173-39-02 **Conditions of participation.**

(A) There are four types of ODA-certified long-term care service providers:

(1) Long-term care agency providers;

(2) Long-term care non-agency providers;

(3) Consumer-directed individual providers; and

(4) Assisted living providers

(B) In order to be an ODA-certified long-term care agency, or non-agency service provider, a provider must:

(1) Meet the service specifications outlined in rules 173-39-02.1 to 173-39-02.17 of the Administrative Code for each of the services for which the provider wishes to be certified.

(2) Accept as payment in full the reimbursement levels negotiated for each service by the provider and ODA's designee and, except as otherwise required in this rule, not seek any additional payment for those services from the consumer or any other person.

(3) Provide and bill for only those services specified in the consumer's care plan that are provided and documented in accordance with the requirements set forth in Chapter 173-39. of the Administrative Code.

(a) At ODA's request, the provider must submit written documentation for each unit of service billed.

(b) The provider must agree to give ODA access to the provider's fiscal records at any time to ensure compliance with this requirement.

(4) Have a written procedure for documenting consumer incidents with evidence of notification to ODA or its designee.

(5) Assure ODA and its designee that none of the provider's staff persons will be a spouse, parent, or stepparent to a consumer for whom they provide services.

(6) Comply with criminal background investigation requirements set forth in rule 173-41-01 of the Administrative Code.

(7) Immediately provide representatives of ODA or its designee with access to the provider facility or place of work, and to policies, procedures, records and other documents related to the provision of services.

(8) Not use or disclose any information concerning a long-term care consumer for

any purpose without the documented consent of the consumer or the consumer's authorized representative. Even with the consumer's consent, the information may not be used or disclosed for any purpose not directly associated with the provision of services.

(9) Comply with all applicable federal and state privacy laws, including the medicaid confidentiality regulations set forth in 42 C.F.R. 421.300 to 421.306, and the Health Insurance Portability and Accountability Act (HIPAA) regulations set forth in 45 C.F.R. parts 160, 162 and 164.

(10) Maintain and retain all records relating to costs, work performed and supporting documentation for payment of work performed, along with copies of all deliverables for audit by the State of Ohio (including, but not limited to ODJFS, ODA, the auditor of the state of Ohio, the inspector general and duly authorized law enforcement officials) and agencies of the United States government for three years or until an audit is concluded and all issues are resolved.

(11) Report any suspicions of abuse, neglect, and/or exploitation to the CDJFS or it's designee according to section 5101.61 of the Revised Code, and notify ODA or its designee of any such suspicions.

(12) Provide evidence of a minimum of one million dollars in commercial liability insurance and insurance coverage for consumer loss due to theft or property damage, and a written procedure describing the step-by-step instructions a consumer must follow to file a claim.

(13) Notify ODA or its designee within one business day when the provider is aware of significant changes that may affect the service needs of the consumer. Significant changes that may affect service needs of the consumer include, but are not limited to:

(a) The consumer refuses services repeatedly;

(b) The consumer moves to another address; and,

(c) There are changes in the physical, mental, and/or emotional status of the consumer, changes in environmental conditions and/or other health and safety issues.

(14) Provide written notification to the consumer and ODA's designee at least thirty business days prior to the anticipated last date of service if the provider is terminating the provision of ODA-certified services to the consumer. Exceptions to this requirement include:

(a) The consumer has been hospitalized, placed in a long-term care facility or has expired;

(b) The health and/or safety of the consumer or provider is at serious risk; and,

(c) The consumer is terminating services with the provider.

(15) Assure ODA or its designee that volunteers will not be authorized to provide any aspect of certified long-term care services for consumers without supervision by the provider's supervisory staff.

(16))Disclose the identity and offense of any person who is an owner and/or has control over the agency who has been convicted of a felony under state or federal law.

(17) Adopt and implement an employee code of ethics that ensures ethical standards of care by requiring workers to deliver services professionally, respectfully, legally, and during the provision of authorized services shall prohibit unprofessional, disrespectful or illegal behavior, including, but not limited to:

(a) Consuming the consumer's food and/or drink, or using the consumers' personal property without the consumer's consent.

(b) Bringing children, pets, friends, relatives, or anyone else to the consumer's place of residence.

(c) Taking the consumer to the provider's place of residence.

(d) Consuming alcohol, medicine, drugs, or other chemical substances not in accordance with the legal, valid, prescribed use and/or in any way that impairs the provider in the delivery of services to the consumer.

(e) Discussing religion or politics with the consumer and others in the care setting.

(f) Discussing personal issues with the consumer and others in the care setting.

(g) Accepting, obtaining or attempting to obtain money, or anything of value, including gifts or tips from the consumer, household members and family members of the consumer.

(h) Engaging with the consumer in sexual conduct or in conduct that may reasonably be interpreted as sexual in nature, regardless of whether or not the contact is consensual.

(i) Leaving the home for a purpose not related to the provision of services

without notifying the agency supervisor, the consumer's emergency contact person, any identified caregiver, and/or the consumer's case manager, or, for consumer-directed service providers, leaving the home without the consent and/or knowledge of the consumer.

(j) Engaging in activities that may distract the provider from service delivery, including, but not limited to:

(i) Watching television or playing computer or video games;

(ii) Making or receiving personal telephone calls;

(iii) Engaging in non-care related socialization with individuals other than the consumer;

(iv) Providing care to individuals other than the consumer;

(v) Smoking without the consent of the consumer; and,

(vi) Sleeping.

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

(l) Engaging in behavior that may reasonably be interpreted as inappropriate involvement in the consumer's personal relationships.

(m) 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, or guardianship.

(n) Selling or purchasing from the consumer products or personal items. The only exception to this prohibition occurs when the consumer is a family member and the provider is not delivering services.

(o) 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 for the consumer, the consumer's family or caregivers, or another provider.

(C) In addition to paragraphs (B)(1) to (B)(17) of this rule, ODA-certified long-term care service agencies must:

(1) Be a formally organized business or service agency registered with the Ohio secretary of state that has been operating, providing, 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 and

shall:

(a) Disclose all entities with a five per cent or more ownership;

(b) Have a written statement defining the purpose of the business or service agency;

(c) Have a written statement of policies and directives, or bylaws, or articles of incorporation;

(d) 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 individual;

(e) Operate the business in compliance with all applicable federal, state, and local laws; and,

(f) Have a written statement supporting compliance with nondiscrimination laws, federal wage and hour laws, and workers' compensation laws in the recruitment and employment of individuals and in service delivery.

(2) Maintain a physical facility from which to conduct business that has all of the following:

(a) A primary business telephone listed under the name of the business locally and/or a toll-free number available through directory assistance that allows for reliable, dependable and accessible communication.

(b) A designated locked storage space for consumer records.

(D) An ODA-certified long-term care consumer-directed individual provider must meet the following requirements:

(1) Be at least eighteen years of age, possess a valid social security number, and have proof of automobile liability insurance when proof insurance is appropriate.

(2) Complete an application to become an ODA-certified long-term care consumer directed individual provider.

(3) Notify ODA or its designee of any "incident" involving a consumer, as defined in rule 173-39-01 of the Administrative Code.

(4) Comply with criminal background investigation requirements set forth in rule 173-41-01 of the Administrative Code.

(5) Meet the service specifications outlined in rules 173-39-02.1 to 173-39-02.17 of

the Administrative Code for each of the services for which the provider wishes to be certified.

(6) At the consumer's request, participate in an interview with the consumer prior to service initiation.

(7) Enter into and abide by a written agreement with the consumer specifying the agreed upon arrangements for service provision.

(8) Accept as payment in full the reimbursement levels negotiated for each service by the provider, consumer, and ODA's designee and, except as otherwise required in this rule, not seek any additional payment for those services from the consumer or any other person.

(9) Immediately provide access to representatives of ODA or its' designee to the provider's place of work and to any records and other documents related to the provision of services.

(10) Cooperate in ODA's and ODA's designee's quality assurance activities, including:

(a) Provide space for on-site reviews of consumer records;

(b) Make all requested information available to ODA or its designee at the time quality assurance reviews are conducted; and,

(c) Be available to answer questions.

(11))Not use or disclose any information concerning a long-term care consumer for any purpose without the documented consent of the consumer. Even with the consumer's consent, the information may not be used or disclosed for any purpose not directly associated with the provision of services. This includes maintaining compliance with all applicable federal and state privacy laws, including the medicaid confidentiality requirements found in 42 C.F.R. parts 421.300 through 306, and the Health Insurance Portability and Accountability Act (HIPAA) regulations as set forth in 45 C.F.R. parts 160, 162 and 164.

(12))Report any suspicions of abuse or neglect to the CDJFS or it's designee in accordance with section 5101.61 of the Revised Code, and notify ODA or its designee of any such suspicions.

(13))Notify ODA or its designee within one business day when the provider is aware of significant changes that may affect the service needs of the consumer. Examples of significant changes that may affect the service needs of the consumer include, but are not limited to:

(a) The consumer repeatedly refuses services;

(b) The consumer moves to another address; and,

(c) There are changes in the physical, mental, and/or emotional status of the consumer, documented changes in environmental conditions, and/or other health and safety issues.

(14) Provide written notification to the consumer and ODA's designee at least thirty business days prior to the anticipated last date of service if the provider is terminating the provision of ODA-certified services to the consumer. Exceptions to this requirement include:

(a) The consumer has been hospitalized, placed in a long-term care facility or has expired;

(b) The consumer is terminating services with the provider;

(c) The health and/or safety of the consumer or provider is at serious risk.

(15) During the provision of authorized services, consumer-directed individual providers may not engage in any unprofessional, disrespectful or illegal behavior including, but not limited to the following:

(a) Consuming alcohol, medicine, drugs, or other chemical substances not in accordance with the legal, valid, prescribed use and/or in any way that impairs the provider in the delivery of services to the consumer;

(b) Accepting, obtaining or attempting to obtain money or anything of value from the consumer, household members and family members of the consumer in accordance with paragraph (C)(8) of this rule. Consumer-directed individual providers who are family members with their consumers, however, may accept gifts for birthdays and holidays;

(c) Engaging with the consumer in sexual conduct, or in conduct that may reasonably be interpreted as sexual in nature, regardless of whether or not the contact is consensual;

(d) Leaving the home for a purpose not related to the provision of services without the consent and/or knowledge of the consumer;

(e) Engaging in activities that may distract from service delivery including, but not limited to:

(i) Watching television or playing computer or video games;

(ii) Making or receiving personal calls;

(iii) Engaging in non-care related socialization with individuals other than the consumer;

(iv) Providing care to individuals other than the consumer;

(v) Smoking without the consent of the consumer;

(vi) Sleeping.

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

(g) Engaging in behavior that may reasonably be interpreted as inappropriate involvement in the consumer's personal relationships;

(h) Serve as the authorized representative for the ODA-certified consumer directed long-term care program;

(i) Be designated or serve to make decisions for the consumer in any capacity involving a declaration for mental health treatment, durable power of attorney, or guardianship pursuant to court order;

(j) Sell to or purchase from the consumer products or personal items. The only exception to this would be family members when not delivering services.

(16) Assure ODA and its designee that provider staff will not be related as a spouse, parent, stepparent, or legal guardian to a consumer to whom the staff provide services.

(E) In order to be an ODA-certified long-term care assisted living provider, a provider must:

(1) Be licensed as a residential care facility by the Ohio department of health in accordance with rules 3701-17-50 to 3701-17-68 of the Administrative Code, and must:

(a) Have a written statement of policies and directives, or bylaws, or articles of incorporation.

(b) 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 individual.

(c) Have a written statement supporting compliance with nondiscrimination law in hiring and service delivery, federal wage and hour laws, and

worker' compensation laws.

(d) Comply with all applicable federal and state privacy laws, including the medicaid confidentiality regulations set forth in 42 C.F.R. 421.300 to 421.306, and the Health Insurance Portability and Accountability Act (HIPAA) regulations set forth in 45 C.F.R. parts 160, 162, and 164.

(e) Provide evidence of commercial liability insurance and insurance coverage for consumer loss due to theft or property damage, and a written procedure describing the process a consumer must follow to report a loss.

(f) Maintain and retain for three years all records relating to costs, work performed and supporting documentation for payment of work performed, along with copies of all deliverables for audit by the state of Ohio (including, but not limited to ODJFS, ODA, the auditor of the state of Ohio, the inspector general and duly authorized law enforcement officials) and agencies of the United States government or until the audit is concluded and all issues are resolved.

(g) Provide, upon request, representatives of ODA or its designee with a place to work in the provider facility and access to policies, procedures, records and other documents related to the provision of services.

(h) Operate the business in compliance with all applicable federal, state, and local laws.

(2) The provider must meet the service specifications outlined in rules 173-39-02.16 and 173-39-02.17 of the Administrative Code and must.

(a) Comply with the criminal background investigation requirements set forth in rule 173-41-01 of the Administrative Code.

(b) Assure ODA and its designee that no facility staff person is the spouse, parent, or stepparent of the consumer for whom the staff person provides personal care services ordered on an assisted living care plan.

(c) Assure ODA and its designee that volunteers will not be authorized to provide any aspect of assisted living services as defined in rule 173-39-02.16 of the Administrative Code for consumers without supervision by the provider's supervisory staff.

(d) Adopt and implement an employee code of ethics that ensures ethical standards of care by requiring facility staff to deliver 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.

(3) The provider must implement the following practices:

(a) Notify ODA or its designee within one business day when the provider is aware of a significant adverse change in the consumer's status that may affect the service needs of the consumer.

(b) Have a written procedure for documenting consumer incidents, in accordance with paragraph (B) of rule 3701-17-62 of the Administrative Code, that includes evidence of notification to ODA or its designee.

(c) Report any suspicions of abuse, neglect, and/or exploitation of a consumer receiving assisted living services in accordance with rule 3701-64-02 of the Administrative Code, and notify ODA or its designee of any such suspicions.

(d) Provide written notification to the consumer and ODA's designee at least thirty business days prior to the anticipated last date of service if the provider is terminating the provision of assisted living services to the consumer. Exceptions to this requirement include:

(i) The health and/or safety of the consumer or provider is at serious risk;

(ii) The consumer is terminating services with the provider; and

(iii) The consumer has been hospitalized, placed in a long-term care facility, or has expired.

(4) The provider must deliver and bill for only those services authorized by ODA's designee and documented in accordance with the requirements set forth in rules 173-39-02.16 and 173-39-02.17 of the Administrative Code.

(a) At ODA's request, the provider must submit written documentation for each unit of service billed.

(b) The provider must agree to give ODA access to the provider's fiscal records that are related to the provision of the authorized service to ensure compliance with this requirement.

(5) Accept as payment in full the reimbursement levels negotiated for each service by the provider and ODA"s designee and, except as otherwise required in this rule, not seek any additional payment for those services from the consumer or any other person.

(F) In addition to paragraphs (B)(1) through (B)(17) of this rule, ODA-certified long-term

care non-agency providers must pay all applicable federal, state and local income and employment taxes. On an annual basis, each certified long-term care non-agency provider must submit to ODA an approved affidavit stating that the provider has paid all applicable federal, state and local income and employment taxes.

(G) In accordance with rule 173-39-06 of the Administrative Code, a provider's failure to meet any of the required conditions of participation set forth in this rule may result in sanctions including, but not limited to, the denial or revocation of the provider's certification.

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Certification

03/21/2006

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