

# Texas Administrative Code

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<b><u>TITLE 40</u></b>	<b>SOCIAL SERVICES AND ASSISTANCE</b>
<b><u>PART 1</u></b>	<b>DEPARTMENT OF AGING AND DISABILITY SERVICES</b>
<b><u>CHAPTER 85</u></b>	<b>IMPLEMENTATION OF THE OLDER AMERICANS ACT</b>
<b><u>SUBCHAPTER D</u></b>	<b>OLDER AMERICANS ACT SERVICES</b>
<b><u>RULE §85.302</u></b>	<b>Nutrition Services</b>

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- (a) Purpose. This section establishes the requirements for nutrition services, a service provided under the Older Americans Act and funded, in whole or in part, by DADS.
- (b) Eligibility.
- (1) A AAA must ensure that a program participant who receives a congregate meal:
- (A) is 60 years of age or older;
  - (B) meets the eligibility criteria to receive a congregate meal as described in DADS Program Instruction AAA - PI 307 *Nutrition Services Eligibility Requirements for Individuals Under Age 60 and Caregivers*; and
  - (C) before service initiation and at least every 12 months thereafter, has had a Nutritional Risk Assessment completed by a service provider or a staff person of the AAA.
- (2) A AAA must ensure that a program participant who receives a home-delivered meal:
- (A) is 60 years of age or older;
  - (B) meets the eligibility criteria to receive a home delivered meal as described in DADS Program Instruction AAA - PI 307 *Nutrition Services Eligibility Requirements for Individuals Under Age 60 and Caregivers*; and
  - (C) before service initiation and at least every 12 months thereafter;
    - (i) has had a Nutritional Risk Assessment completed by a service provider or staff person of the AAA; and
    - (ii) has had a functional assessment completed by a service provider or staff person of the AAA using the data elements contained in DADS' Form 2060, available at [www.dads.state.tx.us](http://www.dads.state.tx.us), and based on the results of such assessment, meets the minimum requirements in accordance with DADS instructions.
- (c) Facilities and food service. A AAA must ensure that a service provider:
- (1) complies with 25 TAC, Chapter 229 (relating to Food and Drug) in the preparation, handling, and provision of food; and
  - (2) provides the AAA a copy of all results from inspections required by state law or rule.
- (d) Nutrition Services Incentive Program compliance. A AAA must ensure that a service provider:
- (1) complies with the Older Americans Act, §311, relating to the Nutrition Services Incentive Program; and
  - (2) includes only eligible meals (that is, meals delivered to program participants who meet the criteria described in subsection (b) of this section) in reports related to the Nutrition Services Incentive Program.
- (e) Meal costs. A AAA must ensure that a service provider:
- (1) posts the cost of a meal for purposes of cost recovery as described in paragraph (2) of this subsection;
  - (2) recovers, at a minimum, the cost of a meal that is not an eligible meal as defined in DADS

Program Instruction AAA - PI 307 *Nutrition Services Eligibility Requirements for Individuals Under Age 60 and Caregiver*; and

(3) keeps payments for ineligible meals separate from contributions from program participants.

(f) Service days. A AAA must ensure that a service provider:

(1) provides meals in accordance with the Older Americans Act, §331 and §336; and

(2) obtains, in accordance with DADS Program Instruction AAA-PI 300 *Older Americans Act Nutrition Waiver Requests*, prior approval from the AAA and DADS if service frequency is less than five days per week.

(g) Meal requirements. A AAA must ensure that a service provider complies with the Older Americans Act, §339(2)(A), relating to compliance with the current Dietary Guidelines for Americans and Dietary Reference Intakes.

(h) Menus.

(1) A AAA must ensure that, for each meal included on the menu and listed allowable substitutions, a service provider obtains:

(A) approval, in writing, from a dietitian consultant that the meal meets one-third of the recommended dietary allowance as referenced in the Dietary Reference Intakes for a person 60 years of age or older and the current Dietary Guidelines for Americans as required by the Older Americans Act, §339(2)(A); and

(B) the written approval before the date the meal is served.

(2) The dietitian consultant required by paragraph (1) of this subsection must:

(A) be a licensed dietitian in accordance with Texas Occupations Code, Chapter 701;

(B) be a registered dietitian with the Commission on Dietetic Registration/American Dietetic Association; or

(C) have a baccalaureate degree with major studies in food and nutrition, dietetics, or food service management.

(3) A AAA must ensure that a service provider's planned menus provide for variety in flavor, consistency, texture, and temperature.

(i) Standard recipes. A AAA must ensure that a service provider plans and manages food production through the use of standardized recipes adjusted to yield the number of servings needed and to provide for consistency in quality and documented nutrient content of food prepared.

(j) Modified diets.

(1) A AAA must permit a service provider to deviate from the standard menu pattern for therapeutic medical diets as required by the participant's medical condition as documented by a physician or other health care practitioner acting within the scope of the practitioner's authority and license.

(2) A AAA may allow a service provider to provide therapeutic medical diets based on the service provider's ability to do so.

(k) Emergency or inclement weather or service frequency less than five days a week. If a service provider delivers frozen, chilled, or shelf-stable meals for emergency or inclement weather situations, or if the service provider's service frequency is less than five days per week, a AAA must ensure that the service provider:

(1) delivers the meals only if the program participant has sanitary and safe conditions for storing, thawing, and reheating the meals;

(2) determines the meals can be safely handled by the program participant or another available person if the participant is unable to safely handle the meal; and

(3) complies with the DADS Program Instruction AAA - PI 300 *Older Americans Act Nutrition Waiver Requests*.

(l) Meal packaging. A AAA must ensure that a service provider:

(1) uses supplies and carriers to package and transport hot foods separately from cold foods;  
(2) uses enclosed meal carriers used to transport easily damaged trays or containers of hot or cold foods to protect such food from contamination, crushing, or spillage and equips the meal carriers with insulation or supplemental hot or cold sources as is necessary to maintain safe temperatures; and

(3) complies with the following in packaging meals:

(A) seals the meal container to prevent moisture loss or spillage to the outside of the container;  
(B) maintains a safe temperature of the packaged meal throughout transport;  
(C) uses a container designed with compartments to separate food items for visual appeal and to minimize spillage between compartments; and  
(D) uses a container a program participant can easily open.

(m) Holding time. A AAA must ensure that a service provider does not allow more than four hours to expire from the time the cooking or reheating of food is completed and the time the food is served to the program participant.

(n) Delivery of home-delivered meals.

(1) A AAA must ensure that a service provider:

(A) delivers meals between 10:30 a.m. and 1:30 p.m.;  
(B) keeps meals that are prepared and packaged for delivery at the following temperatures:  
(i) 40 degrees Fahrenheit or below for cold food items; and  
(ii) 135 degrees Fahrenheit or above for hot food items;  
(C) does not leave meals unattended at the program participant's residence; and  
(D) develops written procedures:  
(i) ensuring meals are safe and sanitary for the program participant;  
(ii) requiring follow-up with a program participant who was not available when a meal delivery was attempted on the same day the attempt was made; and  
(iii) ensuring a significant change in a program participant's physical or mental condition or environment is reported to the service provider and appropriate action taken by the service provider on the same day the service provider is notified of the change.

(2) A AAA may reimburse a service provider for a maximum of two attempted but unsuccessful meal deliveries per program participant per month.

(o) Training.

(1) A AAA must ensure that a service provider provides at least one hour of training to a staff person or volunteer of a service provider who is involved in the administration or provision of nutrition services before the staff person or volunteer assumes duties. The training topics must include:

(A) program participant confidentiality;  
(B) procedures used in handling emergency situations involving program participants;  
(C) sanitary methods used in serving and delivering meals;  
(D) general knowledge and basic techniques of working with a person 60 years of age or older and a person with a disability; and  
(E) personal hygiene.

(2) A AAA must ensure that a service provider provides the following training to a staff person or volunteer of a service provider who is involved only in the administration of nutrition services

before the staff person or volunteer assumes duties:

(A) the training described in paragraph (1) of this subsection; and

(B) one hour of training on the content and implementation of applicable forms, rules, procedures, and policies of DADS, the AAA, and the service provider relating to the administration or provision of nutrition services.

(3) A AAA must ensure that a service provider provides at least two hours of training to a food service supervisor before the supervisor assumes duties. Training topics must include:

(A) personal hygiene;

(B) food storage, preparation and service, including prevention of food borne illness;

(C) equipment cleaning before, during, and after meal service;

(D) selection of proper utensils and equipment for transporting and serving foods;

(E) automatic and manual dishwashing procedures; and

(F) accident prevention.

(4) In addition to the training required by paragraph (3) of this subsection, a AAA must ensure that a service provider provides at least six hours of training to a food service supervisor no later than 30 days after the supervisor assumes duties. Training topics must include:

(A) practical procedures for food preparation, storage, and serving;

(B) portion control of food in appropriate dishes;

(C) use of standardized recipes;

(D) nutritional needs and meal pattern requirements of older program participants to be served; and

(E) quality control of:

(i) flavor;

(ii) consistency;

(iii) texture;

(iv) temperature; and

(v) appearance (including the use of garnishes).

(5) A AAA must ensure that the service provider's food service supervisor complies with 25 TAC §229.163 (relating to Management and Personnel).

(6) A AAA must ensure that a service provider documents the provision of training required by paragraphs (1) - (4) of this subsection. The documentation must include the names of the staff person or volunteer being trained and the trainer; the topics covered; and the date, time, and length of the training.

(7) A AAA must ensure that a service provider has an adequate number of staff persons available during the time congregate meals are provided who are certified in:

(A) first aid;

(B) cardiopulmonary resuscitation; and

(C) operating an automatic external defibrillator, if one is available.

(p) Nutrition outreach. A AAA must ensure that a service provider develops and maintains a written outreach plan giving priority to persons described in the Older Americans Act, §306(a)(1).

(q) Nutrition education. In accordance with the Older Americans Act, §339(2)(J), a AAA must ensure that a program participant is provided with nutrition screening, nutrition education, and if appropriate, nutrition assessment and counseling.

(r) Political activity. A AAA must ensure that a service provider does not:

(1) use a congregate meal site for political campaigning except in those instances where a

representative from each political party running in the campaign is given an equal opportunity to participate; or

(2) distribute political materials at a congregate meal site.

(s) Religious activities and prayer. A AAA must ensure that a service provider does not:

(1) allow a prayer or other religious activity to be officially sponsored, led, or organized by a nutrition site staff person; or

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(2) prohibit a program participant from praying silently or audibly at a congregate meal site if the program participant so chooses.

(t) Monitoring.

(1) A AAA must monitor:

(A) a subcontractor providing nutrition services in accordance with §85.201(e) of this chapter (relating to AAA Administrative Responsibilities); and

(B) a vendor providing nutrition services in accordance with §83.19(f) of this title (relating to Direct Purchase of Service (DPS)).

(2) A AAA must ensure that the Department of State Health Services or the local health authority, as applicable, or the service provider monitors a food preparation site, at least annually, to determine whether the requirements of this section have been followed.

(3) A AAA must ensure that the service provider submits the written report of such monitoring to the AAA.

(u) Weather-related emergencies, fire, and other disasters. A AAA must ensure that a service provider:

(1) keeps facilities and equipment available for emergencies and disasters, in accordance with a plan developed by the service provider, that gives priority to program participants 60 years of age or older;

(2) adopts written procedures ensuring the availability of food for program participants in emergencies and disasters; and

(3) promptly notifies the Department of State Health Services and the AAA of a food-borne disease outbreak, (that is, two or more cases of a similar illness resulting from the ingestion of a

common food).

(v) Subcontracting by a service provider. A AAA must require a service provider to obtain written approval from the AAA before the service provider contracts with any entity for meal preparation or service delivery.

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**Source Note:** The provisions of this §85.302 adopted to be effective September 1, 2008, 33 TexReg 7293

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