

173-39-06

**Notice of denial of certification and proposed sanctions.**

~~Whenever~~ If ODA proposes to deny an individual or government entity certification as a community-based long-term care service provider or to sanction a certified provider pursuant to rule 173-39-05 of the Administrative Code, ODA ~~will~~ shall send the provider written notice of the intended action via registered mail, return receipt requested.

(A) ~~At a minimum, the~~ Except as otherwise required by section 173.391 of the Revised Code, the notice ~~will~~ shall include:

- (1) Notice of the specific sanction(s) ~~the department~~ ODA intends to take.
- (2) A list of the charges or reasons for the proposed action(s).
- (3) A citation to the statute(s) or rule(s) directly involved.
- (4) A statement that the provider is entitled to a prior hearing if it is requested within thirty days from the date of mailing the notice.
- (5) A statement that the provider may appear at a the hearing in person or through an attorney.
- (6) A statement that the provider may present positions entirely in writing, may examine evidence and adverse witnesses at the hearing, and may introduce evidence and bring forth witnesses on behalf of the provider.
- (7) A statement that rules governing the provider's hearing before ~~the department~~ ODA may be found in Chapter 173-39 of the Administrative Code.

(B) ODA ~~will~~ shall mail a copy of the notice to the provider's attorney or other representative of record. To qualify as an attorney or representative of record, the provider or the attorney or representative ~~must~~ shall notify ~~the department~~ ODA, in writing, that the attorney or representative is to be designated the attorney or representative of record. The notification ~~must~~ shall include the address where ~~the department~~ ODA should mail the notice to the attorney or representative of record. The mailing of notice to the provider's attorney or representative is not deemed to perfect service of the notice. Failure to mail a copy of the notice to the attorney or representative of record ~~will~~ shall not result in failure of otherwise perfected service upon the provider. ~~In those instances where~~ If a provider is a corporation doing business in Ohio or is incorporated in Ohio, the mailing of notice to the corporation's statutory agent pursuant to sections 1701.07 and 1703.19 of the Revised Code ~~will~~ shall perfect service ~~provided that~~ if ODA complies with all the requirements of paragraph (A) of this rule ~~have been complied with~~.

- (C) ~~Whenever~~ If the notice required by paragraph (A) of this rule is returned because of inability to deliver, ODA may either have its employee or designee make personal delivery of the notice upon the party at any time or may cause the notice to be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the last known place of residence or business of the provider is located. ~~The department~~ ODA will ~~shall~~ mail, ~~first-class~~ ordinary mail, proof of publication, and a copy of the first publication of the notice in a newspaper to the provider at the provider's last known place of residence or business. The notice is deemed received as of the date of last publication.
- (~~D~~) ~~Nothing in this rule is to be construed to limit or otherwise prohibit the department's utilization of sections 1701.07 and 1703.19 of the Revised Code to perfect service of process.~~

Effective: 09/29/2011

R.C. 119.032 review dates: 07/13/2011 and 09/29/2016

CERTIFIED ELECTRONICALLY

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Certification

09/19/2011

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Date

Promulgated Under: 119.03  
Statutory Authority: 173.01, 173.02, 173.391, 5111.89  
Rule Amplifies: Chapter 119., 173.391, 173.403, 173.431, 5111.89  
Prior Effective Dates: 03/31/2006