



*Empowering Elders.
Strengthening Communities.*

John Kasich, Governor
Beverley L. Laubert, Director

PUBLIC-COMMENT PERIOD
ODA PROVIDER CERTIFICATION: STRUCTURAL COMPLIANCE REVIEWS
OCTOBER 15, 2018

ODA reviewed 173-39-04 and proposes to rescind the current rule and to adopt a new rule in its places. For details on differences between current and proposed new rule, please review the attached business impact analysis (BIA).

Please feel free to review the rule and offer recommendations for improving it. Submit recommendations to rules@age.ohio.gov no later than **Sunday, October 28, 2018** at 11:59PM.

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name:	OHIO DEPARTMENT OF AGING
Package Title:	ODA PROVIDER CERTIFICATION STRUCTURAL COMPLIANCE REVIEWS
Rule Numbers:	173-39-04
Date:	October 15, 2018
Rule Types:	<input checked="" type="checkbox"/> 5-Year Review 173-39-04 <input checked="" type="checkbox"/> Rescinded 173-39-04 <input checked="" type="checkbox"/> New 173-39-04 <input type="checkbox"/> Amended <input type="checkbox"/> No change

The Common-Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the regulations in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

OVERVIEW

173-39-04 implements the requirements for reviewing the compliance of ODA-certified providers (providers) with Chapter 173-39 of the Administrative Code. ODA proposes to rescind this rule and adopt a new rule in its place.

CURRENT VERSION OF RULE VS., NEW RULE

- ODA proposes to remove many unnecessary words and definitions from this rule.
- ODA proposes to require reviews at least once every 365 days instead of "annually."¹
- ODA proposes to clarify when its designees may conduct desk reviews vs. on-site reviews.²
- ODA proposes to clarify what comprises a 10% sample of records.³
- ODA proposes to require its designee to conduct reviews of participant-directed providers with the individual present and in the individual's home, unless the individual refuses to participate.
- ODA proposes to match the terminology used in the authorizing statute (ORC § 173.391).

¹ See ¶ (B)(1) of the new rule.

² See ¶ (C) of the new rule.

³ See ¶ (D) of the new rule.

2. Please list the Ohio statute authorizing the Agency to adopt these regulations.

ORC §§ [173.01](#), [173.02](#), [173.391](#), [173.52](#), [173.522](#), [173.54](#), and [173.543](#)

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

In order for the Centers for Medicare and Medicaid Services (CMS) to approve Ohio's application for a Medicaid waiver authorizing the State to launch and maintain the PASSPORT Program, 42 CFR 441.352 requires ODA to assure CMS in the waiver application that ODA established adequate requirements for providers (i.e., Chapter 173-39 of the Administrative Code) and that ODA reviews the providers to ensure they comply with those requirements.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

The rule exists to comply with the state laws mentioned in ODA's response to #2, which establish the requirements for ODA-certified providers.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

These regulations ensure necessary safeguards are in place to protect the health and safety of individuals receiving services from ODA-certified providers.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

ODA and its designees conduct structural compliance reviews on providers to ensure compliance for the continued health and safety of individuals receiving services from ODA-certified providers. Likewise, ODA reviews its designees to ensure compliance in conducting structural compliance reviews. The rule is judged as being successful when ODA and its designees find few violations from structural compliance reviews or investigations of alleged incidents.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

On Sept. 22, 2017, ODA sent an email to the stakeholders in the table below requesting feedback on ODA's proposals and additional recommendations for improving this rule.

PROVIDERS	PROVIDER ASSOCIATIONS	OTHER ASSOCIATIONS
1. Alzheimer's and Dementia Care Services 2. Home Care by Black Stone 3. National Church Residences (NCR). 4. Senior Resource Connection	5. LeadingAge Ohio 6. Ohio Assisted Living Assn. (OALA). 7. Ohio Assn. of Medical Equipment Services (OAMES). 8. Ohio Health Care Assn. (OHCA) 9. Ohio Council for Home Care and Hospice (OCHCH). 10. Ohio Jewish Communities (OJC).	11. Catholic Social Services of the Miami Valley (a PAA not represented by O4A) 12. The Ohio Association of Area Agencies on Aging (O4A).

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

In response to ODA's Sept. 22, 2017 email, ODA received 4 comments from 2 stakeholders, which are summarized below:

- A provider association asked if this rule should say that federal heightened scrutiny under 42 CFR 441.301(c)(5)(v) is part of structural compliance reviews. *Response:* Structural compliance reviews under this rule pertain to the review of providers already certified by ODA. Whereas, the federal heightened scrutiny rule applies to providers applying to become an ODA-certified provider.
- A non-provider association asked a few questions primarily on the role of individuals when conducting a structural compliance review of a participant-directed provider. *Responses:* Unless individuals refuse to participate, it's reasonable to expect ODA's designee to conduct on-site reviews and to include individuals in those reviews. The individuals are the employers of record for the participant-directed providers. Participant-directed providers are required to store service records in the individuals' homes and in locations accessible to the individuals, the participant-directed providers, ODA, and its designees. ODA's designee should review those records as it would review the records in any other setting. ODA proposes to clarify this matter in the proposed new rule.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

ODA is not proposing to amend this rule based upon data.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

ODA did not consider any alternative regulations.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

Because 173-39-04 is a rule requiring the review of ODA-certified providers for compliance, it is inherently performance-based. Providers who remain compliant do not need to undergo reviews of expanded sample sizes or incur plans of correction or disciplinary actions.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

ORC § [173.391](#) only authorizes ODA to develop requirements for ODA-certified providers.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Before the proposed new rule takes effect, ODA will post it on ODA's website. ODA will also send an email to subscribers of its rule-notification service to feature the rule.

ODA also hosts webinars and in-person meetings with its designees to train them on implementing new rules.

Through its regular monitoring activities, ODA will monitor its designees for compliance with this rule.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

Every provider certified by ODA.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

There are no adverse impacts for providers other than to allow ODA and its designees to regularly conduct structural compliance reviews and have access its records.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

There are no adverse impacts for providers other than to allow ODA and its designees to regularly conduct structural compliance reviews and have access to its records. The costs incurred as a result of this rule is likely calculated as part of a provider’s operational budget (*i.e.*, the cost of doing business and clerical jobs, such as retaining records).

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

ODA is required to develop rules establishing requirements for ODA-certified providers and to ensure the health and safety of individuals enrolled in ODA-administered waiver programs.

Providers voluntarily apply for ODA certification. Certification is not required to engage in providing a service unless a provider wants paid for providing that service by a program, such as the PASSPORT Program, for which ORC § 173.391 requires providers to be certified. Therefore, compliance with these regulations is only required if a provider voluntarily chooses to participate in an ODA-administered waiver program.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

Because the primary purpose of this rule is to ensure the health and safety of individuals enrolled in ODA-administered waiver programs, the rule treats all providers the same, regardless of their size.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

ODA is concerned primarily about protecting the health and safety of individuals receiving services from ODA-certified providers through compliance with this rule. Whenever possible, ODA or its designees will treat administrative violations that do not involve health and safety as opportunities for improvement through warning notices and solicitation of corrective action.

18. What resources are available to assist small businesses with compliance of the regulation?

ODA and its designees are available to help providers of all sizes with their questions. Any person may contact [Tom Simmons](#), ODA's policy development manager, with questions about this rule.

Additionally, ODA maintains an [online rules library](#) to help providers find rules regulating them. Providers may access the online library 24 hours per day, 365 days per year.

TO BE RESCINDED

173-39-04

~~Provider structural compliance review.~~

~~(A) Agency, non-agency, and assisted living providers: Each ODA-certified long-term care agency provider, ODA-certified non-agency provider, and ODA-certified assisted living provider is subject to a regular provider structural compliance review to ascertain if it complies with Chapter 173-39 of the Administrative Code. These are the regulations on that review:~~

~~(1) ODA's designees shall conduct the reviews. If a provider furnishes services in two or more geographic regions of the state, ODA's designee for each geographic region may monitor the provider. If a business site is 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, ODA (or ODA's designee) shall determine whether to perform a desk review or an on-site review.~~

~~(2) On-site provider structural compliance reviews:~~

~~(a) Must occur at least annually, from the first date of service delivery as a certified provider through the second year of service delivery;~~

~~(b) Must occur at least once every two years after the first two years of service, if the provider furnishes a pest control service, emergency response services, chore services, home medical equipment services, minor home maintenance services, or transportation services;~~

~~(c) Must occur at least annually for those providers of services not listed in paragraph (A)(2)(b) of this rule;~~

~~(d) 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 173-39-02.20 of the Administrative Code;~~

~~(e) Must be announced by ODA's designee by placing a telephone call, or sending a written announcement, to the provider before the visit and on-site introductory conference with the provider, except as noted in paragraph (A)(10) of the rule;~~

- ~~(f) 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 173-39-02.20 of the Administrative Code;~~
 - ~~(g) Must include verification that a sample of paid service units were furnished according to the requirements set forth in rules 173-39-02 and 173-39-02.1 to 173-39-02.20 of the Administrative Code, as appropriate; and;~~
 - ~~(h) Must include an exit conference with the provider.~~
- ~~(3) The evaluation described in paragraph (A)(2)(f) 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 the provider furnished, with a minimum of three and a maximum of thirty records reviewed for each certified the provider furnished 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 to be conducted at the provider's expense.~~
- ~~(4) The structural compliance review for certified providers that furnish both personal care and homemaker services must be a combined review and the total sample must equal the sample size required in paragraph (A)(3) of this rule.~~
- ~~(5) 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.~~
- ~~(a) 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.~~
 - ~~(b) 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.~~
- ~~(6) 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.~~
- ~~(7) 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.~~

- ~~(8) If a unit of service error is detected during a unit of service verification, the provider shall return the overpayment of funds to ODA (or ODA's designee). The repayment must be completed using acceptable state auditing procedures.~~
- ~~(9) ODA's designee may conduct a follow-up on-site review to evaluate the provider's compliance.~~
- ~~(10) ODA (or ODA's 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.~~
- ~~(11) A provider has the right to challenge structural compliance review findings by ODA's designee and to request a review by ODA.~~
- ~~(12) As specified in rule 173-39-02 of the Administrative Code, all certified long-term care providers are required to retain records to verify each episode of service delivery. Certified providers are required to provide such records and documentation to ODA, ODA's designee, 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, ODA shall take action to gain compliance and recoup inappropriate payments. The provider must retain all records as stipulated in this rule and rule 173-39-02 of the Administrative Code.~~
- ~~(a) The provider must retain all records as stipulated in this rule and rule 173-39-02 of the Administrative Code.~~
- ~~(b) 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.~~
- ~~(c) All records, documentation, and/or information requested in accordance with paragraph (A)(2) of this rule shall be submitted to ODA (or ODA's designee), in an appropriate manner as determined by ODA. Records subject to audit and review must be produced at no cost to ODA (or ODA's designee).~~

- ~~(i) Records subject to audit and review must be made available for examination in the time period determined by ODA (or ODA's designee). Failure to supply the requested records, documentation, and/or information as indicated in this rule will result in no payment for outstanding services.~~
 - ~~(ii) In all situations, ODA 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 ODA (or ODA's designee), a member of the provider's staff is to be assigned to assist in collecting the information. Upon request from ODA, the provider shall photocopy or make the applicable records available for photocopying.~~
 - ~~(iii) Services billed to and reimbursed by ODA, which are not validated in the consumer record, are subject to recoupment through the audit and review process described in this rule.~~
- ~~(B) Consumer-directed individual providers and consumer-directed personal care providers: Each certified consumer-directed individual provider or consumer-directed personal care provider is subject to a regular provider structural compliance review to ascertain if it complies with Chapter 173-39 of the Administrative Code. These are the regulations on that review:~~
- ~~(1) Reviewer:
 - ~~(a) ODA's designee shall conduct the review.~~
 - ~~(b) If a provider furnishes a service in the geographic region of one of ODA's designees and also the geographic region of one or more of ODA's other designees, the designee of each geographic region may monitor the provider.~~~~
 - ~~(2) Announcement: Although ODA's designee usually notifies the provider of an upcoming review and introductory conference by telephone or in writing, ODA or its designee may conduct an unannounced, unscheduled review or follow-up review at any time.~~
 - ~~(3) Minimum frequency: ODA's designee shall conduct the review of each provider at least annually.~~
 - ~~(4) Location: ODA's designee shall conduct the review at a location that is mutually agreeable to ODA's designee, the consumer, and the provider.~~

~~(5) Components: In each review, ODA's designee shall evaluate the provider's compliance with rule 173-39-02 of the Administrative Code; and rule 173-39-02.4, if the provider furnishes a home care attendant service; or 173-39-02.11 of the Administrative Code if the provider furnishes a personal care service. Each review includes verification of a sample of paid service units.~~

~~(6) Sample size:~~

~~(a) ODA's designee shall review records for each consumer served during the quarter preceding the review.~~

~~(b) If, during the course of a review, ODA's designee identifies problems, it may expand the time period the review covers.~~

~~(7) Exit conference and report:~~

~~(a) ODA's designee shall furnish the provider and the consumer with an exit conference immediately after it concludes the review.~~

~~(b) ODA's designee shall issue to the provider and the consumer a written review report no later than forty-five business days after it reviewed the provider.~~

~~(8) Follow-up review: ODA's designee may conduct a follow-up review.~~

~~(9) Sanctions: ODA or ODA's designee may impose sanctions pursuant to rule 173-39-05 of the Administrative Code:~~

~~(a) If ODA's designee determines that the provider doesn't comply in an area that does not place the health or safety of one or more consumers at imminent risk, the provider shall demonstrate compliance to ODA's designee in no more than forty-five days. If ODA's designee determines that the provider does not comply because of unit of service errors, by using acceptable state auditing procedures, the provider shall return overpaid funds to ODA or ODA's designee.~~

~~(b) ODA's designee shall notify ODA no more than one business day after it determines that the health or safety of one or more of a provider's consumers is at imminent risk. ODA may, in turn, impose immediate sanctions against the provider, in accordance with rule 173-39-05 of the Administrative Code.~~

~~(c) If the provider refuses to supply any records that ODA's designee requests to conduct its review, ODA's designee shall not pay the provider for any outstanding services.~~

~~(C) Definitions for this rule:~~

- ~~(1) "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.~~
- ~~(2) "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.~~
- ~~(3) "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.~~

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ODA provider certification: structural compliance reviews.

(A) Each ODA-certified provider is subject to a regular structural compliance review (review) to ascertain if it complies with this chapter.

(B) ODA's designees shall conduct reviews of every provider certified to provide services in the region designated by ODA.

(1) The review shall occur at least once every three hundred sixty-five days beginning from the date of initial certification for all services not listed in paragraph (B)(2) of this rule.

(2) Beginning three hundred sixty-five days after the date of initial certification, the review shall occur at least once every seven hundred thirty days for providers of pest control; personal emergency response systems; chores; home medical equipment and supplies; minor home maintenance, modification, or repair; non-emergency medical transportation; or non-medical transportation.

(3) 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 (D) of this rule.

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

(1) ODA's designee shall conduct an on-site review in accordance with paragraph (D) of this rule when:

(a) The provider has at least one business site located within the region. If the provider has multiple business sites in the 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 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, the designee of 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 (D) 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 (D) of this rule other than the requirements in paragraph (D)(2) of this rule if ODA's designee is not in the region of the state in which the provider was first certified.

(b) The provider is certified in multiple regions but does not have a business site located in the region. In such cases, ODA's designee shall review the following:

(i) Compliance with all requirements listed under paragraph (D) of this rule if ODA's designee is located in the region of the state in which the provider was first certified.

(ii) Compliance with all requirements listed under paragraph (D) of this rule other than the requirements in paragraph (D)(2) of this rule if ODA's designee is not in the region of the state in which the provider was first certified.

(D) Each review shall:

(1) Be announced by ODA's designee by placing a telephone call, or sending a written announcement, to the provider before the visit and conducting an on-site introductory conference with the provider explaining the purpose and scope of the review, except as noted in paragraph (G) 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 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 or may 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 providers served from each business site.
 - (c) If the ten-per-cent sample includes duplication of employee records from one business site to the next, the sample shall be expanded to include records that do not duplicate employee records, unless expansion of the sample is not possible.
 - (d) If the provider has no service delivery records for the preceding quarter, ODA or its designee shall expand its review to include previous quarters beginning from the date of the last completed review.
 - (e) If the provider has no service delivery records for the period in paragraphs (D)(6) or (D)(6)(d) 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) If ODA or its designee identifies non-compliance, it may expand the time period the review covers.
 - (g) If the provider is a participant-directed provider, ODA or its designee shall review records for each individual serviced during the quarter preceding the review.

 - (i) If the provider has no service delivery records for the preceding quarter, ODA or its designee shall expand its review to include previous quarters beginning from the date of the last completed review.
 - (ii) If the provider has no service delivery records for the period in paragraph (D)(6)(g) or (D)(6)(g)(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.
 - (7) Be conducted at the individual's home if the provider is a participant-directed provider, unless the individual agrees to an alternate location in writing. ODA or its designee shall conduct the review with the individual present, unless the individual chooses not to participate.
- (E) At the conclusion of the review, ODA's designee shall:
- (1) If ODA's designee determines a provider engaged in conduct determined injurious or posing a threat to the health or safety of an individual, all of the following shall occur:

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- (a) ODA's designee shall notify ODA within one business day.
- (b) The provider shall demonstrate compliance within five business days.
- (c) 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.
- (2) Within forty-five business days after the review, ODA's designee shall issue a written 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.
- (3) Within forty-five business days after the date ODA's designee issues the written structural compliance report to the provider, the provider shall submit 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.
- (4) 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.
- (F) 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.
- (G) 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.
- (H) 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.