meet the qualifications for a provider under Chapter 173-39 of the Administrative Code, or the provider fails to only employ staff members who meet the qualifications for to provide direct care under Chapter 173-39 of the Administrative Code, unless the provider's violation of a rule would warrant a level-three disciplinary action under this rule.

(ii) Criminal records check: The provider fails to meet the criminal records check requirements under rule 173-9-01 of the Administrative Code, but, after completing a remedial check, ODA (or ODA's designee) determines that the provider or the provider's employee would have been hireable in a position to provide direct care under rule 173-9-01 of the Administrative Code.

(iii) Records: The provider has irregular financial records.

(iv) Progressive violation: The provider fails to correct any violation for which ODA (or ODA's designee) issued a level-one disciplinary action, fails to provide ODA (or ODA's designee) with a plan or correction or evidence that it now complies with the requirement for which ODA (or ODA's designee) issued a level-one disciplinary action, or commits any second violation of any requirement in Chapter 173-39 of the Administrative Code.

(b) A level-two disciplinary action includes any one or more of the following four options:

(i) Plan of correction or evidence of compliance: ODA may require the provider to furnish ODA with a plan or correction or evidence of compliance with the requirement in no more than fifteen calendar days after ODA issues the level-two disciplinary action.

(ii) Hold and review: ODA may require ODA's designee to withhold reimbursing a provider for the cost of services the provider has furnished until ODA has completed the hold and review process described in rule 5101:3-1-27.2 of the Administrative Code.

(iii) Fiscal disciplinary action: ODA may impose a fiscal disciplinary action such as a civil monetary penalty or an order that unearned funds be repaid.

(iv) Suspension: ODA may suspend the provider's certification until the

provider furnishes ODA with evidence of compliance with the requirement for which ODA issued the level-two disciplinary action. The suspension involves suspending referrals and removing consumer's from the provider's care.

(3) Level-three disciplinary action:

(a) ODA may impose a level-three disciplinary action against any provider who commits any one or more of the following:

(i) Fraud:

(a) The provider is convicted, employs, or is associated with a principal who has been convicted of medicaid or medicare fraud.

(b) The provider falsifies its (or, "his or her") application for certification.

(c) The provider falsifies documentation in the consumer records.

(d) The provider falsifies documentation in the employee records (e.g., employee qualifications, records of supervisory visits, staff training) or provides employees with answers to the tests for employee qualification.

(ii) Denied access: The provider has denied or failed to provide ODA (or ODA's designee) with access to the provider's facilities during the provider's normal business hours for purposes of conducting an audit or structural compliance review.

(iii) Criminal records check: The provider fails to meet the criminal records check requirements under rule 173-9-01 of the Administrative Code, and, after completing a remedial check, ODA (or ODA's designee) determines that the provider or the provider's employee would not have been hireable in a position to provide direct care under rule 173-9-01 of the Administrative Code.

(iv) Health and safety: The provider endangers the health, safety, or welfare of a consumer. This includes situations such as abusing, neglecting, or exploiting consumers; a serious food-safety violation (e.g., a listeria contamination); or failing to have a back-up plan when it cannot provide a service.

(v) Continuing non-compliance: The provider engages in a pattern of recurring or continuing non-compliance with Chapter 173-39 of

the Administrative Code.

(vi) Progressive violation: The provider fails to correct any violation for which ODA issued a level-two disciplinary action or fails to provide ODA with evidence that it now complies with the requirement for which ODA issued a level-two disciplinary action.

(b) A level-three disciplinary action involves revoking the provider's certification. A provider is prohibited from reapplying for certification after ODA revokes its certification.

(C) Appeals:

(1) No hearings: According to section 173.391 of the Revised Code, ODA is not required to hold a hearing to give a provider an opportunity to appeal a disciplinary action under any of the following conditions:

(a) The provider (or an employee of the provider) lacks the qualifications required under Chapter 173-39 of the Administrative Code to furnish the service the provider (or employee of the provider) is furnishing, especially the requirements under Chapter 173-39 of the Administrative Code to meet the criminal records check requirements under rule 173-9-01 of the Administrative Code, regardless of whether the provider (or employee) has obtained a current, valid license, certificate, permit, or certification from another state.

(b) The principal owner or manager of a provider has entered a guilty plea for, or has been convicted of, an offense materially related to the medicaid program.

(c) The provider has denied or failed to provide ODA (or ODA's designee) with access to the provider's facilities during the provider's normal business hours for purposes of conducting an audit or structural compliance review.

(2) Hearings: For any disciplinary action not subject to the conditions in paragraph (C)(1) of this rule, ODA is required to hold a hearing to give the provider an opportunity to appeal the disciplinary action if the provider appeals a disciplinary action. ODA shall conduct its hearings in accordance with this rule and rules 173-39-05.1, 173-39-06, 173-39-07, and 173-39-08 of the Administrative Code.

Replaces: 173-39-05

Effective:

R.C. 119.032 review dates:

Certification

Date

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