CSI - Ohio
The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Aging (ODA)

Regulation/Package Title: Cost Sharing and Voluntary Contributions

Rule Number(s): Rule 173-3-07 of the Administrative Code
Date: May 2, 2013 (Revised on May 9, 2013)

Rule Type:
_ New
X Amended
X 5-Year Review
_ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov

Business Impact Analysis

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.
Please include the key provisions of the regulation as well as any proposed amendments.

INTRODUCTION

Original Purpose

"Cost sharing provides a mechanism for States to expand services to a growing number of Americans 60 years of age and older."[1]

"National Association of States United for Aging and Disabilities (NASUAD) ... found in a 2009 survey that ... cost-sharing arrangements could generate income for programs by obtaining payments from those with higher incomes. [The U.S. Administration on Aging] officials noted that if individuals with higher incomes see [Older Americans Act] programs as an attractive service option, they could pay market value for the services through cost-sharing arrangements, thereby subsidizing services to lower-income adults."[2]

Cost Sharing *vs.*, Voluntary Contributions:

Cost sharing and voluntary contributions are practically the same. Both are funds that consumers voluntarily give towards the costs of the services they receive.

Cost sharing and voluntary contributions are different under federal law, but are similar under state law. Section 315(a) of the Older Americans Act (the Act) *permits* states to require cost sharing, but Section 315(b) of the Act *requires* states to accept voluntary contributions. However, as noted in ODA's response under #2, a requirement in state law for matching funds *requires* ODA to require cost sharing.

ODA has adopted one rule to conveniently contain its regulations on cost sharing and voluntary contributions. ODA first adopted a rule on January 17, 1999 to require cost sharing. ODA amended the on February 15, 2009 to incorporate the Act's requirements for voluntary contributions.

Program Income Trends

In Ohio, providers collect 45 times more program income as voluntary contributions than as cost shares. The tables under #14c indicate that, in 2012, providers collected $140,681 in cost shares compared to $6,361,213 in voluntary contributions.

Ohio providers collect 50% more program income from consumers than the national average. Nationwide, voluntary contributions for 2009 accounted for 4% of the amount providers received for their services.[3] The tables under #14c show that Ohio providers' combined cost shares and voluntary contributions for 2009 accounted for

[1] Department of Health and Human Services: Office of Inspector General. "Cost Sharing for Older Americans Act Services." © September, 2006.
[2] Government Accountability Office. "Older Americans Act: More Should Be Done to Measure the Extent of Unmet Need for Services." Report to the Chairman, Special Committee on Aging, U.S. Senate. © February, 2011. *Pp.*, 27-28.
[3] Government Accountability Office. *Pg.*, 27.

6% of the of the amount they received for their services. The percentage was also 6% in 2012.

Occasion for Rule Review:
Section 119.032 of the Revised Code requires ODA to review each rule no later than the rule's assigned review date. Accordingly, ODA has reviewed the rule 173-3-07 of the Administrative Code before its review date and is now proposing to amend the rule to make 3 corrections, 1 clarification, and 4 non-substantive changes.

CORRECTIONS
ODA is proposing to amend the rule to:

- Correct paragraph (C)(3) of the rule to require the area agencies on aging (AAAs) to establish a procedure to safeguard and account for cost share payments consumers make for each service provider involved, not just consumer-directed providers. This correction has no adverse impact, because the Sections 315(a)(5) and 315(a)(5)(B) of the Act require area agencies on aging (AAAs) to establish such a procedure, even if the rule—up to this point—has not. ODA will make this correction by replacing "a consumer" with "consumers, including from consumers."

- Correct paragraph (E) of the rule by inserting "paragraph (C) of" in between "The AAA may request a waiver of" and "this rule." This correction would eliminate language that says AAAs may request waivers from the requirement to accept voluntary contributions. The proposed correction has no adverse impact because Section 315(a)(6) of the Act allows for waivers against the requirement to cost share, but not against the requirement to accept voluntary contributions. Fortunately, no AAA has attempted to request a waiver from the requirement to collect voluntary contributions.

- Correct the previous effective dates that ODA lists at the end of the rule. The rule first took effect on January 17, 1999, not December 14, 1994. Following the advice of the Legislative Service Commission, ODA is proposing to list the effective dates in the following manner because the rule's number has changed multiple times: "173-2-02: 01/17/1999; 173-3-01: 05/15/2000, 09/30/2001, 05/16/2005; 173-3-07: 02/15/2009."

CLARIFICATION
ODA is proposing to clarify in paragraph (E) of the rule that a decision on whether or not ODA would approve a request for a waiver is not subjective. Instead, it is based upon a preponderance of the evidence. To accomplish this, ODA is proposing to amend the rule to replace "*convincingly* demonstrates *to ODA's satisfaction* any of the following..." with "demonstrates to ODA *by a preponderance of the evidence that....*" Because no AAA has ever requested a waiver from the requirement to adopt a cost-sharing policy, ODA anticipates that there would be no new adverse impact created by this proposed amendment—especially because ODA is not proposing to change the criteria that ODA would consider.

NON-SUBSTANTIVE CHANGES

ODA is proposing to amend the rule to:

- Replace the title so that it reflects both cost sharing and voluntary contributions, not just cost sharing.

- Replace "Title III, Part E" in paragraph (B)(2) of the rule with "National Family Caregiver Support Program." In doing so, readers of the rule could see the common name of the program rather than the section of legislation that authorizes it.

- Replace, in reference to the federal poverty guidelines, the phrase "which are updated periodically in the register by the U.S. department of health and human services under 42 U.S.C. 3302 (2)" with "as defined in section 5101.46 of the Revised Code."

- Add the edition citation to the C.F.R. cited in the "statutory authority" section after the rule language to comply with Section 121.75 of the Revised Code. ODA does not need to fully cite the Older Americans Act in the rule because, in rule 173-3-01 of the Administrative Code, ODA fully cites "Older Americans Act" in its definition for the term which applies to all uses of "Older Americans Act" throughout Chapter 173-3 of the Administrative Code.

None of the proposed non-substantive amendments would create an adverse impact.

NO CONNECTION TO UPCOMING PATIENT LIABILITY RULES

This review is unrelated to a forthcoming rule project that would involve adopting similar rules on "patient liability payment[s]" for the state-funded components of the PASSPORT and Assisted Living Programs. Pending H.B.59 (130th G.A.) would require adopting the similar rules if sections 173.523 and 173.545 of the Revised Code continue to require such rules in the version of H.B.59 that will be enacted.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Uncodified section 209.30 of pending H.B.59 (130th G.A.) would require, and section 209.30 of H.B.487 (129th G.A.) and previous budget bills already require, ODA to implement cost sharing for services purchased with Senior Community Services funds. Senior Community Services funds are used as a match[4] for Older Americans Act funds in accordance with Section 304 of the Act. Requiring cost sharing for the Senior-Community-Services side of the match obligates ODA to require cost sharing for the Older-Americans-Act side of the match.

Section 173.392 of the Revised Code gives ODA authority to adopt rules regarding provider agreements (*i.e.*, contracts and grants) for providers that provide services to consumers who are enrolled in ODA's non-Medicaid programs (*i.e.*, programs that do not require provider certification). Pursuant to rule 173-3-06 of the Administrative Code, a requirement for every provider agreement is to comply with the cost sharing and voluntary contributions requirements in rule 173-3-07 of the Administrative Code.

Section 173.04 of the Revised Code gives ODA authority to adopt rules to govern the Alzheimer's Respite Program. Alzheimer's Respite Program funds are used as a match for Older Americans Act funds, particularly funds the federal government appropriates to states for the National Family Caregiver Support Program, which requires a 25% match according to Section 373(g)(2)(B) of the Act. As previously stated, because Ohio's budget bills have been requiring ODA to require cost sharing for programs that use Older Americans Act funds, ODA must require cost sharing for Older Americans Act funds. Requiring cost sharing for the Older-Americans-Act side of the match obligates ODA to require cost sharing for the Alzheimer's-Respite-Program side of the match.[5] Likewise, accepting voluntary contributions for the Older-Americans-Act side of the match obligates ODA to accept voluntary contributions for the Alzheimer's-Respite-Program side of the match.

Sections 173.01 and 173.02 of the Revised Code give ODA general authority to adopt rules to regulate services provided through programs that it administers.

[4] Or, "maintenance of effort."
[5] However, the rule prohibits collecting cost shares for education, training, or support-group services that use Alzheimer's Respite Program funds.

3. **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.

   Section 305(a)(1)(C) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; and 45 C.F.R. 1321.11 (October 1, 2012 edition) authorize the state unit on aging (*i.e.*, ODA) to adopt policies to implement the provisions of the Act.

   Section 315(a)(1) of the Act, permits ODA to implement cost sharing. However, because of the uncodified budget language ODA cited under #2, ODA is required to implement cost sharing for services purchased with Older Americans Act funds.

   Section 315(b) of the Act requires the acceptance of voluntary contributions and section 315(b)(4)(D) requires AAAs to account for the contributions.

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

   ODA's implementation of Section 315 of the Act does not exceed the federal requirements.

   As ODA stated under #1 and #3, Section 315(a)(1) of the Act, *permits* ODA to implement cost sharing; but, the uncodified budget language that ODA cited under #2, *requires* ODA to implement cost sharing.

5. **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)?**

   The rules exist to comply with state law. See ODA's response under #2.

   The rules exist to implement federal law. See ODA's response under #3.

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

   ODA and AAAs will monitor for compliance.

Development of the Regulation

7. 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 contacted a significant number of stakeholders on multiple occasions to seek input on this rule.

On March 15, 2013, ODA emailed the Ohio Association of Area Agencies on Aging to notify them that Section 119.032 of the Revised Code requires ODA to review each rule that we've adopted before the review date that we previously assigned to the rule, that August 31, 2013 was the review date for rule 173-3-07 of the Administrative Code, and that ODA was very likely to initiate the review of the rule this spring. ODA asked the association to email any suggestions for improving the rules to ODA. On March 27, 2013, ODA emailed O4A to follow up and to indicate that ODA also planned to replace "Title III, Part E" in paragraph (B)(2) of the rule with "National Family Caregiver Support Program" so that readers of the rule could see the common name of the program rather than the section of legislation that authorizes it.

On March 27, 2013, ODA emailed the Ohio Association of Senior Centers (via the Licking County Aging Program), Midwest Care Alliance, the Council for Home Care and Hospice, and Southwestern Ohio Area Network (via Home Care by Black Stone) to explain that ODA has begun to review the rule and would like for the provider associations to submit any suggestions they have for improving the rule to ODA soon. ODA also informed the provider associations that ODA had already identified the need to amend the following: (1) Replace "Title III, Part E" in paragraph (B)(2) of the rule with "National Family Caregiver Support Program" so that readers of the rule could see the common name of the program rather than the section of legislation that authorizes it. (2) Add version and edition citations to references to federal law to comply with section 121.75 of the Revised Code.

On April 11, 2013, ODA made a presentation to a monthly meeting of the Ohio Association of Senior Centers about the Common-Sense Initiative and ODA's pending rule projects, including this rule project.

Additionally, on ODA's website, ODA will field public comments on this project before filing the rules with the Joint Committee on Agency Rule Review (JCARR) to begin the legislature's portion of the rule-review process.

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

On March 27, 2013, the president of the Ohio Association of Senior Centers, who also directs the Licking County Aging Program, wrote on behalf of his program. He said, "I don't have any comments because this rule has not had a great impact on

my agency. However, I did forward your email to OASC board members and told them to respond to you with any comments. Are you still planning to attend our board meeting on April 11th?"

At the April 11, 2013 meeting of the Ohio Association of Senior Centers, the executive director for United Seniors of Athens County (USAC) said that it seemed that cost sharing had outlived its purpose. Because providers that serve consumers who are enrolled in Older Americans Act programs have, over the years, been increasingly asked to target the neediest seniors in their areas who don't qualify for Medicaid, they are increasingly serving seniors with lower abilities to share costs or voluntarily contribute. As a result, providers have been collecting, over the years, a decreasing amount of cost shares and voluntary contributions. Adding to the comment of USAC, the executive director of the Wood County Committee on Aging stated that the administrative expenses to count and report the money providers now collect from cost sharing is larger than the amount collected from cost sharing. ODA informed the senior centers that, even if the amounts are decreasing, ODA would continue to adopt rules to require cost sharing as long as state law requires ODA to do so.[6] (The tables ODA inserted under #14c show the trends from the past four years.)

On April 2, 2013, the Ohio Association of Area Agencies on Aging said, "Ohio Association of Area Agencies on Aging did not have any substantive comments on this rule and did not have any disagreement with the change you noted below. I have one comment – in (E) you use the word "convincingly": *(E) The AAA may request a waiver of this rule. ODA shall approve the request if the AAA* ***convincingly*** *demonstrates to ODA's satisfaction any of the following:* How does the Department decide if an AAA has "convincingly" demonstrated something? Isn't that subjective? You have set forth what the criteria are for approving a request to waive the requirements of the rule. Are there situations where that information might not be convincing enough? Thanks for the opportunity to provide feedback on these rules in advance of public comment.

On May 2, 2013, ODA responded to the Ohio Association of Area Agencies on Aging by saying, "After considering your question on *how* ODA would be convinced that an AAA met the criteria for a waiver, ODA has decided to use less-subjective language. Instead, ODA will require an AAA that wants to obtain a waiver to demonstrate to ODA by a preponderance of the evidence that...." This would involve providing evidence to prove that one of the three criteria for the waiver has been met."

[6] Section 209.30 of pending Sub. H.B.59 (130th G.A.) continues to require cost sharing for services that are purchased with senior community services funds. Senior Community Services funds are used as a state match to the Older Americans Act funds, which means that the requirement to cost share for one fund indicates a requirement for the other fund.

9. 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?

ODA used scientific data to measure the recent outcomes of the rule over the past four years. (For more information, see the tables that ODA inserted under #14c.)

ODA referred to the following reports of the federal government to measure ODA's outcomes to national averages and to evaluate the rule in light of the reports' explanations of the purposes for such a rule:

- Government Accountability Office. "Older Americans Act: More Should Be Done to Measure the Extent of Unmet Need for Services." Report to the Chairman, Special Committee on Aging, U.S. Senate. © February, 2011.

- Department of Health and Human Services: Office of Inspector General. "Cost Sharing for Older Americans Act Services." © September, 2006.

10. 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?

The parameters proposed in uncodified section 209.30 of pending H.B.59 (130th G.A.), established in section 209.30 of H.B.487 (129th G.A.) and other budget bills, do not permit ODA to adopt the alternate regulation of no longer requiring cost sharing or voluntary contributions. (For more information, see ODA's response under #2.)

Regarding requesting waivers from the requirement to cost share, ODA took the question submitted by the Ohio Association of Area Agencies on Aging into consideration. As a result, ODA is now proposing alternate language that is less subjective. (See #1 under "**CLARIFICATION**" and #8 above for more information.)

11. 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.

With one exception, neither Section 315 of the Act, nor section 209.30 of pending H.B.59 (130th G.A.), nor Section 209.30 of H.B.487 (129th G.A.) or previous budget bills give ODA flexibility to consider performance-based measures for cost sharing or voluntary contributions. If an AAA demonstrates to ODA with a preponderance of evidence that (1) at least 80% of the consumers in the planning and service are have incomes below 150% of the federal poverty guidelines or (2) cost sharing generates less funds in the planning and service area than accounting costs, ODA shall grant the AAA a waiver from the requirement for cost sharing in its planning and service area. (The third criterion listed under paragraph (E) of the rule for qualifying for a waiver is not a performance measure in the same way that the first two criteria are performance measures.)

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

ODA reviewed the Ohio Administrative Code and found no duplication. No other state agency adopts rules that regulate the use of Older Americans Act funds or Senior Community Services funds or the cost sharing and voluntary contributions that accompany services that those funds reimburse.

13. 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.

ODA posts all proposed and currently-effective rules on its website. (http://aging.ohio.gov/information/rules/default.aspx) Before a rule takes effect, ODA posts it on its website and sends an email to any subscriber of our rule notification service.

ODA will work with its designees (PASSPORT administrative agencies) to ensure that the regulation is applied uniformly.

ODA and its designees will also monitor the providers for compliance. Rule 173-39-02 of the Administrative Code states that a condition of being an ODA-certified provider is allowing ODA or the PASSPORT administrative agency to monitor the provider.

Adverse Impact to Business

14. 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;

Rule 173-3-06 of the Administrative Code requires all providers that provide home and community-based services to consumers who are enrolled in Older Americans Act programs to comply with the requirements for cost sharing and voluntary contributions in rule 173-3-07 of the Administrative Code.

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

IN GENERAL

There are two costs to consider: (1) the cost to account for cost shares and voluntary contributions and (2) the cost shares and voluntary contributions. The former is adverse, but is offset by the latter which becomes program income for the provider to expand services.

PROPOSED AMENDMENTS

None of ODA's proposed amendments to the rule would add any new adverse impact.

- ODA is proposing to correct paragraph (C)(3) of the rule to require the AAAs to establish a procedure to safeguard and account for cost share payments consumers make for each service provider involved, not just consumer-directed providers. This correction has no adverse impact, because the Sections 315(a)(5) and 315(a)(5)(B) of the Act require AAAs to establish such a procedure, even if the rule has not.

- ODA is proposing to correct paragraph (E) of the rule by inserting "paragraph (C) of" in between "The AAA may request a waiver of" and "this rule." This correction would prevent AAAs from requesting waivers from the requirement to accept voluntary contributions. The proposed correction has no adverse impact because Section 315(a)(6) of the Act allows for waivers against the requirement to cost share, but not against the requirement to accept voluntary contributions. Additionally, no AAA has ever requested a waiver from the requirement to collect voluntary contributions.

- ODA is proposing to amend the rule to clarify in paragraph (E) of the rule that a decision on whether or not ODA would approve a request for a waiver is not subjective. Instead, ODA's decision would be based upon a preponderance of the evidence. To accomplish this, ODA is proposing to replace "*convincingly* demonstrates *to ODA's satisfaction* any of the following..." with "demonstrates to ODA *by a preponderance*

of the evidence that...." Because no AAA has ever requested a waiver from the requirement to adopt a cost-sharing policy, ODA anticipates that the proposed amendment would not create any adverse impact—especially because ODA is not proposing to change the criteria that ODA would consider.

- ODA is also proposing to make 4 non-substantive changes to the rule. Making the non-substantive changes would not add any new adverse impact.

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.

Quantifying the general requirement to collect cost shares and voluntary contributions requires considering two costs: (1) the cost to account for cost shares and voluntary contributions and (2) the cost shares and voluntary contributions.

The accounting involves reporting the cost shares and voluntary contributions to the AAA according to the method established by the AAA. Sections 315(a)(5) and 315(a)(5)(B) of the Act require ODA to require AAAs to establish a cost-sharing policy that includes a procedure on how to "account for cost share payments." Section 315(b)(4)(D) requires the AAAs to establish a procedure on how to "account for all contributions." Thus, accounting for cost shares and voluntary contributions is not a burden of this rule, but a burden mandated by the Act and designed by the AAA.

The cost shares and voluntary contributions are for use as income for providers to offer more of the same services for which the cost shares and voluntary contributions were made. In the tables below, ODA has compiled a history of how much program income has been received over the past four program years. The tables show (1) cost sharing by service by year, (2) voluntary contributions by service by year, and (3) cost sharing and voluntary contributions combined as a percentage of each funds spent on each service by year.

Highlights of the aforementioned tables reveal that providers of congregate meals, home-delivered meals, and transportation are most likely to receive such program income. Such income has been accounting for 14%, 8%, and 4% of the amount they receive for their services, respectively.[7]

[7] The tables show that *ineligible* congregate meals are 93% funded by voluntary contributions. This makes providers of ineligible meals appear to receive the most income from voluntary contributions. However, *ineligible* meals are not meals that the Act funds. Instead, they are meals consumed by staff and guests of seniors who want to eat with the seniors in the congregate meal setting. Ideally, the total should be 100%, not 93%. See paragraphs (A)(4) and (A)(5) of rule 173-4-02 of the Administrative Code for more information on *ineligible* meals.

Business Impact Analysis

COST SHARING STATEWIDE TOTALS BY SERVICE, BY YEAR				
SERVICE	**2009**	**2010**	**2011**	**2012**
AAA RD/LD	$ -	$ -	$ -	$ -
AAA-Admin.	$ -	$ -	$ -	$ -
Adult Day Care	$ 6,956	$ 47,747	$ 61,419	$ 61,911
Alzheimer's Core Services	$ -	$ -	$ -	$ -
Alzheimer's Education	$ -	$ -	$ -	$ -
Alzheimer's Institutional Care	$ -	$ 1,348	$ 300	$ 975
ARRA Congregate Meals	$ -	$ -	$ -	$ -
ARRA Home-Delivered Meals	$ -	$ -	$ -	$ -
Benefits Counseling	$ -	$ -	$ -	$ -
Case Management	$ -	$ -	$ -	$ -
Chore	$ 1,524	$ 11,200	$ 2,505	$ 3,024
Congregate Meals-Ineligible	$ -	$ -	$ -	$ -
Congregate Meals	$ -	$ -	$ -	$ -
Counseling	$ -	$ 59	$ -	$ -
Education	$ -	$ 440	$ -	$ -
(Personal) Emergency Response Systems	$ 9	$ -	$ 7	$ 96
Escort-Assisted Transportation	$ 416	$ 1,000	$ 50	$ 252
Health Education	$ 240	$ -	$ 88	$ 125
HEAP	$ -	$ -	$ -	$ -
Home-Delivered Meals	$ -	$ -	$ -	$ -
Home Injury Control	$ -	$ 676	$ -	$ -
Home Maintenance	$ 1,403	$ 11,220	$ 597	$ 390
Home Medical Equipment	$ -	$ 544	$ 96	$ 902
Home Repair Unobligated	$ -	$ -	$ -	$ -
Homemaker	$ 25,333	$ 41,290	$ 25,353	$ 27,875
Housing Admin.	$ -	$ -	$ -	$ -
Independent Living	$ -	$ -	$ -	$ -
Information & Assistance	$ -	$ -	$ -	$ -
Information & Referral	$ -	$ -	$ -	$ -
In-Service Training	$ -	$ -	$ -	$ -
Legal Assistance	$ -	$ -	$ -	$ -
Mass Outreach	$ -	$ -	$ -	$ -
Medical Assessment	$ 2,004	$ 4,280	$ 4,018	$ 3,000
Medical Treatment	$ -	$ -	$ -	$ -
Medication Screening	$ -	$ -	$ -	$ -
Nutrition Counseling	$ -	$ -	$ -	$ -
Nutrition Education	$ -	$ -	$ -	$ -
Nutrition Level I	$ -	$ -	$ -	$ -

Ombudsman Advocacy	$ -	$ -	$ -	$ -
Ombudsman Counseling	$ -	$ -	$ -	$ -
Ombudsman Information	$ -	$ -	$ -	$ -
Other Services (Not Title-III or SCSBG)	$ -	$ -	$ -	$ -
Outreach	$ -	$ -	$ -	$ -
Personal Care	$ 30,636	$ 62,827	$ 35,806	$ 22,600
Plan Equipment Set Aside	$ -	$ -	$ -	$ -
Plan Vehicle Set-Aside	$ -	$ -	$ -	$ -
Protective Services	$ -	$ -	$ -	$ -
Recreation	$ -	$ -	$ -	$ -
Respite Voucher	$ -	$ 16,122	$ 37,088	$ 18,182
Safety Monitor	$ -	$ -	$ -	$ -
Senior Farmers Market	$ -	$ -	$ -	$ -
Service Unknown	$ -	$ -	$ -	$ -
Shopping Assistance	$ -	$ -	$ -	$ -
Sr. Vol.-Foster Grand	$ -	$ -	$ -	$ -
Sr. Vol.-RSVP	$ -	$ -	$ -	$ -
Sr. Vol.-Sr. Companion	$ -	$ -	$ -	$ -
ST. Care Coordination	$ -	$ -	$ -	$ -
Supportive Services	$ 125	$ 41	$ 342	$ 777
Supportive Services: Con	$ -	$ -	$ -	$ -
Telephoning	$ -	$ -	$ -	$ -
Transportation	$ -	$ 1,343	$ 3,341	$ 573
Unobligated Funds	$ -	$ -	$ -	$ -
Visiting	$ -	$ -	$ -	$ -
Volunteer Placement	$ -	$ -	$ -	$ -
GRAND TOTALS	$ 68,646	$ 200,138	$ 171,009	$ 140,681

VOLUNTARY CONTRIBUTIONS STATEWIDE TOTALS BY SERVICE, BY YEAR				
SERVICE	**2009**	**2010**	**2011**	**2012**
AAA RD/LD	$ -	$ -	$ -	$ -
AAA-Admin.	$ 8,145	$ -	$ -	$ -
Adult Day Care	$ 309,127	$ 270,159	$ 129,496	$ 231,645
Alzheimer's Core Service	$ 4,539	$ 862	$ 1,962	$ 1,963
Alzheimer's Education	$ 13,110	$ 11,096	$ 1,825	$ 1,011
Alzheimer's Institutional Care	$ 278	$ 757	$ 35	$ 870
ARRA Congregate Meals	$ 41,939	$ 73,571	$ -	$ -
ARRA Home-Delivered Meals	$ 7,054	$ 6,926	$ -	$ -
Benefits Counseling	$ 130	$ 13	$ 3,023	$ -
Case Management	$ -	$ -	$ -	$ -

Business Impact Analysis

Chore	$ 89,688	$ 26,182	$ 1,003	$ 879
Congregate Meals-Ineligible	$ 54,934	$ 48,874	$ 42,236	$ 37,569
Congregate Meals	$ 2,405,103	$ 1,935,203	$ 2,278,674	$ 2,321,529
Counseling	$ 716	$ 3,953	$ 1,578	$ 2,455
Education	$ 50,487	$ 41,510	$ -	$ 54
(Personal) Emergency Response Systems	$ 67	$ 30	$ 19	$ 13
Escort-Assisted Transportation	$ 25,305	$ 22,832	$ 11,085	$ 9,659
Health Education	$ 1,806	$ 4,314	$ 29,270	$ 28,630
HEAP	$ -	$ -	$ 2	$ 2
Home-Delivered Meals	$ 3,254,743	$ 2,708,994	$ 3,040,336	$ 3,008,928
Home Injury Control	$ 434	$ 580		
Home Maintenance	$ 515	$ 598	$ 399	$ 3,129
Home Medical Equipment	$ -	$ -	$ -	$ 105
Home Repair-unobligated	$ -	$ -	$ -	$ -
Homemaker	$ 71,955	$ 48,694	$ 35,044	$ 32,044
Housing Administration	$ -	$ -	$ -	$ -
Independent Living	$ -	$ -	$ -	$ -
Information & Assistance	$ 115	$ 2,325	$ 160	$ 7,083
Information & Referral	$ 19,506	$ 12,779	$ -	$ -
In-Service Training	$ -	$ -	$ -	$ -
Legal Assistance	$ 6,059	$ 4,849	$ 3,876	$ 4,524
Mass Outreach	$ -	$ 333	$ -	$ -
Medical Assessment	$ 27,488	$ 21,543	$ 9,349	$ 9,286
Medical Treatment	$ 115	$ 80	$ -	$ -
Medication Screening	$ -	$ -	$ -	$ -
Nutrition Counseling	$ -	$ -	$ -	$ -
Nutrition Education	$ 73	$ 3	$ 394	$ 2
Nutrition Level I	$ 28	$ 35	$ 50	$ 50
Ombudsman Advocacy	$ 1	$ 1	$ 1	$ 346
Ombudsman Counseling	$ -	$ -	$ -	$ -
Ombudsman Information	$ -	$ -	$ -	$ -
Other Services (Not Title III or SCSBG)	$ -	$ -	$ -	$ -
Outreach	$ -	$ -	$ 2,150	$ -
Personal Care	$ 34,661	$ 53,196	$ 31,180	$ 63,326
Plan Equipment Set Aside	$ -	$ -	$ -	$ -
Plan Vehicle Set-aside	$ -	$ -	$ -	$ -
Protective Services	$ -	$ -	$ -	$ -
Recreation	$ 120,391	$ 105,804	$ 62,801	$ 48,198
Respite Voucher	$ -	$ -	$ -	$ -
Safety Monitor	$ 7	$ -	$ -	$ -
Senior Farmers Market	$ -	$ -	$ -	$ -
Service Unknown	$ -	$ -	$ 1,017	$ 66

Business Impact Analysis

Shopping Assistance	$ -	$ -	$ 30	$ 183
Sr. Vol.-Foster Grand	$ -	$ -	$ -	$ 1,676
Sr. Vol.-RSVP	$ 13	$ 53	$ 38	$ 1,975
Sr. Vol.-Sr. Companion	$ -	$ -	$ -	$ 2,515
ST. Care Coordination	$ -	$ -	$ 64	$ -
Supportive Services	$ 52,470	$ 42,919	$ 13,503	$ 26,123
Supportive Services: Con	$ -	$ -	$ -	$ -
Telephoning	$ 2,782	$ 3,356	$ -	$ -
Transportation	$ 673,412	$ 518,818	$ 499,369	$ 515,179
Unobligated Funds	$ -	$ -	$ -	$ -
Visiting	$ 875	$ -	$ 200	$ 200
Volunteer Placement	$ -	$ -	$ -	$ -
GRAND TOTALS	$ 7,278,068	$ 5,971,243	$ 6,200,168	$ 6,361,213

COMBINED TOTALS AS SHARE OF TOTAL COST OF SERVICES				
SERVICE	**2009**	**2010**	**2011**	**2012**
AAA RD/LD	0%	0%	0%	0%
AAA-Admin.	0%	0%	0%	0%
Adult Day Care	7%	8%	5%	8%
Alzheimer's Core Service	1%	0%	0%	0%
Alzheimer's Education	2%	1%	0%	0%
Alzheimer's Institutional Care	0%	3%	0%	2%
ARRA Congregate Meals	7%	3%	0%	0%
ARRA Home-Delivered Meals	1%	1%	0%	0%
Benefits Counseling	0%	0%	4%	0%
Case Management	0%	0%	0%	0%
Chore	11%	11%	1%	1%
Congregate Meals-Ineligible	98%	98%	97%	93%
Congregate Meals	16%	13%	14%	14%
Counseling	0%	1%	1%	1%
Education	6%	6%	0%	0%
(Personal) Emergency Response Systems	0%	0%	0%	0%
Escort-Assisted Transport	4%	4%	4%	5%
Health Education	0%	1%	3%	3%
HEAP	0%	0%	0%	0%
Home-Delivered Meals	9%	8%	9%	8%
Home Injury Control	3%	10%	0%	0%
Home Maintenance	0%	1%	0%	0%
Home Medical Equipment	0%	0%	0%	1%
Home Repair-Unobligated	0%	0%	0%	0%
Homemaker	3%	3%	3%	2%

Business Impact Analysis

Housing Admin.	0%	0%	0%	0%
Independent Living	0%	0%	0%	0%
Information & Asst.	0%	0%	0%	1%
Information & Referral	2%	1%	0%	0%
In-Service Training	0%	0%	0%	0%
Legal Assistance	1%	0%	0%	0%
Mass Outreach	0%	0%	0%	0%
Medical Assessment	4%	3%	2%	2%
Medical Treatment	1%	0%	0%	0%
Medication Screening	0%	0%	0%	0%
Nutrition Counseling	0%	0%	0%	0%
Nutrition Education	0%	0%	0%	0%
Nutrition Level I	0%	0%	0%	0%
Ombudsman Advocacy	0%	0%	0%	0%
Ombudsman Counseling	0%	0%	0%	0%
Ombudsman Information	0%	0%	0%	0%
Other Services (not Title-III or SCSBG)	0%	0%	0%	0%
Outreach	0%	0%	1%	0%
Personal Care	1%	2%	1%	2%
Plan Equipment Set-Aside	0%	0%	0%	0%
Plan Vehicle Set-Aside	0%	0%	0%	0%
Protective Services	0%	0%	0%	0%
Recreation	6%	5%	5%	4%
Respite Voucher	0%	2%	6%	4%
Safety Monitor	2%	0%	0%	0%
Senior Farmers Market	0%	0%	0%	0%
Service Unknown	0%	0%	0%	0%
Shopping Assistance	0%	0%	1%	3%
Sr. Vol.-Foster Grand	0%	0%	0%	0%
Sr. Vol.-RSVP	0%	0%	0%	0%
Sr. Vol.-Sr. Companion	0%	0%	0%	1%
ST. Care Coordination	0%	0%	0%	0%
Supportive Services	2%	1%	1%	1%
Supportive Services: Con	0%	0%	0%	0%
Telephoning	9%	10%	0%	0%
Transportation	4%	4%	4%	4%
Unobligated Funds	0%	0%	0%	0%
Visiting	1%	0%	0%	0%
Volunteer Placement	0%	0%	0%	0%
GRAND TOTALS	6%	5%	6%	6%

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

COST SHARING

Uncodified section 209.30 of pending H.B.59 (130th) would require, and section 209.30 of H.B.487 (129th G.A.) and previous budget bills already require, ODA to implement cost sharing for services purchased with Senior Community Services funds. Senior Community Services funds are used as a match for Older Americans Act funds, which obliges ODA to adopt a rule to require cost sharing for services purchased with Older Americans Act funds. (For more information, see ODA's response under #2.) By implementing cost sharing through the rule, ODA is not requiring any adverse impact beyond what budget bills and the Act require.

Furthermore, 42 C.F.R. 435.726 (October 1, 2012 edition) requires states to reduce payments to providers that provide home and community-based services to consumers who are enrolled in Medicaid waiver programs if the consumers meet income criteria. Programs funded with Older Americans Act funds are available to all seniors regardless of their income. Therefore, if the federal government requires "cost sharing" in the home and community-based programs for the poor elderly who are enrolled in Medicaid, it seems unlikely that Congress or the Ohio General Assembly would take action to no longer require cost sharing in the home and community-based programs for the not-as-poor elderly who do not qualify for Medicaid, but receive services purchased with Older Americans Act funds.

VOLUNTARY CONTRIBUTIONS

Section 315(b) of the Act requires ODA to require the acceptance of voluntary contributions and section 315(b)(4)(D) requires AAAs to account for the contributions. ODA has used its authority under sections 173.01 and 173.02 of the Revised Code, Section 305(a)(1)(C) of the Act, and 45 C.F.R. 1321.11 (October 1, 2012 edition), to adopt a rule to implement the voluntary-contributions requirement into the Ohio Administrative Code. Because cost sharing and voluntary contributions are, on a practical level, very similar, it seems that ODA simplifies matters by adopting the requirements for both into one rule.

Regulatory Flexibility

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

    The rule does not treat businesses differently based upon their size.

17. **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?**

    Section 119.14 of the Revised Code establishes the exemption from penalties for first-time paperwork violations.

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

    The AAAs and ODA are available to help direct-care providers of any size with their questions about the statutes and rules. Providers may address their questions to the AAAs or to ODA, including to ODA's regulatory ombudsman at rules@age.ohio.gov.