

Department of Health and Human Services
Office of Inspector General



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Ohio Did Not Comply With Federal Waiver and State Requirements at 18 of the 19 Adult Day Health Care Facilities Audited

REPORT HIGHLIGHTS



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Ohio Did Not Comply With Federal Waiver and State Requirements at 18 of the 19 Adult Day Health Care Facilities Audited

Why OIG Did This Audit

- Under the Ohio Home and Community-Based Services Waiver program (the program), Ohio funds Adult Day Services (ADS) which are regularly scheduled services provided at an adult day center in a non-institutional, community-based setting and consist of activities authorized in an individual's person-centered services plan.
- The Office of Inspector General (OIG) has conducted health and safety reviews of adult day care and foster care homes and regulated childcare facilities. Those reviews identified multiple health and safety issues that put children and adults at risk.
- This audit determined whether Ohio complied with Federal waiver and State requirements in overseeing adult day service facilities that serve adults who receive services through the program.

What OIG Found

The Ohio Department of Medicaid (ODM) did not fully comply with Federal waiver and State requirements in overseeing providers that serve adults receiving ADS through the program because its inspections of facilities were insufficient to ensure a continuously safe and nonhazardous environment. As a result, adults were at risk in numerous instances.

- Of the 19 providers that we reviewed, 18 did not comply with 1 or more health and safety requirements, and 9 did not comply with 1 or more administrative requirements.
- We found 117 instances of provider noncompliance with health, safety, and administrative requirements.
- Providers of ADS did not always meet the needs of program participants or maintain compliance with State requirements.

What OIG Recommends

We made three recommendations to ODM to ensure that providers correct the 117 instances of provider noncompliance identified in this report; improve its oversight and monitoring of all providers; and work with providers to improve their facilities, staffing, and training. The full recommendations are in the report.

In written comments on our draft report, the State agency concurred with our three recommendations and described corrective actions that it had taken or planned to take. These corrective actions included updating Ohio Administrative Code rules, requested remediation actions from providers, developing technical assistance and guidance, and performed site visits.

After reviewing the State agency's comments and additional information it provided, we modified some of our findings. We maintain that the remaining findings and recommendations are valid.

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INTRODUCTION

WHY WE DID THIS REVIEW

The Office of Inspector General (OIG) has conducted health and safety reviews of adult day care and foster care homes and regulated childcare facilities. (Appendix B lists related OIG reports.) Those reviews identified multiple health and safety issues that put children and adults at risk. We wanted to determine whether adults participating in Ohio's Home and Community-Based (HCB) waiver program (the program) were at risk.

OBJECTIVE

The objective of our audit was to determine whether the Ohio Department of Medicaid (State agency) complied with Federal waiver and State requirements in overseeing adult day service (ADS)¹ facilities that serve adults who receive services through the program.

BACKGROUND

The Medicaid program provides medical assistance to low-income individuals and individuals with disabilities. The Federal and State Governments jointly fund and administer the Medicaid program. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers the Medicaid program. In Ohio, the State agency administers its Medicaid program in accordance with a CMS-approved State plan. The State plan establishes which services the Medicaid program will cover.

Section 1915(c) of the Social Security Act authorizes the Secretary of Health and Human Services to waive certain Medicaid statutory requirements so that a State may offer HCB services to a State-specified target group of Medicaid enrollees who need a level of institutional care that is provided under the Medicaid State plan.

Before the enactment of section 1915(c), the Medicaid program provided limited coverage for long-term services and support in noninstitutional settings but offered full or partial coverage of institutional care. Section 1915(c) was enacted to enable States to address the needs of individuals who would otherwise receive costly institutional care by furnishing cost-effective services that allow them to remain in their households and communities.

Federal regulations for section 1915(c) waivers require States to provide assurances that they will implement safeguards, including adequate standards for provider participation, to protect the health and welfare of individuals served under the waiver and to assure financial accountability for funds expended for those services (42 CFR § 441.302).

¹ The Department of Development and Disabilities (DODD) and the Ohio Department of Aging (ODA) use different titles for the same services (adult day support and adult day services); we will refer to these services as adult day services throughout this report.

As part of the waiver, the State agency must also provide assurances that State requirements are met for services or for individuals furnishing services that are provided under the waiver (42 CFR § 441.302(a)(2)).

Ohio Home and Community-Based Services Waiver Program

The State agency administers and operates the program under a 1915(c) waiver to its Medicaid State plan. The program funds HCB services for individuals with disabilities and chronic conditions to receive care in their homes and communities rather than in long-term care facilities, hospitals, or intermediate care facilities. These waivers also allow individuals to have more control over their care and remain active in their communities.²

The State agency, as a single State Medicaid Agency, maintains administrative oversight of operational and policy development at DODD and ODA, the operating agencies, through an interagency agreement. These agreements provide the State agency reviews of programmatic compliance with Federal and State laws and regulations, in addition to auditing and fiscal compliance.³

Ohio Adult Day Support

In Ohio, ADS provides regularly scheduled activities such as assistance with acquisitions, retention, or improvement of self-help, socialization, and adaptive skills that enhance the individual's social development and performance of daily community living. ADS are designed to foster the acquisition of skills, build community membership and independence, and expand personal choice. ADS enables the individual to attain and maintain his or her maximum potential.⁴

ADS may include recreational and educational programming to support an individual's health and independence goals, health status monitoring, skilled therapy services, and transportation to and from the center, among others. ADS can be provided to the individual in the individual's home in person, by telephone, by video conference, or by a combination of in person, telephone, or video conference.

² The waiver programs operated by DODD and ODA as listed on the State's website are Assisted Living, MyCare Ohio, Ohio Home Care, PASSPORT, Individual Options, Level One, and SELF.

³ Due to multiple waivers being operated by different agencies, we reviewed and applied the requirements that corresponded to the particular waiver and waiver providers.

⁴ Ohio Administrative Code 5123-9-17.

The State agency must ensure the health and welfare of adults through licensing standards in State statutes and regulations and through the requirements in its application for waiver services.⁵

HOW WE CONDUCTED THIS REVIEW

Of the 575 providers in Ohio as of June 1, 2022, we selected a nonstatistical sample of 20 providers for review. We selected these providers based on their geographical location and number of participants. To evaluate the State agency's oversight of facilities, we conducted unannounced site visits at 19 providers; 1 provider was no longer in business. We conducted the site visits in June 2023.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix A contains the details of our audit scope and methodology. Appendix C contains Federal regulations and specific State requirements related to health and safety and administration.

FINDINGS

The State agency did not fully comply with Federal waiver and State requirements in overseeing providers that serve adults receiving ADS services through the program. Of the 19 providers reviewed,⁶ 18 did not comply with 1 or more health and safety requirements, and 9 did not comply with 1 or more administrative requirements.⁷ The 19 providers had a total of 117 instances of noncompliance with health, safety, and administrative requirements. Only one provider was found to have met health and safety requirements as well as administrative requirements. We found that providers did not always meet the needs of program participants or maintain compliance with State requirements, and the State agency's inspections of facilities were insufficient to ensure a continuously safe and nonhazardous environment. As a result, adults were at risk in numerous instances. (See Appendix D.)

⁵ In its waiver, the State agency assures that necessary safeguards have been taken to protect the health and welfare of persons receiving services under the waiver. These safeguards include adequate standards for all types of providers that provide services under the waiver (section 5(A) of the waiver).

⁶ We were unable to conduct a site visit for one provider because the provider was no longer in business.

⁷ Twelve providers did not comply with both health and safety and administrative requirements.

EIGHTEEN PROVIDERS DID NOT COMPLY WITH ONE OR MORE HEALTH AND SAFETY REQUIREMENTS

The State agency must inspect providers to ensure compliance with applicable State requirements, including those regarding health and safety.⁸ Providers must meet the health care needs of program participants by, among other things, ensuring the health, safety, and welfare of participants.⁹

Of the 19 providers reviewed, 18 did not comply with 1 or more health and safety requirements. Specifically, we found 92 instances of provider noncompliance with health and safety requirements.

Those findings included the following: insufficient maintenance in 10 facilities (Photograph 1), water damage in 3 facilities (Photograph 2), unclean conditions in 6 facilities (Photograph 3), exposed electrical wiring in 6 facilities (Photograph 4),¹⁰ toxic chemicals in unlocked areas that were accessible to participants in 14 facilities (Photograph 5),¹¹ and alcoholic beverages in 1 facility (Photograph 6). Applicable rules can be found in Appendix C.

⁸ Ohio Administrative Code 5160-45-06 (A) and (B)) and Rule 173-39-04.

⁹ Ohio Administrative Code 5160-45-06. and Section 5(A) of the waiver program.

¹⁰ Ohio Administrative Code 3717-1-06.4(A) and Ohio Revised Code Section 3781.06(A)(1).

¹¹ Ohio Administrative Code 173-39-02.1(B)(3)(e).



Photograph 1: Insufficient building maintenance



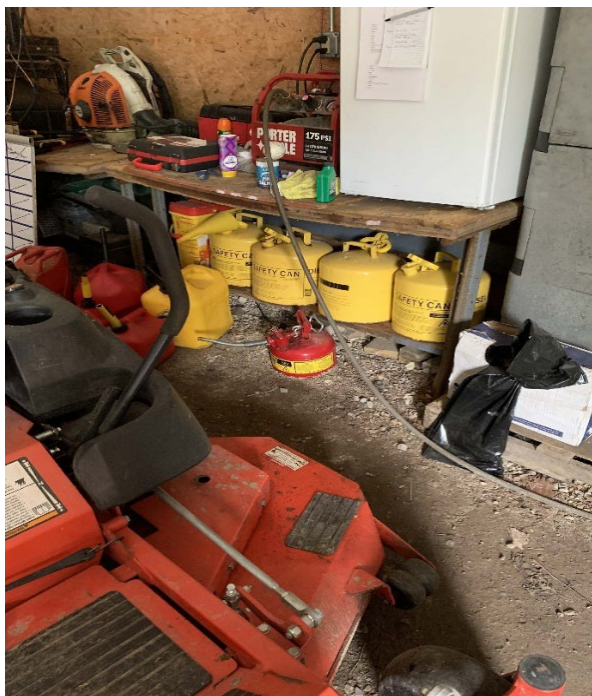
Photograph 2: Water damage



Photograph 3: Unclean conditions



Photograph 4: Exposed wiring



Photograph 5: Hazardous chemicals



Photograph 6: Alcoholic beverage

NINE PROVIDERS DID NOT COMPLY WITH ONE OR MORE ADMINISTRATIVE REQUIREMENTS

The State agency must continuously monitor providers to ensure compliance with applicable State requirements, including those regarding administration.¹² Providers must meet participants' needs by having enough appropriately qualified staff.¹³ For example, prior to employment, a provider must ensure that all employees are subjected to a criminal background check and complete appropriate trainings.¹⁴

Of the 19 providers reviewed, 9 did not comply with 1 or more State administrative requirements. We found 25 instances of provider noncompliance with State administrative requirements.

Among other things, we found that four providers had not conducted or failed to document criminal background checks. Additionally, we found training issues at five providers. For example, documentation of trainings for staff was missing. We found staffing issues at two providers: one provider did not have licensed medical personnel,¹⁵ and one provider did not maintain staff to enrollee ratios.¹⁶

NONCOMPLIANCE WITH FEDERAL WAIVER AND STATE REQUIREMENTS

The State agency did not fully comply with Federal waiver and State requirements for overseeing and monitoring the health and welfare of Medicaid enrollees receiving ADS services because its inspections of facilities were insufficient to ensure a continuously safe and nonhazardous environment.

Between May 19, 2016, and June 20, 2023, the State agency inspected each of the 20 providers that we selected for review. For three of these providers, the State agency did not identify any compliance violations, including maintenance issues, water damage, unclean conditions, exposed electrical wiring, or toxic chemicals in unlocked areas. Additionally, the State agency's inspections did not identify that some providers did not perform criminal background checks as required or ensure staff completed required training. Inspections also failed to identify that some providers did not have licensed medical personnel on staff.

¹² Ohio Administrative Code 5160-45-06, "Structural reviews of providers and investigation of provider occurrences."

¹³ Ohio Administrative Code 173-39-02.1, "ODA provider certification."

¹⁴ Ohio Administrative Code 5123-2-02, "Background investigation for employment."

¹⁵ Ohio Administrative Code 173-39-02.1(B)(4)(c).

¹⁶ Ohio Administrative Code 173-39-02.1(B)(4)(a).

Providers did not always meet the needs of program participants or maintain compliance with State requirements, and the State agency's oversight and monitoring did not detect these instances of noncompliance. As a result, adults were at risk in numerous instances.

RECOMMENDATIONS

We recommend that the Ohio Department of Medicaid:

- ensure providers correct the 117 instances of provider noncompliance identified in this report;
- improve its oversight and monitoring of all providers; and
- work with providers to improve their facilities, staffing, and training.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, the State agency concurred with our three recommendations and described corrective actions that it had taken or planned to take. These corrective actions included updating Ohio Administrative Code rules, requested remediation actions from providers, developing technical assistance and guidance, and performed site visits.

However, the State agency did not agree with 10 specific findings within recommendation one.

- The State agency did not agree with six findings for failure to provide meals or snacks for DODD providers.
- The State agency did not agree with one finding for failure to have an activity director for a DODD provider.
- The State agency did not agree with one finding for failure to have a contracted nurse on call for a DODD provider.
- The State agency did not agree with two findings for transportation related issues for one provider.

The State agency's comments appear in their entirety as Appendix E.

After reviewing the State agency's comments, we modified some of our findings for this final report. Specifically, we removed eight findings from the first recommendation because the State agency provided support that meals and snacks are not required for DODD providers and that the providers in question were not required to maintain an activity director or a nurse on call.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Of the 575 providers in Ohio as of June 30, 2022, we selected a nonstatistical sample of 20 providers for review. We selected these providers based on their geographical location and number of participants.

To evaluate the State agency's oversight of facilities, we conducted unannounced site visits at 19 of the selected providers¹⁷ from June 5 through 23, 2023. We conducted fieldwork in the Ohio cities of Rocky River, Cleveland, Maumee, Westerville, Gahanna, Columbus, Toledo, Cincinnati, Williamsburg, Delaware, Akron, Canton, New Philadelphia, Dayton, and Fairborn.

During our audit, we did not review the overall internal control structure of the State agency or the Medicaid program. Rather, we reviewed only the internal controls that pertained directly to our objective.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal laws, State statutes, and regulations for facilities;
- discussed with State officials how the State agency monitors its facilities;
- developed a health, safety, and administrative requirement checklist from State requirements as a guide for conducting site visits;
- selected a nonstatistical sample of 20 providers, from the 575 providers in Ohio, for review based on geographic location and number of participants;
- conducted unannounced site visits at the 19 of the 20 providers selected for review;
- evaluated provider compliance using the health, safety, and administrative requirement checklist;
- reviewed State agency inspection reports for the 20 providers selected for review; and
- discussed the results of our review with State officials.

¹⁷ We were unable to conduct a site visit for one provider because the provider was no longer in business.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX B: RELATED OFFICE OF INSPECTOR GENERAL REPORTS

Report Title	Report Number	Date Issued
<i>Texas Did Not Fully Comply With Federal Waiver and State Health, Safety, and Administrative Requirements At All 20 Adult Day Activity and Health Service Facilities Audited</i>	<u>A-06-23-05000</u>	03/07/2025
<i>Florida Did Not Comply With Federal Waiver and State Requirements at 18 of 20 Adult Day Care Facilities Reviewed</i>	<u>A-04-23-00135</u>	12/26/2024
<i>Washington State's Oversight Could Better Ensure That Adult Family Homes Comply With Health and Safety and Administrative Requirements</i>	<u>A-09-23-02002</u>	11/13/2024
<i>Georgia Did Not Comply With Federal Waiver and State Requirements at All 20 Adult Day Health Care Facilities Reviewed</i>	<u>A-04-22-00134</u>	3/14/2023
<i>New York's Oversight of Medicaid Managed Care Organizations Did Not Ensure Providers Complied With Health and Safety Requirements at 18 of 20 Adult Day Care Facilities Reviewed</i>	<u>A-02-18-01027</u>	3/26/2020
<i>California Needs To Improve Oversight of Community-Based Adult Services Providers' Compliance With Health and Safety and Administrative Requirements</i>	<u>A-09-18-02002</u>	9/30/2019
<i>Kentucky Did Not Comply With Federal Waiver and State Requirements at 14 of 20 Adult Day Health Care Facilities Reviewed</i>	<u>A-04-18-00123</u>	7/9/2019
<i>Four States Did Not Comply With Federal Waiver and State Requirements in Overseeing Adult Day Care Centers and Foster Care Homes</i>	<u>A-05-19-00005</u>	5/16/2019
<i>Wisconsin Did Not Comply With Federal Waiver and State Requirements at All 20 Adult Day Service Centers Reviewed</i>	<u>A-05-17-00030</u>	10/15/2018
<i>Mississippi Did Not Comply With Federal Waiver and State Requirements at All 20 Adult Day Care Facilities Reviewed</i>	<u>A-04-17-00116</u>	8/20/2018
<i>Illinois Did Not Comply With Federal Waiver and State Requirements at 18 of 20 Adult Day Service Centers Reviewed</i>	<u>A-05-17-00028</u>	7/24/2018
<i>Minnesota Did Not Comply With Federal Waiver and State Requirements for All 20 Adult Day Care Centers Reviewed</i>	<u>A-05-17-00009</u>	5/30/2018
<i>Minnesota Did Not Comply With Federal Waiver and State Requirements for 18 of 20 Family Adult Foster Care Homes Reviewed</i>	<u>A-05-16-00044</u>	10/31/2017

APPENDIX C: FEDERAL REGULATIONS AND STATE REQUIREMENTS

FEDERAL REGULATIONS

Section 1915(c) of the Social Security Act authorizes the Secretary of Health and Human Services to waive certain Medicaid statutory requirements so that a State may offer HCB services to a State-specified target group of Medicaid recipients who need a level of institutional care that is provided under the Medicaid State plan.

Before the enactment of section 1915(c), the Medicaid program provided limited coverage for long-term services and support in noninstitutional settings but offered full or partial coverage of institutional care. Section 1915(c) was enacted to enable States to address the needs of individuals who would otherwise receive costly institutional care by furnishing cost-effective services while the individuals remain in their households and communities.

Federal regulations for section 1915(c) waivers require States to provide assurance that necessary safeguards will be taken, including adequate standards for provider participation, to protect the health and welfare of individuals serviced under the waiver and to assure financial accountability for funds expended for those services. (42 CFR § 441.302).

As part of the waiver, the State agency is required to ensure the health and welfare of participants through oversight and monitoring of providers. (42 CFR § 441.302(a)(2); 1915(c) waiver, Appendix C).

STATE REQUIREMENTS

The State identifies provider licensure and certification requirements for the operation of Adult Day Services in its Ohio Administrative Code (OAC), Rule 5123-9-17 Provider qualifications - agency providers for DODD and Rule 173-39-02.1 ODA provider certification. Additionally, the State identifies rules for licensing, inspection, and operation of adult day centers in its OAC Rule 5123-9-17 Home and community-based services waivers; Rule 5123-9-18 Home and community-based services waivers - non-medical transportation; Rule 5123-17-02 Addressing major unusual incidents and unusual incidents to ensure health, welfare, and continuous quality improvement; Rule 5123-2-02 Background investigations for employment for DODD and Rule 173-39-02.18 ODA provider certification: non-medical transportation; Rule 173-39-04 ODA provider certification: structural compliance reviews; and Rule 173-39-05 ODA Provider certification: disciplinary actions.

The general statutes are section 3737.41 Citation to remedy dangerous condition; Rule 3717-1-06.4 Physical facilities: maintenance and operation; Rule 3717-1-06.1 Physical facilities: design, construction, and installation; and section 3781.06 Public buildings to be safe and sanitary.

Ohio Administrative Code Rules for DODD

Rule 5123-2-08 Provider certification - agency providers

(C) General Requirements for Agency Providers

An agency provider will:

- (2) Obtain and maintain a Medicaid provider agreement with the Ohio Department of Medicaid when the agency provider intends to provide home and community-based services.
- (3) Comply with the requirements of this rule and other standards and assurances established in Chapter 5123. of the Revised Code and rules adopted pursuant to that chapter.
- (5) At the point of application for certification and upon request by the department, provide a certificate of a continuing policy of general liability insurance in an amount of at least one million dollars, which includes coverage for individuals' losses due to theft or property damage.
- (6) Provide and maintain in the provider services management system and the provider network management module, the agency provider's current physical address, telephone number, and electronic mail address.
- (9) Participate as requested by the department in service delivery system data collection initiatives.

(D) Management of the Agency Provider

- (1) An agency provider will have written policies and procedures that address the agency provider's management practices regarding:
 - (d) Supervision of staff;
 - (e) Training plan described in paragraph (F)(1) of this rule;
 - (f) Service delivery;
 - (g) Background investigations for employment in accordance with rule 5123-2-02 of the Administrative Code; and
 - (h) Volunteers (when the agency provider engages volunteers).
- (2) An agency provider will demonstrate that the agency provider has an established internal compliance program to ensure compliance with requirements for:

(b) Background investigations and appropriate actions in accordance with rule 5123-2-02 of the Administrative Code for its director of operations, supervisors of direct support professionals, direct support professionals, and when applicable, volunteers.

(E) Employment of Staff

An agency provider will:

(1) In addition to employing a director of operations who meets the requirements set forth in paragraph (H) of this rule, employ at least one other person for the purpose of providing services.

(2) Comply with applicable federal, state, and local regulations, statutes, rules, codes, and ordinances pertaining to employment of staff including, but not limited to, wage and hour, workers' compensation, unemployment compensation, and withholding taxes.

(4) Conduct background investigations and take appropriate actions in accordance with rule 5123-2-02 of the Administrative Code.

(F) Staff Training Documentation

An agency provider will:

(1) Develop and implement a written training plan for its director of operations, supervisors of direct support professionals, direct support professionals, and, when applicable, volunteers that:

(a) Is consistent with the needs of individuals served, best practice, and the requirements set forth in appendix A and appendix C to this rule.

(b) Describes the method (e.g., written test, skills demonstration, or documented observation by a supervisor) that will be used to establish competency of supervisors of direct support professionals and direct support professionals in areas of training.

(c) Is updated at least once every twelve months and identifies who is responsible for arranging or providing the training and projected timelines for completion of the training.

(2) Maintain a written record of training completed by its director of operations, supervisors of direct support professionals, direct support professionals, and volunteers

that includes a description of the training completed, the date of training, the duration of training, and when applicable, the instructor's name.

(G) Standards of Service Provision

An agency provider will:

(6) Take all reasonable steps necessary to prevent the occurrence or recurrence of major unusual incidents and unusual incidents.

(H) Requirements for Director of Operations

(1) An agency provider will employ a director of operations who:

(d) Has at least:

(i) One year of full-time (or equivalent part-time) paid work experience in the provision of specialized services; or

(ii) Four years of experience providing care to a family member (i.e., parent, child, or sibling) with a developmental disability.

(f) Holds either:

(i) A bachelor's degree from an accredited college or university; or

(ii) A high school diploma or certificate of high school equivalence and has at least:

(a) Four years of full-time (or equivalent part-time) paid work experience as a supervisor of specialized services; or

(b) Four years of experience providing care to a family member (i.e., parent, child, or sibling) with a developmental disability.

(2) Prior to the agency provider's application for initial certification, the director of operations will successfully complete the training specified in appendix A to this rule.

(3) On an annual basis, the director of operations will successfully complete the training specified in appendix A to this rule.

(4) The director of operations will undergo a background investigation in accordance with rule 5123-2-02 of the Administrative Code and consent to be enrolled by the

department in the Ohio attorney general's retained applicant fingerprint database (also known as "Rapback").

(I) Required Actions and Notifications Regarding Director of Operations

(5) When the director of operations leaves an agency provider's employ, the agency provider will report within fourteen calendar days via the provider services management system, the agency provider's plan for identifying a new director of operations and to whom executive authority has been delegated in the interim period.

(9) A director of operations will designate in writing a staff member to whom executive authority has been delegated in the temporary absence of the director of operations.

(M) Requirements for Volunteers

(4) An agency provider will ensure that volunteers who provide more than forty hours of service working directly with individuals served by the agency provider during a calendar year:

(b) Undergo background investigations.

Rule 5123-9-17 Home and Community-Based Services Waivers - Adult Day Support under the Individual Options, Level One, and Self-Empowered Life Funding Waivers

(D) Requirements for Service Delivery

(7) A provider of adult day support will comply with applicable laws, rules, and regulations of the federal, state, and local governments pertaining to the physical environment (building and grounds) where adult day support is provided. A provider of adult day support will be informed of and comply with standards applicable to the service setting.

Rule 5123-9-18 Home and Community-Based Services Waivers - Non-Medical Transportation under the Individual Options, Level One, and Self-Empowered Life Funding Waivers

(E) Requirements for Service Delivery of Non-Medical Transportation

(1) Be equipped with:

(c) A fire extinguisher and an emergency first-aid kit that are safely secured.

Rule 5123-17-02 Addressing Major Unusual Incidents and Unusual Incidents to Ensure Health, Welfare, and Continuous Quality Improvement

(C) Definitions

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

(25) "Unusual incident" means an event or occurrence involving an individual that is not consistent with routine operations, policies and procedures, or the individual's care or individual service plan, but is not a major unusual incident. Unusual incident includes, but is not limited to: dental injuries; falls; an injury that is not a significant injury; medication errors without a likely risk to health and welfare; overnight relocation of an individual due to a fire, natural disaster, or mechanical failure; an incident involving two individuals served that is not a peer-to-peer act major unusual incident; rights code violations or unapproved behavioral supports without a likely risk to health and welfare; emergency room or urgent care treatment center visits; and program implementation incidents.

Ohio Administrative Code Rules for ODA

Rule 173-39-02 – ODA Provider Certification: Requirements for providers to become, and to remain, certified.

(B) Requirements for every type of provider to remain certified:

(12) Other laws: The provider is subject to all applicable federal, state, and local laws, rules, and regulations and is responsible for ensuring all subcontractors comply with all applicable federal, state, and local laws, rules, and regulations.

Rule 173-39-02.1 ODA Provider Certification: Adult Day Service

(B) Requirements to Become, and to Remain, an ODA-Certified Provider of ADS:

(2) Service Requirements:

(h) Lunch and snacks:

(i) The provider shall provide lunch and snacks to each individual who is present during lunchtime or snack time.

(ii) Each meal the provider provides shall comply with all the requirements for home-delivered meals under rules.

(3) Center Requirements: A provider qualifies to be an ODA-certified ADS provider only if the provider's center has the following specifications:

(d) The provider stores individuals' medications in a locked area the provider maintains at a temperature complying with the storage requirements of the medications.

(e) The provider stores toxic substances in an area which is inaccessible to individuals.

(4) Staffing Levels:

(a) The provider shall have at least two staff members present whenever more than one individual is present, including one who is a paid staff member who provides hands-on activities and one who is certified in CPR.

(c) The provider shall have an RN, or LPN under the direction of an RN, available to provide nursing services.

(d) The provider shall employ an activity director to direct activities.

Rule 173-39-02.18 ODA Provider Certification: Non-Medical Transportation

(B) Requirements for ODA-Certified Providers of Non-Medical Transportation:

(2) Vehicle Requirements:

(b) Inspections: The provider shall conduct the following inspections on each vehicle used to transport individuals. If the vehicle includes a wheelchair lift, the provider's inspection shall include inspecting the wheelchair lift:

Rule 173-39-04 ODA provider certification: structural compliance reviews

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

Rule 173-39-05 ODA Provider certification: disciplinary actions

(A) ODA or its designee may impose disciplinary action against an ODA certified provider for good cause, including misfeasance, nonfeasance, confirmed abuse or neglect, financial irresponsibility, or other conduct ODA determines is injurious, or pose a threat, to the health and safety of individuals being served.

Section 173.391 Requirements for provider Certification – disciplinary action.

General Statutes

Section 3737.41 Citation to Remedy Dangerous Condition

- (A) If the fire marshal, an assistant fire marshal, or any certified fire safety inspector, upon an examination or inspection, finds a building or other structure, which for want of proper repair, by reason of age and dilapidated condition, defective or poorly installed electrical wiring and equipment, defective chimneys, gas connections, or heating apparatus, or for any other reason, is especially liable to fire or endangers life or other buildings or property, such officer shall issue a citation and order such building or structure to be repaired, torn down, demolished, or materials removed, and all dangerous conditions remedied.

Rule 3717-1-06.4 Physical Facilities: Maintenance and Operation

- (A) Repairing.

The physical facilities shall be maintained in good repair.

Rule 3717-1-06.1 Physical Facilities: Design, Construction, and Installation

- (B) Floors, Walls, and Ceilings - Utility Lines.

- (1) Utility service lines and pipes may not be unnecessarily exposed.

Section 3781.06 Public Buildings to be Safe and Sanitary

- (A)(1) Any building that may be used as a place of resort, assembly, education, entertainment, lodging, dwelling, trade, manufacture, repair, storage, traffic, or occupancy by the public, any residential building, and all other buildings or parts and appurtenances of those buildings erected within this state, shall be so constructed, erected, equipped, and maintained that they shall be safe and sanitary for their intended use and occupancy.

APPENDIX D: INSTANCES OF NONCOMPLIANCE AT EACH FACILITY

Provider	Health and Safety		Administrative			Totals
	Physical Environment	Participant Welfare	Staffing and Policies	Personnel Records	Participant Records	
1	1	2	1	4	0	8
2	1	0	0	0	0	1
3	3	10	1	2	0	16
4	3	1	1	0	0	5
5	1	4	0	0	0	5
6	2	1	0	0	0	3
7	6	2	1	1	0	10
8	1	1	0	0	0	2
9	0	0	0	0	0	0
10	2	0	0	0	0	2
11	2	1	0	0	0	3
12	9	2	0	2	0	13
13	1	0	0	0	0	1
14	3	4	2	1	0	10
15	1	0	0	0	0	1
16	0	1	0	0	0	1
17	4	8	2	3	0	17
18	3	2	1	1	0	7
19	6	4	1	1	0	12
20	n/a	n/a	n/a	n/a	n/a	n/a
Total	49	43	10	15	0	117

Notice: We provided to the State agency under a separate cover the specific facilities reviewed and their specific violations.

APPENDIX E: OHIO COMMENTS



**Department of
Medicaid**

Medicaid.Ohio.gov

Mike DeWine, Governor Maureen M. Corcoran, Director

February 19, 2025

Ms. Sheri Fulcher
Office of Inspector General
Office of Adult Services, Region V
233 North Michigan, Suite 1360
Chicago, IL 60601

Re: Report Number: A-05-23-00006

Dear Ms. Fulcher:

Thank you for the opportunity to respond to the draft report issued by the Department of Health and Human Services, Office of Inspector General (OIG) titled *Ohio Did Not Comply With Federal Waiver and State Requirements at 18 of 19 Adult Day Care Facilities Reviewed*.

The Ohio Department of Medicaid's (ODM) comments are as follows:

It is of paramount importance to ensure the health and safety of Medicaid members utilizing the services provided by adult day care facilities. In fact, the state's oversight of these providers is a collaborative effort across three cabinet level agencies, which are the Ohio Department of Medicaid, Ohio Department of Developmental Disabilities, and Ohio Department of Aging. The state has taken a thoughtful and careful approach to implementing program requirements across all Medicaid waiver programs to ensure Medicaid recipients receive the best care possible in these settings.

Findings within this report have provided the state with an opportunity to identify areas of improvement needed within program policies, operations, and oversight. The state recognizes the importance of addressing health and safety risks and is committed to supporting providers in maintaining high standards of care.

Recommendation 1

Ensure providers correct the 127 instances of provider noncompliance identified in this report.

Management Response

The state concurs with this recommendation. While the recommendation indicates 127 instances of noncompliance, the state received a detailed report of only 125 instances of provider noncompliance. Of the 125 identified findings, there were many findings that are not required in Ohio Administrative Code (OAC) rules today related to the physical environment/building safety. We agree with the findings and will work to update policies to include building safety specifics.

ODM disagrees with ten specific findings related to staffing and policy. These include six findings for failure to provide meals or snacks which is not a requirement for developmental disabilities adult day waiver services. These adult day providers have participants bring meals and snacks with them to the adult day location. One finding was included for failure to have an activity director and one finding was for failure to have a contracted nurse on call which are not staffing requirements. One center was cited

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for two transportation-related issues, however, that center does not provide transportation to participants.

As described within the CMS approved 1915(c) waiver applications, the state is responsible for assuring the health and safety of individuals served throughout all programs. Through 1915(c) program authority, Ohio's responsibility includes oversight of qualified providers receiving Medicaid funds to provide waiver services. The Adult Day Services are provided through three waiver programs operated by the Ohio Department of Developmental Disabilities (Individual Options, Level One and SELF), two waiver programs operated by the Ohio Department of Medicaid (MyCare Ohio and Ohio Home Care) and one waiver program operated by the Ohio Department of Aging (PASSPORT).

The provider service standards required of Adult Day Service (ADS) providers are implemented through OAC program regulations. While some requirements within each program may align, not all are applicable in the same way to each program. Program regulations may be found in the following OAC sections:

- Department of Developmental Disabilities (DODD) operated waiver program administrative code requirements are contained in [OAC Chapter 5123-9](#).
- Ohio Department of Aging (ODA) operated waiver program administrative code requirements are contained in [OAC Chapter 173-39](#).
- Ohio Department of Medicaid (ODM) operated waiver program administrative code requirements are contained in OAC Chapters [5160-45](#) and [5160-46](#).

Following receipt of the findings of this audit, the state completed follow-up site visits to locations identified in this report. Visit activities included determining if the concern noted within the findings remained at the time of the state visit, and whether the findings presented a health and safety concern for individuals attending the center or were administrative in nature. Staff also reviewed each finding to determine whether the OAC cited in the draft report applied to the adult day service provider based on waiver type.

Twenty-three of the 125 findings identified by the OIG were found to require remediation by the provider. Of the remaining findings, 64 had been remediated at the time of the follow-up visit, 18 could not be verified because the provider was no longer providing ADS, or the finding was not a requirement for the waiver provider as detailed above.

For the findings requiring remediation, the state has requested remediation actions from the provider. Remediation plans may include quality improvement plans with the individual provider.

Recommendation 2

Improve its oversight and monitoring of all providers.

Management Response

The state concurs with this recommendation. The aforementioned departments are evaluating OAC requirements, program processes, and tools used by the state for provider programmatic oversight and monitoring responsibilities. Modifications needed will be employed through each program, as determined necessary. Technical assistance and guidance will be developed, with particular focus on areas identified to be addressed through quality improvement planning: fire safety, emergency response

planning, storage of potentially harmful substances and environmental conditions of sites and areas accessible by participants.

The state has determined, based on the OIG report findings and examination of programmatic regulations, operations and oversight, a state-wide quality improvement plan across all programs is necessary to further assure the health and safety of waiver participants receiving services in these settings. The state will develop a workgroup with partner agencies to cover the following areas of focus including fire safety, emergency response planning, storage of potentially harmful substances and environmental conditions of sites and areas accessible by participants. Additionally, the state workgroup will work on assessing and updating OAC rules, as appropriate. Although issues identified are addressed through the general expectation of meeting the health and safety needs of individuals attending ADS at facilities, these areas are not specifically identified as standards articulated in current OAC program provider requirements.

Recommendation 3

Work with providers to improve their facilities, staffing, and training.

Management Response

The state concurs with this recommendation. The state and state delegates continuously work with providers to improve their facilities, staffing, and training and will continue to do so. As demonstrated through state visits resulting from this report, the state will continue to work with providers to support quality care for individuals served through waiver programs. The state remains committed to addressing the health and safety risks of individuals attending ADS centers to receive services and supporting providers in maintaining high standards of care.

ODM appreciates the OIG's review and recommendations. Thank you for the opportunity to provide comments on the draft report. Please let me know if you have any questions or need additional information.

Sincerely,



Julie Babbist, Chief Legal Counsel and Deputy Director
Office of Legal Counsel and Bureau of Program Integrity
Ohio Department of Medicaid

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