

173-39-02

**ODA provider certification: Conditions of participation requirements for every provider.**

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

(B) Agency providers: These are the ~~conditions~~ requirements 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 any rule in Chapter 173-39 of the Administrative Code ~~that regulates~~ regulating a good or service ~~that~~ ODA certified the provider to ~~furnish~~ provide.

(b) The provider may ~~furnish~~ provide a good or service ~~that is~~ not authorized by the ~~consumer's~~ individual's service plan, but ODA (or ~~ODA's~~ its designee) only ~~reimburses~~ pays the provider for ~~furnishing~~ providing a ~~service that is~~ goods or services authorized by the ~~consumer's~~ individual's service plan.

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

(i) The provider does not ~~furnish~~ provide an authorized good or service at the time (or, for the period of time) authorized by the case manager;

(ii) The ~~consumer~~ individual moves to another address;

(iii) The provider is aware of any significant change ~~that may impact~~ furnishing impacting the provision of goods or services to the ~~consumer~~ individual, including the ~~consumer's~~ individual's repeated refusal of goods or services; ~~or,~~

(iv) The ~~consumer's~~ 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 ~~consumer~~ individual and ODA's designee in writing at least thirty days before the last day the provider ~~furnishes~~ provides ~~ODA-certified goods or services to the consumer individual,~~ unless:
- (i) The ~~consumer~~ individual has been hospitalized, placed in a long-term care facility, or ~~has expired~~ is deceased;
  - (ii) The health or safety of the ~~consumer~~ individual or provider is at serious, imminent risk; and,
  - (iii) The ~~consumer is terminating~~ individual chooses to no longer receive goods or services with from the provider.
- (e) The provider shall adopt and implement ethical standards to require ~~workers~~ its staff members to ~~furnish~~ 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 ~~consumer's~~ individual's food or drink, or using the ~~consumer's~~ individual's personal property without his or her consent.
  - (ii) Bringing a child, friend, relative, or anyone else, or a pet, to the ~~consumer's~~ individual's place of residence.
  - (iii) Taking the ~~consumer~~ individual to the provider's place of business, unless the place of business is the care setting.
  - (iv) Consuming alcohol while ~~furnishing~~ providing ~~a service~~ goods or services to the ~~consumer~~ individual.
  - (v) Consuming medicine, drugs, or other chemical substances ~~not in accordance with the legal, valid, prescribed use, or in any way that in a way that is illegal, unprescribed, or~~ impairs the provider from ~~furnishing~~ providing ~~a service~~ goods or services to the ~~consumer~~ individual.
  - (vi) Discussing religion or politics with the ~~consumer~~ individual and others in the care setting.

- (vii) Discussing personal issues with the ~~consumer~~ 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 ~~consumer~~ individual or his or her household members or family members.
- (ix) Engaging the ~~consumer~~ individual 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~~ individual's home for a purpose not related to ~~furnishing~~ providing a service without notifying the agency supervisor, the ~~consumer's~~ individual's emergency contact person, any identified caregiver, or the ~~consumer's~~ individual's case manager. "Emergency contact person" means a person the ~~consumer~~ 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 ~~furnishing a service~~ 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) ~~Engaging in non-care-related~~ Non-care-related socialization with a person other than the ~~consumer~~ individual (e.g., a visit from a person who is not ~~furnishing~~ providing care to the ~~consumer~~ individual; making or receiving a personal telephone call; or, sending or receiving a personal text message, ~~or email, or video~~).
  - (c) ~~Furnishing~~ Providing care to a person other than the ~~consumer~~ individual.
  - (d) Smoking without the ~~consumer's~~ individual's consent.
  - (e) Sleeping.

- (xii) Engaging in behavior that causes, or may cause, physical, verbal, mental, or emotional distress or abuse to the ~~consumer~~ individual including publishing any manner of photos of the individual on social media websites without the individual's written consent.
  - (xiii) Engaging in behavior ~~that~~ a reasonable person would interpret as inappropriate involvement in the ~~consumer's~~ individual's personal relationships.
  - (xiv) ~~Being~~ Making decisions, or being designated to make decisions, for the ~~consumer~~ 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 ~~consumer~~ individual products or personal items, unless the provider is the ~~consumer's~~ individual's family member who does so only when not ~~furnishing a service~~ providing goods or services.
  - (xvi) Engaging in behavior ~~that constitutes~~ constituting a conflict of interest, or ~~takes~~ taking advantage of, or ~~manipulates~~ manipulating ~~ODA-certified~~ services resulting in an unintended advantage for personal gain that has detrimental results to the ~~consumer~~ individual, the ~~consumer's~~ 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) ~~Consumer safety~~ Safety:

- (a) The provider shall have a written procedure for documenting ~~consumer~~ individual's incidents. The procedure shall include notifying ODA (or ~~ODA's~~ 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 ~~that a consumer~~ has an individual suffered abuse, neglect, or exploitation to the CDJFS (or its designee), ~~in accordance with~~ as required by section 5101.61 of the Revised Code, ~~and. The provider shall~~ also notify ODA (or ~~ODA's~~ its designee).

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 ~~consumer individual~~ loss due to theft or property damage and ~~furnish~~ provide written instructions that any ~~consumer individual~~ may use to obtain ~~reimbursement 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 ~~consumer individual~~ confidentiality including, ~~but not limited to~~, 42 C.F.R. 431.300 to 431.307 (October 1, ~~2013~~ 2015 edition), and 45 C.F.R. parts 160, 162, and 164 (October 1, ~~2013~~ 2015 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. 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 ~~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~~ identifying lines of administrative, advisory, contractual, and supervisory authority.
- (f) The provider shall not allow a staff person to ~~furnish~~ provide ~~a service~~ goods or services to a ~~consumer~~ individual if the person is the ~~consumer's~~ individual's spouse, parent, step-parent, legal guardian, power of attorney, or authorized representative.
- (g) The provider shall not allow a volunteer to ~~furnish~~ provide any aspect of a ~~certified long-term care service for a consumer~~ 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 ~~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~~ 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 ~~has been~~ was convicted of a felony under state or federal law.
- (k) ~~The~~ When hiring an applicant for, or retaining an employee in, a paid direct-care position, the provider shall ~~comply with the database reviews~~ review databases and check criminal records ~~check requirements under~~ 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, ~~2013~~ 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 ~~November 20, 2012~~ March 4, 2016) federal wage-and-hour laws, and workers' compensation laws regarding the recruitment and employment of persons.
- (n) The provider shall annually ~~furnish~~ provide to ODA (or ~~ODA's~~ its designee) a written statement ~~that certifies~~ certifying that the provider ~~has~~ paid all applicable federal, state, and local income and employment taxes.
- (o) The provider shall participate in ODA's (~~and~~ 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 ~~furnished~~ provided, and significant business transactions, until the ~~latter~~ 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; ~~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~~ provide representatives of ODA (or ~~ODA's~~ 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) ~~Reimbursement~~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 ~~that regulates~~ regulating a good or service ~~that~~ ODA certified the provider to ~~furnish~~ provide.
  - (b) ODA's obligation to ~~reimburse~~ pay the provider for the costs of goods and services the provider ~~furnishes~~ provides as a certified ~~long-term-care~~ 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 ~~reimbursement~~ payment ~~levels~~ rates ~~negotiated for each service by the provider and ODA's designee for~~ goods and services established in the certification agreement as payment in full, and not seek any additional payment for ~~those~~ goods and services from the ~~consumer~~ individual or any other person.
- (C) Non-agency providers: These are the ~~conditions~~ requirements 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 any rule in Chapter 173-39 of the Administrative Code ~~that regulates~~ regulating a good or service ~~that~~ ODA certified the provider to ~~furnish~~ provide.
- (b) The provider may ~~furnish~~ provide a service ~~that is~~ not authorized by the ~~consumer's~~ individual's service plan, but ODA (or ~~ODA's~~ its designee) only ~~reimburses~~ pays the provider for ~~furnishing~~ providing a good or service ~~that is~~ authorized by the ~~consumer's~~ individual's service plan.
- (c) The provider shall notify ODA (or ~~ODA's~~ its designee) no later than one business day after the provider is aware of any significant change that



may affect the ~~consumer's service needs~~ individual's need for goods and services, including one or more of the following:

- (i) The provider does not ~~furnish~~ provide an authorized good or service at the time (or, for the period of time) authorized by the case manager;
  - (ii) The ~~consumer~~ individual moves to another address;
  - (iii) The provider is aware of any significant change ~~that may impact furnishing~~ impacting the provision of goods or services to the consumer individual, including the ~~consumer's~~ individual's repeated refusal of goods or services; ~~or,~~
  - (iv) The ~~consumer's~~ 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 an consumer individual~~ and ODA's designee in writing at least thirty days before the last day the provider stops ~~furnishing providing ODA-certified goods and services~~ ODA certified the provider to provide to the consumer individual, unless:
- (i) The ~~consumer~~ individual has been hospitalized, placed in a long-term care facility, or ~~has expired~~ is deceased;
  - (ii) The health or safety of the ~~consumer~~ individual or provider is at serious, imminent risk; and,
  - (iii) The ~~consumer is terminating~~ individual chooses to no longer receive goods or services with from the provider.
- (e) The provider shall ~~furnish~~ 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 ~~consumer's~~ individual's food or drink, or using the ~~consumer's~~ individual's personal property without his or her consent.

- (ii) Bringing a child, friend, relative, or anyone else, or a pet, to the consumer's individual's place of residence.
- (iii) Taking the consumer individual to his or her place of business, unless the place of business is the care setting.
- (iv) Consuming alcohol while ~~furnishing~~ providing a service goods or services to the consumer individual.
- (v) Consuming medicine, drugs, or other chemical substances ~~not in accordance with the legal, valid, prescribed use, or in any way that in a way that is illegal, unprescribed, or~~ impairs the provider from furnishing providing a service goods or services to the consumer individual.
- (vi) Discussing religion or politics with the consumer individual and others in the care setting.
- (vii) Discussing personal issues with the consumer 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 consumer individual or his or her household members or family members.
- (ix) Engaging the consumer individual 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 individual's home for a purpose not related to furnishing providing a service goods or services without notifying the consumer's individual's emergency contact person, any identified caregiver, or the consumer's individual's case manager. "Emergency contact person" means a person the consumer 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 furnishing a service 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) ~~Engaging in non-care-related~~ Non-care-related socialization with a person other than the ~~consumer~~ individual (e.g., a visit from a person who is not ~~furnishing~~ providing care to the ~~consumer~~ individual; making or receiving a personal telephone call; or, sending or receiving a personal text message, ~~or email, or video~~).
  - (c) ~~Furnishing~~ Providing care to a person other than the ~~consumer~~ individual.
  - (d) Smoking without the ~~consumer's~~ individual's consent.
  - (e) Sleeping.
- (xii) Engaging in behavior that causes, or may cause, physical, verbal, mental, or emotional distress or abuse to the ~~consumer~~ individual including any manner of publishing photos of the individual on social media websites without the individual's written consent.
  - (xiii) Engaging in behavior ~~that~~ a reasonable person would interpret as inappropriate involvement in the ~~consumer's~~ individual's personal relationships.
  - (xiv) ~~Being~~ Making decisions, or ~~being~~ designated to make decisions, for the ~~consumer~~ 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 ~~consumer~~ individual products or personal items, unless the provider is the ~~consumer's~~ individual's family member who does so only when not ~~furnishing a service~~ providing goods or services.
  - (xvi) Engaging in behavior ~~that constitutes~~ constituting a conflict of interest, ~~or takes~~ taking advantage of, or ~~manipulates~~ manipulating ~~ODA-certified~~ the provision of goods and services resulting in an unintended advantage for personal gain that has

detrimental results to the ~~consumer~~ individual, the ~~consumer's~~ 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) ~~Consumer safety~~ Safety:

(a) The provider shall have a written procedure for documenting ~~consumer~~ individual's incidents. The procedure shall include notifying ODA (or ~~ODA's~~ 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 ~~that a consumer~~ has an individual suffered abuse, neglect, or exploitation to the CDJFS (or its designee), ~~in accordance with~~ as required by section 5101.61 of the Revised Code, ~~and. The provider shall~~ also notify ODA (or ~~ODA's~~ 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 ~~consumer~~ individual loss due to the theft or property damage caused by the provider and ~~furnish~~ provide written instructions ~~that any consumer individual~~ may use to obtain ~~reimbursement~~ 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 ~~consumer~~ individual confidentiality including, ~~but not limited to,~~ 42 C.F.R. 431.300 to 431.307 (October 1, ~~2013~~ 2015 edition), and 45 C.F.R. parts 160, 162, and 164 (October 1, ~~2013~~ 2015 edition).

(4) Provider qualifications:

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

(b) The provider shall not allow a volunteer to ~~furnish~~ provide ~~any aspect of a certified long-term care service for a consumer~~ goods or services to an

individual except as ODA's designee authorizes the provider to do so through ~~its~~ the provider certification agreement with the provider.

- (c) The provider shall disclose whether he or she ~~has been~~ was convicted of a felony under state or federal law.
- (d) The provider shall comply with the database reviews and criminal records check requirements ~~under~~ 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 have a written statement supporting compliance with 45 C.F.R. 80.4 (October 1, 2013 edition) regarding the provision of services.~~
- ~~(f)~~(e) The provider shall annually ~~furnish~~ provide to ODA (or ODA's its designee) a written statement ~~that certifies~~ certifying that he or she ~~has~~ paid all applicable federal, state, and local income and employment taxes.
- ~~(g)~~(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 ~~furnished~~ provided, and significant business transactions, until the ~~latter~~ latest of the following dates:
  - (i) Six years after the date the provider receives payment for the service; or,
  - (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; ~~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~~ provide representatives of ODA (or ~~ODA's~~ 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) ~~Reimbursement~~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 ~~that regulates~~ regulating a service ~~that~~ ODA certified the provider to ~~furnish~~ provide.
- (b) ODA's obligation to ~~reimburse~~ pay the provider for the costs of goods and services the provider furnishes provides as a certified ~~long-term care~~ 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 ~~reimbursement payment levels rates~~ negotiated for each service by the provider and ODA's designee established in the certification agreement as payment in full, and not seek any additional payment for those services from the ~~consumer~~ individual or any other person.

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

(1) Service provision:

- (a) The provider shall comply with any rule in Chapter 173-39 of the Administrative Code ~~that regulates~~ regulating a service ~~that~~ ODA certified the provider to ~~furnish~~ provide.
- (b) The provider shall notify ODA (or ~~ODA's~~ its designee) no later than one business day after the provider is aware of any significant change that may affect the ~~consumer's service needs~~ individual's need for goods and services, including one or more of the following:

- (i) The ~~consumer~~ individual moves to another address;
  - ~~(ii) The consumer has been admitted to a hospital or has visited an emergency room;~~
  - ~~(iii)~~(ii) The provider is aware of any significant change ~~that may impact the furnishing of~~ impacting the provision of goods and services to the consumer individual, including the ~~consumer's~~ individual's repeated refusal of goods and services; ~~or,~~
  - ~~(iv)~~(iii) The ~~consumer's~~ 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 ~~consumer~~ individual and ODA's designee in writing at least thirty days before the last day the provider ~~furnishes~~ provides the home care attendant service to the ~~consumer~~ individual, unless the health or safety of the ~~consumer~~ individual or provider is at serious, imminent risk.
- (d) The provider shall ~~furnish~~ 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 ~~furnishing~~ providing a service to the ~~consumer~~ individual.
  - (ii) Consuming medicine, drugs, or other chemical substances ~~not in accordance with the legal, valid, prescribed use, or in any way that in a way that is illegal, unprescribed, or impairs the provider from~~ furnishing providing a service to the ~~consumer~~ individual.
  - (iii) Accepting, obtaining, or attempting to obtain money or anything of value from the ~~consumer~~ individual or his or her household members or family members. However, if the provider is the ~~consumer's~~ individual's family member, he or she may accept gifts for birthdays and holidays.
  - (iv) Engaging the ~~consumer~~ individual 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~~ providing a service without the consent or knowledge of the ~~consumer~~ individual.
- (vi) Engaging in any activity that may distract the provider from ~~furnishing~~ 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) ~~Engaging in non-care-related~~ Non-care-related socialization with a person other than the ~~consumer~~ individual (e.g., a visit from a person who is not ~~furnishing~~ providing care to the ~~consumer~~ individual; making or receiving a personal telephone call; or, sending or receiving a personal text message, ~~or email, or video~~).
  - (c) ~~Furnishing~~ providing care to a person other than the ~~consumer~~ individual.
  - (d) Smoking without the ~~consumer's~~ 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.
- ~~(vii)~~(viii) Engaging in behavior ~~that~~ a reasonable person would interpret as inappropriate involvement in the ~~consumer's~~ individual's personal relationships.
- ~~(viii)~~(ix) ~~Being~~ Making decisions, or being designated ~~or serve~~ to make decisions, for the ~~consumer~~ individual in any capacity involving a declaration for mental health treatment, durable power of attorney, guardianship pursuant to court order; or authorized representative.
- ~~(ix)~~(x) Selling to, or purchasing from, the ~~consumer~~ individual products or personal items, unless the provider is the ~~consumer's~~



individual's family member who does so only when not ~~furnishing~~  
providing a service.

(2) ~~Consumer safety~~Safety:

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

(3) Confidentiality: The provider shall comply with all state and federal laws and regulations governing ~~consumer~~ individual confidentiality including, ~~but not limited to~~, 42 C.F.R. 431.300 to 431.307 (October 1, ~~2013~~ 2015 edition), and 45 C.F.R. parts 160, 162, and 164 (October 1, ~~2013~~ 2015 edition).

(4) Provider qualifications:

- (a) The provider shall maintain an active, valid ~~medicaid~~ medicaid-provider agreement, as set forth in rule 5160-1-17.2 of the Administrative Code.
- (b) The provider shall not ~~furnish~~ provide a service to a ~~consumer~~ individual if he or she is the ~~consumer's~~ individual's spouse, parent, step-parent, legal guardian, power of attorney, or authorized representative.
- (c) The provider shall maintain telephone service ~~that allows~~ allowing for reliable, dependable, and accessible communication.
- (d) The provider shall maintain a secure place for retaining ~~consumer~~ 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 ~~under~~ 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 ~~furnished~~ provided, and significant business transactions, until the ~~latter~~ 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; ~~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~~ provide ODA (or ~~ODA's~~ its designee) with access to all records required by this rule and by any rule in Chapter 173-39 of the Administrative Code ~~that regulates~~ regulating a service ~~that~~ ODA certified the provider to ~~furnish~~ provide.

- (6) ~~Reimbursement~~ Payment: A provider shall accept the ~~reimbursement~~ payment ~~levels~~ rate negotiated between the provider and the ~~consumer~~ individual for each home care attendant service as payment in full and not seek any additional payment for ~~those~~ services from the ~~consumer~~ 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 ~~conditions~~ requirements 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)~~(a) The provider shall comply with any rule in Chapter 173-39 of the Administrative Code ~~that regulates~~ regulating a service ~~that~~ ODA certified the provider to ~~furnish~~ provide.

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

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

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

(i) The provider is aware of any significant change ~~that may impact~~ furnishing impacting the provision of goods and services to the consumer individual, including the consumer's individual's repeated refusal of goods and services; ~~or,~~

(ii) The ~~consumer's~~ individual's physical, mental or emotional status changes, or the provider can document changes in the environmental conditions or other health and safety issues.

~~(f)~~(e) The provider shall transfer or discharge ~~a consumer~~ an individual under the terms of section 3721.16 of the Revised Code.

~~(g)~~(f) If the provider terminates its ~~medicaid-provider~~ medicaid-provider agreement ~~with ODM~~, pursuant to section 3721.19 of the Revised Code, it shall ~~furnish~~ provide written notification to the ~~consumer~~ individual and to ODA's designee at least ninety days before

terminating the provision of goods and services to the consumer individual.

~~(h)~~(g) The provider shall adopt and implement ethical standards of practice by requiring facility staff to ~~furnish~~ provide services ~~in accordance with~~ according to the residents' rights policies and procedures described in section 3721.12 of the Revised Code, and ~~in accordance with~~ 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) ~~Consumer safety~~Safety:

(a) ~~The provider shall have a written procedure~~ In the policy the provider adopts for documenting consumer on how to document individual's incidents, ~~in accordance with~~ as required by paragraph (B) of rule 3701-17-62 of the Administrative Code. ~~The procedure~~ the provider shall include require notifying ODA (or ~~ODA's~~ its designee) of the ~~incident~~ incidents.

(b) The provider shall report any reasonable cause to believe ~~that a consumer~~ has an individual suffered abuse, neglect, or exploitation to the Ohio department of health, ~~in accordance with~~ according to rule 3701-64-02 of the Administrative Code, ~~and~~ The provider shall also notify ODA (or ~~ODA's~~ 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 ~~consumer individuals'~~ losses due to theft or property damage and ~~furnish~~ provide written instructions ~~that~~ any ~~consumer individual~~ consumer individual may use to obtain ~~reimbursement~~ 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 ~~consumer individual's~~ consumer individual's confidentiality including, ~~but not limited to~~, 42 C.F.R. 431.300 to 431.307 (October 1, ~~2013~~ 2015 edition), and 45 C.F.R. parts 160, 162, and 164 (October 1, ~~2013~~ 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 directives~~, and bylaws or articles of incorporation.
- (c) The provider shall have a written table of organization ~~that~~ clearly ~~identifies~~ 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 ~~furnish~~ provide a service to a ~~consumer~~ individual if the person is the ~~consumer's~~ individual's spouse, parent, parent, step-parent, legal guardian, power of attorney, or authorized representative.
- (e) The provider shall not allow a volunteer to ~~furnish~~ provide any aspect of the services regulated under rule 173-39-02.16 or 173-39-02.17 of the Administrative Code for ~~consumers~~ 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 comply with the database reviews and criminal records check requirements under Chapter 173-9 of the Administrative Code.~~
- ~~(h)~~(g) The provider shall have a written statement supporting compliance with 45 C.F.R. 80.4 (October 1, ~~2013~~ 2015 edition) regarding the provision of services.
- ~~(i)~~(h) The provider shall have a written statement supporting compliance with the "Equal Employment Opportunity Act of 1972" (as in effect on ~~November 20, 2012~~ March 4, 2016) federal wage-and-hour laws, and workers' compensation laws regarding the recruitment and employment of persons.
- ~~(j)~~(i) The provider shall participate in ODA's (~~and~~ 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 ~~furnished~~ provided, and significant business transactions, until the ~~latest~~ 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; ~~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~~ provide representatives of ODA (or ~~ODA's~~ 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) ~~Reimbursement~~ Payment:

- (a) The provider shall bill only for a service if the provider complies with the requirements ~~under~~ in this rule and the requirements, including service-verification requirements, ~~under~~ in any rule in Chapter 173-39 of the Administrative Code ~~that regulates~~ regulating a service ~~that~~ ODA certified the provider to ~~furnish~~ provide.
- (b) ODA's obligation to ~~reimburse~~ pay the provider for the costs of services the provider ~~furnishes~~ provides as a certified ~~long-term-care~~ 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 ~~reimbursement~~ payment ~~levels~~ rates ~~negotiated for each service by the provider and ODA's designee established in the certification agreement~~ as payment in full, and not seek any additional payment for those services from the ~~consumer~~ individual or any other person.

- (d) The assisted living program shall not pay for any service the provider ~~furnishes~~ provides to an applicant before ODA's designee enrolls the applicant into the program and before case manager authorizes the service in the ~~consumer's~~ individual's service plan.
- (e) If a ~~consumer~~ 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 ~~consumer~~ individual an additional fee for the service or charge the ~~consumer~~ individual an additional fee to hold the unit during the ~~consumer's~~ individual's absence.
- (F) ~~Consumer-directed~~ Participant-directed personal care provider: These are the ~~conditions~~ requirements for any person who seeks to become, or to remain, and ODA-certified ~~long-term-care consumer-directed~~ participant-directed personal care provider:
- (1) Service provision:
- (a) At the ~~consumer's~~ individual's request, the provider shall participate in an interview with the ~~consumer~~ individual before initiating any service.
- (b) The provider shall comply with any rule in Chapter 173-39 of the Administrative Code ~~that regulates~~ regulating a service ~~that~~ ODA certified the provider to ~~furnish~~ provide.
- (c) The provider shall notify ODA (or ~~ODA's~~ its designee) no later than one business day after the provider is aware of any significant change that may affect the ~~consumer's~~ individual's service needs, including one or more of the following:
- (i) The ~~consumer~~ individual moves to another address;
- (ii) ~~The consumer has been admitted to a hospital or has visited an emergency room;~~
- ~~(iii)~~(ii) The provider is aware of any significant change ~~that may impact the furnishing of~~ impacting the provision of goods or services to the ~~consumer~~ individual, including the ~~consumer's~~ individual's repeated refusal of goods or services; ~~or,~~
- ~~(iv)~~(iii) The ~~consumer's~~ 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 ~~consumer~~ individual and ODA's designee in writing at least thirty days before the last day the provider ~~furnishes~~ provides the personal care service to the ~~consumer~~ individual, unless the health or safety of the ~~consumer~~ individual or provider is at serious, imminent risk.
- (e) The provider shall ~~furnish~~ 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 ~~furnishing~~ providing a service to the ~~consumer~~ individual.
  - (ii) Consuming medicine, drugs, or other chemical substances ~~not in accordance with the legal, valid, prescribed use, or in any way that in a way that is illegal unprescribed, or~~ impairs the provider from ~~furnishing~~ providing a service to the ~~consumer~~ individual.
  - (iii) Accepting, obtaining, or attempting to obtain money or anything of value from the ~~consumer~~ individual or his or her household members or family members. However, if the provider is the ~~consumer's~~ individual's family member, he or she may accept gifts for birthdays and holidays.
  - (iv) Engaging the ~~consumer~~ individual 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~~ providing a service without the consent or knowledge of the ~~consumer~~ individual.
  - (vi) Engaging in any activity that may distract the provider from ~~furnishing~~ 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) ~~Engaging in non-care-related~~ Non-care-related socialization



with a person other than the ~~consumer~~ individual (e.g., a visit from a person who is not ~~furnishing~~ providing care to the ~~consumer~~ individual; making or receiving a personal telephone call; or, sending or receiving a personal text message, ~~or email, or video~~).

(c) ~~Furnishing~~ providing care to a person other than the ~~consumer~~ individual.

(d) Smoking without the ~~consumer's~~ 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.

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

~~(viii)~~(ix) ~~Being~~ Making decisions, or being designated or serve to make decision decisions, for the consumer individual in any capacity involving a declaration for mental health treatment, durable power of attorney, guardianship pursuant to court order; or authorized representative.

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

## (2) ~~Consumer safety~~ Safety:

(a) The provider shall notify ODA (or ~~ODA's~~ its designee) of any "incident" involving ~~a consumer~~ 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 ~~that a consumer has~~ an individual suffered abuse, neglect, or exploitation to the CDJFS (or its designee),

~~in accordance with~~ as required by section 5101.61 of the Revised Code; ~~and. The provider shall~~ also notify ODA (or ~~ODA's~~ its designee) of the reasonable cause.

- (3) Confidentiality: The provider shall comply with all state and federal laws and regulations governing ~~consumer~~ individual confidentiality including, ~~but not limited to,~~ 42 C.F.R. 431.300 to 431.307 (October 1, ~~2013~~ 2015 edition), and 45 C.F.R. parts 160, 162, and 164 (October 1, ~~2013~~ 2015 edition).

(4) Provider qualifications:

- (a) The provider shall complete an application to become an ODA-certified ~~long-term—consumer-directed~~ participant-directed personal care provider.
- (b) The provider shall maintain an active, valid ~~medicaid~~ 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 ~~consumer~~ individual.
- (g) The provider shall not ~~furnish~~ provide a service to a ~~consumer~~ an individual if he or she is the ~~consumer's~~ individual's spouse, parent, step-parent, legal guardian, power of attorney, or authorized representative.

- (h) The provider shall maintain a telephone service ~~that allows~~ allowing for reliable, dependable, and accessible communication.
- (i) The provider shall maintain a secure place for retaining ~~consumer~~ 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 ~~under in~~ 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 ~~and or~~ 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 ~~furnished~~ provided, and significant business transactions, until the ~~latter~~ latest of the following dates:
  - (i) Six years after the date the provider receives payment for the service;<sub>2</sub>
  - (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;  
~~or;~~<sub>2</sub>
  - (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~~ 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 ~~that regulates~~ regulating a service that ODA certified the provider to ~~furnish~~ provide.

- (6) ~~Reimbursement~~Payment: The provider shall accept the ~~reimbursement~~ payment rate ~~that the written agreement with ODA's designee establishes for each personal care service established in the certification agreement~~ as payment in full and not seek any additional payment for services from the ~~consumer~~ 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: 04/15/2016

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Certification

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Date

Promulgated Under: 119.03  
Statutory Authority: 173.01, 173.02, 173.391, 173.52, 173.54, Section 323.110 of H.B.59 (130th G.A.)  
Rule Amplifies: 173.39, 173.391, 173.52, 173.53, 173.54  
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