5160-45-06 **Ohio department of medicaid (ODM) -administered waiver program: structural reviews of providers and investigation of provider occurrences.**

(A) The Ohio department of medicaid (ODM) or its designee shall continuously monitor every ODM-administered waiver provider. Monitoring activities shall include, but not be limited to:

(1) A structural review of compliance with all ODM-administered waiver provider requirements in accordance with paragraph (B) of this rule.

(2) Investigation of provider occurrences in accordance with paragraph (C) of this rule.

(B) Structural reviews.

(1) Medicare-certified and otherwise accredited agency providers as defined in rule 5160-45-01 of the Administrative Code are subject to reviews in accordance with their certification and accreditation bodies and may be exempt from a regularly scheduled structural review as determined by ODM. Medicare-certified and otherwise-accredited agency providers shall submit a copy of their updated certification and/or accreditation, and upon request by ODM or its designee, shall make available within ten business days, all review reports and accepted plans of correction from the certification and/or accreditation bodies.

(2) All other agency providers are subject to structural reviews by ODM or its designee every two years after the provider begins furnishing billable services.

(3) All non-agency ODM-administered waiver providers are subject to structural reviews by ODM or its designee during each of the first three years after a provider begins furnishing billable services. Thereafter, and unless otherwise prescribed by either paragraph (B)(4) or (B)(5) of this rule, structural reviews shall be conducted annually.

(4) ODM or its designee may conduct biennial structural reviews of a non-agency ODM-administered waiver provider, when all the following apply:

(a) There were no findings against the provider during the provider's most recent structural review;

(b) The provider was not substantiated to be the violator in an incident described in rule 5160-44-05 of the Administrative Code;

(c) The provider was not the subject of more than one provider occurrence during the previous twelve months; and

(d) The provider does not live with an individual receiving ODM-administered waiver services.

(5) All ODM-administered waiver providers may be subject to an announced or unannounced structural review at any time as determined by ODM or its designee.

(6) Structural reviews are conducted in person between the provider and ODM or its designee, unless prior-approved by ODM and in a manner consistent with paragraph (B)(3) of rule 5160-45-09 of the Administrative Code.

(7) All structural reviews use an ODM-approved structural review tool.

(8) Structural reviews shall not occur while the provider is furnishing services to an individual.

(9) The structural review process consists of the following activities:

(a) Except for unannounced structural reviews, the provider shall be notified in advance of the review to arrange a mutually acceptable time, date and location for the review. Advance notification shall also include identification of the time period for which the review is being conducted and a list of the type of documents required for the review.

(b) The provider shall ensure the availability of required documents and maintain the confidentiality of information about individuals enrolled on the ODM-administered waiver.

(c) ODM or its designee shall examine all substantiated incident reports or provider occurrences related to the provider. Documented findings of noncompliance shall be addressed during the review.

(d) The structural review shall include an evaluation of compliance with Chapter 5160-45 of the Administrative Code and Chapter(s) 5160-44, 5160-46, and/or 5160-58 of the Administrative Code, depending upon the waiver(s) under which the provider is furnishing services.

(e) A unit of service verification shall be conducted by ODM or its designee to ensure all waiver services are authorized, delivered and reimbursed in accordance with the approved person-centered services plan for the individual receiving waiver services.

(f) The provider's compliance with the home and community-based settings requirements set forth in rule 5160-44-01 of the Administrative Code will

be evaluated, which will include interviews with individuals served in the setting.

(g) An evaluation shall be conducted to determine whether the provider has implemented all plans of correction approved since the last review. Failure to successfully complete all plans of correction and/or the existence of repeat violations may lead to additional sanctions including, but not limited to termination of their provider agreement.

(h) A final exit interview summarizing the overall outcome of the review will occur between the non-agency provider, or in the case of an agency provider, the agency administrator or his or her designee, and ODM or its designee at the conclusion of the review.

(10) The exit interview will be followed up with a written report to the provider from ODM or its designee. The report shall summarize the overall outcome of the structural review, specify the Administrative Code rules that are the basis for which noncompliance has been determined, and outline the specific findings of noncompliance. When findings are indicated, the provider shall respond in writing to the report in a plan of correction, including any individual remediation.

(C) Provider occurrences.

(1) "Provider occurrence" means any alleged, suspected or actual performance or operational issue by a provider furnishing ODM-administered waiver services that does not meet the definition of an incident as set forth in rule 5160-44-05 of the Administrative Code. Provider occurrences include, but are not limited to alleged violations of provider eligibility and/or service specification requirements, provider conditions of participation, billing issues including overpayments, and medicaid fraud.

(2) Upon discovery, ODM or its designee shall investigate provider occurrences including requesting any documentation required for the investigation.

(3) If ODM or its designee substantiates the provider occurrence, it shall notify the provider. The notification shall specify:

(a) The provider's action or inaction that constituted the provider occurrence;

(b) The Administrative Code rule(s) that support the finding(s) of noncompliance;

(c) What the provider must do to correct the finding(s) of noncompliance, including acknowledgement of technical assistance, required training, and any individual remediation;

(D) Plans of correction for structural reviews and provider occurrences.

(1) The provider must submit to ODM or its designee a plan of correction for all identified findings of noncompliance, including any individual remediation, within forty-five calendar days after the date on the written report.

(2) If ODM or its designee finds the provider's plan of correction acceptable, it shall acknowledge, in writing, to the provider that the plan addresses the findings outlined in the written report. If ODM or its designee determines that it cannot approve the provider's plan of correction, it shall inform the provider of this determination, in writing, require that the provider submit a new plan of correction and specify the required actions that must be included in the plan of correction. The provider must submit the new plan of correction within the prescribed timframes, not to exceed forty-five calendar days.

(E) If the possibility of an overpayment is identified through the structural review and/or provider occurrence processes, ODM will conduct a final review, and as appropriate, issue all payment adjustments in accordance with rule 5160-1-19 of the Administrative Code.

(F) ODM may take action against the provider in accordance with rule 5160-45-09 of the Administrative Code for failure to comply with any of the requirements set forth in this rule.

(G) Notwithstanding any provisions to the contrary in this rule, during the COVID-19 state of emergency the following apply:

(1) Submission of evidence of recertification or reaccreditation to ODM or ODA by medicare-certified or otherwise-accredited home health agency providers is suspended for structural reviews that are completed pursuant to paragraph (B)(1) of this rule.

(2) The requirement in paragraph (B)(6) of this rule that structural reviews be conducted in-person is suspended. Desk reviews may be conducted in lieu of an in-person structural review.

(3) ODM permits flexibility with the required timeframes for submission of plans of correction required in paragraph (D) of this rule, so long as it is documented in the provider's file.

Effective: 6/12/2020

CERTIFIED ELECTRONICALLY

Certification

06/12/2020

Date

Promulgated Under:	119.03
Statutory Authority:	5166.02
Rule Amplifies:	5162.03, 5164.02, 5166.02
Prior Effective Dates:	07/01/2004, 09/19/2009, 02/01/2015, 02/01/2020