

*** DRAFT - NOT YET FILED ***

TO BE RESCINDED

In the proposed new rule, ODA proposes to replace the long-winded, multi-paragraph, run-on sentence that comprises most of the rule with topically-organized paragraphs that each consist of complete sentences.

ODA proposes to delete the reference to the Alzheimer's Respite program because the chapter does not apply to that program.

173-3-06

Mandatory clauses.

In the proposed new rule, ODA proposes to replace the title with "Older Americans Act: requirements for every contract and grant agreement."

(A) In each provider agreement entered into under Chapter 173-3 or Chapter 173-4 of the Administrative Code, for the provision of services that are funded in part or in full with Older Americans Act funds, senior community services funds, or Alzheimer's respite program funds, the AAA shall include:

ODA has discovered that providers do not know that their AAA-provider agreements are regulated by the Older Americans Act and this chapter. How, then, would they know if their agreement was valid? Would they know their appeal rights? In (B)(1) of the proposed new rule, ODA proposes to replace this requirement with a requirement to insert a statement that informs providers of the name of the federal program that funds them and the name of the pass-through entity that regulates them.

- (1) A clause requiring the provider to comply with rule 173-3-06.1 of the Administrative Code, if providing an adult day service; rule 173-3-06.2 of the Administrative Code, if providing a chore service; rule 173-3-06.3 of the Administrative Code, if providing a home maintenance, modification, or repair service; rule 173-3-06.4 of the Administrative Code, if providing a homemaker service; rule 173-3-06.5 of the Administrative Code, if providing a personal care service; rule 173-3-06.6 of the Administrative Code, if providing a transportation service; rule 173-4-05 of the Administrative Code, if providing a meal service; rule 173-4-06 of the Administrative Code, if providing a nutrition consultation service; rule 173-4-07 of the Administrative Code, if providing a nutrition education service; rule 173-4-08 of the Administrative Code, if providing a nutrition health screening; or rule 173-4-09 of the Administrative Code, if providing a grocery shopping assistance service; or, if the service the AAA is procuring is not specified in the above rules, a clause requiring the provider to comply with a written specification of the service (e.g., a description of the service and any conditions for providing the service);
- (2) A reference to any federal, state, and local laws, regulations, and federal circulars to which the provider is required to comply;
- (3) A reference to the funding source for the provider agreement by part (as noted in Title III of the Older Americans Act) and by source (e.g., senior community services);
- (4) A description of the compensation, including the amount, method of payment, and any possible non-federal match;
- (5) A clause prohibiting the provider from assigning any of its duties under the provider agreement to another provider without the authorization of the AAA;
- (6) Any clause regarding equal employment opportunities required under Appendix

See (B)(6) of proposed new rule for "sub-contracting" language.

This has been mistaken to imply that AAAs have authority to enforce the laws that fall under the jurisdiction of other government agencies. The intent is to not allow an AAA-provider agreement to stand if the provider needs to operate under the authority of another government agency, but the government agency prohibits the provider from doing so. (E.g., The provider loses a license that is necessary to provide services.) (B)(5)(b) of the proposed new rule clears this up.

A to 45 C.F.R. 74 (October 1, 2013 edition) or 45 C.F.R 92.36(i) (October 1, 2013 edition);

- (7) If the provider agreement regards services reimbursed by Older Americans Act funds, a clause requiring the provider to satisfy the service needs of older persons with the greatest economic and social needs with particular attention to older persons who are low-income, who are low-income minorities, who have limited proficiency in the English language, who reside in rural areas, and who are at risk for institutional placement;
- (8) If the provider agreement regards services reimbursed by Older Americans Act funds, a clause requiring the provider to meet the AAA's specific objectives for giving service priority to specific consumer groups;
- (9) A list of focal points in the service area covered by the provider agreement that the AAA has designated under Section 306(a)(3)(B) of the Older Americans Act;
- (10) A clause requiring the provider to comply with the requirements regarding consumer contributions under rule 173-3-07 of the Administrative Code;
- (11) A clause requiring the provider to cooperate with the AAA and ODA, to assess the extent of the disaster impact upon persons aged sixty years and over, and to coordinate the public and private resources in the field of aging in order to assist older disaster victims whenever the president of the United States declares that the provider's service area is a disaster area;
- (12) A clause requiring any provider who is a mandatory reporter to immediately notify the county department of job and family services, or the agency the county department of job and family services designates to provide adult protective services, once the provider has reasonable cause to believe a consumer is the victim of abuse, neglect, or exploitation;
- (13) A clause requiring the provider to notify the AAA of any significant change that may necessitate a reassessment the service needs of a consumer in a care-coordination program no later than one business day after the provider is aware of a repeated refusal to receive services; changes in the consumer's physical, mental, or emotional status; documented changes in the consumer's environmental conditions; or, other significant, documented changes to the consumer's health and safety;
- (14) A clause requiring the provider to notify the AAA and the consumer in writing

of the anticipated last day of service to a consumer in a care-coordination program no later than thirty business days before the anticipated last day of service, unless the reason for discontinuing the service is the hospitalization, institutionalization, or death of the consumer; serious risk to the health or safety of the provider; the consumer's decision to discontinue the service; or a similar reason why the provider is unable to notify the AAA thirty days before the anticipated last day of service. The provider shall also notify the consumer how he or she may reach a long-term care ombudsman;

(15) A clause prohibiting the provider from using or disclosing any information concerning a consumer for any purpose directly associated with the provision of services, unless the provider has documentation of the consumer's consent to do so;

(16) A clause prohibiting the provider from using or disclosing any information concerning a consumer for any purpose not directly associated with the provision of services, even if the consumer consents to doing so;

See (B)(5)(a) of proposed new rule for new language that unveils a "hidden" requirement to open sealed criminal records in ORC§179.572(B)(1).

(17) A clause requiring the provider to comply with the database reviews and criminal records check requirements under section 173.38 of the Revised Code and Chapter 173-9 of the Administrative Code;

(18) A clause requiring the provider to return any funds received for providing services, if the provision of the services did not comply with the Administrative Code, the Revised Code, or any other law that regulates the provider or the services provided;

(19) A clause requiring the provider to store consumer records in a designated, locked storage space;

See (B)(4)(c) of proposed new rule an allowance for storing records electronically.

(20) A clause requiring the provider to retain any record relating to costs, work performed, supporting documentation for payment of work performed, and all deliverables until the latter of:

- (a) Three years after the date the provider receives payment for the service;
- (b) The date on which ODA, the AAA, or a duly-authorized law enforcement official concludes monitoring the records and any findings are finally settled; or,
- (c) The date on which the auditor of the state of Ohio, the inspector general, or a duly-authorized law enforcement official concludes an audit of the

records and any findings are finally settled.

- (21) A description of the review, monitoring, and audit rights of the provider, the AAA, ODA, and the administration on aging;
 - (22) A description of the grounds (and the process) for modifying, suspending, or terminating the provider agreement;
 - (23) A statement that any amendments to laws, rules, or regulations cited in the provider agreement will result in a correlative modification to the provider agreement without the necessity of executing a written amendment;
 - (24) If the provider agreement regards a service that is reimbursed by Older Americans Act funds, a description of the right to appeal (and the process for appealing) a decision on provider agreement that cites rule 173-3-09 of the Administrative Code; and,
 - (25) A statement that the AAA may terminate the agreement without obligation if ODA determines, through the appeals process or through monitoring, that the provider agreement was entered into inappropriately.
- (B) If a provider agreement contains a clause that allows the AAA to renew the agreement after the agreement has been in effect for a year, the AAA shall include the following clauses in the agreement:
- (1) If the provider does not demonstrate satisfactory performance, the AAA may terminate the agreement;
 - (2) If funds are not available to pay for the service, product, or program for a subsequent year, the AAA may terminate the agreement; or,
 - (3) If a situation arises that was unforeseen at the time that the AAA and the provider entered into the provider agreement, the AAA may terminate the agreement. Examples of an unforeseen situation are a change in market conditions or a change in the law that regulates the service, product, or program that is procured by the agreement.
- (C) An AAA may incorporate additional clauses into a provider agreement beyond those required by paragraphs (A) and (B) of this rule, so long as the additional clauses do not conflict with any state or federal law. (e.g., delegation of the collection of consumer contributions)

It is no longer necessary to retain this rule language.

→(D) This rule applies only to provider agreements entered into by the AAA after February fifteen, two thousand nine, which was the effective date of the first time ODA adopted this rule.

173-3-06

TO BE RESCINDED

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Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under:

119.03

Statutory Authority:

173.01, 173.02, 173.392; Section 305(a)(1)(C) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; 45 C.F.R. 1321.11 (October, 2015 edition)

Rule Amplifies:

173.392; Section 305(a)(1)(C) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; 45 C.F.R. Part 75 (December 26, 2014)

Prior Effective Dates:

02/15/2009, 02/14/2010, 08/30/2010, 01/01/2013, 12/19/2013

173-3-06

Older Americans Act: requirements to include in every agreement.

The new rule is differently organized than the current rule. Federal requirements appear before state requirements.

(A) Federal requirements: An AAA shall comply with the following federal requirements when entering into an AAA-provider agreement ("agreement") for goods or services paid, in whole or in part, with Older Americans Act funds, the AAA shall comply with the following:

(1) Uniform administrative requirements, cost principles, and audit requirements for federal awards: The agreement shall comply with 45 C.F.R. 75.327 to 75.335 (December 26, 2014), including Appendix II to 45 C.F.R., Part 75 (December 26, 2014).

(2) Targeting:

(a) In the agreement, the AAA shall list the focal points in the service area covered by the agreement that the AAA designated under Section 306(a)(3)(B) of the Older Americans Act.

(b) In the agreement, the AAA shall require the following:

(i) The provider shall specify how it intends satisfy the need for services by consumers with the greatest economic and social needs with particular attention to consumers who are low-income, who are low-income minorities, who have limited proficiency in the English language, who reside in rural areas, and who are at risk for institutional placement.

(ii) The provider shall meet the AAA's specific objectives for giving services to specific consumer groups.

(3) Additional federal laws: The agreement shall comply with the Older Americans Act and any additional federal law governing, or federal rule regulating, the agreement.

(B) Additional state requirements: Every agreement for goods or services paid, in whole or in part, with Older Americans Act funds shall comply with the following:

(1) Program and funding identification:

This is an update to (A)(3) of the current rule.

(a) In the agreement, the AAA shall identify the names of the federal and state programs that are sources for the Older Americans Act funding being used for the procurement of the goods and services being procured through the agreement.

(b) In the agreement, the AAA shall contain the following statement:

"This agreement is for the provision of goods or services paid with

federal funds that the United States Department of Health and Human Services appropriated to the Ohio Department of Aging (ODA). ODA, in turn, allocated the federal funds to the area agency on aging. The agreement is subject to federal laws and rules, state laws, and ODA's rules."

(2) Additional state laws:

- (a) The agreement shall comply with any rule in Chapters 173-3 or 173-4 of the Administrative Code regulating agreements in general or the provision of specific goods or services being procured through the agreement.
- (b) The agreement shall comply with any additional state law governing, or state rule regulating agreements in general or the provision of specific goods or services being procured through the agreement.

(3) Safety:

- (a) Disasters: In the agreement, the AAA shall require the provider to cooperate with the AAA and ODA to assess disaster impact upon consumers and to coordinate with public and private resources in the field of aging to assist consumers whenever the president of the United States declares that the provider's service area is a disaster area.
- (b) Significant changes: If the provider provides goods and services to a consumer that the AAA case manages through a care-coordination program, in the agreement, the AAA shall require the provider to notify the AAA of any significant change that may necessitate a reassessment the case-managed consumer's need for goods and services no later than one day after the provider is aware of a repeated refusal to receive goods or services; changes in the consumer's physical, mental, or emotional status; documented changes in the consumer's environmental conditions; or, other significant, documented changes to the consumer's health and safety. If "one day after" falls on a weekend or legal holiday, as defined in section 1.14 of the Revised Code, the deadline is extended to the day immediately following "one day after" that is not on a weekend or legal holiday.
- (c) APS: In the agreement, the AAA shall require the provider to immediately report any reasonable cause to believe a consumer is the victim of abuse, neglect, or exploitation to the local adult protective services program in accordance with section 5101.61 of the Revised Code.
- (d) Terminating the provision of goods and services: If the provider provides goods or services to a consumer that the AAA case manages through a

care-coordination program, the agreement shall require the provider to notify the AAA and the case-managed consumer in writing of the anticipated last day of goods or services to the case-managed consumer no later than thirty days before the anticipated last day of goods or services, unless the reason for discontinuing the goods or services is the hospitalization, institutionalization, or death of the consumer; serious risk to the health or safety of the provider; the consumer's decision to discontinue the goods or services; or a similar reason why the provider is unable to notify the AAA thirty days before the anticipated last day of goods or services. The provider shall also notify the case-managed consumer how he or she may reach a long-term care ombudsman. If the thirtieth day falls on a weekend or legal holiday, as defined in section 1.14 of the Revised Code, the deadline is extended to the day immediately after the thirtieth day that is not on a weekend or a legal holiday.

(4) Confidentiality: In the agreement, the AAA shall include the following requirements:

(a) The provider shall not disclose information concerning a consumer unless the provider obtains and retains the consumer's written, informed consent to do so and the purpose for the disclosure is associated with the provider's provision of goods and services to the consumer.

(b) The provider shall not disclose information concerning a consumer for a purpose unassociated with the provider's provision of goods and services even if the provider obtains and retains the consumer's written, informed consent to do so.

New cost-saving method

(c) If the provider retains consumers' records electronically, the provider shall store the records in a password-protected file. If the provider does not retain records electronically, the provider shall store consumers' records in a designated, locked storage space.

(5) Provider qualifications: In the agreement, the AAA shall include the following requirements:

(a) When hiring an applicant for, or retaining an employee in, a paid direct-care position, the provider shall review databases and criminal records checks according to section 173.38 of the Revised Code and Chapter 173-9 of the Administrative Code, unless the provider is self-employed. If the provider is self-employed, the AAA shall review databases and check criminal records of the provider according to section 173.381 of the Revised Code and Chapter 173-9 of the Administrative Code. Division (B)(1) of section 109.572 of the Revised Code requires the bureau of criminal identification and investigation to

Although the requirements in ORC§109.572(B)(1) presently exist, not many know where to find the law. Listing the requirement here should unbury the requirement.

include sealed criminal records in its criminal records reports for criminal records checks conducted under sections 173.38 and 173.381 of the Revised Code.

Update on (A)
(2) of the
current rule.

(b) If a federal, state, or local government regulatory authority prohibits the provider from providing the goods or services required by the agreement, the provider shall notify the AAA of the disciplinary action and the AAA shall, simultaneous to the date of the regulatory authority's disciplinary action, deem the provider to be ineligible to be paid with Older Americans Act funds for providing goods or services to consumers.

(6) Sub-contracting: In the agreement, the AAA shall prohibit the provider from sub-contracting any of its duties under the agreement to another provider unless the provider obtains authorization from the AAA before sub-contracting.

This is an update to (A)(5) in the current rule.

(7) Modification:

(a) In the agreement, the AAA shall describe the grounds (and the process) for modifying the agreement.

(b) In the agreement, the AAA shall state that any amendments to the laws, rules, or regulations the AAA cites in the agreement will result in a correlative modification to the agreement without the necessity of executing a written amendment.

(8) Renewable and multi-year: If the agreement is renewable or covers a multi-year term, the agreement shall comply with rule 173-3-05.1 of the Administrative Code.

(9) Service verification and records retention:

New cost-saving
protection for
providers.

(a) In no agreement, shall an AAA prohibit a provider from using electronic systems to verify the provision of goods or services or to retain records.

(b) In the agreement, the AAA shall require providers to retain any record relating to costs, goods and services provided, supporting documentation for payment of goods and services provided, and all deliverables until the last of the following dates:

(i) Three years after the date the provider receives payment for the goods or services.

(ii) The date on which ODA, the AAA, or a duly-authorized law enforcement official concludes monitoring the records and any findings are finally settled.

(iii) The date on which the auditor of the state of Ohio, the inspector general, or a duly-authorized law enforcement official concludes an audit of the records and any findings are finally settled.

(10) Payment:

(a) In the agreement, the AAA shall describe how it shall pay the provider, including the amount and payment method.

(b) In the agreement, the AAA shall include the following requirements:

(i) The provider shall comply with rule 173-3-07 of the Administrative Code.

(ii) The provider shall return any Older Americans Act funds payments for its goods or services, if the provider's provision of the goods or services did not comply with the Administrative Code, the Revised Code, or any other law.

(11) Administrative hearings:

(a) In the agreement, the AAA shall state that the provider may appeal a decision the AAA takes against the provider according to rule 173-3-09 of the Administrative Code.

(b) If the AAA intends to redistribute unearned funds to other providers, in the agreement, the AAA shall state that it may redistribute funds if a provider is not, in a timely manner, earning the funds it was awarded and if the AAA determines the provider is not, in a timely manner earning the funds it was awarded in the agreement.

(C) An AAA may add requirements into an agreement in addition to the requirements in paragraphs (A) and (B) of this rule if the additional requirements do not conflict with any federal or state law.