

173-39-02

Conditions of participation.

(A) Introduction: This rule presents the conditions of participation for each of the five types of ODA-certified long-term care providers: agency providers, non-agency providers, consumer-directed individual providers, assisted living providers, and consumer-directed personal care providers.

(B) Agency providers: These are the conditions for any provider who seeks to become, or to remain, an ODA-certified long-term care agency provider:

(1) Service provision:

(a) The provider shall comply with rule 173-39-02.1 of the Administrative Code, if furnishing an adult day service; rule 173-39-02.3 of the Administrative Code, if furnishing a pest-control service; rule 173-39-02.4 of the Administrative Code, if furnishing a home-care attendant service; rule 173-39-02.5 of the Administrative Code, if furnishing a chore service; rule 173-39-02.6 of the Administrative Code, if furnishing an emergency response service; rule 173-39-02.7 of the Administrative Code, if furnishing home medical equipment and supplies; rule 173-39-02.8 of the Administrative Code, if furnishing a homemaker service; rule 173-39-02.9 of the Administrative Code, if furnishing a minor home modification, maintenance, or repair service; rule 173-39-02.10 of the Administrative Code, if furnishing a nutritional consultation service; rule 173-39-02.11 of the Administrative Code, if furnishing a personal care service; rule 173-39-02.12 of the Administrative Code, if furnishing a social work counseling service; rule 173-39-02.13 of the Administrative Code, if furnishing a non-emergency medical transportation service; rule 173-39-02.14 of the Administrative Code, if furnishing a home-delivered meal service; rule 173-39-02.15 of the Administrative Code, if furnishing an independent living assistance service; rule 173-39-02.17 of the Administrative Code, if furnishing a community transition service; rule 173-39-02.18 of the Administrative Code, if furnishing a non-medical transportation service; rule 173-39-02.19 of the Administrative Code, if furnishing a home-delivered meal service with a kosher diet; and rule 173-39-02.20 of the Administrative Code, if furnishing an enhanced community living service.

(b) The provider may furnish a service that is not authorized by the consumer's service plan, but ODA (or ODA's designee) only reimburses the provider for furnishing a service that is authorized by the consumer's service plan.

(c) The provider shall notify ODA (or ODA's designee) no later than one

business day after the provider is aware of any significant change that may affect a consumer's service needs, including:

- (i) The provider does not furnish an authorized service at the time (or, for the period of time) authorized by the case manager;
 - (ii) The consumer moves to another address;
 - (iii) The provider is aware of any significant change that may impact furnishing services to the consumer, including the consumer's repeated refusal of services; or,
 - (iv) The consumer'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 consumer and ODA's designee in writing at least thirty days before the last day the provider furnishes ODA-certified services to the consumer, unless:
- (i) The consumer has been hospitalized, placed in a long-term care facility, or has expired;
 - (ii) The health or safety of the consumer or provider is at serious, imminent risk; and,
 - (iii) The consumer is terminating services with the provider.
- (e) The provider shall adopt and implement ethical standards to require workers to furnish services in an ethical professional, respectful, and legal manner and not engage in any unethical, unprofessional, disrespectful, or illegal behavior including:
- (i) Consuming the consumer's food or drink, or using the consumer's personal property without his or her consent.
 - (ii) Bringing a child, friend, relative, or anyone else, or a pet, to the consumer's place of residence.
 - (iii) Taking the consumer to the provider's place of business.

- (iv) Consuming alcohol while furnishing a service to the consumer.
- (v) Consuming medicine, drugs, or other chemical substances not in accordance with the legal, valid, prescribed use, or in any way that impairs the provider from furnishing a service to the consumer.
- (vi) Discussing religion or politics with the consumer and others in the care setting.
- (vii) Discussing personal issues with the consumer 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 consumer or his or her household members or family members.
- (ix) Engaging the consumer in sexual conduct, or in conduct that a reasonable person would interpret as sexual in nature, even if the conduct is consensual.
- (x) Leaving the consumer's home for a purpose not related to furnishing a service without notifying the agency supervisor, the consumer's emergency contact person, any identified caregiver, or the consumer's case manager. "Emergency contact person" means a person the consumer 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 furnishing a service, including:
 - (a) Watching television or playing computer or video games.
 - (b) Engaging in non-care-related socialization with a person other than the consumer (e.g., a visit from a person who is not furnishing care to the consumer; making or receiving a personal telephone call; or, sending or receiving a personal text message or email).
 - (c) Furnishing care to a person other than the consumer.

(d) Smoking without the consumer's consent.

(e) Sleeping.

(xii) Engaging in behavior that causes, or may cause, physical, verbal, mental, or emotional distress or abuse to the consumer.

(xiii) Engaging in behavior that a reasonable person would interpret as inappropriate involvement in the consumer's personal relationships.

(xiv) Being designated to make decisions for the consumer 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 consumer products or personal items, unless the provider is the consumer's family member who does so only when not furnishing a service.

(xvi) Engaging in behavior that constitutes a conflict of interest, or takes advantage of, or manipulates ODA-certified services resulting in an unintended advantage for personal gain that has detrimental results to the consumer, the consumer's family or caregivers, or another provider.

(2) Consumer safety:

(a) The provider shall have a written procedure for documenting consumer incidents. The procedure shall include notifying ODA (or ODA's 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 that a consumer has suffered abuse, neglect, or exploitation to the CDJFS (or its designee), in accordance with section 5101.61 of the Revised Code, and also notify ODA (or ODA's 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 consumer loss due to theft or property damage and provide written instructions that any consumer may use to obtain reimbursement 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 consumer confidentiality including, but not limited to, 42 C.F.R. 431.300 to 431.307 (October 1, 2011 edition), and 45 C.F.R. parts 160, 162, and 164 (October 1, 2011 edition).
- (4) Provider qualifications:
- (a) The provider shall be a formally-organized business or service agency that is registered with the Ohio secretary of state that has been operating, furnishing services, and being paid for the same services for which certification is being applied for at least two adults in the community for a minimum of three months at the point of application.
 - (b) The provider shall disclose all entities that own at least five per cent of the business.
 - (c) The provider shall have a written statement defining the purpose of the business or service agency.
 - (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 that clearly identifies lines of administrative, advisory, contractual, and supervisory authority.
 - (f) The provider shall not allow a staff person to furnish a service to a consumer if the person is the consumer's spouse, parent, step-parent, legal guardian, power of attorney, or authorized representative.
 - (g) The provider shall not allow a volunteer to furnish any aspect of a certified long-term care service for a consumer 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 that is 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 that is available through directory assistance that allows for reliable, dependable, and accessible communication.
 - (ii) A designated, locked storage space for retaining consumer 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 has been convicted of a felony under state or federal law.
- (k) The provider shall comply with the database reviews and criminal records check requirements under rule Chapter 173-9-01 173-9 of the Administrative Code.
- (l) The provider shall have a written statement supporting compliance with ~~Title VI of the "Civil Rights Act of 1964," as amended, 42 USC 2000, et seq.~~ 45 C.F.R. 80.4 (as in effect on June 8, 2005) regarding the provision of services.
- (m) The provider shall have a written statement supporting compliance with the "Equal Employment Opportunity Act of 1972," ~~as amended,~~ (as in effect on November 20, 2012) 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 ODA's designee) a written statement that certifies that the provider has paid all applicable federal, state, and local income and employment taxes.
- (o) The provider shall participate in ODA's (and its designee's) mandatory 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 furnished, and significant business transactions, until the latter of:
 - (i) Six years after the date the provider receives payment for the service;
 - (ii) The date on which ODA, ODA's designee, ODJFS, or a duly-authorized law enforcement official concludes a review of the records and any findings are finally settled; or,
 - (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 furnish representatives of ODA (or ODA's 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) Reimbursement:

- (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 rule 173-39-02.1, 173-39-02.3, 173-39-02.4, 173-39-02.5, 173-39-02.6, 173-39-02.7, 173-39-02.8, 173-39-02.9, 173-39-02.10, 173-39-02.11, 173-39-02.12, 173-39-02.13, 173-39-02.14, 173-39-02.15, 173-39-02.17, 173-39-02.18, 173-39-02.19, or 173-39-02.20 of the Administrative Code for any service the provider furnishes that is regulated by one of those rules.
- (b) ODA's obligation to reimburse the provider for the costs of services the provider furnishes as a certified long-term care provider is subject to the hold and review process described in rule 5101:3-1-27.2 of the Administrative Code.
- (c) The provider shall accept the reimbursement levels negotiated for each service by the provider and ODA's designee as payment in full, and not seek any additional payment for those services from the consumer or any other person.

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

(1) Service provision:

- (a) The provider shall comply with rule 173-39-02.2 of the Administrative Code, if furnishing an alternative meal service; rule 173-39-02.3 of the Administrative Code, if furnishing a pest-control service; rule 173-39-02.5 of the Administrative Code, if furnishing a chore service; rule 173-39-02.7 of the Administrative Code, if furnishing home medical equipment and supplies; rule 173-39-02.9 of the Administrative Code, if furnishing a minor home modification, maintenance, or repair service; rule 173-39-02.10 of the Administrative Code, if furnishing a nutritional consultation service; rule 173-39-02.12 of the Administrative Code, if furnishing a social work counseling service; rule 173-39-02.13 of the Administrative Code, if furnishing a non-emergency medical transportation service; rule 173-39-02.17 of the Administrative Code, if furnishing a community transition service; and rule 173-39-02.18 of the Administrative Code, if furnishing a non-medical transportation service.
- (b) The provider may furnish a service that is not authorized by the consumer's service plan, but ODA (or ODA's designee) only reimburses the provider for furnishing a service that is authorized by the consumer's service plan.
- (c) The provider shall notify ODA (or ODA's designee) no later than one business day after the provider is aware of any significant change that may affect the consumer's service needs, including:
 - (i) The provider does not furnish an authorized service at the time (or, for the period of time) authorized by the case manager;
 - (ii) The consumer moves to another address;
 - (iii) The provider is aware of any significant change that may impact furnishing services to the consumer, including the consumer's repeated refusal of services; or,
 - (iv) The consumer'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 consumer and ODA's designee in writing at least thirty days before the last day the provider stops furnishing ODA-certified services to the consumer, unless:
 - (i) The consumer has been hospitalized, placed in a long-term care facility, or has expired;
 - (ii) The health or safety of the consumer or provider is at serious, imminent risk; and,
 - (iii) The consumer is terminating services with the provider.
- (e) The provider shall furnish services in an ethical professional, respectful, and legal manner and shall not engage in any unethical, unprofessional, disrespectful, or illegal behavior including:
 - (i) Consuming the consumer's food or drink, or using the consumer's personal property without his or her consent.
 - (ii) Bringing a child, friend, relative, or anyone else, or a pet, to the consumer's place of residence.
 - (iii) Taking the consumer to his or her place of business.
 - (iv) Consuming alcohol while furnishing a service to the consumer.
 - (v) Consuming medicine, drugs, or other chemical substances not in accordance with the legal, valid, prescribed use, or in any way that impairs the provider from furnishing a service to the consumer.
 - (vi) Discussing religion or politics with the consumer and others in the care setting.
 - (vii) Discussing personal issues with the consumer 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 consumer or his or her household members or family members.

- (ix) Engaging the consumer in sexual conduct, or in conduct that a reasonable person would interpret as sexual in nature, even if the conduct is consensual.

- (x) Leaving the consumer's home for a purpose not related to furnishing a service without notifying the consumer's emergency contact person, any identified caregiver, or the consumer's case manager. "Emergency contact person" means a person the consumer 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 furnishing a service, including:
 - (a) Watching television or playing computer or video games.

 - (b) Engaging in non-care-related socialization with a person other than the consumer (e.g., a visit from a person who is not furnishing care to the consumer; making or receiving a personal telephone call; or, sending or receiving a personal text message or email).

 - (c) Furnishing care to a person other than the consumer.

 - (d) Smoking without the consumer's consent.

 - (e) Sleeping.

- (xii) Engaging in behavior that causes, or may cause, physical, verbal, mental, or emotional distress or abuse to the consumer.

- (xiii) Engaging in behavior that a reasonable person would interpret as inappropriate involvement in the consumer's personal relationships.

- (xiv) Being designated to make decisions for the consumer 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 consumer products or personal items, unless the provider is the consumer's family member who does so only when not furnishing a service.
- (xvi) Engaging in behavior that constitutes a conflict of interest or takes advantage of or manipulates ODA-certified services resulting in an unintended advantage for personal gain that has detrimental results to the consumer, the consumer's family or caregivers, or another provider.

(2) Consumer safety:

- (a) The provider shall have a written procedure for documenting consumer incidents. The procedure shall include notifying ODA (or ODA's 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 that a consumer has suffered abuse, neglect, or exploitation to the CDJFS (or its designee), in accordance with section 5101.61 of the Revised Code, and also notify ODA (or ODA's 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 consumer loss due to the theft or property damage caused by the provider and provide written instructions that any consumer may use to obtain reimbursement 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 consumer confidentiality including, but not limited to, 42 C.F.R. 431.300 to 431.307 (October 1, 2011 edition), and 45 C.F.R. parts 160, 162, and 164 (October 1, 2011 edition).

(4) Provider qualifications:

- (a) The provider shall not furnish a service to a consumer if he or she is the consumer's spouse, parent, step-parent, legal guardian, power of attorney, or authorized representative.

- (b) The provider shall not allow a volunteer to furnish any aspect of a certified long-term care service for a consumer except as ODA's designee authorizes the provider to do so through its contract with the provider.
- (c) The provider shall disclose whether he or she has been convicted of a felony under state or federal law.
- (d) The provider shall comply with the database reviews and criminal records check requirements under ~~rule Chapter 173-9-01~~ 173-9 of the Administrative Code.
- (e) The provider shall have a written statement supporting compliance with ~~Title VI of the "Civil Rights Act of 1964," as amended, 42 USC 2000, et seq.~~ 45 C.F.R. 80.4 (as in effect on June 8, 2005) regarding the provision of services.
- (f) The provider shall annually provide to ODA (or ODA's designee) a written statement that certifies that he or she has paid all applicable federal, state, and local income and employment taxes.
- (g) The provider shall participate in ODA's (and its designee's) mandatory 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 furnished, and significant business transactions, until the latter of:
 - (i) Six years after the date the provider receives payment for the service;
 - (ii) The date on which ODA, ODA's designee, ODJFS, or a duly-authorized law enforcement official concludes a review of the records and any findings are finally settled; or,
 - (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 furnish representatives of ODA (or ODA's 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) Reimbursement:

- (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 rule 173-39-02.2, 173-39-02.3, 173-39-02.5, 173-39-02.7, 173-39-02.9, 173-39-02.10, 173-39-02.12, 173-39-02.13, 173-39-02.17, or 173-39-02.18 of the Administrative Code for any service the provider furnishes that is regulated by one of those rules.

- (b) ODA's obligation to reimburse the provider for the costs of services the provider furnishes as a certified long-term care provider is subject to the hold and review process described in rule 5101:3-1-27.2 of the Administrative Code.

- (c) The provider shall accept the reimbursement levels negotiated for each service by the provider and ODA's designee as payment in full, and not seek any additional payment for those services from the consumer or any other person.

(D) Consumer-directed individual providers: These are the conditions for any person who seeks to become, or to remain, an ODA-certified long-term care consumer-directed individual provider:

(1) Service provision:

- (a) At the consumer's request, the provider shall participate in an interview with the consumer before initiating any service.

- (b) The provider shall comply with rule 173-39-02.4 of the Administrative Code to furnish the home-care attendant service.

- (c) The provider shall notify ODA (or ODA's designee) no later than one business day after the provider is aware of any significant change that may affect the consumer's service needs, including:

- (i) The consumer moves to another address;
 - (ii) The consumer has been admitted to a hospital or has visited an emergency room;
 - (iii) The provider is aware of any significant change that may impact the furnishing of services to the consumer, including the consumer's repeated refusal of services; or,
 - (iv) The consumer'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 consumer and ODA's designee in writing at least thirty days before the last day the provider furnishes the home care attendant service to the consumer, unless the health or safety of the consumer or provider is at serious, imminent risk.
- (e) The provider shall furnish 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:
- (i) Consuming alcohol while furnishing a service to the consumer.
 - (ii) Consuming medicine, drugs, or other chemical substances not in accordance with the legal, valid, prescribed use, or in any way that impairs the provider from furnishing a service to the consumer.
 - (iii) Accepting, obtaining, or attempting to obtain money or anything of value from the consumer or his or her household members or family members. However, if the provider is the consumer's family member, he or she may accept gifts for birthdays and holidays.
 - (iv) Engaging the consumer in sexual conduct, or in conduct that 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 furnishing a service without the consent or knowledge of the consumer.

- (vi) Engaging in any activity that may distract the provider from furnishing a service, including:
 - (a) Watching television or playing computer or video games.
 - (b) Engaging in non-care-related socialization with a person other than the consumer (e.g., a visit from a person who is not furnishing care to the consumer; making or receiving a personal telephone call; or, sending or receiving a personal text message or email).
 - (c) Furnishing care to a person other than the consumer.
 - (d) Smoking without the consumer's consent.
 - (e) Sleeping.
- (vii) Engaging in behavior that a reasonable person would interpret as inappropriate involvement in the consumer's personal relationships.
- (viii) Being designated or serve to make decisions for the consumer in any capacity involving a declaration for mental health treatment, durable power of attorney, guardianship pursuant to court order; or authorized representative.
- (ix) Selling to, or purchasing from, the consumer products or personal items, unless the provider is the consumer's family member who does so only when not furnishing a service.

(2) Consumer safety:

- (a) The provider shall notify ODA (or ODA's designee) of any "incident" involving a consumer, 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 that a consumer has suffered abuse, neglect, or exploitation to the CDJFS (or its designee), in accordance with section 5101.61 of the Revised Code, and

also notify ODA (or ODA's designee) of the reasonable cause.

(3) Confidentiality: The provider shall comply with all state and federal laws and regulations governing consumer confidentiality including, but not limited to, 42 C.F.R. 431.300 to 431.307 (October 1, 2011 edition), and 45 C.F.R. parts 160, 162, and 164 (October 1, 2011 edition).

(4) Provider qualifications:

- (a) The provider shall complete an application to become an ODA-certified long-term care consumer-directed individual provider.
- (b) The provider shall maintain an active, valid medicaid agreement, as set forth in rule 5101:3-1-17.2 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 America 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 173-39-02.4 of the Administrative Code.
- (f) The provider shall be able to effectively communicate with the consumer.
- (g) The provider shall not furnish a service to a consumer if he or she is the consumer's spouse, parent, step-parent, legal guardian, power of attorney, or authorized representative.
- (h) The provider shall maintain telephone service that allows for reliable, dependable, and accessible communication.

- (i) The provider shall maintain a secure place for retaining consumer 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 under rule Chapter 173-9-01 173-9 of the Administrative Code.
- (l) The provider shall participate in ODA's (and its designee's) mandatory 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 furnished, and significant business transactions, until the latter of:
 - (i) Six years after the date the provider receives payment for the service;
 - (ii) The date on which ODA, ODA's designee, ODJFS, 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; or,
 - (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 furnish ODA (or ODA's designee) with access to all records required by this rule and by rule 173-39-02.4 of the Administrative Code.

- (6) Reimbursement: A provider shall accept the reimbursement levels negotiated between the provider and the consumer for each home care attendant service as payment in full and not seek any additional payment for those services from the consumer or any other person.

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

(1) Service provision:

- (a) The provider shall not furnish any services under the assisted living program to a person who is not enrolled in the program.
- (b) The provider shall comply with any regulation under rules 173-39-02.16 and 173-39-02.17 of the Administrative Code.
- (c) The provider may furnish a service that is not authorized by the consumer's service plan, but ODA (or ODA's designee) only reimburses the provider for furnishing a service that is authorized by the consumer's service plan.
- (d) The provider shall acknowledge that any statute or rule that regulates the assisted living program supersedes any clause in the facility's resident agreement.
- (e) The provider shall notify ODA (or ODA's designee) no later than one business day after the provider is aware of any significant change that may affect the consumer's service needs, including:
 - (i) The provider is aware of any significant change that may impact furnishing services to the consumer, including the consumer's repeated refusal of services; or,
 - (ii) The consumer's physical, mental or emotional status changes, or the provider can document changes in the environmental conditions or other health and safety issues.
- (f) The provider shall transfer or discharge a consumer under the terms of section 3721.16 of the Revised Code.
- (g) If the provider terminates its medicaid provider agreement with ODJFS, pursuant to section 3721.19 of the Revised Code, it shall furnish written notification to the consumer and the PAA at least ninety days before terminating services to the consumer.
- (h) The provider shall adopt and implement ethical standards of practice by requiring facility staff to furnish services in accordance with the residents' rights policies and procedures described in section 3721.12 of the Revised Code, and in accordance with the provider's policies and

procedures.

(2) Consumer safety:

- (a) The provider shall have a written procedure for documenting consumer incidents, in accordance with paragraph (B) of rule 3701-17-62 of the Administrative Code. The procedure shall include notifying ODA (or ODA's designee) of the incident.
- (b) The provider shall report any reasonable cause to believe that a consumer has suffered abuse, neglect, or exploitation, in accordance with rule 3701-64-02 of the Administrative Code, and also notify ODA (or ODA's 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 consumer loss due to theft or property damage and provide written instructions that any consumer may use to obtain reimbursement 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 consumer confidentiality including, but not limited to, 42 C.F.R. 431.300 to 431.307 (October 1, 2011 edition), and 45 C.F.R. parts 160, 162, and 164 (October 1, 2011 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 directives, and bylaws or articles of incorporation.
- (c) The provider shall have a written table of organization that clearly identifies 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 furnish a service to a

consumer if the person is the consumer's spouse, parent, parent, step-parent, legal guardian, power of attorney, or authorized representative.

- (e) The provider shall not allow a volunteer to furnish any aspect of the services regulated under rule 173-39-02.16 or 173-39-02.17 of the Administrative Code for consumers 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 comply with the database reviews and criminal records check requirements under rule Chapter 173-9-01 173-9 of the Administrative Code.
- (h) The provider shall have a written statement supporting compliance with Title VI of the "Civil Rights Act of 1964," as amended, 42 USC 2000, et seq. 45 C.F.R. 80.4 (as in effect on June 8, 2005) regarding the provision of services.
- (i) The provider shall have a written statement supporting compliance with the "Equal Employment Opportunity Act of 1972," as amended, (as in effect on November 20, 2012) federal wage-and-hour laws, and workers' compensation laws regarding the recruitment and employment of persons.
- (j) The provider shall participate in ODA's (and its designee's) mandatory 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 furnished, and significant business transactions, until the latter of:
 - (i) Six years after the date the provider receives payment for the;
 - (ii) The date on which ODA, ODA's designee, ODJFS, or a duly-authorized law enforcement official concludes a review of the records and any findings are finally settled; or,

(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 furnish representatives of ODA (or ODA's 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) Reimbursement:

(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 rule 173-39-02.16 or 173-39-02.17 of the Administrative Code.

(b) ODA's obligation to reimburse the provider for the costs of services the provider furnishes as a certified long-term care provider is subject to the hold and review process described in rule 5101:3-1-27.2 of the Administrative Code.

(c) The provider shall accept the reimbursement levels negotiated for each service by the provider and ODA's designee as payment in full, and not seek any additional payment for those services from the consumer or any other person.

(d) The assisted living program shall not pay for any service the provider furnishes to an applicant before ODA's designee enrolls the applicant into the program and before case manager authorizes the service in the consumer's service plan.

(e) If a consumer 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 consumer an additional fee for the service or charge the consumer an additional fee to hold the unit during the consumer's absence.

(F) Consumer-directed personal care provider: These are the conditions for any person who seeks to become, or to remain, and ODA-certified long-term care consumer-directed personal care provider:

(1) Service provision:

- (a) At the consumer's request, the provider shall participate in an interview with the consumer before initiating any service.
- (b) The provider shall comply with rule 173-39-02.11 of the Administrative Code to furnish the personal care service.
- (c) The provider shall notify ODA (or ODA's designee) no later than one business day after the provider is aware of any significant change that may affect the consumer's service needs, including:
 - (i) The consumer moves to another address;
 - (ii) The consumer has been admitted to a hospital or has visited an emergency room;
 - (iii) The provider is aware of any significant change that may impact the furnishing of services to the consumer, including the consumer's repeated refusal of services; or,
 - (iv) The consumer'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 consumer and ODA's designee in writing at least thirty days before the last day the provider furnishes the personal care service to the consumer, unless the health or safety of the consumer or provider is at serious, imminent risk.
- (e) The provider shall furnish 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 furnishing a service to the consumer.
 - (ii) Consuming medicine, drugs, or other chemical substances not in accordance with the legal, valid, prescribed use, or in any way that impairs the provider from furnishing a service to the consumer.

- (iii) Accepting, obtaining, or attempting to obtain money or anything of value from the consumer or his or her household members or family members. However, if the provider is the consumer's family member, he or she may accept gifts for birthdays and holidays.
- (iv) Engaging the consumer in sexual conduct, or in conduct that 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 furnishing a service without the consent or knowledge of the consumer.
- (vi) Engaging in any activity that may distract the provider from furnishing a service, including:
 - (a) Watching television or playing computer or video games;
 - (b) Engaging in non-care-related socialization with a person other than the consumer (e.g., a visit from a person who is not furnishing care to the consumer; making or receiving a personal telephone call; or, sending or receiving a personal text message or email).
 - (c) Furnishing care to a person other than the consumer.
 - (d) Smoking without the consumer's consent.
 - (e) Sleeping.
- (vii) Engaging in behavior that a reasonable person would interpret as inappropriate involvement in the consumer's personal relationships.
- (viii) Being designated or serve to make decision for the consumer in any capacity involving a declaration for mental health treatment, durable power of attorney, guardianship pursuant to court order; or authorized representative.
- (ix) Selling to, or purchasing from, the consumer products or personal

items, unless the provider is the consumer's family member who does so only when not furnishing a service.

(2) Consumer safety:

- (a) The provider shall notify ODA (or ODA's designee) of any "incident" involving a consumer, 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 that a consumer has suffered abuse, neglect, or exploitation to the CDJFS (or its designee), in accordance with section 5101.61 of the Revised Code, and also notify ODA (or ODA's designee) of the reasonable cause.

(3) Confidentiality: The provider shall comply with all state and federal laws and regulations governing consumer confidentiality including, but not limited to, 42 C.F.R. 431.300 to 431.307 (October 1, 2011 edition), and 45 C.F.R. parts 160, 162, and 164 (October 1, 2011 edition).

(4) Provider qualifications:

- (a) The provider shall complete an application to become an ODA-certified long-term consumer-directed personal care provider.
- (b) The provider shall maintain an active, valid medicaid agreement, as set forth in rule 5101:3-1-17.2 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 consumer.
- (g) The provider shall not furnish a service to a consumer if he or she is the consumer's spouse, parent, step-parent, legal guardian, power of attorney, or authorized representative.
- (h) The provider shall maintain telephone service that allows for reliable, dependable, and accessible communication.
- (i) The provider shall maintain a secure place for retaining consumer 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 under rule Chapter 173-9-04 173-9 of the Administrative Code.
- (l) The provider shall participate in ODA's (and its designee's) mandatory 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 furnished, and significant business transactions, until the latter of:
 - (i) Six years after the date the provider receives payment for the service;
 - (ii) The date on which ODA, ODA's designee, ODJFS, 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; or,
 - (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 furnish ODA (or ODA's designee) with access to all records required by this rule and by rule 173-39-02.11 of the Administrative Code.
- (6) Reimbursement: The provider shall accept the reimbursement rate that the written agreement with ODA's designee establishes for each personal care service as payment in full and not seek any additional payment for services from the consumer or any other person.
- (G) If a provider of any type fails to meet or maintain any of the required conditions of participation under this rule, ODA (or ODA's designee) may sanction the provider under the terms of rule 173-39-06 of the Administrative Code, which include the denial or revocation of the provider's certification.

Effective:

R.C. 119.032 review dates: 03/17/2016

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 173.01, 173.02, 173.391, 5111.89
Rule Amplifies: 173.39, 173.391, 173.402, 173.403, 173.431, 5111.89
Prior Effective Dates: 03/31/2006, 04/26/2009, 10/19/2009, 08/30/2010,
03/17/2011