



# NUTRITION RULES

## FREQUENTLY ASKED QUESTIONS

August 23, 2016

### WHEN DO THE RULES TAKE EFFECT?

The new rules take effect on September 1, 2016.

### DO AAA-PROVIDER AGREEMENTS AND CERTIFICATION AGREEMENTS REQUIRE AMENDMENTS TO RESOLVE CONFLICTS WITH THE NEW RULES?

**For the Older Americans Act Nutrition Program**, the new rules may impact existing AAA-provider agreements. OAC [173-3-06](#) has, since February 15, 2009, required AAAs to include within their AAA-provider agreements a reference to the uniform administrative requirements, cost principles, and audit requirements for federal awards; additional federal laws regulating the agreement; the names of federal state programs that are sources for the Older Americans Act funding being used to procure; additional state laws regulating the agreement; and a statement that any amendments to laws the AAA cites in the agreement will result in a correlative modification to the agreement without the necessity of executing a written amendment.

OAC173-4-04 requires AAAs to evaluate potential nutrition providers, to consider if the provider offers person direction to consumers, and to award AAA-provider agreement(s) to the provider(s) offering the most-responsible bid(s). The rule does not require amending an AAA-provider agreement in effect before September 1, 2016. AAAs must implement the rule for every nutrition project the next time they complete a procurement process that results in an AAA-provider agreement going into effect on (or after) September 1, 2016.

**For programs that require ODA certification**, including the PASSPORT Program, the new rules may impact existing certification agreements between PAAs and ODA-certified providers.

### WHICH RULES REGULATE MY BUSINESS?

OAC [Chapter 173-4](#) regulates AAA-provider agreements for nutrition projects paid, in whole or in part, with Older Americans Act funds.

OAC [Chapter 173-39](#) regulates ODA-certified providers when they are providing meals in a program requiring ODA-certification, including the PASSPORT Program.

ODA made the requirements for OAC Chapter 173-4 and OAC Chapter 173-39 similar to one another to make compliance easier for providers of home-delivered meals who deliver some meals paid by Older Americans Act funds and other meals paid by Medicaid waiver funds.

## WHAT IS PERSON DIRECTION?

**For the Older Americans Act Nutrition Program**, OAC[173-4-04](#) requires AAAs to procure for congregate dining projects that include person direction and home-delivered meals projects that include person direction. The rule defines "person direction" as "a subset of person-centered methodology. While person-centered methodology requires providers to work with consumers to determine what is best for the consumers, person direction allows consumers to decide what is best for themselves from a range of viable options. Person direction over congregate and home-delivered meals allows consumers to control the direction of their meals."

**For programs that require ODA certification**, OAC[173-39-02.14](#) requires providers to "provide each individual with a menu of meal options that, as much as possible, consider the individual's medical restrictions; religious, cultural, and ethnic background; and dietary preferences." Additionally, OAC[5160-44-02](#) creates the person-centered planning process which gives individuals enrolled in all Medicaid waiver programs choice and control over the goods and services they receive through those programs.

## MAY PROVIDERS USE MENU PATTERNS OR NUTRIENT ANALYSIS?

Yes.

**For the Older Americans Act Nutrition Program**, OAC[173-4-05](#) allows providers to use either nutrient analysis or menu patterns as the means by which to calculate the nutritional adequacy of a meal and prohibits AAA-provider agreements from limiting the use of these tools.

**For programs that require ODA certification**, OAC[173-39-02.14](#) explicitly allows providers to use either nutrient analysis or menu patterns as the means by which to calculate the nutritional adequacy of a meal.

## CAN ODA OR AN AAA ESTABLISH NUTRITIONAL-ADEQUACY STANDARDS?

No.

**Older Americans Act Nutrition Program:** The excerpt below is from Section 339 of the Older Americans Act Reauthorization Act of 2016. In that section, Congress established the nutritional-adequacy standards and gave providers flexibility in meeting those standards.

A State that establishes and operates a nutrition project under this chapter, shall—

(2) ensure that the project—

(A) provides meals that—

(ii) provide to each participating older individual—

(I) *a minimum of* 33½ percent of the dietary reference intakes established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences, if the project provides one meal per day,

(II) *a minimum of* 66⅔ percent of the allowances if the project provides two meals per day, and

(III) 100 percent of the allowances if the project provides three meals per day, and

(iii) *to the maximum extent practicable, are adjusted to meet any special dietary needs of program participants,*

(B) *provides flexibility to local nutrition providers* in designing meals that are appealing to program participants,

ODA implemented the Act's requirements in OAC[173-4-05](#) by requiring meals to meet *a minimum of 1/3* of the dietary reference intakes (DRIs) per meal. Because the requirement is to meet *a minimum of 1/3* of the DRIs per meal, a provider may exceed the DRIs in a single meal.

Section 339 of the Act authorizes providers to adjust nutritional-adequacy requirements for meals "to the maximum extent practicable" to meet any consumer's dietary needs and "flexibility...in designing meals that are appealing." OAC[173-4-05](#) prohibits AAA-provider agreements from removing this flexibility. (For more information on flexibility in the Older Americans Act, please review [The Older Americans Act Nutrition Program: Did You Know?](#))

Although Congress gave providers additional flexibility when providing meals paid with Older Americans Act funds. Congress didn't authorize ODA or AAAs to replace the DRIs with an alternate list of nutrients, a list of leader nutrients, or an alternate compliance range for a single DRI (e.g., sodium).

**Programs that require ODA-certification:** ODA adopted similar nutritional-adequacy standards into OAC[173-39-02.14](#) for programs that require ODA certification. The rule requires meals to meet *at least 1/3* of the dietary reference intakes (DRIs) per meal. Because the requirement is to meet *at least 1/3* of the DRIs per meal, a provider may exceed the DRIs in a single meal.

## DID ODA OR THE AAAs INCREASE THE NUMBER OF DIETARY REFERENCE INTAKES?

No.

For the Older Americans Act Nutrition Program and programs that require ODA certification, ODA and AAAs do not have authority to establish dietary reference intakes. Please review ODA's response to the following question: [Can ODA or an AAA establish nutritional-adequacy standards?](#)

## DOES ODA PROHIBIT DIETITIANS FROM USING MENU AVERAGING TO MEET FEDERAL NUTRITIONAL-ADEQUACY STANDARDS?

No.

**Older Americans Act Nutrition Program and programs that require ODA certification:** Because ODA and AAAs do not have authority to establish the standards of practice for dietetics, ODA's rules do not make requirements regarding how licensed dietitians determine when a meal meets federal nutritional-adequacy requirements.

## DOES A PROVIDER NEED TO COLLECT A CONSUMER'S HANDWRITTEN SIGNATURE FOR EACH HOME-DELIVERED MEAL PROVIDED TO A CONSUMER?

**Older Americans Act Nutrition Program and programs that require ODA certification:** OAC [173-4-05.2](#) and [173-39-02.14](#) require providers to verify every meal delivery. Providers may use electronic verification systems, which may not involve collecting handwritten signatures.

A provider who delivers meals but does not use an electronic verification system must collect a consumer's handwritten signature for each delivery regardless of the number of meals being delivered to a consumer in the delivery. The rules only require one handwritten signature for a single delivery to a consumer comprised of multiple meals. Additionally, the rules make provisions for verifying deliveries by receiving a consumer's stamp, mark, or handwritten initials instead of a consumer's handwritten signature.

For further FAQs, please refer to [The Older Americans Act Nutrition Program: Did You Know?](#)

Please [contact us](#) if you have questions about the nutrition rules, including how to implement the rules.