

TO BE RESCINDED

173-39-02

ODA provider certification: requirements for every provider.

- (A) Introduction: This rule presents the requirements for each of the five types of ODA-certified providers: agency providers, non-agency providers, participant-directed individual providers, assisted living providers, and participant-directed personal care providers.
- (B) Agency providers: These are the requirements for any provider who seeks to become, or to remain, an ODA-certified agency provider:
- (1) Service provision:
- (a) The provider shall comply with any rule in Chapter 173-39 of the Administrative Code regulating a good or service ODA certified the provider to provide.
 - (b) The provider may provide a good or service not authorized by the individual's service plan, but ODA (or its designee) only pays the provider for providing goods or services authorized by the individual's service plan.
 - (c) The provider shall notify ODA (or its designee) no later than one business day after the provider is aware of any significant change that may affect an individual's service needs, including one or more of the following:
 - (i) The provider does not provide an authorized good or service at the time (or, for the period of time) authorized by the case manager.
 - (ii) The individual moves to another address.
 - (iii) The provider is aware of any significant change impacting the provision of goods or services to the individual, including the individual's repeated refusal of goods or services.
 - (iv) The individual's physical, mental, or emotional status changes, or the provider can document changes in the environmental conditions or other health and safety issues.
 - (d) The provider shall notify the individual and ODA's designee in writing at least thirty days before the last day the provider provides goods or services to the individual, unless:

- (i) The individual has been hospitalized, placed in a long-term care facility, or is deceased;
 - (ii) The health or safety of the individual or provider is at serious, imminent risk; and,
 - (iii) The individual chooses to no longer receive goods or services from the provider.
- (e) The provider shall adopt and implement ethical standards to require its staff members to provide goods and services in an ethical professional, respectful, and legal manner and not engage in any unethical, unprofessional, disrespectful, or illegal behavior including the following behaviors:
- (i) Consuming the individual's food or drink, or using the individual's personal property without his or her consent.
 - (ii) Bringing a child, friend, relative, or anyone else, or a pet, to the individual's place of residence.
 - (iii) Taking the individual to the provider's place of business, unless the place of business is the care setting.
 - (iv) Consuming alcohol while providing goods or services to the individual.
 - (v) Consuming medicine, drugs, or other chemical substances in a way that is illegal, unprescribed, or impairs the provider from providing goods or services to the individual.
 - (vi) Discussing religion or politics with the individual and others in the care setting.
 - (vii) Discussing personal issues with the individual or any other person in the care setting.
 - (viii) Accepting, obtaining, or attempting to obtain money, or anything of value, including gifts or tips, from the individual or his or her household members or family members.
 - (ix) Engaging the individual in sexual conduct, or in conduct a reasonable person would interpret as sexual in nature, even if the conduct is consensual.

- (x) Leaving the individual's home for a purpose not related to providing a service without notifying the agency supervisor, the individual's emergency contact person, any identified caregiver, or the individual's case manager. "Emergency contact person" means a person the individual or caregiver wants the provider to contact in the event of an emergency to inform the person about the nature of the emergency.
- (xi) Engaging in any activity that may distract the provider from providing goods or services, including the following activities:
 - (a) Watching television or playing computer or video games, including on the provider's phone or the individual's phone.
 - (b) Non-care-related socialization with a person other than the individual (e.g., a visit from a person who is not providing care to the individual; making or receiving a personal telephone call; or, sending or receiving a personal text message, email, or video).
 - (c) Providing care to a person other than the individual.
 - (d) Smoking without the individual's consent.
 - (e) Sleeping.
- (xii) Engaging in behavior that causes, or may cause, physical, verbal, mental, or emotional distress or abuse to the individual including publishing any manner of photos of the individual on social media websites without the individual's written consent.
- (xiii) Engaging in behavior a reasonable person would interpret as inappropriate involvement in the individual's personal relationships.
- (xiv) Making decisions, or being designated to make decisions, for the individual in any capacity involving a declaration for mental health treatment, power of attorney, durable power of attorney, guardianship; or authorized representative.
- (xv) Selling to, or purchasing from, the individual products or personal items, unless the provider is the individual's family member who does so only when not providing goods or services.

(xvi) Engaging in behavior constituting a conflict of interest, or taking advantage of, or manipulating services resulting in an unintended advantage for personal gain that has detrimental results to the individual, the individual's family or caregivers, or another provider.

(f) The provider shall only provide services to individuals in settings meeting the home and community-based setting characteristics set forth in rule 5160-44-01 of the Administrative Code.

(2) Safety:

(a) The provider shall have a written procedure for documenting individual's incidents. The procedure shall include notifying ODA (or its designee) of the incident no later than one business day after the provider is aware of the incident.

(b) The provider shall report any reasonable cause to believe an individual suffered abuse, neglect, or exploitation to the CDJFS (or its designee), as required by section 5101.61 of the Revised Code. The provider shall also notify ODA (or its designee) of the reasonable cause.

(c) The provider shall maintain a minimum of one million dollars in commercial liability insurance.

(d) The provider shall maintain insurance coverage for individual loss due to theft or property damage and provide written instructions that any individual may use to obtain payment for a loss due to employee theft or property damage.

(3) Confidentiality: The provider shall comply with all state and federal laws and regulations governing individual confidentiality including 42 C.F.R. 431.300 to 431.307 (October 1, 2015 edition), and 45 C.F.R. parts 160, 162, and 164 (October 1, 2015 edition).

(4) Provider qualifications:

(a) At the point of application, the provider shall have at least three months of experience doing all of the following:

(i) The provider has been providing the specific goods and services for which it seeks certification from ODA to provide to at least two Ohio adults in the community.

- (ii) The provider has been providing the goods and services in paragraph (B)(4)(a)(i) of the rule as a business entity with an active registration from the Ohio secretary of state.
 - (iii) The provider was paid for providing the goods and services in paragraph (B)(4)(a)(i) of the rule.
- (b) The provider shall disclose all entities that own at least five per cent of the provider's business.
- (c) The provider shall have a written statement defining the purpose of the provider's business.
- (d) The provider shall have written policies. Additionally, if the provider has a governing board, the provider shall have written bylaws; and, if the provider is incorporated, the provider shall have written articles of incorporation.
- (e) The provider shall have a written table of organization clearly identifying lines of administrative, advisory, contractual, and supervisory authority.
- (f) The provider shall not allow a staff person to provide goods or services to a individual if the person is the individual's spouse, parent, step-parent, legal guardian, power of attorney, or authorized representative.
- (g) The provider shall not allow a volunteer to provide any aspect of providing goods or services ODA certified the provider to provide individual without supervision by the provider's supervisory staff.
- (h) The provider shall maintain a physical facility from which to conduct business that has all of the following:
 - (i) A primary business telephone number locally listed (e.g., in the telephone book in the provider's area of business) under the name of the business or a toll-free telephone number available through directory assistance that allows for reliable, dependable, and accessible communication.
 - (ii) A designated, locked storage space for retaining individuals' records.
- (i) The provider shall comply with all applicable federal, state, and local laws.

- (j) The provider shall disclose the identity of any person who is an owner or has control over the agency if that person was convicted of a felony under state or federal law.
 - (k) 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 section 173.38 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 include sealed criminal records in its criminal records reports for criminal records checks conducted under section 173.38 of the Revised Code.
 - (l) The provider shall have a written statement supporting compliance with 45 C.F.R. 80.4 (October 1, 2015 edition) regarding the provision of goods and services.
 - (m) The provider shall have a written statement supporting compliance with the "Equal Employment Opportunity Act of 1972" (as in effect on March 4, 2016) federal wage-and-hour laws, and workers' compensation laws regarding the recruitment and employment of persons.
 - (n) The provider shall annually provide to ODA (or its designee) a written statement certifying that the provider paid all applicable federal, state, and local income and employment taxes.
 - (o) The provider shall participate in ODA's (or its designee's) mandatory free provider training sessions.
- (5) Monitoring:
- (a) Records retention: The provider shall retain all records necessary, and in such form, so as to fully disclose the extent of the goods and services the provider provided, and significant business transactions, until the latest of the following dates:
 - (i) Six years after the date the provider receives payment for the good or service.
 - (ii) The date on which ODA, ODA's designee, ODM, or a duly-authorized law enforcement official concludes a review of 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.

(b) Access: The provider shall, upon request, immediately provide representatives of ODA (or its designee) with access to its facility, a place to work in its facility, and access to policies, procedures, records, and documentation for each unit of service billed.

(6) Payment:

(a) The provider shall bill only for a good or service if the provider complies with the requirements under this rule and the requirements, including service-verification requirements, under any rule in Chapter 173-39 of the Administrative Code regulating a good or service ODA certified the provider to provide.

(b) ODA's obligation to pay the provider for the costs of goods and services the provider provides as a certified provider is subject to the hold and review process described in rule 5160-1-27.2 of the Administrative Code.

(c) The provider shall accept the payment rates for goods and services established in the certification agreement as payment in full, and not seek any additional payment for goods and services from the individual or any other person.

(C) Non-agency providers: These are the requirements for any provider who seeks to become, or to remain, an ODA-certified non-agency provider:

(1) Service provision:

(a) The provider shall comply with any rule in Chapter 173-39 of the Administrative Code regulating a good or service ODA certified the provider to provide.

(b) The provider may provide a service not authorized by the individual's service plan, but ODA (or its designee) only pays the provider for providing a good or service authorized by the individual's service plan.

(c) The provider shall notify ODA (or its designee) no later than one business day after the provider is aware of any significant change that may affect the individual's need for goods and services, including one or more of the following:

- (i) The provider does not provide an authorized good or service at the time (or, for the period of time) authorized by the case manager.
 - (ii) The individual moves to another address.
 - (iii) The provider is aware of any significant change impacting the provision of goods or services to the individual, including the individual's repeated refusal of goods or services.
 - (iv) The individual's physical, mental, or emotional status changes, or the provider can document changes in the environmental conditions or other health and safety issues.
- (d) The provider shall notify an individual and ODA's designee in writing at least thirty days before the last day the provider stops providing goods and services ODA certified the provider to provide to the individual, unless:
- (i) The individual has been hospitalized, placed in a long-term care facility, or is deceased;
 - (ii) The health or safety of the individual or provider is at serious, imminent risk; and,
 - (iii) The individual chooses to no longer receive goods or services from the provider.
- (e) The provider shall provide goods and services in an ethical professional, respectful, and legal manner and shall not engage in any unethical, unprofessional, disrespectful, or illegal behavior including the following behaviors:
- (i) Consuming the individual's food or drink, or using the individual's personal property without his or her consent.
 - (ii) Bringing a child, friend, relative, or anyone else, or a pet, to the individual's place of residence.
 - (iii) Taking the individual to his or her place of business, unless the place of business is the care setting.
 - (iv) Consuming alcohol while providing goods or services to the individual.

- (v) Consuming medicine, drugs, or other chemical substances in a way that is illegal, unprescribed, or impairs the provider from providing goods or services to the individual.
- (vi) Discussing religion or politics with the individual and others in the care setting.
- (vii) Discussing personal issues with the individual or any other person in the care setting.
- (viii) Accepting, obtaining, or attempting to obtain money, or anything of value, including gifts or tips, from the individual or his or her household members or family members.
- (ix) Engaging the individual in sexual conduct, or in conduct reasonable person would interpret as sexual in nature, even if the conduct is consensual.
- (x) Leaving the individual's home for a purpose not related to providing goods or services without notifying the individual's emergency contact person, any identified caregiver, or the individual's case manager. "Emergency contact person" means a person the individual or caregiver wants the provider to contact in the event of an emergency to inform the person about the nature of the emergency.
- (xi) Engaging in any activity that may distract the provider from providing goods or services, including the following activities:
 - (a) Watching television or playing computer or video games, including on the provider's phone or the individual's phone.
 - (b) Non-care-related socialization with a person other than the individual (e.g., a visit from a person who is not providing care to the individual; making or receiving a personal telephone call; or, sending or receiving a personal text message, email, or video).
 - (c) Providing care to a person other than the individual.
 - (d) Smoking without the individual's consent.
 - (e) Sleeping.

- (xii) Engaging in behavior that causes, or may cause, physical, verbal, mental, or emotional distress or abuse to the individual including any manner of publishing photos of the individual on social media websites without the individual's written consent.
 - (xiii) Engaging in behavior a reasonable person would interpret as inappropriate involvement in the individual's personal relationships.
 - (xiv) Making decisions, or being designated to make decisions, for the individual in any capacity involving a declaration for mental health treatment, power of attorney, durable power of attorney, guardianship; or authorized representative.
 - (xv) Selling to, or purchasing from, the individual products or personal items, unless the provider is the individual's family member who does so only when not providing goods or services.
 - (xvi) Engaging in behavior constituting a conflict of interest, taking advantage of, or manipulating the provision of goods and services resulting in an unintended advantage for personal gain that has detrimental results to the individual, the individual's family or caregivers, or another provider.
- (f) The provider shall only provide services to individuals in settings meeting the home and community-based setting characteristics set forth in rule 5160-44-01 of the Administrative Code.

(2) Safety:

- (a) The provider shall have a written procedure for documenting individual's incidents. The procedure shall include notifying ODA (or its designee) of the incident no later than one business day after the provider is aware of the incident.
- (b) The provider shall report any reasonable cause to believe an individual suffered abuse, neglect, or exploitation to the CDJFS (or its designee), as required by section 5101.61 of the Revised Code. The provider shall also notify ODA (or its designee) of the reasonable cause.
- (c) The provider shall maintain a minimum of one million dollars in commercial liability insurance or professional liability insurance.

- (d) The provider shall maintain insurance coverage for individual loss due to the theft or property damage caused by the provider and provide written instructions any individual may use to obtain payment for a loss due to theft or property damage caused by the provider.
- (3) Confidentiality: The provider shall comply with all state and federal laws and regulations governing individual confidentiality including 42 C.F.R. 431.300 to 431.307 (October 1, 2015 edition), and 45 C.F.R. parts 160, 162, and 164 (October 1, 2015 edition).
- (4) Provider qualifications:
- (a) The provider shall not provide a service to a individual if he or she is the individual's spouse, parent, step-parent, legal guardian, power of attorney, or authorized representative.
 - (b) The provider shall not allow a volunteer to provide goods or services to an individual except as ODA's designee authorizes the provider to do so through the certification agreement with the provider.
 - (c) The provider shall disclose whether he or she was convicted of a felony under state or federal law.
 - (d) The provider shall comply with the database reviews and criminal records check requirements in 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 include sealed criminal records in its criminal records reports for criminal records checks conducted under section 173.381 of the Revised Code.
 - (e) The provider shall annually provide to ODA (or its designee) a written statement certifying that he or she paid all applicable federal, state, and local income and employment taxes.
 - (f) The provider shall participate in ODA's (and its designee's) mandatory free provider training sessions.
- (5) Monitoring:
- (a) Records retention: The provider shall retain all records necessary, and in such form, so as to fully disclose the extent of the services the provider provided, and significant business transactions, until the latest of the following dates:

- (i) Six years after the date the provider receives payment for the service.
- (ii) The date on which ODA, ODA's designee, ODM, or a duly-authorized law enforcement official concludes a review of 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.

- (b) Access: The provider shall, upon request, immediately provide representatives of ODA (or its designee) with access to his or her workplace, a place to work in his or her workplace, and access to policies, procedures, records, and documentation for each unit of service billed.

(6) Payment:

- (a) The provider shall bill only for a service if the provider complies with the requirements under this rule and the requirements, including service-verification requirements, under any rule in Chapter 173-39 of the Administrative Code regulating a service ODA certified the provider to provide.
- (b) ODA's obligation to pay the provider for the costs of goods and services the provider provides as a certified provider is subject to the hold and review process described in rule 5160-1-27.2 of the Administrative Code.
- (c) The provider shall accept the payment rates established in the certification agreement as payment in full, and not seek any additional payment for those services from the individual or any other person.

(D) participant-directed individual providers: These are the requirements for any person who seeks to become, or to remain, an ODA-certified participant-directed individual provider:

(1) Service provision:

- (a) The provider shall comply with any rule in Chapter 173-39 of the Administrative Code regulating a service ODA certified the provider to provide.
- (b) The provider shall notify ODA (or its designee) no later than one business day after the provider is aware of any significant change that may affect

the individual's need for goods and services, including one or more of the following:

- (i) The individual moves to another address.
 - (ii) The provider is aware of any significant change impacting the provision of goods and services to the individual, including the individual's repeated refusal of goods and services.
 - (iii) The individual's physical, mental or emotional status changes, or the provider can document changes in the environmental conditions or other health and safety issues.
- (c) The provider shall notify the individual and ODA's designee in writing at least thirty days before the last day the provider provides the home care attendant service to the individual, unless the health or safety of the individual or provider is at serious, imminent risk.
- (d) The provider shall provide the home care attendant service in an ethical, professional, respectful, and legal manner and shall not engage in any unethical, unprofessional, disrespectful, or illegal behavior including the following behaviors:
- (i) Consuming alcohol while providing a service to the individual.
 - (ii) Consuming medicine, drugs, or other chemical substances in a way that is illegal, unprescribed, or impairs the provider from providing a service to the individual.
 - (iii) Accepting, obtaining, or attempting to obtain money or anything of value from the individual or his or her household members or family members. However, if the provider is the individual's family member, he or she may accept gifts for birthdays and holidays.
 - (iv) Engaging the individual in sexual conduct, or in conduct a reasonable person would interpret as sexual in nature, even if the conduct is consensual.
 - (v) Leaving the home for a purpose not related to providing a service without the consent or knowledge of the individual.
 - (vi) Engaging in any activity that may distract the provider from providing a service, including:

- (a) Watching television or playing computer or video games, including on the provider's phone or the individual's phone.
- (b) Non-care-related socialization with a person other than the individual (e.g., a visit from a person who is not providing care to the individual; making or receiving a personal telephone call; or, sending or receiving a personal text message, email, or video).
- (c) providing care to a person other than the individual.
- (d) Smoking without the individual's consent.
- (e) Sleeping.
- (vii) Engaging in behavior that causes, or may cause, physical, verbal, mental, or emotional distress or abuse to the individual including publishing any manner of photos of the individual on social media websites, without the individual's written consent.
- (viii) Engaging in behavior a reasonable person would interpret as inappropriate involvement in the individual's personal relationships.
- (ix) Making decisions, or being designated to make decisions, for the individual in any capacity involving a declaration for mental health treatment, durable power of attorney, guardianship pursuant to court order; or authorized representative.
- (x) Selling to, or purchasing from, the individual products or personal items, unless the provider is the individual's family member who does so only when not providing a service.

(2) Safety:

- (a) The provider shall notify ODA (or its designee) of any "incident" involving an individual, as defined in rule 173-39-01 of the Administrative Code, no later than one business day after the provider is aware of the incident.
- (b) The provider shall report any reasonable cause to believe an individual suffered abuse, neglect, or exploitation to the CDJFS (or its designee), as required by section 5101.61 of the Revised Code. The provider shall also notify ODA (or its designee) of the reasonable cause.

(3) Confidentiality: The provider shall comply with all state and federal laws and regulations governing individual confidentiality including 42 C.F.R. 431.300 to 431.307 (October 1, 2015 edition), and 45 C.F.R. parts 160, 162, and 164 (October 1, 2015 edition).

(4) Provider qualifications:

- (a) The provider shall maintain an active, valid medicaid-provider agreement, as set forth in rule 5160-1-17.2 of the Administrative Code.
- (b) The provider shall not provide a service to a individual if he or she is the individual's spouse, parent, step-parent, legal guardian, power of attorney, or authorized representative.
- (c) The provider shall maintain telephone service allowing for reliable, dependable, and accessible communication.
- (d) The provider shall maintain a secure place for retaining individual records.
- (e) The provider shall comply with all applicable federal, state, and local laws.
- (f) The provider shall comply with the database reviews and criminal records check requirements in section 173.38 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 include sealed criminal records in its criminal records reports for checks conducted under section 173.38 of the Revised Code.
- (g) The provider shall participate in ODA's (and its designee's) mandatory free provider training sessions.

(5) Monitoring:

- (a) Records retention: The provider shall retain all records necessary, and in such form, so as to fully disclose the extent of the goods and services the provider provided, and significant business transactions, until the latest of the following dates:
 - (i) Six years after the date the provider receives payment for the good or service.
 - (ii) The date on which ODA, ODA's designee, ODM, or a duly-authorized law enforcement official concludes a review of the

records, including the review described in rule 173-39-04 of the Administrative Code, 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.

(b) Access: The provider shall, upon request, immediately provide ODA (or its designee) with access to all records required by this rule and by any rule in Chapter 173-39 of the Administrative Code regulating a service ODA certified the provider to provide.

(6) Payment: A provider shall accept the payment rate negotiated between the provider and the individual for each home care attendant service as payment in full and not seek any additional payment for services from the individual or any other person. ODA's designee records the rate negotiated between the provider and the individual in the certification agreement.

(E) Assisted living providers: These are the requirements for any provider who seeks to become, or to remain, an ODA-certified assisted living provider:

(1) Service provision:

(a) The provider shall comply with any rule in Chapter 173-39 of the Administrative Code regulating a service ODA certified the provider to provide.

(b) The provider may provide a service not authorized by the individual's service plan, but ODA (or its designee) only pays the provider for providing a service authorized by the individual's service plan.

(c) The provider shall acknowledge that any statute or rule regulating the assisted living program supersedes any clause in the facility's resident agreement.

(d) The provider shall notify ODA (or its designee) no later than one business day after the provider is aware of any significant change that may affect the individual's need for goods and services, including one or both of the following:

(i) The provider is aware of any significant change impacting the provision of goods and services to the individual, including the individual's repeated refusal of goods and services.

- (ii) The individual's physical, mental or emotional status changes, or the provider can document changes in the environmental conditions or other health and safety issues.
 - (e) The provider shall transfer or discharge an individual under the terms of section 3721.16 of the Revised Code.
 - (f) If the provider terminates its medicaid-provider agreement, pursuant to section 3721.19 of the Revised Code, it shall provide written notification to the individual and to ODA's designee at least ninety days before terminating the provision of goods and services to the individual.
 - (g) The provider shall adopt and implement ethical standards of practice by requiring facility staff to provide services according to the residents' rights policies and procedures described in section 3721.12 of the Revised Code, and according to the provider's policies and procedures.
 - (h) The provider shall only provide services to individuals in settings meeting the home and community-based setting characteristics set forth in rule 5160-44-01 of the Administrative Code.
- (2) Safety:
- (a) In the policy the provider adopts on how to document individual's incidents, as required by paragraph (B) of rule 3701-17-62 of the Administrative Code, the provider shall require notifying ODA (or its designee) of incidents.
 - (b) The provider shall report any reasonable cause to believe an individual suffered abuse, neglect, or exploitation to the Ohio department of health according to rule 3701-64-02 of the Administrative Code. The provider shall also notify ODA (or its designee) of the reasonable cause.
 - (c) The provider shall maintain a minimum of one million dollars in commercial liability insurance.
 - (d) The provider shall maintain insurance coverage for individuals' losses due to theft or property damage and provide written instructions any individual may use to obtain payment for a loss due to employee theft or property damage.
- (3) Confidentiality: The provider shall comply with all state and federal laws and regulations governing individual's confidentiality including 42 C.F.R. 431.300

to 431.307 (October 1, 2015 edition), and 45 C.F.R. parts 160, 162, and 164 (October 1, 2015 edition).

(4) Provider qualifications:

- (a) The provider shall be licensed as a residential care facility by the Ohio department of health under rules 3701-17-50 to 3701-17-68 of the Administrative Code.
- (b) The provider shall have a written statement of policies, and bylaws or articles of incorporation.
- (c) The provider shall have a written table of organization clearly identifying lines of administrative, advisory, contractual, and supervisory authority, unless the business consists of a self-employed person.
- (d) The provider shall not allow a staff person to provide a service to a individual if the person is the individual's spouse, parent, parent, step-parent, legal guardian, power of attorney, or authorized representative.
- (e) The provider shall not allow a volunteer to provide any aspect of the services regulated under rule 173-39-02.16 or 173-39-02.17 of the Administrative Code for individuals without supervision by the provider's supervisory staff.
- (f) The provider shall comply with all applicable federal, state, and local laws.
- (g) The provider shall have a written statement supporting compliance with 45 C.F.R. 80.4 (October 1, 2015 edition) regarding the provision of services.
- (h) The provider shall have a written statement supporting compliance with the "Equal Employment Opportunity Act of 1972" (as in effect on March 4, 2016) federal wage-and-hour laws, and workers' compensation laws regarding the recruitment and employment of persons.
- (i) The provider shall participate in ODA's (or its designee's) mandatory free provider training sessions.

(5) Monitoring:

- (a) Records retention: The provider shall retain all records necessary, and in such form, so as to fully disclose the extent of the services the provider provided, and significant business transactions, until the latest of the following dates:

- (i) Six years after the date the provider receives payment for the service.
 - (ii) The date on which ODA, ODA's designee, ODM, or a duly-authorized law enforcement official concludes a review of 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.
- (b) Access: The provider shall, upon request, immediately provide representatives of ODA (or its designee) with access to its facility, a place to work in its facility, and access to policies, procedures, records, and documentation for each unit of service billed.
- (6) Payment:
- (a) The provider shall bill only for a service if the provider complies with the requirements in this rule and the requirements, including service-verification requirements, in any rule in Chapter 173-39 of the Administrative Code regulating a service ODA certified the provider to provide.
 - (b) ODA's obligation to pay the provider for the costs of services the provider provides as a certified provider is subject to the hold and review process described in rule 5160-1-27.2 of the Administrative Code.
 - (c) The provider shall accept the payment rates established in the certification agreement as payment in full, and not seek any additional payment for those services from the individual or any other person.
 - (d) The assisted living program shall not pay for any service the provider provides to an applicant before ODA's designee enrolls the applicant into the program and before case manager authorizes the service in the individual's service plan.
 - (e) If a individual is absent from the facility, the provider shall not accept a payment for the service under rule 173-39-02.16 of the Administrative Code or charge the individual an additional fee for the service or charge the individual an additional fee to hold the unit during the individual's absence.

(F) Participant-directed personal care provider: These are the requirements for any person who seeks to become, or to remain, and ODA-certified participant-directed personal care provider:

(1) Service provision:

- (a) At the individual's request, the provider shall participate in an interview with the individual before initiating any service.
- (b) The provider shall comply with any rule in Chapter 173-39 of the Administrative Code regulating a service ODA certified the provider to provide.
- (c) The provider shall notify ODA (or its designee) no later than one business day after the provider is aware of any significant change that may affect the individual's service needs, including one or more of the following:
 - (i) The individual moves to another address.
 - (ii) The provider is aware of any significant change impacting the provision of goods or services to the individual, including the individual's repeated refusal of goods or services.
 - (iii) The individual's physical, mental or emotional status changes, or the provider can document changes in the environmental conditions or other health and safety issues.
- (d) The provider shall notify the individual and ODA's designee in writing at least thirty days before the last day the provider provides the personal care service to the individual, unless the health or safety of the individual or provider is at serious, imminent risk.
- (e) The provider shall provide the personal care service in an ethical, professional, respectful, and legal manner and shall not engage in any unethical, unprofessional, disrespectful, or illegal behavior including:
 - (i) Consuming alcohol while providing a service to the individual.
 - (ii) Consuming medicine, drugs, or other chemical substances in a way that is illegal unprescribed, or impairs the provider from providing a service to the individual.
 - (iii) Accepting, obtaining, or attempting to obtain money or anything of value from the individual or his or her household members or

family members. However, if the provider is the individual's family member, he or she may accept gifts for birthdays and holidays.

- (iv) Engaging the individual in sexual conduct, or in conduct a reasonable person would interpret as sexual in nature, even if the conduct is consensual.
- (v) Leaving the home for a purpose not related to providing a service without the consent or knowledge of the individual.
- (vi) Engaging in any activity that may distract the provider from providing a service, including:
 - (a) Watching television or playing computer or video games, including on the provider's phone or the individual's phone.
 - (b) Non-care-related socialization with a person other than the individual (e.g., a visit from a person who is not providing care to the individual; making or receiving a personal telephone call; or, sending or receiving a personal text message, email, or video).
 - (c) providing care to a person other than the individual.
 - (d) Smoking without the individual's consent.
 - (e) Sleeping.
- (vii) Engaging in behavior that causes, or may cause, physical, verbal, mental, or emotional distress or abuse to the individual including publishing any manner of photos of the individual on social media websites, without the individual's written consent.
- (viii) Engaging in behavior a reasonable person would interpret as inappropriate involvement in the individual's personal relationships.
- (ix) Making decisions, or being designated to make decisions, for the individual in any capacity involving a declaration for mental health treatment, durable power of attorney, guardianship pursuant to court order; or authorized representative.

- (x) Selling to, or purchasing from, the individual products or personal items, unless the provider is the individual's family member who does so only when not providing a service.

(2) Safety:

- (a) The provider shall notify ODA (or its designee) of any "incident" involving an individual, as defined in rule 173-39-01 of the Administrative Code, no later than one business day after the provider is aware of the incident.
- (b) Report any reasonable cause to believe an individual suffered abuse, neglect, or exploitation to the CDJFS (or its designee), as required by section 5101.61 of the Revised Code. The provider shall also notify ODA (or its designee) of the reasonable cause.

- (3) Confidentiality: The provider shall comply with all state and federal laws and regulations governing individual confidentiality including 42 C.F.R. 431.300 to 431.307 (October 1, 2015 edition), and 45 C.F.R. parts 160, 162, and 164 (October 1, 2015 edition).

(4) Provider qualifications:

- (a) The provider shall complete an application to become an ODA-certified participant-directed personal care provider.
- (b) The provider shall maintain an active, valid medicaid-provider agreement, as set forth in rule 5160-1-17.2 of the Administrative Code.
- (c) The provider shall be at least eighteen years of age.
- (d) The provider shall have a valid social security number and at least one of the following current, valid, government-issued, photographic identification cards:
 - (i) Driver's license;
 - (ii) State of Ohio identification card; or,
 - (iii) United States of American permanent residence card.
- (e) The provider shall read, write, and understand English at a level that enables the provider to comply with this rule and rule 173-39-02.11 of the Administrative Code.

- (f) The provider shall be able to effectively communicate with the individual.
- (g) The provider shall not provide a service to an individual if he or she is the individual's spouse, parent, step-parent, legal guardian, power of attorney, or authorized representative.
- (h) The provider shall maintain a telephone service allowing for reliable, dependable, and accessible communication.
- (i) The provider shall maintain a secure place for retaining individual's records.
- (j) The provider shall comply with all applicable federal, state, and local laws.
- (k) The provider shall comply with the database reviews and criminal records check requirements in section 173.38 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 include sealed criminal records in its criminal records reports for checks conducted under section 173.38 of the Revised Code.
- (l) The provider shall participate in ODA's (or its designee's) mandatory free provider training sessions.

(5) Monitoring:

- (a) Records retention: The provider shall retain all records necessary, and in such form, so as to fully disclose the extent of the service the provider provided, and significant business transactions, until the latest of the following dates:
 - (i) Six years after the date the provider receives payment for the service.
 - (ii) The date on which ODA, ODA's designee, ODM, or a duly-authorized law enforcement official concludes a review of the records, including the review described in rule 173-39-04 of the Administrative Code, and any findings are generally 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.
- (b) Access: The provider shall, upon request, immediately provide ODA (or ODA's designee) with access to all records required by this rule and any

rule in Chapter 173-39 of the Administrative Code regulating a service that ODA certified the provider to provide.

- (6) Payment: The provider shall accept the payment rate established in the certification agreement as payment in full and not seek any additional payment for services from the individual or any other person.
- (G) If a provider of any type fails to comply with this rule, ODA (or ODA's designee) may discipline the provider under the terms of rule 173-39-05 or 173-39-05.1 of the Administrative Code,.

Effective:

Five Year Review (FYR) Dates: 3/18/2019

Certification

Date

Promulgated Under: 119.03

Statutory Authority: 173.01, 173.02, 173.391, 173.52, 173.522, 173.54,
173.543

Rule Amplifies: 173.39, 173.391, 173.52, 173.522, 173.54, 173.543; 42
C.F.R. 441.352

Prior Effective Dates: 03/31/2006, 04/26/2009, 10/19/2009, 08/30/2010,
03/17/2011, 01/01/2013, 07/01/2014, 07/01/2016