173-42-06 **Consumer choices and responsibilities.**

(A) Choices:

(1) Section 1902(a)(23) of the "Social Security Act" allows any consumer who is enrolled in the PASSPORT program to choose to obtain a service under the PASSPORT program from any agency, non-agency, or consumer-directed personal care provider if:

(a) The provider agrees to provide the service to the consumer;

(b) ODA certifies the provider to furnish the service;

(c) The case manager authorizes the service in the consumer's service plan;

(d) ODJFS enters into a medicaid provider agreement with the provider; and,

(e) If the consumer chooses a consumer-directed personal care provider, the case manager determines that the consumer is able to direct services under paragraph (B)(1)(b) of this rule.

(2) ODA's designee shall assure the health and welfare of each consumer while acknowledging that, according to this rule, every consumer has a right to make informed choices that may impact his or her life.

(B) Responsibilities related to developing a service plan:

(1) To help the case manager develop a service plan that best addresses the consumer's needs, the consumer shall do the following:

(a) The consumer and the case manager shall meet face-to-face to develop his or her service plan. The consumer shall decide if anyone other than the case manager shall participate this meeting.

(b) If the consumer chooses to receive a service from a consumer-directed personal care provider, the case manager shall assess the consumer's strengths and weaknesses (and/or, if the consumer has an authorized representative, the authorized representative's strengths or weaknesses) related to his or her ability to direct a provider. The case manager shall retain records supporting the determination. The case manager shall allow the consumer to direct a provider if the case manager's assessment establishes that the consumer demonstrates an understanding of the elements of the service the provider shall furnish, an understanding of how to direct the provider, and an understanding of, and ability to, perform the responsibilities of an employer, including:

(i) Completion of any consumer training that ODA (or ODA's designee)

requires;

(ii) Understanding which service activities are covered according to rule 173-39-02.11 of the Administrative Code;

(iii) Understanding of the criminal records check requirements under rule 173-9-01 of the Administrative Code;

(iv) Understanding of the methods for selecting and dismissing providers;

(v) Understanding of the methods for entering into written agreements with providers for specific activities;

(vi) Understanding of the methods for training providers to meet the consumer's specific needs;

(vii) Understanding of the methods for supervising and monitoring the provider's performance of specific activities, including written approval of the provider's time sheets;

(viii) Development of a back-up plan for furnishing services if a provider is unable to furnish the agreed-upon service;

(ix) Understanding of the methods for lodging complaints, including use of the regional and state long term care ombudsman, and familiarity with how to contact the state long-term care ombudsman;

(x) Familiarity with state appeal and fair hearing request procedures;

(xi) Understanding of the record-retention requirements; and,

(xii) An ability to manage the provider when he or she furnishes a service.

(c) If the case manager developed a service plan according to his or her determination that the consumer (and/or, the consumer's authorized representative) was able to direct a consumer-directed personal care provider according to paragraph (B)(1)(b) of this rule, but the case manager later determines that the consumer is no longer able to direct a provider, the case manager shall implement an alternative service plan utilizing an agency or non-agency provider in place of the consumer-directed personal care provider.

(d) The consumer shall notify the case manager if the consumer desires to change the type of provider from whom he or she receives a service. If

the consumer who directs a consumer-directed personal care provider desires to receive a service from another provider type, ODA's designee shall identify and secure a provider of another type. If a consumer who does not direct a consumer-directed personal care provider desires to receive a service from a consumer-directed personal care provider, ODA's designee shall conduct the assessment under paragraph (B)(1)(b) of this rule.

(e) After the case manager has developed the service plan, the consumer shall notify the case manager of any significant change that may affect his or her service needs, including a change that may require more or fewer hours of service, and the case manager shall revise the service plan accordingly. Significant changes include:

(i) The consumer moves to another address; or,

(ii) The consumer's physical, mental, or emotional status changes; the consumer's environmental conditions change; or other health and safety issues.

(2) The consumer shall inform each provider of his or her personal preferences about how the provider will furnish the duties, tasks, or interventions that the case manager authorizes in the consumer's service plan.

(3) The consumer shall allow the case manager to exchange information with any of the consumer's service providers on a need-to-know basis.

(C) Consumer responsibilities related to the provider furnishing services:

(1) Agency provider: If the consumer chooses to receive a service from an agency provider:

(a) The consumer shall not aid the provider's staff in furnishing a service, nor request that the provider's staff furnish a service, in a manner that does not comply with any rule or law that regulates the provider, including rule 173-39-02 of the Administrative Code. The requirements of rule 173-39-02 of the Administrative Code include requiring the provider's staff to adhere to the provider's ethical standards and the provider's written policies.

(b) The consumer shall report any incident involving the provider's staff to the case manager.

(c) The consumer shall notify the provider if he or she is going to miss a scheduled service episode, unless the provider is already informed of the consumer's absence.

(d) The consumer shall notify the provider if the provider's staff misses a scheduled service episode.

(e) Immediately following the conclusion of each episode of service, the consumer shall provide the provider's staff with his or her signature to verify that the provider's staff furnished the service. The consumer shall never sign blank timesheets or timesheets that the provider's staff completes before furnishing services.

(f) ODA's designee shall act as a facilitator to resolve conflicts between the consumer and the provider.

(2) Non-agency provider: If the consumer chooses to receive a service from a non-agency provider:

(a) The consumer shall not aid the provider in furnishing a service in a manner that does not comply with any rule or law that regulates the provider, including rule 173-39-02 of the Administrative Code.

(b) The consumer shall report any incident involving the provider to the case manager.

(c) The consumer shall notify the provider if he or she is going to miss a scheduled service episode, unless the provider is already informed of the consumer's absence.

(d) Immediately following the conclusion of each episode of service, the consumer shall provide the provider with his or her signature to verify that the provider furnished the service. The consumer shall never sign blank timesheets or timesheets that the provider completes before furnishing services.

(e) ODA's designee shall act as a facilitator to resolve conflicts between the consumer and the provider.

(3) Consumer-directed personal care provider: If the consumer chooses to receive a service from a consumer-directed personal care provider:

(a) The consumer shall recruit, select, and dismiss his or her consumer-directed personal care provider and the case manager shall assist the consumer in these responsibilities.

(b) The case manager shall provide the consumer with a list of the consumer's rights and responsibilities listed in this rule, with the provider's requirements under rules 173-39-02 and 173-39-02.11 of the Administrative Code, and with other medicaid waiver information and

materials. In doing so, ODA's designee shall use communication mechanisms that are most effective for the consumer. The case manager shall review these materials with the consumer and assist him or her to understand his or her specific responsibilities.

(c) The consumer shall not aid the provider in furnishing a service in a manner that does not comply with any rule or law that regulates the provider, including rules 173-39-02 and 173-39-02.11 of the Administrative Code.

(d) The consumer and the case manager shall work together to develop a back-up plan for furnishing the service if the provider cannot, or does not, meet his or her obligation to furnish services for the consumer.

(e) The consumer shall report any incident involving the provider to the case manager. In turn, the case manager shall investigate any reported incident and report any incident that may impact the health and welfare of the consumer to ODA.

(f) The case manager shall assist the consumer in resolving conflicts between the consumer and the provider.

(g) The consumer shall notify the provider if he or she is going to miss a scheduled service episode, unless the provider is already informed of the consumer's upcoming absence.

(h) The consumer shall work with the case manager and the provider to decide what, if any, additional orientation or training within the provider's scope of practice is necessary for the provider to complete to meet the consumer's needs. The consumer and the case manager shall work with the provider to secure the educational opportunity.

(i) The consumer shall work with the case manager and the provider to decide what, if any, continuing education requirement within the provider's scope of practice is necessary to meet the consumer's expectations. The consumer and the case manager shall work with the provider to secure the educational opportunity. (The consumer may participate in the continuing education.)

(j) The case manager shall assist the consumer to retain records that identify the method by which the consumer will verify that the provider furnishes each episode of service according to the service plan.

(k) Immediately following the conclusion of each episode of service, the consumer shall provide the provider with his or her signature to verify that the provider furnished the service. The consumer shall never sign blank timesheets or timesheets that the provider completes before

furnishing services.

(l) The consumer shall work with ODA's designated financial management service for consumers who direct consumer-directed personal care providers under the PASSPORT program.

(m) The consumer shall designate a location in his or her home in which the provider may safely store a copy of the consumer's activity plan in a manner that protects the consumer's confidentiality. (Having a copy of the activity plan in the consumer's home contributes to the provider's ability to adhere to the activity plan.)

(n) The consumer and ODA's designee shall work together to monitor the provider's performance.

(o) ODA's designee shall communicate with the consumer in a manner that protects the consumer's right to confidentiality.

(p) ODA's designee shall act as a facilitator to resolve conflicts between the consumer and the provider.

(D) Authorized representative: If a consumer has an authorized representative, the consumer's authorized representative may represent the consumer for any purpose under this rule.

(E) Definitions for this rule:

(1) "Agency provider," "non-agency provider," and "consumer-directed personal care provider" have the same meaning as in rule 173-39-01 of the Administrative Code.

(2) "Incident" has the same meaning as in rule 173-39-01 of the Administrative Code.

(3) "Financial management service" has the same meaning as in rule 5101:3-31-02 of the Administrative Code.

(4) "Signature" has the same meaning as "consumer signature" in rule 173-39-01 of the Administrative Code.

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Certification

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Date

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