

## TO BE RESCINDED

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 who 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.~~

~~(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 seven calendar days after ODA (or ODA's designee) issues the level one disciplinary action.~~

~~(iii) Ceasing referrals: ODA (or ODA's designee) may cease to refer consumers to the provider until ODA (or ODA's designee) determines that the provider complies with all requirements under Chapter 173-39 of the Administrative Code.~~

~~(2) Level two disciplinary action:~~

~~(a) ODA may impose a level two disciplinary action against any provider in 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 database review and criminal records check requirements under Chapter 173-9 of the Administrative Code, except as provided in paragraph (B)(3)(a)(iii) of the rule.~~

~~(iii) Records: The provider fails to retain all records required under rule 173-39-02 of the Administrative Code or fails to comply with the service verification requirements under rules 173-39-02.1 to 173-39-02.21 of the Administrative Code, for any service the provider provides that is regulated by rules 173-39-02.1 to 173-39-02.21 of the Administrative Code.~~

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

~~(iii) Ceasing referrals and removing consumers: ODA may cease to refer consumers to the provider and may remove consumers from the provider until ODA determines that the provider complies the requirement for which ODA issued the level-two disciplinary action.~~

~~(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 one or more consumer records.~~

~~(d) The provider falsifies documentation in one or more 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 conduct criminal records checks according to rules 173-9-04 and 173-9-05 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 appeals: According to section 173.391 of the Revised Code, ODA is not required to give a provider an opportunity to appeal a disciplinary action under any of the following conditions:~~

~~(a) A government entity of this state, other than ODA, has terminated or refused to renew any of the following held by, or has denied any of the following sought by, a provider that ODA has certified: a provider agreement, license, certificate, permit, or certification. This applies regardless of whether the provider has entered into a provider agreement in, or holds a license, certificate, permit, or certification issued by, 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 principal owner or manager of a provider has entered a guilty plea for, been convicted of, or been found eligible for intervention in lieu of conviction for an offense listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code and rule 173-9-06 of the Administrative Code, unless the principal owner or manager is not disqualified based on the terms of rule 173-9-07 of the Administrative Code.~~

~~(d) 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.~~

~~(e) ODA (or ODA's designee) has ceased to refer consumers to the provider.~~

~~(f) ODA has removed consumers from the provider's care.~~

- ~~(2) Appeals: Except as otherwise provided in section 173.391 of the Revised Code, ODA is required to give a provider an opportunity to appeal a disciplinary action that is not subject to the conditions in paragraph (C)(1) of this rule or paragraph (A) of rule 173-39-05.1 of the Administrative Code.~~

Effective:

Five Year Review (FYR) Dates: 11/28/2018

---

Certification

---

Date

Promulgated Under: 119.03

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

Rule Amplifies: 173.39, 173.391, 173.52, 173.522, 173.54, 173.543; 42  
C.F.R. 441.352

Prior Effective Dates: 03/31/2006, 08/30/2010, 06/30/2011, 09/29/2011,  
01/01/2013