



**PUBLIC-COMMENT PERIOD**  
**OLDER AMERICANS ACT SUPPORTIVE SERVICES**  
**OLDER AMERICANS ACT NUTRITION PROGRAM**  
September 14, 2020

ODA reviewed the following rules and now proposes to amend them:

- 173-3-01, 173-3-06, 173-3-06.1 173-3-06.2, 173-3-06.3, 173-3-06.4, 173-3-06.5, 173-3-06.6
- 173-4-03, 173-4-04, 173-4-05.1, 173-4-05.2, 173-4-05.3, 173-4-07, 173-4-09

Please feel free to review these rules and ODA's proposed amendments to them, then offer recommendations for improving the rules or amendments. Submit recommendations to [rules@age.ohio.gov](mailto:rules@age.ohio.gov) no later than **Sunday, September 27, 2020** at 11:59PM.

***Fostering sound public policy, research, and initiatives that benefit older Ohioans.***



## Business Impact Analysis

Agency, Board, or Commission Name: **OHIO DEPT. OF AGING**

Rule Contact Name and Contact Information: Tom Simmons [rules@age.ohio.gov](mailto:rules@age.ohio.gov)

Regulation/Package Title (a general description of the rules' substantive content):

**OLDER AMERICANS ACT SUPPORTIVE SERVICES**

**OLDER AMERICANS ACT NUTRITION PROGRAM**

The rules below establish requirements for AAA-provider agreements for services/meals paid by Older Americans Act funds.

Rule Number(s):

- 173-3-01, 173-3-06, 173-3-06.1, 173-3-06.2, 173-3-06.3, 173-3-06.4, 173-3-06.5, 173-3-06.6
- 173-4-03, 173-4-04, 173-4-05.1, 173-4-05.2, 173-4-05.3, 173-4-07, 173-4-09

Date of Submission for CSI Review: September 14, 2020

Public Comment Period End Date: September 27, 2020 at 11:59PM.

**Rule Type/Number of Rules:**

New/ 0 rules

Amended/ 15 rules (FYR? )

No Change/ 0 rules (FYR? )

Rescinded/ 0 rules (FYR? )

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

### Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

**The rule(s):**

- a. **Require a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. **Requires specific expenditures or the report of information as a condition of compliance.**
- d. **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

**Regulatory Intent**

**2. Please briefly describe the draft regulation in plain language.**

*Please include the key provisions of the regulation as well as any proposed amendments.*

Providers voluntarily bid, through open and free competition, for AAA-provider agreements, which are agreements between area agencies on aging (AAAs), which are ODA's designees, and providers of home and community-based services when paid, in whole or in part, by Older Americans Act (OAA) funds.

- Rule 173-3-01 of the Administrative Code introduces Chapter 173-3 of the Administrative Code and defines terms used in Chapters 173-3 and 173-4 of the Administrative Code. ODA proposes to amend the rule to define "unique identifier."
- Rule 173-3-06 of the Administrative Code establishes general requirements for AAA-provider agreements. On June 11, 2020, ODA adopted an emergency amendment that Through this rule package, required providers entering AAA-provider agreements to subscribe to ODA's service for notifying providers of proposed rule changes, opportunities to comment upon rules, and adopted rule changes. ODA proposes to adopt this amendment on an ongoing basis. This is the only new requirement that ODA proposes for providers in this rule package.
- Rules 173-3-06.1, 173-3-06.2, 173-3-06.3, 173-3-06.4, 173-3-06.5, 173-3-06.6, 173-4-05.1, 173-4-05.2, 173-4-05.3, 173-4-07, and 173-4-09 of the Administrative Code establish requirements applying only to AAA-provider agreements for an adult day service (ADS), home maintenance and chores, home modification, homemaker service, personal care, transportation, congregate dining project, home-delivered meals project, congregate dining project based in restaurants and grocery stores, nutrition counseling, and nutrition health screening (respectively). On June 11, 2020, ODA adopted one or more emergency amendment(s) into each of these rules to allow providers to decide whether, during the state of emergency, to collect a unique identifier of the consumer (e.g., a handwritten signature) to verify that an activity or unit of service was provided. This allows the provider and consumer to maintain social distancing. Through this rule package ODA proposes to allow providers to decide whether, during any state of emergency declared by the governor, to collect a unique identifier of the consumer to verify that an activity or unit of service was provided.
- Rule 173-3-06.1 of the Administrative Code establishes requirements applying only to AAA-provider agreements for an adult day service (ADS). On June 11, 2020, ODA adopted an emergency amendment to the definition of "adult day service." The amendment gave ADS providers temporary flexibility to provide ADS activities in consumer's homes. Through this rule package, ODA proposes to adopt this amendment on an ongoing basis, but limit its effectiveness to states of emergency declared by the governor.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIPublicComments@governor.ohio.gov](mailto:CSIPublicComments@governor.ohio.gov)

In the same rule, ODA also proposes to move language that defines “adult day service” under paragraph (B)(2) of the rule, plus Table 1 to the rule, to the definition under paragraph (A) of the rule and to replace occurrences of “components” in the definition with “activities,” and to delete all uses of “shall” in the definition since defining a term does not require a regulatory restriction.

In the same rule, ODA proposes to replace a reference to section 102 of the Older Americans Act with a reference to 42 U.S.C. 3002, which is the codified version of section 102. This will help readers who want to follow the cross reference because the federal government publishes the United States Code, but does not publish an amended version of the act.

In the same rule, ODA proposes to replace reference to “the meals service requirements of rule 173-4-05 of the Administrative Code” with “paragraphs (A)(7) to (A)(12) of rule 173-4-05 of the Administrative Code and paragraph (E) of rule 173-4-05.1 of the Administrative Code.”

In the same rule, ODA proposes to replace “personal care staff member” with “PCA.”

In the same rule, ODA proposes to replace “present” regarding nurse staffing to “available.”

- Rules **173-3-06.4**, **173-3-06.5**, **173-4-03**, **173-4-07**, and **173-4-09** of the Administrative Code establishes requirements applying only to AAA-provider agreements for a homemaker service, personal care, eligibility verification, nutrition counseling, and nutrition health screening (respectively). On June 11, 2020, ODA adopted one or more emergency amendment(s) into each of these rules to give providers flexibility to conduct supervisory visits, eligibility verification, nutrition counseling, and nutrition health screening by telephone, video conference, or in person, rather than only in person. This allows providers and consumers to maintain social distancing. Through this rule package, ODA proposes to adopt these amendments on an ongoing basis but limit its effectiveness to states of emergency declared by the governor.
- In rule **173-3-06.5** of the Administrative Code, ODA also proposes to replace “the” with “The” in 5 paragraphs.
- In rule **173-3-06.6** of the Administrative Code, on June 11, 2020, ODA adopted an emergency amendment requiring drivers to provide their signatures as an attestation that they provided the trips for which they claimed to provide. Through this rule package, ODA proposes to require providers to collect driver’s signatures (instead of collecting a unique identifier of the consumer) to attest to the completion of a trip during states of emergency declared by the governor.
- Rule **173-4-04** of the Administrative Code establishes requirements for AAAs to incorporate person direction into procurement for nutrition projects. On June 11, 2020, ODA adopted an emergency amendment that limited the requirement for AAAs to incorporate certain aspects of person direction into procurement for nutrition projects during the state of emergency. Through this rule package, ODA proposes to adopt this amendment on an ongoing basis, but limit its effectiveness to states of emergency declared by the governor.
- In rule **173-4-05.1** of the Administrative Code, on June 11, 2020, ODA adopted an emergency amendment that deleted a requirement for providers to keep at least one congregate dining location in its nutrition project open for business to provide meals for at least one mealtime (*i.e.*, breakfast, lunch, or dinner) per day to consumers on five or more days per week. Through this rule package, ODA proposes to adopt this amendment on an ongoing basis, but limit its effectiveness to states of emergency declared by the governor.

In the same rule, on June 11, 2020, ODA adopted an emergency amendment to pay for occasional carry-out meals during a state of emergency. Through this rule package, ODA proposes to adopt this amendment on an ongoing basis.

In the same rule, on June 11, 2020, ODA adopted an amendment limiting the requirement for providers to give consumers reasonable notice before the closure of a dining location to that which is practicable during a state of emergency. In this rule package, ODA proposes to adopt this amendment on an ongoing basis.

- In rule 173-4-05.2 of the Administrative Code, on June 11, 2020, ODA adopted an emergency amendment that added states of emergency to the list of reasons that a provider should develop and implement written contingency procedures for emergency closings. Through this rule package, ODA proposes to adopt this amendment on an ongoing basis.

**3. Please list the Ohio statutes that authorize the agency, board or commission to adopt the rule(s) and the statutes that amplify that authority.**

R.C. §§ [121.07](#), [173.01](#), [173.02](#), and [173.392](#).

**4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? If yes, please briefly explain the source and substance of the federal requirement.**

[42 USC 3025](#) says ODA is "primarily responsible" for Older Americans Act policy development in Ohio and [45 CFR 1321.11](#) requires ODA to "develop policies governing all aspects of [Older Americans Act] programs."

**5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

The rules exist to implement the state laws ODA listed in its response to #2, which require ODA to establish the standards for AAA-provider agreements, and the federal law and federal regulation ODA listed in its response to #3, which require ODA to develop policies for all aspects of the Older Americans Act programs in Ohio.

**6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

These rules ensure necessary safeguards are in place to protect the health and safety of consumers receiving services paid with Older Americans Act funds.

**7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

To ensure compliance fostering the health and safety of consumers receiving services paid with Older Americans Act funds and compliance with monitoring (i.e., auditing) requirements under 45 CFR Part 75, Subpart F: (1) ODA regularly monitors AAAs for compliance with these rules and (2) AAAs regularly monitor providers for their compliance with AAA-provider agreements, the rules are judged as being successful when (1) ODA funds few violations in AAA-provider agreements and (2) AAAs find few violations against AAA-provider agreements.

**8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931? If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.**

No.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIPublicComments@governor.ohio.gov](mailto:CSIPublicComments@governor.ohio.gov)

## **Development of the Regulation**

### **9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation. If applicable, please include the date and medium by which the stakeholders were initially contacted.**

ODA's guide [Participating in ODA's Rule Development](#) and [this webpage](#) on ODA's website encourage stakeholders and the general public to give input on improving ODA's rules and provide contact information for doing so. Since ODA adopted the emergency amendments to the rules now in this package on June 11, 2020, ODA's policy development manager has received no input from stakeholders or the general public on those amendments.

On August 21, 2020, ODA presented its 4<sup>th</sup> webinar to providers, area agencies on aging (AAAs), and others concerning matters relating to the COVID-19 state of emergency. During the meeting, ODA announced that was considering adopting many of the emergency amendments on an ongoing basis. ODA, then fielded questions from providers, AAAs, *et al.*

### **10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

During the August 21, 2020 webinar, ODA received questions on whether ODA would propose to adopt all, or only some, of the emergency amendments on an ongoing basis. ODA explained that it only planned to adopt some and was open to input. ODA did not receive any such input during the question and answer portion of the webinar and has not since received any such input.

### **11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

Many of ODA's proposals in this rule package are based upon CDC guidelines for social distancing to reduce exposure to COVID-19, especially for consumers of the Older Americans Act Nutrition program which may be at a higher risk for contracting COVID-19.

### **12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

R.C. [§173.392](#) requires ODA to adopt rules to establish requirements for AAA-provider agreements. Additionally, the federal law and regulation ODA listed in its response to #3 require ODA to develop policies for all aspects of the Older Americans Act programs.

### **13. Did the Agency specifically consider a performance-based regulation? Please explain. Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.**

Before the proposed new rules take effect, ODA will post them on ODA's website. ODA will also send an email to subscribers of our rule-notification service to feature the rules. Through its regular monitoring activities, ODA and its designees will monitor providers for compliance.

### **14. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

R.C. [§173.392](#) authorizes only ODA to develop standards for AAA-provider agreements.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIPublicComments@governor.ohio.gov](mailto:CSIPublicComments@governor.ohio.gov)

**15. Please describe the Agency’s plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

Before the proposed new rules take effect, ODA will post them on ODA's website. ODA will also send an email to subscribers of ODA's rule-notification service to feature the rule. Through regular monitoring (*i.e.*, auditing) requirements under 45 CFR Part 75, Subpart F: (1) ODA regularly monitors AAAs for compliance with these rules and (2) AAAs regularly monitor providers for their compliance with AAA-provider agreements. Additionally, ODA will add information to on-going frequently asked questions and guidance regarding operating OAA services during COVID-19.

**Adverse Impact to Business**

**16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

**a. Identify the scope of the impacted business community; and**

These rules directly regulate Ohio's 12 AAAs, which are ODA's designees. The AAA-provider agreements directly regulate any provider that enters such agreements.

**b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and**

The adverse impact of these rules is to ensure every AAA-provider agreement complies with the general requirements for AAA-provider agreements in rule 173-3-06 of the Administrative Code plus specific requirements for each service listed in individual rules of this package.

ODA's proposed amendments to the rules in this package will not increase the adverse impact upon providers. In general, the proposed amendments will give providers flexibility to maintain social distancing during a state of emergency declared by the governor. Please review ODA's response to question #17 for more information.

**c. Quantify the expected adverse impact from the regulation.**

*The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.*

Providers establish the rate they are paid when they respond to a request for proposal (RFP) by submitting their bid to the AAA for how much they will charge per unit (*i.e.*, per job (*e.g.*, a home modification), per unit (*e.g.*, a meal), or per a period of time (*e.g.*, personal care)). The amount an AAA pays a provider is an all-inclusive rate. It's intended to cover all costs incurred in providing the project or service, including administration, training, and reporting. Therefore, the provider's bid includes all costs anticipated in providing the project or service.

If the provider's bid wins, the provider is paid what it bid during the open and free competition for the AAA-provider agreement. (*cf.*, 173-3-04 and 173-3-05)

**17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

R.C. §173.392 requires ODA to develop rules establishing standards for AAA-provider agreements (*i.e.*, contracts and grants) and R.C. §173.01 requires ODA to represent the interests older Ohioans. Establishing standards for AAA-provider agreements in the rules of this package ensures the health and safety of the older Ohioans who are consumers of services through Older Americans Act programs, which fulfills both statutes.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

Most of ODA's proposed amendments in this package will give providers flexibility to maintain social distancing during a state of emergency. Specifically, during a state of emergency declared by the governor, these amendments will allow providers to (1) conduct eligibility determinations, supervisory visits (for personal care and homemaker), nutrition counseling, and nutrition health screening by telephone or video conference instead of only in person, and (2) verify that they provided services without making unnecessary physical contact with the consumer (e.g., to collect a unique identifier, such as a handwritten signature, from the consumer).

The only proposed amendment that may be considered to create a new requirement for providers entering AAA-provider agreements will be ODA's proposal to require providers subscribe to ODA's service for notifying providers of proposed rule changes, opportunities to comment upon rules, and adopted rule changes. ODA believes that a requirement to subscribe to a free service that keeps providers informed of updates to the Administrative Code and opportunities to participate in the rule-development process will be an asset—not an adverse impact—to providers.

There is no requirement for a provider to enter into an AAA-provider agreement in order to provide services in this state. An AAA-provider agreement is not a gateway to doing business in Ohio. Instead, a provider who wants to add the Older Americans Act programs to its lines of business must enter into an AAA-provider agreement in order for those Older Americans Act programs to pay the provider for the services it wants to provide to the consumers of those programs. Thus, an AAA-provider agreement is a gateway to being paid for services a provider wants to provide to consumers through those programs.

Additionally, providers voluntarily bid for AAA-provider agreements. A provider is only required to comply with an AAA-provider agreement if (1) the provider bids on providing the service to be paid with Older Americans Act funds, and (2) the provider's bid is a winning bid. Providers may provide the same service without entering into an AAA-provider agreement when paid by third-party insurers, private pay, or other government programs not using Older Americans Act funds.

### **Regulatory Flexibility**

#### **18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

Because the primary purpose of these rules is to ensure the health and safety of consumers receiving services paid with Older Americans Act funds, the rules treat all providers the same, regardless of their size.

#### **19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

ODA is concerned primarily about protecting the health and safety of consumers receiving services paid with Older Americans Act funds through compliance with these rules. Whenever possible, ODA or AAAs will treat administrative violations that do not involve health and safety as opportunities for improvement through warning notices and solicitation of corrective action.

#### **20. What resources are available to assist small businesses with compliance of the regulation?**

ODA and AAAs are available to help providers of all sizes with their questions. Any person may contact [Tom Simmons](#), ODA's policy development manager, with questions about the rules.

Additionally, ODA publishes all rules currently in effect on its website. Providers may access the currently-effective rules 24 hours per day, 365 days per year.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIPublicComments@governor.ohio.gov](mailto:CSIPublicComments@governor.ohio.gov)

173-3-01

**Older Americans Act: introduction and definitions.**

(A) Introduction to Chapter 173-3 of the Administrative Code: This chapter regulates AAA provider agreements for services paid, in whole or in part, with Older Americans Act funds.

(B) Definitions for Chapters 173-3 and 173-4 of the Administrative Code:

"AAA-provider agreement" (agreement) means a contract between an AAA and a provider for the provision of services to consumers.

"Activities of daily living" (ADLs) means bathing; dressing; eating; grooming; toileting; transferring in and out of a bed or chair; and walking.

"Area agency on aging" (AAA) means an entity ODA designates to be an AAA under rule 173-2-04 of the Administrative Code.

"Assessment" means a gathering of information about a person's strengths, problems, financial resources, and care needs in the following major functional areas: physical health, utilization of medical care, ADLs, IADLs, mental and social functioning, physical environment, and utilization of services and supports.

"Assistance with self-administration of medication" has the same meaning as in as in paragraph (C) of rule 4723-13-02 of the Administrative Code when the assistance is provided by an unlicensed person.

"Care-coordination program" means a program coordinating and monitoring the provision of services.

"Caregiver" and "family caregiver" have the same meaning as "family caregiver" in 42 U.S.C. 3022.

"Competency evaluation" includes both written testing and skills testing by return demonstration to ensure the aide is able to address the care needs of the consumer to be served.

"Consumer" means, for the purposes of services paid for, in whole or in part, with Older Americans Act funds, any person sixty years of age or older, unless a different age is required by a state or federal law.

"Consumer's signature" means the signature, mark, or electronic signature of a consumer, or the consumer's caregiver, verifying the provision of services. Examples of technologies used to record electronic signatures are "Co-Pilot," "MealService," "MJM," "MySenior Center," "SAMS Scan," "Santrax," "SeniorDine," "SERVtracker," "SSAID," and call-in verification.

"Contract" has the same meaning as "AAA-provider agreement," unless the context

clearly indicates otherwise.

"Day" means a twenty-four-hour period beginning and ending at midnight.

"Incident" means an event that is inconsistent with the routine care or routine provision of services to a consumer. An incident may involve a consumer, caregiver (to the extent it impacts a consumer), provider, provider's staff or facility, another facility, an AAA's staff, ODA's staff, or other administrative authorities. Examples of an incident are abuse, neglect, abandonment, an accident, or an unusual situation resulting in an injury to a person or damage to the person's property or equipment.

"Instrumental activities of daily living" (IADLs) means preparing meals, shopping for personal items, medication management, managing money, using the telephone, doing heavy housework, doing light housework, and the ability to get and use available transportation without assistance.

"Licensed practical nurse" (LPN) has the same meaning as in section 4723.01 of the Revised Code.

"ODA" means the Ohio department of aging.

"Older Americans Act" means 42 U.S.C. Chapter 35.

"Older Americans Act funds" means the federal funds awarded to ODA through Title III of the Older Americans Act (42 U.S.C. Chapter 35, Subchapter III) and any state or local funds used to match those federal funds, regardless of whether the local funds are public or private funds. For the purposes of this chapter and Chapter 173-4 of the Administrative Code, "Older Americans Act funds" does not mean funds for an ombudsman program.

"PCA" means "personal care aide."

"Planning and service area" (PSA) means a geographic region of Ohio that ODA designated as a planning and service area under rule 173-2-02 of the Administrative Code.

"Provider" means a person or entity entering into an AAA-provider agreement with an AAA to provide services to consumers. The three categories of providers are agency providers, self-employed providers, and consumer-directed providers. "Agency provider" means a provider hiring persons to provide services to consumers. "Self-employed provider" means a provider who provides services to consumers and who does not hire, or contract with, other persons to provide those services. "Participant-directed provider" means a provider (e.g., relative, friend, neighbor, or other person) a consumer hired and directs to provide services to the consumer.

"Registered nurse" (RN) has the same meaning as in section 4723.01 of the Revised Code.

"RFP" means "request for proposal."

"Service plan" means a written outline of services authorized for a consumer regardless of the funding source for the services.

"Unique identifier" means an item belonging to a specific consumer or caregiver that identifies only that consumer or caregiver. Examples of a unique identifier are a handwritten or electronic signature or initials, fingerprint, mark, stamp, password, barcode, or swipe card. A consumer or caregiver offers their unique identifier to a provider as an attestation that the provider, or the provider's staff, completed an activity or unit of service.

173-3-06

**Older Americans Act: requirements to include in every AAA-provider agreement.**

(A) Federal requirements: An AAA shall comply with the following federal requirements when entering into an AAA-provider agreement (agreement) for goods or services paid, in whole or in part, with Older Americans Act funds, the AAA shall comply with the following:

(1) Uniform administrative requirements, cost principles, and audit requirements for federal awards: The agreement shall comply with 45 C.F.R. 75.327 to 75.335, including Appendix II to 45 C.F.R. Part 75.

(2) Targeting:

(a) In the agreement, the AAA shall list the focal points in the service area covered by the agreement that the AAA designated under Section 306(a)(3)(B) of the Older Americans Act.

(b) In the agreement, the AAA shall require the following:

(i) The provider shall specify how it intends satisfy the need for services by consumers with the greatest economic and social needs with particular attention to consumers 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.

(ii) The provider shall meet the AAA's specific objectives for giving services to specific consumer groups.

(3) Additional federal laws: The agreement shall comply with the Older Americans Act and any additional federal law governing, or federal rule regulating, the agreement.

(B) Additional state requirements: Every agreement for goods or services paid, in whole or in part, with Older Americans Act funds shall comply with the following:

(1) Program and funding identification:

(a) In the agreement, the AAA shall identify the names of the federal and state programs that are sources for the Older Americans Act funding being used for the procurement of the goods and services being procured through the agreement.

(b) In the agreement, the AAA shall contain the following statement:

"This agreement is for the provision of goods or services paid with federal funds that the United States Department of Health and Human Services appropriated to the Ohio Department of Aging (ODA). ODA, in turn, allocated the federal funds to the area agency on aging. The agreement is subject to federal laws and rules, state laws, and ODA's rules."

(2) Additional state laws:

(a) The agreement shall comply with any rule in Chapter 173-3 or 173-4 of the Administrative Code regulating agreements in general or the provision of specific goods or services being procured through the agreement.

(b) The agreement shall comply with any additional state law governing, or state rule regulating agreements in general or the provision of specific goods or services being procured through the agreement.

(3) Safety:

(a) Disasters: In the agreement, the AAA shall require the provider to cooperate with the AAA and ODA to assess disaster impact upon consumers and to coordinate with public and private resources in the field of aging to assist consumers whenever the president of the United States declares that the provider's service area is a disaster area.

(b) Significant changes: If the provider provides goods and services to a consumer that the AAA case manages through a care-coordination program, in the agreement, the AAA shall require the provider to notify the AAA of any significant change that may necessitate a reassessment the case-managed consumer's need for goods and services no later than one day after the provider is aware of a repeated refusal to receive goods or 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. If "one day after" falls on a weekend or legal holiday, as defined in section 1.14 of the Revised Code, the deadline is extended to the day immediately following "one day after" that is not on a weekend or legal holiday.

- (c) APS: In the agreement, the AAA shall require the provider to immediately report any reasonable cause to believe a consumer is the victim of abuse, neglect, or exploitation to the local adult protective services program in accordance with section 5101.61 of the Revised Code, until September 28, 2018, then with section 5101.63 of the Revised Code on or after September 29, 2018.
  
  - (d) Terminating the provision of goods and services: If the provider provides goods or services to a consumer that the AAA case manages through a care-coordination program, the agreement shall require the provider to notify the AAA and the case-managed consumer in writing of the anticipated last day of goods or services to the case-managed consumer no later than thirty days before the anticipated last day of goods or services, unless the reason for discontinuing the goods or services 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 goods or services; or a similar reason why the provider is unable to notify the AAA thirty days before the anticipated last day of goods or services. The provider shall also notify the case-managed consumer how he or she may reach a long-term care ombudsman. If the thirtieth day falls on a weekend or legal holiday, as defined in section 1.14 of the Revised Code, the deadline is extended to the day immediately after the thirtieth day that is not on a weekend or a legal holiday.
- (4) Confidentiality: In the agreement, the AAA shall include any federal or state confidentiality requirements and also the following requirements:
- (a) The provider shall not disclose information concerning a consumer unless the provider obtains and retains the consumer's written, informed consent to do so and the purpose for the disclosure is associated with the provider's provision of goods and services to the consumer.
  
  - (b) The provider shall not disclose information concerning a consumer for a purpose unassociated with the provider's provision of goods and services even if the provider obtains and retains the consumer's written, informed consent to do so.
  
  - (c) If the provider retains consumers' records electronically, the provider shall store the records in a password-protected file. If the provider does not retain records electronically, the provider shall store consumers' records in a designated, locked storage space.

(5) Provider qualifications: In the agreement, the AAA shall include the following requirements:

(a) When hiring an applicant for, or retaining an employee in, a paid direct-care position, the provider shall review databases and check criminal records according to section 173.38 of the Revised Code and Chapter 173-9 of the Administrative Code, unless the provider is self-employed. If the provider is self-employed, the AAA shall review databases and check criminal records of the provider according to 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 sections 173.38 and 173.381 of the Revised Code.

(b) If a federal, state, or local government regulatory authority prohibits the provider from providing the goods or services required by the agreement, the provider shall notify the AAA of the disciplinary action and the AAA shall, simultaneous to the date of the regulatory authority's disciplinary action, deem the provider to be ineligible to be paid with Older Americans Act funds for providing goods or services to consumers.

(6) Sub-contracting: In the agreement, the AAA shall prohibit the provider from sub-contracting any of its duties under the agreement to another provider unless the provider obtains authorization from the AAA before sub-contracting.

(7) Modification:

(a) In the agreement, the AAA shall describe the grounds (and the process) for modifying the agreement.

(b) In the agreement, the AAA shall state that any amendments to the laws, rules, or regulations the AAA cites in the agreement will result in a correlative modification to the agreement without the necessity of executing a written amendment.

(c) In every new agreement, the AAA shall require the provider to sign up for email updates on ODA's rules on <https://aging.ohio.gov/wps/portal/gov/aging/see-news-and-events/subscribe/subscribe>.

(8) Renewable and multi-year: If the agreement is renewable or covers a multi-year term, the agreement shall comply with rule 173-3-05.1 of the Administrative Code.

(9) Service verification and records retention:

(a) In no agreement, shall an AAA prohibit a provider from using electronic systems to verify the provision of goods or services or to retain records.

(b) In the agreement, the AAA shall require providers to retain any record relating to costs, goods and services provided, supporting documentation for payment of goods and services provided, and all deliverables until the last of the following dates:

(i) Three years after the date the provider receives payment for the goods or services.

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

(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.

(10) Payment:

(a) In the agreement, the AAA shall describe how it shall pay the provider, including the amount and payment method.

(b) In the agreement, the AAA shall include the following requirements:

(i) The provider shall comply with rule 173-3-07 of the Administrative Code.

(ii) The provider shall return any Older Americans Act funds payments for its goods or services, if the provider's provision of the goods or services did not comply with the Administrative Code, the Revised Code, or any other law.

(11) Administrative hearings:

- (a) In the agreement, the AAA shall state that the provider may appeal a decision the AAA takes against the provider according to rule 173-3-09 of the Administrative Code.
  - (b) If the AAA intends to redistribute unearned funds to other providers, in the agreement, the AAA shall state 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 the provider is not, in a timely manner earning the funds it was awarded in the agreement.
- (C) An AAA may add requirements into an agreement in addition to the requirements in paragraphs (A) and (B) of this rule if the additional requirements do not conflict with any federal or state law.

173-3-06.1

**Older Americans Act: adult day service.**

(A) "Adult day service" ("ADS") means a regularly-scheduled service delivered at an ADS center, which is a non-institutional, community-based setting. ADS includes recreational and educational programming to support a consumer's health and independence goals; at least one meal, but no more than two meals per day; and, sometimes, health status monitoring, skilled therapy services, and transportation to and from the ADS center. [Table 1 to this rule defines the three levels of ADS.](#)

[If the provider's ADS center is unable to operate during a state of emergency declared by the governor, "adult day service" also includes ADS components provided in a consumer's home, including activities provided by telephone or video conference.](#)

[Table 1: Levels and Activities of ADS](#)

	<a href="#">BASIC ADS</a>	<a href="#">ENHANCED ADS</a>	<a href="#">INTENSIVE ADS</a>
<a href="#">Structured activity programming</a>	<a href="#">Yes</a>	<a href="#">Yes</a>	<a href="#">Yes</a>
<a href="#">Health assessments</a>	<a href="#">Yes</a>	<a href="#">Yes</a>	<a href="#">Yes</a>
<a href="#">Supervision of ADLs</a>	<a href="#">One or more ADL</a>	<a href="#">One or more ADL</a>	<a href="#">All ADLs</a>
<a href="#">Hands-on assistance with ADLs</a>	<a href="#">No</a>	<a href="#">Yes, one or more ADL (bathing excluded)</a>	<a href="#">Yes, minimum of two ADLs (bathing included)</a>
<a href="#">Hands-on assistance with medication administration</a>	<a href="#">No</a>	<a href="#">Yes</a>	<a href="#">Yes</a>
<a href="#">Comprehensive therapeutic activities</a>	<a href="#">No</a>	<a href="#">Yes</a>	<a href="#">Yes</a>
<a href="#">Monitoring of health status</a>	<a href="#">No</a>	<a href="#">Intermittent</a>	<a href="#">Regular</a>
<a href="#">Hands-on assistance with personal hygiene activities</a>	<a href="#">No</a>	<a href="#">Yes (bathing excluded)</a>	<a href="#">Yes (bathing included, as needed)</a>
<a href="#">Social work services</a>	<a href="#">No</a>	<a href="#">No</a>	<a href="#">Yes</a>
<a href="#">Skilled nursing services</a>	<a href="#">No</a>	<a href="#">No</a>	<a href="#">Yes</a>
<a href="#">Rehabilitative</a>	<a href="#">No</a>	<a href="#">No</a>	<a href="#">Yes</a>

<a href="#">services</a>			
--------------------------	--	--	--

(B) Every AAA-provider agreement for ADS that is paid, in whole or in part, with Older Americans Act funds, shall comply with ~~the requirements for every AAA-provider agreement under rule 173-3-06 of the Administrative Code and~~ the following requirements:

(1) General requirements: In the AAA-provider agreement, the AAA shall include the requirements in rule 173-3-06 of the Administrative Code for every AAA-provider agreement paid, in whole or in part, with Older Americans Act funds.

(2) Service requirements:

~~(a) Service levels: The required components of the three service levels are presented in this paragraph and in "Table 1" to this rule:~~

~~(i) Basic ADS shall include structured activity programming, health assessments, and the supervision of one or more ADL.~~

~~(ii) Enhanced ADS shall include the components of basic ADS, plus hands-on assistance with one or more ADL (bathing excluded), supervision of medication administration, assistance with medication administration, comprehensive therapeutic activities, intermittent monitoring of health status, and hands-on assistance with personal hygiene activities (bathing excluded).~~

~~(iii) Intensive ADS shall include the components of enhanced ADS, plus hands-on assistance with two or more ADLs, regular monitoring of health status, hands-on assistance with personal hygiene activities (bathing included, as needed), social work services, skilled nursing services (e.g., dressing changes), and rehabilitative services, including physical therapy, speech therapy, and occupational therapy.~~

~~Table 1: Levels and Components of ADS~~

	<del>BASIC ADS</del>	<del>ENHANCED ADS</del>	<del>INTENSIVE ADS</del>
<del>Structured activity programming</del>	<del>Yes</del>	<del>Yes</del>	<del>Yes</del>
<del>Health assessments</del>	<del>Yes</del>	<del>Yes</del>	<del>Yes</del>
<del>Supervision of ADLs</del>	<del>One or more ADL</del>	<del>One or more ADL</del>	<del>All ADLs</del>

Hands-on assistance with ADLs	No	Yes, one or more ADL (bathing excluded)	Yes, minimum of two ADLs (bathing included)
Hands-on assistance with medication administration	No	Yes	Yes
Comprehensive therapeutic activities	No	Yes	Yes
Monitoring of health status	No	Intermittent	Regular
Hands-on assistance with personal hygiene activities	No	Yes (bathing excluded)	Yes (bathing included, as needed)
Social work services	No	No	Yes
Skilled nursing services	No	No	Yes
Rehabilitative services	No	No	Yes

~~(b)~~(a) Transportation: The provider shall transport each consumer to and from the ADS center by performing a transportation service that complies with rule 173-3-06.6 of the Administrative Code, unless the provider enters into a contract with another provider who complies with rule 173-3-06.6 of the Administrative Code, or unless the caregiver provides or designates another person or non-provider, other than the ADS center provider, to transport the consumer to and from the ADS center.

~~(e)~~(b) Case manager's assessment: If the consumer receives a case management service, as defined ~~under section 102(a)(11) of the Older Americans Act~~ [in 42 U.S.C. 3002](#), as part of care coordination:

- (i) The case manager shall assess each consumer's needs and preferences then specify which service level will be approved for each consumer; and,
- (ii) The provider shall retain records to show that it provides the service at the level that the case manager authorized.

~~(d)~~(c) Provider's initial assessment:

- (i) The provider shall assess the consumer before the end of the consumer's second day of attendance at the center. If the consumer is enrolled in care coordination, the provider may substitute a copy of the case manager's assessment of the consumer if the case manager assessed the consumer no more than thirty days before the consumer's first day of attendance at the center.
- (ii) The initial assessment shall include both of the following components:
  - (a) Functional and cognitive profiles that identify the ADLs and IADLs that require attention or assistance of ADS center staff; and,
  - (b) Social profile including social activity patterns, major life events, community services, caregiver data, formal and informal support systems, and behavior patterns.

~~(e)~~(d) Health assessment: No later than thirty days after the consumer's initial attendance at the ADS center or before the consumer receives the first ten units of service at the ADS center, whichever comes first, the provider shall either obtain a health assessment of each consumer from a licensed healthcare professional whose scope of practice includes health assessments or require a staff member who is such a licensed healthcare professional to perform a health assessment of each consumer. The health assessment shall include the consumer's psychosocial profile and shall identify the consumer's risk factors, diet, and medications. If the licensed healthcare professional who performs the health assessment is not a staff member of the provider, the provider shall retain a record of the professional's name and phone number.

~~(f)~~(e) Activity plan: No later than thirty days after the consumer's initial attendance at the ADS center or before the consumer receives the first ten units of service at the ADS center, whichever comes first, the provider shall either obtain the services of a licensed healthcare professional whose scope of practice includes developing activity plans to draft an activity plan for each consumer or the provider shall require a staff member who is such a licensed healthcare professional to draft an activity plan for each consumer. The plan shall identify the

consumer's strengths, needs, problems or difficulties, goals, and objectives. The plan shall describe the consumer's:

- (i) Interests, preferences, and social rehabilitative needs;
- (ii) Health needs;
- (iii) Specific goals, objectives, and planned interventions of ADS that meet the goals;
- (iv) Level of involvement in the drafting of the plan, and, if the consumer has a caregiver, the caregiver's level of involvement in the drafting of the plan; and,
- (v) Ability to sign his or her signature versus alternate means for a consumer signature.

~~(g)~~(f) Plan of treatment: Before administering medication or meals with a therapeutic diet, and before providing a nursing service, nutrition counseling, physical therapy, or speech therapy, the provider shall obtain a plan of treatment from a licensed healthcare professional whose scope of practice includes making plans of treatment. The provider shall obtain the plan of treatment at least every ninety days for each consumer that receives medication, a nursing service, nutrition counseling, physical therapy, or speech therapy. For diet orders that may be part of a plan of treatment, a new diet order is not required every ninety days. Instead, the provider shall comply with the diet-order requirements for therapeutic diets under rule ~~173-4-05~~ [173-4-06](#) of the Administrative Code.

~~(h)~~(g) Interdisciplinary care conference:

- (i) Frequency: The provider shall conduct an interdisciplinary care conference for each consumer at least once every six months.
- (ii) Participants: The provider shall conduct the conference between the provider's staff members and invitees who choose to participate. If the consumer receives case management as part of care coordination, the provider shall invite the case manager to participate in the conference. The provider shall invite any licensed healthcare professional who does not work for the provider, but who provided the provider with a health assessment

of the consumer or an activity plan for the consumer, to participate in the conference. If the consumer has a caregiver, the provider shall invite the caregiver to the conference. The provider shall also invite the consumer to the conference. The provider shall invite the case manager, licensed healthcare professional, caregiver, or consumer by providing the date and time to the case manager seven days before the conference begins.

(iii) **Revise activity plan:** If the conference participants identify changes in the consumer's health needs, condition, preferences, or responses to the service, the provider shall obtain the services of a licensed healthcare professional whose scope of practice includes developing activity plans to revise the activity plan accordingly or shall require a staff member who is such a licensed healthcare professional to revise the activity plan accordingly.

(iv) **Records:** The provider shall retain records on each conference's determinations.

**(h)** **Activities:** The provider shall post daily and monthly planned activities in prominent locations throughout the center.

**(i)** **Lunch and snacks:**

(i) The provider shall provide lunch and snacks to each consumer who is present during lunchtime or snacktime.

(ii) The provision of lunch shall comply with ~~the meal service requirements~~ [paragraphs \(A\)\(7\) to \(A\)\(12\)](#) of rule 173-4-05 of the Administrative Code [and paragraph \(E\) of rule 173-4-05.1 of the Administrative Code](#).

(3) **Center requirements:**

(a) **Specifications:** The provider shall only perform ADS in a center with the following specifications:

(i) If the center is housed in a building with services or programs other than ADS, the provider shall assure that a separate, identifiable space and staff are available for ADS activities during all hours in which the provider provides ADS in the center.

- (ii) The center shall comply with the "ADA Accessibility Guidelines for Buildings and Facilities" in appendix A to 28 C.F.R. Part 36 (~~July 1, 2015~~).
- (iii) The center shall have at least sixty square feet per individual that it serves, excluding hallways, offices, rest rooms, and storage areas.
- (iv) The provider shall store consumers' medications in a locked area that the provider maintains at a temperature that meets the storage requirements of the medications.
- (v) The provider shall store toxic substances in an area that is inaccessible to consumers.
- (vi) The center shall have at least one toilet for every ten individuals present that it serves and at least one wheelchair-accessible toilet.
- (vii) If the center provides intensive ADS, the center shall have bathing facilities suitable to the needs of consumers who require intensive ADS.

(b) Emergency safety plan:

- (i) The provider shall develop and annually review a fire inspection and emergency safety plan.
- (ii) The provider shall post evacuation procedures in prominent locations throughout the center.

(c) Evacuation drills:

- (i) At least quarterly, the provider shall conduct an evacuation drill from the center while consumers are present.
- (ii) The provider shall retain records on the date and time it completes each evacuation drill.

(d) Fire extinguishers and smoke alarms:

- (i) The provider shall have fire extinguishers and smoke alarms in the

center and shall provide routine maintenance to them.

- (ii) At least annually, the provider shall conduct an inspection of the fire extinguishers and smoke alarms and shall document the completion of each inspection.

(4) Staffing levels:

- (a) The provider shall have at least two staff members present whenever more than one consumer is present, including one who is a paid ~~personal care staff member~~ PCA and one who is certified in CPR.
- (b) The provider shall maintain a staff-to-consumer ratio of at least one staff member to every six consumers at all times.
- (c) The provider shall have one RN, or LPN under the direction of an RN, ~~present~~ available whenever a consumer who receives enhanced ADS or intensive ADS requires components of enhanced ADS or intensive ADS that fall within a nurse's scope of practice.
- (d) The provider shall employ an activity director to direct consumer activities.

(5) Provider qualification:

- (a) Type of provider: A provider shall only provide ADS if the provider is an agency provider.

(b) Staff qualifications:

- (i) Every RN, LPN under the direction of an RN, social worker, physical therapist, physical therapy assistant, speech therapist, dietitian, occupational therapist, ~~or~~ occupational therapy assistant, or other licensed professional planning to practice ~~as a personal care staff member~~ in the adult day center shall possess a current, and valid license to practice in their profession.

- (ii) The activity director shall possess at least one of the following:

(a) A baccalaureate or associate degree in recreational therapy or

a related degree.

(b) At least two years of experience as an activity director, activity assistant or a related position.

(c) Compliance with the qualifications required to direct consumer activities in a nursing facility under paragraph (G) of rule 3701-17-07 of the Administrative Code.

(d) A certification from the national certification council for activity professionals (NCCAP).

(iii) Each activity assistant shall possess at least one of the following:

(a) A high school diploma;

(b) A high school equivalence diploma as defined in section 5107.40 of the Revised Code; or,

(c) At least two years of employment in a supervised position to provide personal care, to provide activities, or to assist with activities.

(iv) Each personal care aide shall possess at least one of the following:

(a) A high school diploma;

(b) A high school equivalence diploma as defined in section 5107.40 of the Revised Code;

(c) At least two years of employment in a supervised position to provide personal care, to provide activities, or to assist with activities; or,

(d) The successful completion of a vocational program in a health or human services field.

(v) Each staff member who provides transportation to consumers shall comply with all requirements under rule 173-3-06.6 of the Administrative Code.

- (vi) The provider shall retain records to show that each staff member who has in-person interaction with consumers complies with the staff qualifications under paragraph (B)(4)(b) of this rule.

(c) Staff training:

- (i) Orientation: Before each new personal care aide provides an ADS, the provider shall train the staff member on all of the following:

- (a) The expectation of employees;

- (b) The provider's ethical standards;

- (c) An overview of the provider's personnel policies;

- (d) A description of the provider's organization and lines of communication;

- (e) Incident reporting procedures; and,

- (f) Universal precautions for infection control.

- (ii) Task-based training: Before each new personal care aide provides an ADS, the provider shall provide task-based training.

- (iii) Continuing education: Each staff member shall complete at least eight hours of in-service or continuing education on appropriate topics each calendar year, unless the staff person holds a professional certification that requires at least eight hours in order to maintain the certification.

- (iv) Records: The provider shall retain records showing that it complies with the training requirements under paragraph (B)(4)(c) of this rule. In doing so, the provider shall list the instructor's title, qualifications, and signature; date and time of instruction; content of the instruction; and name and signature of ADS personal care staff completing the training.

(d) Performance reviews:

- (i) The provider shall complete a performance review of each staff member in relation to the staff member's job description.
- (ii) The provider shall retain records to show that it complies with paragraph (B)(5)(d)(i) of this rule.

(6) Service verification:

- (a) The provider shall verify that each episode of adult day service for which it bills was provided by one of the following two methods:

- (i) The provider may use an electronic system if the system does all of the following:

- (a) Collects the consumer's name, date of service, consumer's arrival and departure times (if the service is provided in the ADS center), consumer's mode of transportation (if the service is provided in the ADS center), and ~~an~~ a unique identifier (e.g., electronic signature, fingerprint, password, swipe card, bar code) unique to of the consumer.

- (b) Retains the information it collects.

- (c) Produces reports, upon request, that the AAA can monitor for compliance.

- (ii) The provider may use a manual system if the provider documents the consumer's name, date of service, consumer's arrival and departure times (if the service is provided in the ADS center), and consumer's mode of transportation (if the service is provided in the ADS center), and collects ~~the handwritten signature a unique identifier~~ of the consumer. If the consumer is unable to produce a handwritten signature, the consumer's handwritten initials, stamp, or mark are acceptable if the AAA authorizes such an alternative.

- (b) In the AAA-provider agreement, the AAA shall not prohibit a provider from using an electronic system or daily attendance roster to collect and retain the records this rule requires.

- (c) During a state of emergency declared by the governor, the provider may verify each episode of service provided without collecting the unique

[identifier of the consumer.](#)

(C) Units of service:

(1) Units of ADS are calculated as follows:

(a) One-half unit is less than four hours of ADS per day.

(b) One unit is four to eight hours of ADS per day.

(c) A fifteen-minute unit is each fifteen-minute period of time over eight hours up to, and including, a maximum of twelve hours of ADS per day.

(2) A unit of ADS does not include a transportation service, as defined by rule 173-3-06.6 of the Administrative Code, even if the transportation service is provided to transport the consumer to or from the ADS center.

173-3-06.2

**Older Americans Act: home maintenance and chores.**

(A) "Home maintenance and chores" means a job providing critical cleaning, maintenance, or repair of elements in a consumer's home or surrounding property which are necessary to preserve the consumer's health and welfare.

(1) "Home maintenance and chores" includes the assessment, materials, and labor involved in any of the following:

(a) Heavy household cleaning, including washing walls and ceilings; washing the outside of windows, washing the inside of difficult-to-reach windows; removing, cleaning, and re-hanging curtains or drapery; and, shampooing carpets or furniture.

(b) Disposing garbage or recyclable materials.

(c) Seasonal outdoor maintenance, including cleaning gutters and downspouts; removing leaves, snow, or ice; trimming shrubs; cutting grass; or installing existing storm windows.

(d) Inspecting HVAC equipment, water heater, or water pump.

(e) Repairing damaged, malfunctioning, or unsafe HVAC equipment, plumbing, electrical systems, roofing, stairs, or floors.

(f) Household maintenance, including replacing light bulbs, unclogging a drain, lighting a pilot light, replacing an electrical fuse, replacing broken window panes, repairing/replacing damaged window or door screens, or changing a furnace filter.

(g) Pest control.

(2) "Home maintenance and chores" does not include any of the following:

(a) A service another person (e.g., a landlord) has a legal or contractual responsibility to provide.

(b) A service available through third-party insurers, community supports, Ohio medicaid state plan, or a medicaid waiver program.

(B) Requirements for every AAA-provider agreement for home maintenance and chores paid, in whole or in part, with Older Americans Act funds:

- (1) General requirements: The AAA-provider agreement is subject to the requirements in rule 173-3-06 of the Administrative Code for every AAA-provider agreement paid, in whole or in part, with Older Americans Act funds.
- (2) Licensure or accreditation: If a job requires a license or credentials (e.g., pest control), only a provider who possesses the current, valid license or credentials qualifies to provide the job.
- (3) Consent agreement: The provider shall not provide a job involving the activities described in paragraphs (A)(1)(e) to (A)(1)(g) of this rule without first obtaining a written (including electronic) consent agreement from the homeowner, which may be the consumer, the consumer's family, or a landlord.
- (4) Health and safety: If the provider anticipates health or safety risks to the consumer during the job, the provider shall inform the consumer and the AAA of the risks and provide the service on dates and times that minimize those risks. The provider shall comply with any and all applicable local codes or ordinances in the provision of each job.
- (5) Job verification: The provider shall verify each job provided for which it bills the AAA using the provider's choice of either an electronic or manual system that collects all the following information:
  - (a) Consumer's name.
  - (b) Job date.
  - (c) Job description.
  - (d) Name of each employee providing the job.
  - (e) Provider's signature.
  - (f) ~~An A unique identifier unique to of~~ the consumer or the consumer's caregiver. ~~The unique identifier serves as an attestation that the provider completed the service. The unique identifier may include a handwritten or electronic signature or initials, a fingerprint, a mark, a stamp, a password, a bar code, or a swipe card. During a state of emergency declared by the governor, the provider may verify each job provided~~

[without collecting the unique identifier.](#)

(6) Reporting: 45 C.F.R. 1321.65 requires the provider to report information to the AAA on jobs provided.

(C) Unit of service: One unit of home maintenance and chores is one completed job reported in hours. Providers may report partial hours to two decimal places (e.g., "0.25 hours"). Material costs are part of the hourly rate. (For example, if a provider normally charges thirty dollars per hour and a three-hour service involves thirty dollars in materials, the provider would bill for three units at forty dollars per unit.)

173-3-06.3

**Older Americans Act: home modification.**

(A) "Home modification" means a job modifying elements of the interior or exterior of a consumer's home to increase accessibility and enable the consumer to function with greater independence in the home.

(1) "Home modification" includes the assessment, materials, and labor involved in any of the following:

(a) A job to install grab bars or other devices to improve the consumer's ability to perform ADLs.

(b) A job to modify the interior or exterior of the consumer's home to improve the consumer's health and safety.

(c) A job to install a wheelchair ramp to a doorway or another modification to improve the consumer's accessibility.

(d) A job to repair or replace a home modification previously paid, in whole or in part, with Older Americans Act funds, if the previous modification cannot be repaired or replaced through another resource.

(2) "Home modification" does not include any of the following:

(a) A job another person (e.g., a landlord) has a legal or contractual responsibility to provide.

(b) A job available through Ohio medicaid state plan, a medicaid waiver program, or another government program, pursuant to 45 C.F.R. 1321.3.

(c) A job available through third-party insurers or a community support program.

(d) A job that adds to the total square footage of the home.

(e) A job of general utility and not direct medical or remedial benefit to the consumer.

(f) A job to repair or replace a home modification previously paid, in whole or in part, with Older Americans Act funds, that is damaged as a result of apparent abuse, misuse, or negligence.

(B) Requirements for every AAA-provider agreement for home modification paid, in whole or in part, with Older Americans Act funds:

- (1) General requirements: The AAA-provider agreement is subject to requirements in rule 173-3-06 of the Administrative Code for every AAA-provider agreement for home modification paid, in whole or in part, with Older Americans Act funds.
- (2) Licensure or accreditation: If a job requires a license or credentials (e.g., an electrician, a HVAC specialist, a plumber), only a provider who possesses the current, valid license or credentials qualifies to provide the job.
- (3) Authorization: Before providing a job, the provider shall do the following:
  - (a) Provide a written (including electronic) estimate to the AAA on the cost of the job.
  - (b) Obtain the AAA's written (including electronic) authorization to begin the job.
- (4) Consent agreement: A provider shall not modify a home without first obtaining a written (including electronic) consent agreement from the homeowner (which may be the consumer, the consumer's family, or a landlord) authorizing the modification and acknowledging that the homeowner understands that the home will remain in the modified state until after the consumer leaves the home.
- (5) Permits: Before beginning a job, the provider shall obtain any permit and pre-job inspections required by federal, state, and local laws.
- (6) Health and safety: If the provider anticipates health or safety risks to the consumer during the job, the provider shall inform the consumer and the AAA of the risks and provide the job on dates and times that minimize those risks.
- (7) Warranty: The provider shall provide a warranty to the AAA covering the workmanship and materials involved in the job provided.
- (8) Inspection: The provider shall obtain any necessary inspection, inspection report, or permit required by federal, state, and local laws or a homeowners' association to verify that the job was properly completed.

(9) Job verification: The provider shall verify each job provided for which it bills the AAA using the provider's choice of either an electronic or manual system that collects all the following information:

(a) Consumer's name.

(b) Date the job is completed.

(c) Job description.

(d) Name of each employee providing the job.

(e) Provider's signature.

(f) ~~An A unique~~ identifier ~~unique to~~ of the consumer or the consumer's caregiver. ~~The unique identifier serves as an attestation that the provider completed the service. The unique identifier may include a handwritten or electronic signature or initials, a fingerprint, a mark, a stamp, a password, a bar code, or a swipe card.~~ During a state of emergency declared by the governor, the provider may verify each job provided without collecting the unique identifier.

(10) Reporting: 45 C.F.R. 1321.65 requires the provider to report information to the AAA on jobs provided.

(C) Units and rates:

(1) A unit of home modification is one completed job.

(2) The per-job rate is negotiable and subject to the approval of the AAA before the job is provided. It includes assessment, materials, and labor.

173-3-06.4

**Older Americans Act: homemaker.**

(A) Definitions for this rule:

(1) "Homemaker service" means a service providing routine activities to help a consumer to achieve and maintain a clean, safe, and healthy environment.

(a) "Homemaker" includes the following activities:

(i) Routine meal-related activities: planning a meal, preparing a meal, and planning a grocery purchase.

(ii) Routine household activities: dusting furniture, sweeping, vacuuming, mopping floors, removing trash, and washing the inside of windows that are reachable from the floor, kitchen care (washing dishes, appliances, and counters), bedroom and bathroom care (changing bed linens and emptying and cleaning bedside commodes), and laundry care (folding, ironing, and putting the laundry away).

(iii) Routine transportation activities: providing an errand outside of the presence of the consumer (e.g., picking up a prescription), grocery shopping assistance, or escort, but not transportation under rule 173-3-06.6 of the Administrative Code.

(iv) The activities described in paragraphs (A)(1)(a)(i) to (A)(1)(a)(iii) of this rule when they assist the consumer as respite to the consumer's caregiver or are essential to the health and safety of the consumer as respite to the consumer's caregiver.

(b) "Homemaker" does not include the following activities:

(i) Activities provided outside of the home with the exception of the routine transportation activities listed in paragraph (A)(1)(a)(iii) of this rule.

(ii) Activities within the scope of home maintenance and chores.

(iii) Activities available through third-party insurers, community supports, Ohio medicaid state plan, or a medicaid waiver program.

(iv) Activities to administer or set-up medications.

(2) "Aide" means the person who provides homemaker activities.

(B) Agency providers: requirements for every AAA-provider agreement for homemaker activities paid, in whole or in part, with Older Americans Act funds:

(1) General requirements: The AAA-provider agreement is subject to the requirements in rule 173-3-06 of the Administrative Code for every AAA-provider agreement paid, in whole or in part, with Older Americans Act funds.

(2) Availability: The provider shall maintain the following:

(a) Adequate staffing levels to provide homemaker activities at least five days per week.

(b) A back-up plan for providing homemaker activities when the provider has no aide available.

(c) The availability of an aide supervisor during all hours when aides are scheduled to work.

(3) Aides:

(a) Initial qualifications: The provider shall only allow a person to serve as an aide if the person meets at least one of the following qualifications and the provider meets the verification requirements under paragraph (B)(3)(d) of this rule:

(i) The person meets at least one of the qualifications to be a PCA under paragraph (B)(3)(a) of rule 173-3-06.5 of the Administrative Code.

(ii) The person successfully completed a training and competency evaluation program with the following characteristics:

(a) The training lasted at least twenty hours.

(b) All the following subjects were included in the program's

training and its competency evaluation:

- (i)* Communications skills, including the ability to read, write, and make brief and accurate reports (oral or written (including electronic)).
  - (ii)* Universal precautions for infection control, including hand washing and the disposal of bodily waste.
  - (iii)* Homemaker activities.
  - (iv)* Recognition of emergencies, knowledge of emergency procedures, and basic home safety.
  - (v)* Record-keeping skills.
- (b) Orientation: Before allowing aides or other employees to have direct, face-to-face contact with consumers, the provider shall provide the aides or other employees with orientation that, at a minimum, addresses the following topics:
  - (i) The provider's expectations of employees.
  - (ii) Person-centered care.
  - (iii) The provider's ethical standards.
  - (iv) An overview of the provider's personnel policies.
  - (v) The organization and lines of communication of the provider's agency.
  - (vi) Incident reporting.
  - (vii) Emergency procedures.
- (c) In-service training: The provider shall retain records to show that each aide successfully completes eight hours of in-service training very twelve months. Agency- and program-specific orientation shall not count toward the eight hours. If the aide is also a personal care aide

(PCA) according to rule 173-3-06.5 of the Administrative Code, the provider may consider eight hours of successfully-completed in-service training as a PCA to count for the eight hours required as an aide by this paragraph.

(d) Verification of compliance with aide requirements:

- (i) If a person meets the initial qualifications to be an aide under paragraph (B)(3)(a) of this rule by meeting the qualifications to be a PCA under paragraph (B)(3)(a) of rule 173-3-06.5 of the Administrative Code, the provider shall comply with the verification requirements under paragraph (B)(3)(d) of rule 173-3-06.5 of the Administrative Code.
- (ii) If a person meets the initial qualifications to be an aide under paragraph (B)(3)(a) of this rule by completing the training and competency evaluation program under paragraph (B)(3)(a)(ii) of this rule, the provider shall retain copies of certificates of completion earned by each aide after the aide meets qualifications/requirements under paragraph (B)(3) of this rule for successfully completing any training and competency evaluation program, orientation, and in-service training under paragraph (B)(3) of this rule. Additionally, the provider shall also record the following information for each aide, and retain it, if it does not appear on the aide's certificate of completion (or if the aide did not receive a certificate of completion): training dates; training locations; training hours successfully completed; instruction materials used; subjects covered; and to verify the accuracy of the record, the name, qualifications, and signature of each aide trainer and of each aide tester.

(4) Aide supervisors, aide trainers, and aide testers:

- (a) Qualifications: The provider shall only allow a person to serve as an aide supervisor, an aide trainer, or an aide tester if the person meets one or more of the following qualifications:
  - (i) The person is an RN.
  - (ii) The person is an LPN who works under the supervision of a RN.
  - (iii) The person successfully completed a baccalaureate or associate

degree in a health and human services field.

- (iv) The person completed at least two years of work as an aide, as defined by this rule.
- (b) Aide supervisor ~~evaluations~~ visits: The provider's aide supervisor shall do all of the following:
- ~~(i) Initial evaluation: visit each consumer's home in person to develop a written activity plan with each consumer before allowing an aide to visit the consumer or during the aide's initial visit to the consumer.~~
  - (i) Initial: Visit each consumer in person at the consumer's home to develop a written activity plan with the consumer either before allowing an aide to provide an episode of service to the consumer or during the aide's initial episode of service to the consumer. During a state of emergency declared by the governor, the aide supervisor may conduct the visit by telephone, video conference, or in person at the consumer's home.
  - ~~(ii) Subsequent evaluations: conduct, at least once every ninety-three days after an aide's initial visit to a consumer, an evaluation of compliance with the activity plan, the consumer's satisfaction, and the aide's performance, either by an in-person visit to the consumer or through a telecommunications medium with the consumer, so long as the aide supervisor never conducts consecutive evaluations through a telecommunications medium. The supervisor may conduct each evaluation with or without the presence of the aide being evaluated.~~
  - (ii) Subsequent: Visit each consumer in person at the consumer's home at least once every ninety-three days after the aide's initial episode of service with the consumer to evaluate compliance with the activity plan, the consumer's satisfaction, and the aide's performance. The aide supervisor may conduct each visit with or without the presence of the aide being evaluated. During a state of emergency declared by the governor, the aide supervisor may conduct the visit by telephone, video conference, or in person at the consumer's home.
  - ~~(iii) Verification: retain a record of the initial evaluation and each subsequent evaluation that includes all the following:~~

~~(a) Consumer's name.~~

~~(b) Supervisor's name.~~

~~(c) Evaluation date.~~

~~(d) Whether the evaluation occurred in person or through a telecommunications medium.~~

~~(e) An identifier unique to the the consumer or the consumer's caregiver (when an in person evaluation). The unique identifier serves as an attestation that the aide supervisor developed an activity plan with the consumer or made a subsequent in person evaluation. The unique identifier may include a handwritten or electronic signature or initials, a fingerprint, a mark, a stamp, a password, a bard code, or a swipe card.~~

~~(f) Supervisor's signature.~~

(iii) Verification: Retain a record of the initial visit and each subsequent visit that includes the date of the visit; whether the visit occurred by telephone, video conference, or in person at the consumer's home; the aide supervisor's name and signature; the consumer's name; and a unique identifier of the consumer or the consumer's caregiver. During a state of emergency declared by the governor, the provider may verify that the aide supervisor provided the initial visit or subsequent visits without collecting a unique identifier of the consumer or the consumer's caregiver.

(5) Employee policies:

(a) The provider shall develop, implement, comply with, and maintain written policies on all the following topics:

(i) Job descriptions.

(ii) Qualifications to provide homemaker activities.

(iii) Performance appraisals.

(iv) Incident reporting.

- (v) Obtaining the consumer's written permission before releasing information concerning the consumer to anyone.
  - (vi) The required content, handling, storage, and retention of consumer records.
  - (vii) The provider's ethical standards.
- (b) The provider shall make its policies available to all employees and to ODA or the AAA upon request.
- (6) Service verification: The provider shall verify each episode of service provided for which it bills the AAA by using the provider's choice of either an electronic or manual system that collects all the following information:
- (a) Consumer's name.
  - (b) Service date.
  - (c) Arrival time.
  - (d) Departure time.
  - (e) Service description.
  - (f) Service units.
  - (g) Name of each aide in contact with the consumer.
  - (h) Signature of each aide in contact with the consumer.
  - (i) ~~An A unique~~ identifier ~~unique to~~ of the consumer or the consumer's caregiver. ~~The unique identifier serves as an attestation that the provider completed the service. The unique identifier may include a handwritten or electronic signature or initials, a fingerprint, a mark, a stamp, a password, a bar code, or a swipe card. During a state of emergency declared by the governor, the provider may verify each episode of service provided without collecting the unique identifier.~~

- (7) Reporting: 45 C.F.R. 1321.65 requires the provider to report information to the AAA on the service it provides.
- (C) Self-employed (non-agency) and participant-directed providers: In every AAA-provider agreement for homemaker paid, in whole or in part, with Older Americans Act funds, the AAA shall include the same requirements as for agency providers, with the following differences:
- (1) Availability: Paragraph (B)(2)(c) of this rule does not apply.
  - (2) Initial qualifications, in-service training, and verification: Paragraphs (B)(3)(a), (B)(3)(c), and (B)(3)(d) of this rule apply as if "provider" is the AAA and "aide" is either the self-employed or participant-directed provider.
  - (3) Orientation: Paragraph (B)(3)(b) of this rule does not apply.
  - (4) Supervision: Paragraph (B)(4) of this rule does not apply.
  - (5) Employee policies: Paragraphs (B)(5)(iv) to (B)(5)(vii) of this rule of this rule apply, but paragraphs (B)(5)(i) to (B)(5)(iii) do not apply.
  - (6) Service verification: Paragraph (B)(6) of this rule applies as if "aide" is either the self-employed or participant-directed provider.
- (D) Unit of service: A unit of homemaker is one hour of homemaker. Providers may report partial hours to two decimal places (e.g., "0.25 hours").

173-3-06.5

**Older Americans Act: personal care.**

(A) Definition for this rule: "Personal care" means a service comprised of activities to help a consumer achieve optimal functioning with ADLs and IADLs.

(1) "Personal care" includes the following activities:

- (a) Assisting the consumer with managing the household, handling personal affairs, and providing assistance with self-administration of medications.
- (b) Assisting the consumer with ADLs and IADLs.
- (c) Homemaker activities listed in rule 173-3-06.4 of the Administrative Code, if the activities are specified in the consumer's activities plan and are incidental to the activities provided, or are essential to the health and safety of the consumer, rather than the consumer's family. The homemaker activities include routine meal-related activities, routine household activities, and routine transportation activities.
- (d) The activities described in paragraphs (A)(1)(a) to (A)(1)(c) of this rule when they assist the consumer as respite to the consumer's caregiver or are essential to the health and safety of the consumer as respite to the consumer's caregiver.

(2) "Personal care" does not include the following activities:

- (a) Activities provided outside of the home with the exception of the routine transportation activities listed in paragraph (A)(1)(c) of this rule.
- (b) Activities within the scope of home maintenance and chores.
- (c) Activities available through third-party insurers, community supports, Ohio medicaid state plan, or a medicaid waiver program.
- (d) Activities to administer or set-up medications.

(B) Requirements for every AAA-provider agreement for personal care paid, in whole or in part, with Older Americans Act funds:

(1) General requirements: The AAA-provider agreement is subject to the requirements in rule 173-3-06 of the Administrative Code for every

AAA-provider agreement paid, in whole or in part, with Older Americans Act funds.

(2) Availability: The provider shall maintain the following:

- (a) Adequate staffing levels to provide personal care at least five days per week.
- (b) A back-up plan for providing personal care when the provider has no PCA available.
- (c) The availability of a PCA supervisor available during all hours when PCAs are scheduled to work.

(3) PCAs:

- (a) Initial qualifications: the provider shall only allow a person to serve as a PCA if the person meets at least one of the following qualifications and if the provider meets the verification requirements under paragraph (B)(3)(d) of this rule:
  - (i) STNA: ~~the~~ The person successfully completed a nurse aide training and competency evaluation program approved by Ohio department of health (ODH) under section 3721.31 of the Revised Code.
  - (ii) Medicare: ~~the~~ The person met the qualifications to be a medicare-certified home health aide according to one of the following sets of standards:
    - (a) The standards in 42 C.F.R. 484.4 and 484.36, if the person met those standards on or before January 12, 2018.
    - (b) The standards in 42 C.F.R. 484.80 and 484.115, if the person met those standards on or after January 13, 2018.
  - (iii) Previous experience: ~~the~~ The person has at least one year of supervised employment experience as a home health aide or nurse aide, and has successfully completed competency evaluation covering the topics listed under paragraph (B)(3)(a)(v)(b) of this

rule.

(iv) Vocational programs: ~~the~~ The person successfully completed the COALA home health training program or ~~a~~ another vocational school program that included at least sixty hours of training ~~training~~ and competency evaluation covering the topics listed under paragraph (B)(3)(a)(v)(b) of this rule.

(v) Other programs: ~~the~~ The person successfully completed a training and competency evaluation program with the following characteristics:

(a) The training lasted at least sixty hours.

(b) All the following subjects were included in the program's training and its competency evaluation:

(i) Communications skills, including the ability to read, write, and make brief and accurate reports (oral or written (including electronic)).

(ii) Observation, reporting, and retaining records of a consumer's status and activities provided to the consumer.

(iii) Reading and recording a consumer's temperature, pulse, and respiration.

(iv) Basic infection control, including hand washing and the disposal of bodily waste.

(v) Basic elements of bodily functioning and changes in body function that should be reported to a PCA supervisor.

(vi) The homemaker activities listed in rule 173-3-06.4 of the Administrative Code.

(vii) Recognition of emergencies and knowledge of emergency procedures.



(d) Verification of compliance with PCA requirements:

- (i) The provider shall retain copies of certificates of completion earned by each PCA after the PCA meets qualifications/requirements under paragraph (B)(3) of this rule for successfully completing any training and competency evaluation program, orientation, and in-service training under paragraph (B)(3) of this rule. Additionally, the provider shall also record the following information for each PCA, and retain it, if it does not appear on the PCA's certificate of completion (or if the PCA did not receive a certificate of completion): training dates; training locations; training hours successfully completed; instruction materials used; subjects covered; and to verify the accuracy of the record, the name, qualifications, and signature of each PCA trainer and of each PCA tester.
- (ii) If a person meets the initial qualifications to be a PCA under paragraph (B)(3)(a) of this rule by successfully completing a nurse aide training and competency evaluation program described in (B)(3)(a)(i) of this rule, the provider shall retain a copy of the search results from ODH's nurse aide registry ([https://odhgateway.odh.ohio.gov/nar/nar\\_registry\\_search.aspx](https://odhgateway.odh.ohio.gov/nar/nar_registry_search.aspx)) to verify the registry listed the person as "active" or "in good standing."
- (iii) If a person meets the initial qualifications to be a PCA under paragraph (B)(3)(a) of this rule only by the previous employment experience described in paragraph (B)(3)(a)(iii) of this rule, the provider shall also retain records to verify the person's name, the former employer's name and contact information, the former supervisor's name, the date the person began working for the former employer, and the date the person stopped working for the former employer.

(4) PCA supervisors, PCA trainers, and PCA testers:

- (a) Qualifications: The provider shall only allow a RN (or a LPN under the direction of a RN) to be ~~the~~ a PCA supervisor, PCA trainer, or PCA tester.
- (b) PCA supervisor visits:

~~(i) Before allowing a PCA to begin providing personal care to a consumer, the PCA supervisor shall visit the consumer's home to define the expected activities of the PCA and prepare a written activities plan for consumer. The visit may occur at the PCA's initial visit to the consumer.~~

(i) Initial: The PCA supervisor shall visit each consumer in person at the consumer's home to define the expected activities of the PCA and develop a written activity plan with the consumer either before allowing a PCA to provide an episode of service to the consumer or during the PCA's initial episode of service to the consumer. During a state of emergency declared by the governor, the PCA supervisor may conduct the visit by telephone, video conference, or in person at the consumer's home.

~~(ii) After the PCA's initial visit to the consumer, the PCA supervisor shall evaluate compliance with the activities plan, the consumer's satisfaction, and the PCA's performance by conducting a visit to the consumer at least once every sixty days and retaining a record of this evaluation. The PCA supervisor may do this without the presence of the PCA being evaluated. In the record, the PCA supervisor shall include the date of the visit, the PCA supervisor's name and signature, and the consumer's name and signature.~~

(ii) Subsequent: The PCA supervisor shall visit the consumer in person at the consumer's home at least once every sixty days after the PCA's initial episode of service with the consumer to evaluate compliance with the activities plan, the consumer's satisfaction, and the PCA's performance. The PCA supervisor may conduct subsequent visits with or without the presence of the PCA being evaluated. During a state of emergency declared by the governor, the PCA supervisor may conduct subsequent visits by telephone or video conference, unless an emergency requires visiting the consumer in person at the consumer's home.

(iii) Verification: In the consumer's record, the PCA supervisor shall retain a record of the initial visit and each subsequent visit that includes the date of the visit; whether the visit occurred by telephone, video conference, or in person at the consumer's home; the PCA supervisor's name and signature; the consumer's name; and a unique identifier of the consumer or the consumer's caregiver. During a state of emergency declared by the governor, the provider may verify that the PCA supervisor provided the initial or subsequent visit without collecting a unique identifier of the consumer or the consumer's caregiver.

(5) Provider's policies:

(a) The provider shall develop, implement, comply with, and maintain written policies on all the following topics:

(i) Job descriptions.

(ii) Qualifications to provide personal care.

(iii) Performance appraisals.

(iv) Incident reporting.

(v) Obtaining the consumer's written permission before releasing information concerning the consumer to anyone.

(vi) The required content, handling, storage, and retention of consumer records.

(vii) The provider's ethical standards.

(viii) Assistance with self-administration of medication.

(b) The provider shall make its policies available to all employees and provide to ODA or the AAA upon request.

(6) Service verification:

(a) The provider shall use a monitoring system that complies with section 121.36 of the Revised Code.

(b) The provider shall verify each episode of service provided for which it bills the AAA using the provider's choice of either an electronic or manual system that collects all the following information:

(i) Consumer's name.

(ii) Service date.

(iii) Arrival time.

(iv) Departure time.

(v) Service description.

(vi) Service units.

(vii) Name of each PCA in contact with the consumer.

(viii) Signature of each PCA in contact with the consumer.

(ix) ~~An~~ A unique identifier ~~unique to~~ of the consumer or the consumer's caregiver. ~~The unique identifier serves as an attestation that the provider completed the service. The unique identifier may include a handwritten or electronic signature or initials, a fingerprint, a mark, a stamp, a password, a bar code, or a swipe card.~~

(c) During a state of emergency declared by the governor, the provider may verify each episode of service provided without collecting the unique identifier in paragraph (B)(6)(b)(ix) of this rule.

(7) Reporting: 45 C.F.R. 1321.65 requires the provider to report information to the AAA on the personal care it provides.

(C) Unit of service: A unit of personal care is one hour of personal care. Providers may report partial hours to two decimal places (e.g., "0.25 hours").

173-3-06.6

**Older Americans Act: transportation.**

(A) Definitions for this rule:

- (1) "Transportation" means a service that transports a consumer from one place to another through the use of a provider's vehicle and driver, and which may, or may not, include providing the consumer with assistance to safely enter and exit the vehicle. "Transportation" does not include the following:
  - (a) Trips otherwise available, or funded by, Ohio's medicaid program or another source.
  - (b) Trips provided through a similar service in this chapter or Chapter 173-4 of the Administrative Code.
- (2) "Board of EMFTS" means the Ohio board of emergency medical, fire, and transportation services.
- (3) "Bus" has the same meaning as in section 4513.50 of the Revised Code.
- (4) "CLIA-certified laboratory" means a laboratory ODH lists as a "CLIA Lab" in active status on the "Long-Term Care, Non Long-Term Care, & CLIA Health Care Provider Search" ([http://publicapps.odh.ohio.gov/eid/Provider\\_Search.aspx](http://publicapps.odh.ohio.gov/eid/Provider_Search.aspx)).
- (5) "First responder" has the same meaning as in division (A) of section 4765.01 of the Revised Code.
- (6) "EMT" means any of the emergency medical technicians defined in division (A), (B), or (C) of section 4765.01 of the Revised Code.

(B) In every AAA-provider agreement for transportation paid, in whole or in part, with Older Americans Act funds, the AAA shall include the following requirements:

- (1) General requirements:
  - (a) In the AAA-provider agreement, the AAA shall include the requirements in rule 173-3-06 of the Administrative Code for every AAA-provider agreement paid, in whole or in part, with Older Americans Act funds.
  - (b) Availability: An agency provider shall possess a back-up plan for times when a driver or vehicle is unavailable. A self-employed provider shall

possess a back-up plan for times when he/she or his/her vehicle is unavailable. The back-up plan may describe the process for transporting consumers when the driver or vehicle is unavailable or it may describe the process for notifying the consumer when a driver or vehicle is unavailable.

- (c) Assisted transportation: In each AAA-provider agreement, the AAA shall list situations when drivers shall provide consumers with assistance to safely enter and exit vehicles, pick-up locations, and drop-off locations.

(2) Vehicle requirements:

- (a) Maintenance: The provider shall maintain vehicles according to the manufacturer's maintenance schedule for each vehicle used to transport consumers. If the vehicle includes a wheelchair lift, the provider shall maintain the wheelchair lift according to the manufacturer's maintenance schedule for the wheelchair lift.

- (b) Inspections: The provider shall conduct the following inspections on each vehicle used to transport consumers. If the vehicle includes a wheelchair lift, the provider's inspection shall include inspecting the wheelchair lift:

- (i) "Annual Vehicle Inspection" on form ODA0004 (rev. 12/15/2010). The provider shall only use a vehicle for transporting consumers if a mechanic who is certified by the national institute for automotive service excellence (i.e., "ASE-certified"), or another mechanic approved by the AAA, inspected it no more than twelve months before and the answers to all questions on the form were "yes."

- (ii) "Daily Vehicle Inspection" on form ODA0008 (rev. 02/01/2019) or form ODA0011 (rev. 02/01/2019). The provider shall only use a vehicle if, before providing the first trip of the day, the provider inspected it and the answers to all questions required by the form were "yes."

(c) Exemptions:

- (i) A vehicle possessing a current, valid ambulette license is deemed to comply with paragraphs (B)(2)(a) and (B)(2)(b) of this rule. Providers using a vehicle with a current, valid ambulette license

may demonstrate compliance with paragraphs (B)(2)(a) and (B)(2)(b) of this rule by providing the AAA with evidence of the vehicle's current, valid ambulette license.

- (ii) A bus displaying a current, valid safety-inspection decal issued by the state highway patrol under Chapter 4501-52 of the Administrative Code is deemed to comply with paragraph (B)(2)(b)(i) of this rule. Providers using a vehicle with a current, valid safety-inspection decal issued under section 4513.52 of the Revised Code may demonstrate compliance with paragraph (B)(2)(b)(i) of this rule by providing the AAA with evidence of the vehicle's current, valid decal.

(3) Driver requirements:

- (a) Statutory requirements to hire: The provider shall not hire a person to be a driver unless the person meets all the requirements for drivers under divisions (A)(3) and (B) of section 4766.14 of the Revised Code, subject to the following conditions:
  - (i) To comply with the first-aid requirement, the applicant's training shall come from a training organization approved by the board of EMFTS (<http://www.ems.ohio.gov/medical-transportation-faq.aspx>).
  - (ii) To comply with the cardiopulmonary-resuscitation requirement, the applicant's training shall come from a training organization approved by the board of EMFTS (<http://www.ems.ohio.gov/medical-transportation-faq.aspx>).
  - (iii) To comply with the drug-testing requirement, the applicant's test results shall come from a CLIA-certified laboratory and shall declare the applicant to be free of alcohol, amphetamines, cannabinoids (THC), cocaine, opiates, or phencyclidine (PCP).
  - (iv) To comply with the background-check requirement, the provider shall comply with the background-check requirements in Chapter 173-9 of the Administrative Code, which exempts an applicant for a volunteer driver position and an applicant for a position solely involving transporting consumers while working for a county transit system, regional transit authority, or regional transit commission.

- (b) Additional requirements to hire: The provider shall not hire a person to be a driver unless the person meets all the following requirements:
  - (i) The applicant has held a current, valid driver's license for at least two years.
  - (ii) The applicant holds any driver's license endorsement necessary to operate the type of vehicle the applicant would drive.
  - (iii) The applicant has the ability to understand written and oral instructions.
  - (iv) The applicant has the ability to provide transportation assistance.
  - (v) The applicant has the ability to comply with the trip-verification requirements in paragraph (B)(4)(a) of this rule.
- (c) Passenger-assistance training: No later than six months after the provider hires a driver, the driver shall successfully complete a passenger-assistance training course approved by the board of EMFTS (<http://www.ems.ohio.gov/medical-transportation-faq.aspx>).
- (d) Exempted professionals: An applicant with a current, valid license or certificate to be one or more of the following professionals is deemed to meet the requirements in paragraphs (B)(3)(a), (B)(3)(b), and (B)(3)(c) of this rule. Providers hiring an applicant with a current, valid license or certificate to be one or more of the following professionals may demonstrate compliance with paragraphs (B)(3)(a), (B)(3)(b), and (B)(3)(c) of this rule by providing the AAA with evidence the applicant possesses a current, valid license or certificate as one of the following professionals:
  - (i) An ambulette driver.
  - (ii) An EMT or first responder. Additionally, an applicant is deemed to meet the requirements in paragraphs (B)(3)(a), (B)(3)(b), and (B)(3)(c) of this rule if the applicant passed the board of EMFTS' curriculum for an EMT or first responder, but does not hold a current, valid certification for either profession. Providers hiring such applicants may demonstrate compliance with paragraphs (B)(3)(a), (B)(3)(b), and (B)(3)(c) of this rule by providing the

AAA with evidence the applicant passed the board of EMFTS' curriculum for an EMT or first responder.

(iii) A driver for a county transit system, regional transit authority, or regional transit commission.

(4) Trip verification:

- (a) For each trip provided, the driver shall record the consumer's name; type of trip (transportation or assisted transportation); date of trip; pick-up point and time of the pick up; destination point and time of the drop off; driver's name; and a unique identifier of the consumer or the consumer's caregiver ~~which by offering, the consumer attests to the completion of the trip. The consumer's unique identifier may include a handwritten or electronic signature or initials, a fingerprint, a mark, a stamp, a password, a bar code, or a swipe card.~~ During a state of emergency declared by the governor, the provider may verify each trip provided without collecting the unique identifier if the provider also collects the driver's signature as an attestation to the completion of the trip.
- (b) In the AAA-provider agreement, the AAA shall not prohibit a provider from using an electronic system to collect and retain the records required in paragraph (B)(4)(a) of this rule.
- (c) Pursuant to 45 C.F.R. 1321.65, the provider shall report information to the AAA on transportation provided.

(C) Unit and rate:

- (1) A one-way trip equals one unit of transportation.
- (2) The unit rate in an AAA-provider agreement shall reflect the provider's fully-allocated costs, including administrative costs, training costs, and documentation costs.
- (D) Incorporation by reference: This rule's reference to 45 C.F.R. 1321.65 refers to the version of that federal regulation in effect on the date of the trip.

173-4-03

**Older Americans Act nutrition program: consumer enrollment.**

(A) Congregate dining: Before enrolling the consumer into a congregate dining project or congregate dining project based in restaurants or supermarkets, the provider shall verify that a consumer's congregate meals are eligible for payment, in whole or in part, with Older Americans Act funds according to rule 173-4-02 of the Administrative Code.

(B) Home-delivered meals:

(1) Initial verification: Before enrolling a consumer into a home-delivered meals project, the provider shall verify, in person, that ~~his or her~~ the consumer's home-delivered meals are eligible for payment, in whole or in part, with Older Americans Act funds according to rule 173-4-02 of the Administrative Code. During a state of emergency declared by the governor, the provider may verify eligibility by telephone, video conference, or in person.

(2) Annual verification: The provider shall not keep a consumer enrolled in a home-delivered meals project for more than one year unless, at least once annually, the provider verifies, in person, the consumer's home-delivered meals continue to be eligible for payment, in whole or in part, with Older Americans Act funds according to rule 173-4-02 of the Administrative Code. During a state of emergency declared by the governor, the provider may verify eligibility by telephone, video conference, or in person.

(3) Temporary verification: A provider may deem a discharge order to be adequate verification to authorize temporary payment for home-delivered meals, in whole or in part, with Older Americans Act funds until the provider conducts its own verification of eligibility, but only if the following conditions are met:

(a) The consumer requires meals before the provider can verify that the consumer's home-delivered meals are eligible for payment, in whole or in part, with Older Americans Act funds.

(b) The consumer is sixty years or more old.

(c) The discharge order indicates the consumer is unable to prepare his or her own meals, unable to consume meals at a congregate dining location due to physical or emotional difficulties, and lacking another meal support service in the home or community.

(d) The provider begins providing home-delivered meals no later than seven

days after the discharge.

(e) The provider conducts the initial verification no later than thirty consecutive days after the discharge.

(C) Waiting lists: If a waiting list exists for enrolling into a congregate dining project, congregate dining project based in restaurants or supermarkets, or a home-delivered meals project, the provider or the AAA shall develop a prioritization system that distributes meals equitably by prioritizing consumers who are determined to have the highest nutritional risk. The provider shall base the consumer's nutritional risk status upon the following:

(1) The result of a nutritional health screening of the consumer conducted according to rule 173-4-09 of the Administrative Code.

(2) The nutritional risk status of the spouse (if any), if the spouse is determined to have a higher nutritional risk than the consumer.

173-4-05.1                    **Older Americans Act nutrition program: congregate dining projects.**

In every AAA-provider agreement for a congregate dining project paid, in whole or in part, with Older Americans Act funds, the AAA shall include the following requirements:

(A) General requirements:

- (1) In the AAA-provider agreement, the AAA shall include the requirements in rule 173-3-06 of the Administrative Code for every AAA-provider agreement paid, in whole or in part, with Older Americans Act funds.
- (2) In the AAA-provider agreement, the AAA shall include the requirements in rule 173-4-05 of the Administrative Code for every AAA-provider agreement for a nutrition project.

(B) Availability:

- (1) The provider shall keep at least one congregate dining location in its nutrition project open for business to provide meals for at least one mealtime (i.e., a breakfast, lunch, or dinner) per day to consumers on five or more days per week, [within a reasonable distance to older adult target populations](#), unless the AAA obtains ODA's approval to enter into an AAA-provider agreement [or during a state of emergency declared by the governor](#) that allows fewer days per week.
- (2) In the AAA-provider agreement, the AAA shall not prohibit the provider from offering meals in different congregate dining locations on different days rather than have every congregate dining location open for at least five days per week.

(C) Carry-out meals: Older Americans Act Title III-C1 funds shall not pay, in whole or in part, for regularly-provided carry-out meals provided at congregate dining locations, but may pay for occasional carry-out meals, including meals sent home with consumers to prepare for an anticipated closing of congregate dining locations for weather-related emergencies [or a state of emergency declared by the governor](#).

(D) Emergency closings:

- (1) The provider shall give those consumers enrolled in its congregate dining project, [to the extent practicable](#), reasonable notice before a scheduled mealtime when a congregate dining location will be closed due to weather-related emergencies, loss of power, kitchen malfunctions, natural disasters, [a state of emergency declared by the governor](#), etc. Providers shall

notify consumers by using broadcast media, by using its website, by telephone, or by any combination of the three.

- (2) To prepare for emergency closings, the provider shall distribute information to consumers on how to stock an emergency food shelf.

(E) Quality assurance:

- (1) Each year, the provider shall implement a plan to evaluate and improve the effectiveness of the project's operations and services to ensure continuous improvement. In the plan, the provider shall include a review of the existing project; modifications the provider made to respond to changing needs or interest of consumers, staff, or volunteers; and proposed improvements.
- (2) In the AAA-provider agreement, the AAA shall not prohibit a provider from using an electronic system to collect and retain the records showing compliance with the continuous-improvement requirements in this rule.

(F) Meal verification:

- (1) By one of the following two methods, the provider shall verify that each meal for which it bills was provided:
  - (a) The provider may use an electronic system if the system does all of the following:
    - (i) Collects the consumer's name, date, and ~~an~~ a unique identifier ~~(e.g., electronic signature, fingerprint, password, swipe card, bar code)~~ unique to of the consumer or the consumer's caregiver.
    - (ii) Retains the information it collects.
    - (iii) Produces reports, upon request, that the AAA can monitor for compliance.
  - (b) The provider may use a manual system if the provider documents the consumer's name, date, and ~~handwritten signature~~ a unique identifier of the consumer or the consumer's caregiver. ~~If the consumer is unable to produce a handwritten signature, the consumer's handwritten initials, stamp, or mark are acceptable if the AAA authorizes such an alternative.~~

- (2) In the AAA-provider agreement, the AAA shall not prohibit a provider from using an electronic system to collect and retain the records this rule requires.
- (3) During a state of emergency declared by the governor, the provider may verify each meal provided without collecting a unique identifier of the consumer or the consumer's caregiver.

173-4-05.2

**Older Americans Act nutrition program: home-delivered meals projects.**

In every AAA-provider agreement for a home-delivered meals project paid, in whole or in part, with Older Americans Act funds, the AAA shall include the following requirements:

(A) General requirements:

- (1) In the AAA-provider agreement, the AAA shall include the requirements in rule 173-3-06 of the Administrative Code for every AAA-provider agreement paid, in whole or in part, with Older Americans Act funds.
- (2) In the AAA-provider agreement, the AAA shall include the requirements in rule 173-4-05 of the Administrative Code for every AAA-provider agreement for a nutrition project.

(B) Delivery:

(1) Availability:

(a) Per-meal delivery:

- (i) To consumers who choose to receive per-meal deliveries and require meals on five or more days per week, the provider shall deliver at least one meal per day for five or more days per week.
- (ii) To consumers who choose to receive per-meal deliveries, but do not require meals on five or more days per week, the provider shall deliver at least one meal per day on days that the consumer requires meals.

(b) Periodic delivery: To consumers who choose periodic deliveries, in the AAA-provider agreement, the AAA shall not prohibit the provider from, in one delivery, delivering meals to cover multiple mealtimes.

(c) State of emergency: During a state of emergency declared by the governor, the provider may, in one delivery, deliver meals to cover multiple mealtimes for consumers who received meals before the state of emergency by per-meal delivery or periodic delivery.

(2) Successful deliveries: The provider shall only deliver meals to the consumer's home when the consumer, or the consumer's caregiver, is home, unless

otherwise authorized by the AAA.

(C) Emergency closings: The provider shall develop and implement written contingency procedures for emergency closings due to short-term weather-related emergencies, loss of power, kitchen malfunctions, natural disasters, [a state of emergency declared by the governor](#), etc. In the procedures, the provider shall include the following:

- (1) Providing timely notification of emergency situations to consumers; and,
- (2) Either the distribution of:
  - (a) Information to consumers on how to stock an emergency food shelf; or,
  - (b) Shelf-stable meals to consumers for an emergency food shelf.

(D) Quality assurance:

- (1) Each year, the provider shall implement a plan to evaluate and improve the effectiveness of the project's operations and services to ensure continuous improvement. In the plan, the provider shall include a review of the existing project; modifications the provider made to respond to changing needs or interest of consumers, staff, or volunteers; and proposed improvements.
- (2) In the AAA-provider agreement, the AAA shall not prohibit a provider from using an electronic system to collect and retain the records showing compliance with the continuous-improvement requirements in this rule.

(E) Delivery verification:

- (1) The provider shall verify each meal delivery for which it bills the AAA using either an electronic or manual system. Regardless of the system used, the provider shall collect all the following information:
  - (a) Consumer's name.
  - (b) Delivery date.
  - (c) Number of meals delivered.

(d) ~~An~~ A unique identifier ~~unique to~~ of the consumer, the consumer's caregiver, or the delivery person.

~~(2) The identifier in paragraph (E)(1)(d) of this rule may be a handwritten or electronic signature or initials, a fingerprint, a mark, a stamp, a password, a bar code, or a swipe card.~~

~~(3) The identifier in paragraph (E)(1)(d) of this rule shall serve as an attestation that delivery was made as indicated by the system.~~

~~(4)~~(2) In the AAA-provider agreement, the AAA shall not require the provider to use a particular system. Use of either system is acceptable.

(3) During a state of emergency declared by the governor, the provider may verify each meal provided without collecting a unique identifier of the consumer or the consumer's caregiver.

173-4-05.3

**Older Americans Act nutrition program: congregate dining projects based in restaurants or grocery stores.**

In every AAA-provider agreement for a congregate dining project based in restaurants or grocery stores paid, in whole or in part, with Older Americans Act funds, the AAA shall include the following requirements:

(A) General requirements:

- (1) In the AAA-provider agreement, the AAA shall include the requirements in rule 173-3-06 of the Administrative Code for every AAA-provider agreement paid, in whole or in part, with Older Americans Act funds.
- (2) In the AAA-provider agreement, the AAA shall include the requirements in rule 173-4-05 of the Administrative Code for every AAA-provider agreement for a nutrition project.

(B) Eligibility verification: The provider shall use one of the following three methods to verify consumers' eligibility when complying with the eligibility-verification requirements in rule 173-4-03 of the Administrative Code:

- (1) Identification card method (whether or not electronically verified): The provider that uses this method shall register each consumer that it serves and issue the consumer an identification card. When the consumer visits the restaurant or grocery store, the consumer shall show the identification card to the designated staff person at the restaurant or grocery store to receive a prepared meal or to select a prepared meal from a menu of meals that comply with rule 173-4-05 of the Administrative Code. The provider may use an electronic verification system to validate the identification card and to verify the provision of the meal.
- (2) Voucher method (whether or not electronically verified): The provider that uses this method shall register each consumer that it serves and issue the consumer a voucher. At the time the vouchers are received, the provider or AAA shall provide the consumer with the opportunity to voluntarily contribute to the cost of the meal. When the consumer visits the restaurant or grocery store, the consumer shall provide a voucher to the designated staff person at the restaurant or grocery store to receive a prepared meal or to select a prepared meal from a menu of meals that meet the meal requirements established in rule 173-4-05 of the Administrative Code. The provider may use an electronic verification system to validate the voucher and to verify the provision of the meal.

(3) Handwritten verification method: Before providing a consumer his or her first

meal, the provider that uses this method shall verify that the consumer is at least sixty years of age, have the consumer sign in, provide information that the AAA will need for reporting, and to obtain a disclosure signature from the consumer. The provider shall provide the AAA with this information. The provider shall also regularly provide the AAA with records that identify each consumer the provider has served and the number of meals that the provider has served to each consumer.

(C) Consumer contributions: The provider shall use one of the following two methods for soliciting consumer contributions when complying with the consumer-contribution requirements in rule 173-3-07 of the Administrative Code:

(1) If the provider uses the consumer identification method in paragraph (B)(1) or (B)(3) of this rule, the provider shall solicit the consumer to voluntarily contribute to the cost of the meals when the provider provides the meals.

(2) If the provider uses the method in paragraph (B)(2) of this rule, the provider shall solicit the consumer to voluntarily contribute to the cost of the meals when the provider provides the vouchers.

(D) Emergency closings: The provider shall distribute information to consumers on how to stock an emergency food shelf.

(E) Quality assurance: The provider shall elicit comments from consumers on dining environments, food appearance, type of food, food temperatures, and staff professionalism.

(F) Meal verification:

(1) The provider shall verify that each meal for which it bills was delivered by one of the following two methods:

(a) The provider may use an electronic system if the system does all of the following:

(i) Collects the consumer's name, date, and ~~an~~ a unique identifier (~~e.g., electronic signature, fingerprint, password, swipe card, bar code on voucher, barcode on identification card~~) unique to of the consumer or the consumer's caregiver.

(ii) Retains the information it collects.

- (iii) Produces reports, upon request, that the AAA can monitor for compliance.
  
- (b) The provider may use a manual system if the provider documents the consumer's name and date, and collects ~~the handwritten signature a~~ unique identifier of the consumer or the consumer's caregiver. ~~If the consumer is unable to produce a handwritten signature, the consumer's handwritten initials, stamp, or mark are acceptable if the AAA authorizes such an alternative.~~
  
- (2) In the AAA-provider agreement, the AAA shall not prohibit a provider from using an electronic system to collect and retain the records this rule requires.
  
- (3) During a state of emergency declared by the governor, the provider may verify each meal provided without collecting a unique identifier of the consumer or the consumer's caregiver.

173-4-07

**Older Americans Act nutrition program: nutrition counseling.**

(A) Definitions for this rule:

"Nutrition counseling" ("counseling") has the same meaning as "medical nutrition therapy" in rule 4759-2-01 of the Administrative Code.

"Nutritional assessment" ("assessment") has the same meaning as in rule 4759-2-01 of the Administrative Code.

(B) In every AAA-provider agreement for nutrition counseling paid, in whole or in part, with Older Americans Act funds, the AAA shall include the following requirements:

(1) General requirements: In the AAA-provider agreement, the AAA shall include the requirements in rule 173-3-06 of the Administrative Code for every AAA-provider agreement paid, in whole or in part, with Older Americans Act funds.

(2) Dietitian: Only a licensed dietitian ("dietitian") working for an agency provider, or a licensed dietitian working as a self-employed provider shall provide counseling to consumers.

(3) Orders and limits:

(a) Before the provider counsels a consumer, the provider obtains an order for the consumer's counseling from a licensed healthcare professional whose scope of practice includes ordering counseling.

(b) The provider shall not provide counseling in excess of the amount the licensed healthcare professional ordered.

(c) The provider shall not provide counseling to a consumer's caregiver unless the licensed healthcare professional also ordered counseling for the consumer's caregiver to improve the caregiver's care to the consumer.

~~(d) The provider shall not provide counseling in excess of any limits the AAA establishes.~~

(4) ~~Face-to-face vs. telecommunications:~~ Venue:

(a) The provider shall conduct the initial counseling session ~~as a face-to-face session~~ in person in the consumer's home During a state of emergency

declared by the governor, the provider may conduct the initial counseling session by telephone, video conference, or in person in the consumer's home..

- (b) The provider shall conduct subsequent sessions ~~on a face-to-face basis or by a telecommunication system~~ by telephone, video conference, or in person in the consumer's home. ~~As used in this paragraph, "telecommunication" has the same meaning as in 2913.01 of the Revised Code.~~

(5) Nutritional assessment ("assessment"):

- (a) During the initial counseling session, the provider shall conduct an assessment of the consumer's nutritional intake, anthropometric measurements, biochemical values, physical and metabolic parameters, socio-economic factors, current medical diagnosis and medications, pathophysiological processes, and access to food and food-assistance programs.
- (b) No later than seven days after the initial assessment, the dietitian forwards the results of the initial assessment to the licensed healthcare professional who ordered the counseling and, if the consumer is in a care-coordination program, to the consumer's case manager.

(6) Nutrition intervention plan:

- (a) The provider shall develop a nutrition intervention plan based upon the initial assessment and, if the provider conducts subsequent assessments, the subsequent assessments. The plan shall include all the following:
- (i) Clinical and behavioral goals and a care plan.
  - (ii) Intervention planning, including nutrients required, feeding modality, and method of nutrition education and counseling, with expected measurable outcomes.
  - (iii) Consideration for input from the consumer, licensed healthcare professional who ordered the counseling, case manager (if any), consumer's caregiver (if any), and relevant service provider (if any).
  - (iv) The scheduling of any follow-up counseling sessions.

- (b) No more than seven days after the provider sends the assessment to the licensed healthcare professional who ordered the counseling, the provider shall forward the nutrition intervention plan to the same professional and, if the consumer is in a care-coordination program, to the consumer's case manager.
- (c) The provider shall provide reports on the intervention plan's implementation and the consumer's outcomes to the licensed healthcare professional who ordered the counseling and, if the consumer is in a care-coordination program, to the consumer's case manager.

(7) Service verification:

~~(7)(a) Service verification:~~ By one of the following two methods, the provider shall verify that each consultation for which it bills was provided:

~~(a)(i)~~ The provider may use an electronic system if the system does all of the following:

~~(i)(a)~~ Collects the consumer's name, date of consultation, time of day each consultation begins and ends, name of licensed dietitian providing consultation, and an identifier (e.g., electronic signature, fingerprint, password, swipe card, bar code) unique to the consumer.

~~(i)(b)~~ Retains the information it collects.

~~(i)(c)~~ Produces reports, upon request, that the AAA can monitor for compliance.

~~(b)(ii)~~ The provider may use a manual system if the provider documents the date of service, time of day that each consultation begins and ends, name of the licensed dietitian providing the consultation, and collects the handwritten ~~signatures~~ signature of the licensed dietitian providing the consultation and a unique identifier of the consumer. ~~If the consumer is unable to produce a handwritten signature, the consumer's handwritten initials, stamp, or mark are acceptable if the AAA authorizes such an alternative.~~

(b) During a state of emergency declared by the governor, the provider may verify each episode of service provided without collecting a unique identifier of the consumer.

(C) Unit: A unit of nutrition counseling equals fifteen minutes of counseling.

173-4-09

**Older Americans Act nutrition program: nutrition health screening.**

(A) Definitions for this rule:

"Form ODA0010" means the "'Determine Your Own Nutritional Health' checklist (Rev. May 28, 2009)." ODA publishes the form on [www.aging.ohio.gov](http://www.aging.ohio.gov). It is available to the general public at no cost.

"High nutritional risk" means the status of a consumer whose score on form ODA0010 is six or above.

"Nutrition health screening" ("screening") means using form ODA0010 to screen a consumer for nutritional risks and, if the screening determines the consumer to be at high nutritional risk, referring consumer to providers of home and community-based goods and services with potential for reducing the risk.

(B) In every AAA-provider agreement for nutrition health screening paid, in whole or in part, with Older Americans Act funds, the AAA shall include the following requirements;

(1) General requirements: In the AAA-provider agreement, the AAA shall include the requirements in rule 173-3-06 of the Administrative Code for every AAA-provider agreement paid, in whole or in part, with Older Americans Act funds.

(2) Stand-alone or part: The provider may screen consumers [in person](#) as a stand-alone service or as part of a nutrition project or nutrition counseling. [During a state of emergency declared by the governor, the provider may screen consumers by telephone, video conference, or in person.](#)

(3) Checklist: The provider shall use form ODA0010 to screen consumers for nutritional risks [in person. During a state of emergency declared by the governor, the provider may screen consumers by telephone, video conference, or in person.](#)

(4) Referrals: If a screening determines a consumer to be at high nutritional risk, the provider shall refer the consumer to providers of home and community-based good and services with potential for reducing the risk. The AAA-provider agreement shall not require the provider to document the identity of providers to whom it made referrals.

(5) Service verification: For each screening, the provider shall retain records to verify the date of the screening, the consumer's name, the provider's name,

and an indication of whether the consumer is at high nutritional risk.

(C) Units:

- (1) One unit of nutrition health screening provided as a stand-alone service is equal to a single instance of screening one consumer.
- (2) When a provider provides nutrition health screening as part of another good or service paid, in whole or in part, with Older Americans Act funds, the screening is part of the cost of providing a unit of a meal through the other good or service.