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173-3-06 **Mandatory clauses.**

(A) In each provider agreement entered into under ~~this chapter~~ Chapter 173-3 or Chapter 173-4 of the Administrative Code, for the provision of services that are funded in part or in full with Older Americans Act funds, senior community services funds, or Alzheimer's respite program funds, the AAA shall~~, at a minimum,~~ include:

Providers ask if this rule applies to the named programs. Naming the program that the chapter regulates is helpful.

(1) A clause requiring the provider to comply with rule 173-3-06.1 of the Administrative Code, if providing an adult day service; rule 173-3-06.2 of the Administrative Code, if providing a chore service; rule 173-3-06.3 of the Administrative Code, if providing a home maintenance, modification, or repair service; rule 173-3-06.4 of the Administrative Code, if providing a homemaker service; rule 173-3-06.5 of the Administrative Code, if providing a personal care service; rule 173-3-06.6 of the Administrative Code, if providing a transportation service; rule 173-4-05 of the Administrative Code, if providing a meal service; rule 173-4-06 of the Administrative Code, if providing a nutrition consultation service; rule 173-4-07 of the Administrative Code, if providing a nutrition education service; rule 173-4-08 of the Administrative Code, if providing a nutrition health screening; or rule 173-4-09 of the Administrative Code, if providing a grocery shopping assistance service; or, if the service the AAA is procuring is not specified in the above rules, a clause requiring the provider to comply with a written specification of the service (e.g., a description of the service and any conditions for providing the service);

(2) A reference to any federal, state, and local laws, regulations, and federal circulars to which the provider is required to comply;

(3) A reference to the funding source for the provider agreement by part (as noted in Title III of the Older Americans Act) and by source (e.g., senior community services);

(4) A description of the compensation, including the amount, method of payment, and any possible non-federal match;

(5) A clause prohibiting the provider from assigning any of its duties under the provider agreement to another provider without the authorization of the AAA;

§121.72

(6) Any clause regarding equal employment opportunities required under Appendix A to 45 C.F.R. 74 (October 1, ~~2011~~ 2012 edition) or 45 C.F.R 92.36(i) (October 1, ~~2011~~ 2012 edition);

(7) If the provider agreement regards services reimbursed by Older Americans Act funds, a clause requiring the provider to satisfy the service needs of older

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persons with the greatest economic and social needs with particular attention to older persons 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;

(8) If the provider agreement regards services reimbursed by Older Americans Act funds, a clause requiring the provider to meet the AAA's specific objectives for giving service priority to specific consumer groups;

(9) A list of focal points in the service area covered by the provider agreement that the AAA has designated under Section 306(a)(3)(B) of the Older Americans Act;

(10) A clause requiring the provider to ~~implement a consumer cost-sharing policy~~ comply with the requirements regarding consumer contributions under rule 173-3-07 of the Administrative Code ~~for any service that is subject to rule 173-3-07 of the Administrative Code and to allow and encourage voluntary contributions for services reimbursed with Older Americans Act funds under section 315(b) of the Older Americans Act~~;

Proposed new rule 173-3-07 would no longer require a cost-sharing *policy*. Instead, it repeats the federal requirements for consumer

(11) A clause requiring the provider to cooperate with the AAA and ODA, to assess the extent of the disaster impact upon persons aged sixty years and over, and to coordinate the public and private resources in the field of aging in order to assist older disaster victims whenever the president of the United States declares that the provider's service area is a disaster area;

(12) A clause requiring any provider who is a mandatory reporter to immediately notify the county department of job and family services, or the agency the county department of job and family services designates to provide adult protective services, once the provider has reasonable cause to believe a consumer is the victim of abuse, neglect, or exploitation;

(13) A clause requiring the provider to notify the AAA of any significant change that may necessitate a reassessment the service needs of a consumer in a care-coordination program no later than one business day after the provider is aware of a repeated refusal to receive services; 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;

(14) A clause requiring the provider to notify the AAA and the consumer in writing of the anticipated last day of service to a consumer in a care-coordination

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program no later than thirty business days before the anticipated last day of service, unless the reason for discontinuing the service is the hospitalization, institutionalization, or death of the consumer; serious risk to the health or safety of the provider; the consumer's decision to discontinue the service; or a similar reason why the provider is unable to notify the AAA thirty days before the anticipated last day of service. The provider shall also notify the consumer how he/she may reach a long-term care ombudsman;

(15) A clause prohibiting the provider from using or disclosing any information concerning a consumer for any purpose directly associated with the provision of services, unless the provider has documentation of the consumer's consent to do so;

(16) A clause prohibiting the provider from using or disclosing any information concerning a consumer for any purpose not directly associated with the provision of services, even if the consumer consents to doing so;

H.B.59

(17) A clause requiring the provider to comply with the database reviews and criminal records check requirements under section ~~173.394~~ 173.38 of the Revised Code and Chapter 173-9 of the Administrative Code;

(18) A clause requiring the provider to return any funds received for providing services, if the provision of the services did not comply with the Administrative Code, the Revised Code, or any other law that regulates the provider or the services provided;

(19) A clause requiring the provider to store consumer records in a designated, locked storage space;

(20) A clause requiring the provider to retain any record relating to costs, work performed, supporting documentation for payment of work performed, and all deliverables until the latter of:

(a) Three years after the date the provider receives payment for the service;

(b) The date on which ODA, the AAA, or a duly-authorized law enforcement official concludes monitoring the records and any findings are finally settled; or,

(c) 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

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records and any findings are finally settled.

(21) A description of the review, monitoring, and audit rights of the provider, the AAA, ODA, and the administration on aging;

(22) A description of the grounds (and the process) for modifying, suspending, or terminating the provider agreement;

(23) A statement that any amendments to laws, rules, or regulations cited in the provider agreement will result in a correlative modification to the provider agreement without the necessity of executing a written amendment;

(24) If the provider agreement regards a service that is reimbursed by Older Americans Act funds, a description of the right to appeal (and the process for appealing) a decision on provider agreement that cites rule 173-3-09 of the Administrative Code; and,

(25) A statement that the AAA may terminate the agreement without obligation if ODA determines, through the appeals process or through monitoring, that the provider agreement was entered into inappropriately.

(B) If a provider agreement contains a clause that allows the AAA to renew the agreement after the agreement has been in effect for a year, the AAA shall include the following clauses in the agreement:

(1) If the provider does not demonstrate satisfactory performance, the AAA may terminate the agreement;

(2) If funds are not available to pay for the service, product, or program for a subsequent year, the AAA may terminate the agreement; or,

(3) If a situation arises that was unforeseen at the time that the AAA and the provider entered into the provider agreement, the AAA may terminate the agreement. Examples of an unforeseen situation are a change in market conditions or a change in the law that regulates the service, product, or program that is procured by the agreement.

(C) An AAA may incorporate additional clauses into a provider agreement beyond those required by paragraphs (A) and (B) of this rule, so long as the additional clauses do not conflict with any state or federal law. (e.g., delegation of the administration of a consumer cost-sharing policy)

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(D) This rule applies only to provider agreements entered into by the AAA after February fifteen, two thousand nine, which was the effective date of the first time ODA adopted this rule.