

173-3-06

Older Americans Act: requirements to include in every AAA-provider agreement.

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

- (1) The Older Americans Act.
- (2) Subparts C and D of 45 C.F.R. Part 1321.
- (3) 45 C.F.R. 75.327 to 75.335, including Appendix II to 45 C.F.R. Part 75.
- (4) Any additional federal law ~~governing, or federal rule regulating, or executive order with jurisdiction over~~ the agreement or any service procured through the agreement.

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

- (1) Program and funding identification:
 - (a) ~~In the~~ 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~~ to pay for the services ~~being procured through the agreement.~~
 - (b) ~~In the~~ The agreement, ~~the AAA~~ shall contain the following statement:

"This agreement is for the provision of 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 and state laws, and rules, ~~state laws, and ODA's rules,~~ and executive orders with jurisdiction over the agreement or any service procured through the agreement."

(2) Additional state laws:

- (a) The agreement ~~shall comply with~~ is subject to any rule in this chapter or Chapter 173-4 of the Administrative Code regulating agreements in general or the provision of any service being procured through the agreement.

- (b) The agreement ~~shall comply with~~ is subject to any additional state law ~~governing, or state rule regulating, or executive order with jurisdiction~~ over agreements in general or the provision of any service ~~being procured~~ through the agreement.

(3) Safety:

- (a) Disasters: ~~In the~~ 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 a service to a consumer who is enrolled in a case management service as part of care coordination, ~~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 the service no later than one day after the provider is aware of a repeated refusal to receive the service; 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, 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~~ 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 5101.63 of the Revised Code.
- (d) Discontinuing the provision of services: If the provider provides a service to a consumer who is enrolled in a case management service with the AAA as part of care coordination, the agreement shall require the provider to notify the AAA and the case-managed consumer in writing of the anticipated last day the provider will provide the service to the case-managed consumer no later than thirty days before the anticipated last day, 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 and the case-managed consumer thirty days before the anticipated last day. The

provider shall also notify the case-managed consumer on how he or she may to reach a long-term care ombudsman. If the thirtieth day falls on a weekend or legal holiday, 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~~ The agreement, ~~the AAA~~ shall include any federal or state confidentiality requirements, including the following:

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

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

(c) ~~If the provider retains consumers' records electronically, the~~ The provider shall store ~~their each~~ each consumer's electronic records in a password-protected file. ~~If the provider does not retain consumers' records electronically, the provider shall store their~~ and physical 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 check criminal records according to~~ is subject to section 173.38 of the Revised Code and Chapter 173-9 of the Administrative Code, ~~unless the provider is or if 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.

(b) If a federal, state, or local government regulatory authority prohibits the provider from providing ~~the services a~~ service 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 ~~services that~~ that service to consumers.

- (6) Subcontracting: ~~In the~~ The agreement, ~~the AAA~~ shall require the provider to obtain authorization from the AAA before subcontracting any of its duties under the agreement to another provider.
- (7) Modification:
- (a) ~~In the~~ The agreement, ~~the AAA~~ shall describe the grounds (and the process) for modifying the agreement.
- (b) ~~In the~~ The agreement, ~~the AAA~~ shall state that if an amendment to, repeal, or rescission of any law, rule, or regulation ~~(or the repeal or rescission of any law, rule, or regulation)~~ cited in the agreement would change the responsibilities of the AAA, the provider, or both the AAA and provider, then the AAA, the provider, or both the AAA and provider shall comply with the amended amendment, repeal, or rescission of the law, rule, or regulation ~~(or the repeal or rescission of a law, rule, or regulation)~~ even if the agreement is not updated before the amendment ~~(or, repeal, or rescission)~~ takes effect.
- (c) ~~In every~~ Every new agreement, ~~the AAA~~ shall require the provider to sign up for email updates on ODA's rules on <https://aging.ohio.gov/wps/portal/gov/aging/see-news-and-events/subscribe/subscribe>.
- (8) Renewable and multi-year agreements: If the agreement is renewable or covers a multi-year term, the agreement ~~shall comply with~~ is subject to the requirements for renewable or multi-year agreements under rule 173-3-05.1-173-3-05 of the Administrative Code.
- (9) Records: ~~In the~~ The agreement, ~~the AAA~~ shall include the following permissions and requirements:
- (a) Permission to use an electronic system to collect or retain records.
- (b) A requirement to retain any record relating to ~~costs, services provided, supporting documentation for payment of services provided,~~ including activity plans (if required), assessments (if required), permits (if required), evaluations (if required), and mandatory reporting items to verify a unit of service, ~~and all deliverables~~ until all of the following periods of time have passed:
- (i) Three years after the date the provider receives payment for the 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.
- (c) A requirement to retain all records regarding an employee's background checks and qualifications, including records on initial qualifications, ~~and~~ successful completion of orientation and subsequent training (if required), and performance reviews (if required) until all of the following periods of time have passed:
- (i) Three years after the date the provider no longer retains the employee.
 - (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.
- (d) A requirement to participate in good faith in, ~~and assist the AAA and ODA with the scheduling of,~~ the monitoring of the provider's provision of services. To participate in good faith includes assisting the AAA and ODA with the scheduling of monitoring and providing the AAA and ODA with access to its business site(s) during the provider's normal business hours, a place to work in its business site(s), and access to policies and records for each unit of service billed.

(10) Payment:

- (a) ~~In the~~ The agreement, ~~the AAA~~ shall describe how ~~it shall pay the AAA~~ pays the provider, including the amount and payment method.
- (b) ~~In the~~ The agreement, ~~the AAA~~ shall include the following requirements:
 - (i) ~~The provider shall comply with~~ requirements in rule 173-3-07 of the Administrative Code.
 - (ii) ~~The provider shall~~ requirement to return any Older Americans Act funds payments for its services, if the provider's provision of

the services did not comply with the ~~Administrative Code, the Revised Code, or any other law~~ laws, rules, or executive orders with jurisdiction over the provision of the service.

(11) Administrative hearings:

- (a) ~~In the~~ The agreement, ~~the AAA~~ shall state that the provider may appeal an action the AAA takes against the provider according to rule 173-3-09 of the Administrative Code and state the procedures by which the provider may appeal the adverse action.
 - (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 to 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 laws, ~~or rules,~~ or executive orders with jurisdiction over the agreement or state laws, ~~or rules,~~ or executive orders with jurisdiction over the agreement.

Effective: 1/1/2023
Five Year Review (FYR) Dates: 10/14/2022 and 11/30/2027

CERTIFIED ELECTRONICALLY

Certification

12/19/2022

Date

Promulgated Under: 119.03
Statutory Authority: 121.07, 173.01, 173.02, 173.392; 42 U.S.C. 3025; 45 C.F.R. 1321.11
Rule Amplifies: 173.39, 173.392; 42 U.S.C. 3030d; 45 C.F.R. Part 75, 1321.11, 1321.53, 1321.65, 1321.67
Prior Effective Dates: 02/15/2009, 02/14/2010, 08/30/2010, 01/01/2013, 12/19/2013, 08/01/2016, 06/01/2018, 06/11/2020 (Emer.), 12/31/2020, 01/29/2022