

ODA is systematically adding "Older Americans Act" to the beginning of each rule title in Chapters 173-3 and 173-4. This will be reflected in the proposed new rule.

**\*\* DRAFT - NOT YET FILED \*\***

TO BE RESCINDED

173-3-04

**Provider agreements in general.**

ODA is systematically replacing "provider agreements" with "contracts and grant agreements." The proposed new rule will reflect this.

(A) Authority: Each entity that ODA designates in rule 173-2-04 of the Administrative Code to be an AAA shall enter into provider agreements to develop and implement a comprehensive and coordinated system of services for consumers and their family caregivers. Each AAA is ultimately responsible to ODA for ensuring that all state and federal funds received from ODA are used in a manner that complies with state and federal laws.

(B) Federal uniform financial and program management requirements: When entering into a provider agreement, whether a grant or contract, the AAA that is a non-profit agency shall comply with the procurement requirements under 45 C.F.R., Part 74 (October 1, 2013 edition) and the AAA that is a local government agency shall comply with the procurement requirements under in 45 C.F.R., Part 92 (October 1, 2013 edition).

(C) Purchase-of-service provider agreements:

(1) The AAA shall only enter into a provider agreement that is a purchase-of-service provider agreement, unless the AAA chooses the alternative under paragraph (D) of this rule.

(2) As used in this rule, "purchase-of-service provider agreement" means a contract or grant through which a provider is paid for only the services the provider actually delivers based upon a pre-determined price per unit of service delivered. The price paid per unit of service encompasses all elements associated with the production of the unit of service.

45 C.F.R. Part 75 now calls this a "time and materials" type.

(D) **Cost-reimbursement** provider agreements:

(1) The AAA may use a cost-reimbursement provider agreement as an alternative to a purchase-of-service provider agreement for a chore service; client finding; home maintenance, modification, or repair service; information and assistance (referrals); mass outreach; socialization; telephoning; visiting; a service provided through the national family caregiver support program; or any other service if ODA gives the AAA written or electronic permission to enter into a cost-reimbursement provider agreement for the other service.

(2) If an AAA enters into a cost-reimbursement provider agreement, the agreement

In the proposed new rule, ODA proposes to combine paragraphs (A) and (B) into one shorter, simpler paragraph.

shall place a limit on the dollar amount of the AAA's obligation under the agreement, and the provider shall submit evidence to supports its costs before the AAA pays the provider.

(3) As used in this rule, "cost-reimbursement provider agreement" means a contract or grant through which a provider is paid for services based upon allowable costs related to actual expenditures incurred by the provider to deliver a service, regardless of the number of units of services provided.

(E) No retroactive provider agreements: The AAA shall not reimburse a provider for any service unless a valid provider agreement is in place at the time the service is provided. No provider agreement is valid unless and until the agreement is signed by authorized representatives from both the AAA and the provider.

(F) Debarred providers: The AAA shall not enter into a provider agreement with any provider that is listed on the non-procurement portion of the general services administration's "System for Award Management" ("SAM") database. Before entering into any provider agreement, the AAA shall check the SAM database to see if the provider is debarred or suspended by the federal government. Access to the SAM database is readily available on [www.sam.gov](http://www.sam.gov).

(G) Not earning funds: If an AAA determines that a provider is not, in a timely manner, earning the funds that it was awarded in an existing provider agreement, given the amount of the award and the length of the contract period, the AAA may make a portion of those funds available for use by one or more other existing providers, without **first going through a sealed-bidding process.**

(H) Multi-year provider agreement limitations:

(1) Except as otherwise provided for in the RFP upon which the provider agreement is based, the AAA shall not increase the amount of reimbursement it pays to a provider for each unit of goods or services provided under an existing multi-year provider agreement.

(2) The AAA shall not award a multi-year provider agreement that is in effect for longer than the AAA's approved area plan.

In the proposed new rule, ODA proposes to refer to the providers as "ineligible," not "debarred," and to reference 2 C.F.R. Part 180 and 2 C.F.R. Part 376.

In the proposed new rule, ODA will refer to the manifold competitive procurement methods under 45 C.F.R 75.329, not just sealed bidding.

ODA proposes to present the multi-year regulations in propose new rule 173-3-05.1 of the Adminstrative Code instead of in this rule.

173-3-04

TO BE RESCINDED

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Effective:

Five Year Review (FYR) Dates:

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Certification

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Date

Promulgated Under:

119.03

Statutory Authority:

173.01, 173.02, 173.392; Section 305(a)(1)(C) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; 45 C.F.R. 1321.11 (October, 2015 edition)

Rule Amplifies:

173.392; Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; 45 C.F.R. Part 75 (December 26, 2014)

Prior Effective Dates:

02/19/2009, 06/01/2014

**DRAFT FOR ONLINE PUBLIC-COMMENT PERIOD**  
**\*\*\* DRAFT - NOT YET FILED \*\*\***

173-3-04

**Older Americans Act: general requirements for AAA provider agreements.**

(A) Authority: Each AAA shall enter into AAA-provider agreements ("agreements") to develop and implement a comprehensive and coordinated system of services for consumers and their caregivers. Each AAA is ultimately responsible to ODA for ensuring that all state and federal funds received from ODA are used in a manner that complies with this chapter and the uniform administrative requirements, cost principles, and audit requirements for federal awards under 45 C.F.R. Part 75 (December 26, 2014).

(B) Purchase-of-service agreements:

(1) The AAA shall only enter into purchase-of-service agreements, unless the requirements of paragraph (C) of this rule are met.

(2) As used in this rule, "purchase-of-service agreements" means an agreement through which a provider is paid, wholly or in part, with Older Americans Act funds a pre-determined unit rate for only the goods or services it actually provides in accordance with the agreement.

(C) Time-and-materials agreements:

(1) The AAA shall not enter into a time-and-materials agreement as an alternative to a purchase-of-service agreement unless both of the following requirements are met:

(a) Before the AAA enters into the time-and-materials agreement, the AAA receives written permission (hard copy or electronic) from ODA to do so.

(b) The time-and-materials agreement only pertains to the provision of one or more of the following: a chore service; client finding; home maintenance, modification, or repair; information and assistance (referrals); mass outreach; socialization; telephoning; visiting; or goods or services provided through the national family caregiver support program.

(2) If an AAA enters into a time-and-materials agreement, in the agreement, the AAA shall place a limit on the dollar amount of the AAA's obligation under the agreement, and the provider shall submit evidence to verify its costs before the AAA pays the provider. Only expenses that are reasonable under 45 C.F.R. Part 75 (December 26, 2014) are allowable for payment using Older Americans Act funds. The AAA shall vigilantly monitor providers with whom it has entered into time and materials agreements to ensure that the providers' expenses do not exceed the limits that the AAA established in the agreements.

**DRAFT FOR ONLINE PUBLIC-COMMENT PERIOD**  
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- (3) As used in this rule, "time-and-materials type agreement" means a agreement through which a provider is paid, in whole or in part, with Older Americans Act funds for the goods and services it provides to consumers based upon their actual costs (i.e., time and materials) to the provider and not upon a pre-determined unit rate.
- (D) Retroactive: The AAA shall not pay a provider for any goods or services unless a valid agreement is in place before the provider begins to provide the goods or services. No agreement is valid unless, and until, it is signed by authorized representatives from both the AAA and the provider.
- (E) Ineligible providers: The AAA shall comply with 2 C.F.R. Part 180 (December 26, 2014), as supplemented by 2 C.F.R. Part 376 (December 26, 2014), which prohibits the AAA from entering into an agreement with any provider the SAM database lists as excluded or disqualified from agreements involving federal funds. As used in this paragraph, "SAM database" means the general service administration's "System for Award Management," which is available to the general public for free on [www.sam.gov](http://www.sam.gov).
- (F) Not earning funds: An AAA shall only make a portion of the funds awarded to a provider available for use by one or more other existing providers without first going through one of the competitive procurement processes under 45 C.F.R. 75.329 (December 26, 2014) if, in the agreement, the AAA stated that it may redistribute funds if a provider is not, in a timely manner, earning the funds it was awarded and if the AAA determines that the provider is not, in a timely manner earning the funds it was awarded in an existing agreement. A provider may appeal an AAA's decision to redistribute funds under rule 173-3-09 of the Administrative Code.