

5123-2-04

Compliance reviews of certified providers.**(A) Purpose and scope**

This rule governs compliance reviews conducted by the department and county boards of developmental disabilities to ensure compliance by certified providers with applicable requirements. This rule applies to all certified providers, including certified providers licensed in accordance with section 5123.19 of the Revised Code.

(B) Definitions

For the purposes of this rule, the following definitions apply:

- (1) "Accredited college or university" means a college or university accredited by a national or regional association recognized by the secretary of the United States department of education or a foreign college or university of comparable standing.
- (2) "Applicable requirements" means:
 - (a) Federal and state laws and regulations which govern the conduct of the certified provider, including but not limited to, Chapters 4723., 5123., 5126., and 5160. of the Revised Code and all administrative rules promulgated under the authority of those statutes.
 - (b) Requirements set forth in a home and community-based services waiver administered by the department pursuant to an interagency agreement between the department and the Ohio department of medicaid.
- (3) "Certification revocation" means the revocation of a certified provider's certification to serve one or more individuals in one or more counties.
- (4) "Certification suspension" means either:
 - (a) Suspension of a certified provider's certification to serve one or more individuals in one or more counties for a specified time period; or
 - (b) Suspension of a certified provider's certification to serve additional individuals in one or more counties.
- (5) "Certified provider" means an agency provider or independent provider certified by the department pursuant to section 5123.161 of the Revised Code to provide supported living, including home and community-based services.

- (6) "Compliance review" means a review of a certified provider conducted by the department or a county board for the purpose of determining provider compliance with applicable requirements in order to ensure the health, safety, and welfare of individuals served.
- (7) "County board" means a county board of developmental disabilities.
- (8) "Department" means the Ohio department of developmental disabilities.
- (9) "Director of operations" means the person employed by an agency provider who is responsible for and directly and actively involved in the day-to-day operation of the agency provider.
- ~~(9)~~(10) "Home and community-based services" has the same meaning as in section 5123.01 of the Revised Code.
- ~~(10)~~(11) "Individual" means a person with a developmental disability.
- ~~(11)~~(12) "Investigative agent" means a person, regardless of title, employed by or under contract with a county board to conduct administrative investigations of major unusual incidents.
- ~~(12)~~(13) "Major unusual incident" has the same meaning as in rule 5123-17-02 of the Administrative Code.
- ~~(13)~~(14) "Protocol for compliance reviews" means the forms, instructions for the completion of written documentation, and process developed by the department and used by the department and county boards to conduct compliance monitoring in accordance with this rule. ~~A~~The protocol for compliance reviews does not create provider standards or qualifications.
- ~~(14)~~(15) "Service and support administrator" means a person, regardless of title, employed by or under contract with a county board to perform the functions of service and support administration.

(C) Compliance reviews

- (1) There are three types of compliance reviews:
- (a) Routine compliance reviews

In accordance with priorities established by the department in the protocol for compliance reviews, the department ~~shall~~ will coordinate with county boards to ensure that each certified provider receives a

routine compliance review within one year of the certified provider's initial billing for provision of services. Thereafter, routine compliance reviews of certified providers ~~shall~~ will be conducted so that each certified provider that has billed for provision of services within the past twenty-four months is reviewed once during the term of certification.

(b) Special compliance reviews

The department or a county board may conduct special compliance reviews as necessary:

- (i) Pertaining to the health, safety, or welfare of an individual;
- (ii) Based on a complaint or allegation; or
- (iii) Based on a major unusual incident that may indicate the certified provider's failure to comply with applicable requirements.

(c) Abbreviated compliance reviews

- (i) ~~The department may accept a certified provider's accreditation by a national accrediting entity as demonstration that the certified provider is meeting applicable requirements.~~ The department may conduct an abbreviated compliance review when a certified provider holds accreditation by a national accrediting entity. An abbreviated compliance review focuses on individuals served and their health and safety, examines fewer policies, and relies on smaller sample sizes of staff and individuals served. A certified provider that is accredited by a national accrediting entity ~~is~~ may be eligible for an abbreviated compliance review when the standards of the national accrediting entity:

- (a) Meet or exceed the department's standards;
- (b) Are compatible with the centers for medicare and medicaid services home and community-based services core set of quality measures;
- (c) Focus on achievement of desired outcomes for individuals served; and
- (d) Ensure the health and safety of individuals served.

- (ii) An abbreviated compliance review ~~shall~~ will examine the certified provider's compliance with applicable requirements regarding:
- (a) Background investigations and training of the certified provider's ~~chief executive officer~~ director of operations and employees;
 - (b) Behavioral support strategies ~~included in individual service plans~~;
 - (c) Medication administration; ~~and~~
 - (d) Major unusual incidents; and
 - (e) Service delivery.
- (iii) To be eligible for an abbreviated compliance review, the certified provider ~~shall~~ will submit a written request to the department that includes a copy of the most recent survey/review of the certified provider by the national accrediting entity.
- (iv) The certified provider ~~shall~~ will notify the department in writing within ten calendar days if the certified provider's accreditation by the national accrediting entity is amended, suspended, terminated, or not renewed and provide a copy of related correspondence from the national accrediting entity.
- (v) An abbreviated compliance review may not be available when:
- (a) The certified provider has not yet received an initial routine compliance review by the department or county board.
 - (b) The certified provider has had multiple or significant substantiated major unusual incidents since the most recent compliance review by the department or county board or survey/review by the national accrediting entity.
 - (c) The certified provider's ~~chief executive officer~~ director of operations and/or key members of the certified provider's management team have changed since the most recent compliance review by the department or county board or survey/review by the national accrediting entity.

(d) The certified provider's accreditation by the national accrediting entity has been amended or suspended.

(2) Only the department may conduct compliance reviews of residential facilities licensed in accordance with section 5123.19 of the Revised Code and administrative rules promulgated under its authority.

(3) The department ~~shall~~ will maintain a protocol for compliance reviews. A county board will implement the protocol for compliance reviews and, absent extenuating circumstances, may not change or augment the protocol for compliance reviews.

(a) The protocol ~~shall~~ for compliance reviews will include, but is not limited to:

(i) The method for selecting certified providers to be reviewed;

(ii) The types and scope of reviews that may be conducted;

(iii) The process and procedures for notifying certified providers of upcoming reviews;

(iv) The elements of provider compliance which ~~shall~~ will be based on the applicable requirements;

(v) The elements of a written compliance review summary to a certified provider that ~~shall~~ will include an explanation of any citations, the process to develop and implement a plan of correction, and an explanation of the due process afforded to a certified provider;

(vi) The criteria for conducting announced and unannounced reviews; and

(vii) Any forms or methods of documentation approved by the department.

(b) The department ~~shall~~ will make the protocol for compliance reviews available at its website (~~http://dodd.ohio.gov~~) and ~~shall include the protocol in any training outlined in paragraph (F) of this rule~~ (https://dodd.ohio.gov).

(D) Compliance review summary and plan of correction

~~(1) The department or county board, as applicable, shall issue a written compliance review summary to the certified provider within seven calendar days of conclusion of the compliance review in accordance with the format described~~

~~in the protocol for compliance reviews. The compliance review summary shall be objective in terms of observations and citations, relying upon documentation that clearly addresses the standards reviewed.~~

(1) Within ten calendar days of conclusion of a compliance review, the department or county board, as applicable, will issue to the certified provider, a written compliance review summary or a written explanation of the reason for delay in issuance of the written compliance review summary.

(a) A written compliance review summary will be in the format described in the protocol for compliance reviews and objective in terms of observations and citations, relying upon documentation that clearly addresses the standards reviewed.

(b) A written explanation of the reason for delay in issuance of the written compliance review summary will include the date by which the department or county board, as applicable, will issue a written compliance review summary, which will not be more than twenty calendar days of conclusion of the compliance review.

(2) Within fourteen calendar days of receipt of a compliance review summary that includes one or more citations, the certified provider ~~shall~~ will submit to the department or county board, as applicable, a written appeal or a written plan of correction for each citation. If the certified provider does not submit a written appeal within fourteen calendar days, the compliance review summary ~~shall~~ will be final and not subject to appeal by the certified provider.

(a) The appeal for a citation ~~shall~~ will include the certified provider's basis with supporting documentation for challenging the citation. The department or county board, as applicable, ~~shall~~ will allow or disallow the appeal within ten calendar days of receipt.

(i) If the compliance review was conducted by the department and the appeal is disallowed, the certified provider ~~shall~~ will submit a written plan of correction for the citation to the department within fourteen calendar days.

(ii) If the compliance review was conducted by a county board and the appeal is disallowed, the certified provider ~~shall~~ will either:

(a) Submit a written plan of correction for the citation to the county board within fourteen calendar days; or

(b) If the certified provider objects to the county board's decision to disallow the appeal, submit to the department a written appeal within ~~seven~~ fourteen calendar days of the county board's decision. The department ~~shall~~ will notify the certified provider and the county board of its decision to allow or disallow the appeal within ~~fourteen~~ ten calendar days of receipt. If the department disallows the appeal, the certified provider ~~shall~~ will submit a written plan of correction for the citation to the county board within fourteen calendar days.

(b) The written plan of correction for a citation ~~shall~~ will include action steps and timelines for remediation. The department or county board, as applicable, ~~shall~~ will approve or disapprove the plan of correction within twenty calendar days of receipt. When the department or county board disapproves a plan of correction, the certified provider ~~shall~~ will work with the department or county board, as applicable, to develop an acceptable plan of correction.

(E) Qualifications for persons conducting compliance reviews

(1) A person conducting compliance reviews ~~shall~~ will either:

(a) Hold a bachelor's degree or graduate-level degree from an accredited college or university and have at least two years of full-time (or equivalent part-time) paid work experience working directly with individuals; or

(b) Have been, without interruption, employed by or under contract with the department or a county board to conduct compliance reviews ~~on the day immediately prior to the effective date of this rule~~ since June 30, 2019.

(2) A person conducting compliance reviews ~~shall~~ will complete training in accordance with paragraph (F) of this rule.

(3) A person conducting compliance reviews ~~shall~~ will not be an investigative agent or a service and support administrator.

(F) Training

(1) The department ~~shall~~ will provide or arrange for initial training to county boards and certified providers regarding the requirements and procedures outlined in this rule and in the protocol for compliance reviews.

(2) Any employees or agents of the department or a county board whose responsibilities include conducting compliance reviews in accordance with this

rule ~~shall~~ will successfully complete the initial training in the requirements and procedures outlined in this rule prior to being authorized by the department to conduct compliance reviews.

- (3) The department ~~shall~~ will provide documentation of a person's successful completion of the initial training to the county board. The county board ~~shall~~ will maintain a list of the persons in its county that have successfully completed the initial training and are authorized by the department to conduct compliance reviews in accordance with this rule.
- (4) The department may require persons who have received the initial training to receive continuing training in the implementation of this rule in a manner prescribed by the department.

(G) Certification suspension and certification revocation

- (1) The department may initiate certification suspension or certification revocation proceedings if the department finds:
 - (a) Substantial violation of applicable requirements which present a risk to an individual's health and welfare; or
 - (b) A pattern of non-compliance with plans of correction approved in accordance with this rule; or
 - (c) A pattern of continuing non-compliance with applicable requirements; or
 - (d) A licensed provider has had its license revoked by the licensing authority; or
 - (e) Failure to cooperate with the compliance review process set forth in this rule; or
 - (f) Other good cause, including misfeasance, malfeasance, nonfeasance, substantiated abuse or neglect, financial irresponsibility, or other conduct the department determines is injurious to individuals being served. The department may gather and evaluate information from a variety of sources, including the county board and the provider, in making such a determination.
- (2) Certification suspension and certification revocation proceedings ~~shall~~ will be conducted in accordance with Chapter 119. of the Revised Code.
- (3) When the department issues a notice of its intent to suspend or revoke a certified provider's certification, the department ~~shall~~ will give written notice to the Ohio

department of medicaid and to the county board of each county in which the proposed suspension or revocation is proposed to be effective.

- (4) Each county board that is notified in writing by the department of the department's intent to suspend or revoke a certified provider's certification ~~shall~~ will so notify in writing each individual in the county who is receiving services for which the provider's certification is proposed to be suspended or revoked (or as applicable, the individual's parent or guardian).
- (5) The department may suspend or revoke a certified provider's certification regardless of whether some or all of the deficiencies enumerated in accordance with this rule that prompted the department's intent to suspend or revoke the certification have been corrected at the time of the hearing.
- (6) When the department suspends or revokes a certified provider's certification, the certified provider ~~shall~~ will comply with the department's adjudication order within thirty calendar days of the date of the mailing of the order.
- (7) The department ~~shall~~ will give written notice of the certified provider's suspension or revocation to the Ohio department of medicaid and to the county board of each county in which the suspension or revocation is effective.
- (8) Each county board that is notified in writing by the department of suspension or revocation of a certified provider's certification ~~shall~~ will so notify in writing each individual in the county who is receiving services for which the provider's certification is suspended or revoked (or as applicable, the individual's parent or guardian).

~~(H) Authority of director to suspend or alter provisions of this rule~~

~~During the COVID-19 state of emergency declared by the governor, the director of the department may suspend or alter the scheduling of routine compliance reviews and submission and review of plans of correction described in paragraphs (C)(1)(a), (C)(1)(e), and (D) of this rule.~~

(H) Issuance of a citation to a county board

The department may issue a citation to a county board if the department determines, based on a compliance review of a certified provider, that the county board failed to follow applicable requirements set forth in Chapter 5123. or 5126. of the Revised Code or rules adopted pursuant to those chapters.

Effective:

Five Year Review (FYR) Dates: 8/24/2023

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 5123.04, 5123.19, 5126.05, 5126.08
Rule Amplifies: 5123.04, 5123.045, 5123.162, 5123.169, 5123.19,
5126.05, 5126.08, 5166.21
Prior Effective Dates: 10/16/2003, 07/08/2004, 07/01/2005, 03/14/2013,
07/01/2019, 06/11/2020 (Emer.), 11/19/2020