

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 AAA-provider agreement (agreement) for goods or services paid, in whole or in part, with Older Americans Act funds, ~~the AAA shall comply with the following:~~

(1) The Older Americans Act.

(2) Subparts C and D of 45 C.F.R. Part 1321.

~~(1)(3) Uniform administrative requirements, cost principles, and audit requirements for federal awards: The agreement shall comply with 45 C.F.R. 75.327 to 75.335, including Appendix II to 45 C.F.R. Part 75.~~

~~(2) Targeting:~~

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

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

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

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

~~(3)(4) Additional federal laws: The agreement shall comply with the Older Americans Act and any Any additional federal law governing, or federal rule regulating, the agreement.~~

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

(1) Program and funding identification:

(a) In the agreement, the AAA shall identify the names of the federal and state programs that are sources for the Older Americans Act funding

being used for the procurement of the ~~goods and~~ services being procured through the agreement.

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

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

(2) Additional state laws:

(a) The agreement shall comply with any rule in ~~Chapter 173-3~~ this chapter or Chapter 173-4 of the Administrative Code regulating agreements in general or the provision of ~~specific goods or services~~ any service being procured through the agreement.

(b) The agreement shall comply with any additional state law governing, or state rule regulating, agreements in general or the provision of ~~specific goods or services~~ any service being procured through the agreement.

(3) Safety:

(a) Disasters: In the agreement, the AAA shall require the provider to cooperate with the AAA and ODA to assess disaster impact upon consumers and to coordinate with public and private resources in the field of aging to assist consumers whenever the president of the United States declares that the provider's service area is a disaster area.

(b) Significant changes: If the provider provides ~~goods and services~~ a service to a consumer ~~that the AAA case manages through a care coordination program~~ 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 ~~goods and services~~ the service no later than one day after the provider is aware of a repeated refusal to receive ~~goods or services~~ 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, ~~as defined in section 1.14 of the~~

~~Revised Code~~, the deadline is extended to the day immediately following "one day after" that is not on a weekend or legal holiday.

- (c) APS: In the agreement, the AAA shall require the provider to immediately report any reasonable cause to believe a consumer is the victim of abuse, neglect, or exploitation to the local adult protective services program in accordance with ~~section 5101.61 of the Revised Code, until September 28, 2018, then with~~ section 5101.63 of the Revised Code ~~on or after September 29, 2018.~~
- (d) ~~Terminating~~ Discontinuing the provision of ~~goods and services~~: If the provider provides ~~goods or services~~ a service to a consumer ~~that the AAA case manages through a care coordination program 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 ~~of goods or services~~ the provider will provide the service to the case-managed consumer no later than thirty days before the anticipated last day ~~of goods or services,~~ unless the reason for discontinuing the ~~goods or services~~ 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 ~~goods or services~~ 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 ~~of goods or services.~~ The provider shall also notify the case-managed consumer how he or she may reach a long-term care ombudsman. If the thirtieth day falls on a weekend or legal holiday, ~~as defined in section 1.14 of the Revised Code,~~ the deadline is extended to the day immediately after the thirtieth day that is not on a weekend or a legal holiday.
- (4) Confidentiality: In the agreement, the AAA shall include any federal or state confidentiality requirements ~~and also, including~~ the following ~~requirements~~:
- (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 ~~do so~~ disclose and the purpose for the disclosure is associated with the provider's provision of ~~goods and services~~ to the consumer.
- (b) The provider shall not disclose information concerning a consumer for a purpose unassociated with the provider's provision of ~~goods and services~~ even if the provider obtains and retains the consumer's written, ~~or electronic~~ informed consent to do so.

- (c) If the provider retains consumers' records electronically, the provider shall store ~~the~~ their electronic records in a password-protected file. If the provider does not retain consumers' records electronically, the provider shall store ~~consumers'~~ their 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 section 173.38 of the Revised Code and Chapter 173-9 of the Administrative Code, unless the provider is self-employed. If the provider is self-employed, the AAA shall review databases and check criminal records of the provider according to section 173.381 of the Revised Code and Chapter 173-9 of the Administrative Code. ~~Division (B)(1) of section 109.572 of the Revised Code requires the bureau of criminal identification and investigation to include sealed criminal records in its criminal records reports for criminal records checks conducted under sections 173.38 and 173.381 of the Revised Code.~~
- (b) If a federal, state, or local government regulatory authority prohibits the provider from providing the ~~goods or~~ services required by the agreement, the provider shall notify the AAA of the disciplinary action and the AAA shall, simultaneous to the date of the regulatory authority's disciplinary action, deem the provider to be ineligible to be paid with Older Americans Act funds for providing ~~goods or~~ services to consumers.
- (6) ~~Sub-contracting:~~ Subcontracting: In the agreement, the AAA shall ~~prohibit~~ require the provider to obtain authorization from the AAA before sub-contracting subcontracting any of its duties under the agreement to another provider ~~unless the provider obtains authorization from the AAA before sub-contracting.~~
- (7) Modification:
- (a) In the agreement, the AAA shall describe the grounds (and the process) for modifying the agreement.
- (b) In the agreement, the AAA shall state that if an amendment to any amendments to the laws, rules, or regulations-law, rule, or regulation (or the repeal or rescission of any law, rule, or regulation) the AAA cites 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 law, rule, or regulation (or the repeal or rescission of a law, rule, or regulation) will result in a correlative modification to the agreement without the necessity of executing a written amendment even if the agreement is not updated before the amendment (or repeal or rescission) takes effect.

- (c) In 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 rule 173-3-05.1 of the Administrative Code.
- (9) ~~Service verification and records retention~~: Records: In the agreement, the AAA shall include the following permissions and requirements:
- (a) ~~In no agreement, shall an AAA prohibit a provider from using~~ Permission to use electronic systems to verify the provision of goods or services or ~~to retain~~ records.
- (b) ~~In the agreement, the AAA shall require providers~~ A requirement to retain any record relating to costs, ~~goods and services~~ provided, supporting documentation for payment of ~~goods and services~~ provided, and all deliverables until ~~the last~~ all of the following ~~dates~~ periods of time have passed:
- (i) Three years after the date the provider receives payment for the ~~goods or services~~.
- (ii) The date on which ODA, the AAA, or a duly-authorized law enforcement official concludes monitoring the records and any findings are finally settled.
- (iii) The date on which the auditor of the state of Ohio, the inspector general, or a duly-authorized law enforcement official concludes an audit of the records and any findings are finally settled.
- (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), 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, monitoring of the provider's provision of services. To participate in good faith includes 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 agreement, the AAA shall describe how it shall pay the provider, including the amount and payment method.

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

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

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

(11) Administrative hearings:

(a) In the agreement, the AAA shall state that the provider may appeal ~~a decision~~ 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 ~~into~~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 state-~~law~~ laws or rules.

Effective:

Five Year Review (FYR) Dates: 10/5/2021

Certification

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