Ohio | Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency, Board, or Commission Name: OHIO DEPARTMENT OF AGING

Rule Contact Name and Contact Information: Tom Simmons rules@age.ohio.gov

Regulation/Package Title (a general description of the rules' substantive content):
OLDER AMERICANS ACT: HOMEMAKER + PERSONAL CARE
These rules establish the required content for AAA-provider agreements between AAAs and homemaker providers and between AAAs and personal care providers.

Rule Number(s): 173-3-01, 173-3-06.4, 173-3-06.5, and 173-3-07

Date of Submission for CSI Review: September 20, 2019

Public Comment Period End Date: October 3, 2019 at 11:59PM.

Rule Type/Number of Rules:

☑ **New/** 2 **rules**
173-3-06.4 and 173-3-06.5

☐ **No Change/** 0 **rules (FYR? ☐)**

☑ **Amended/** 2 **rules (FYR? ☑)**
173-3-01, 173-3-07

☑ **Rescinded/** 2 **rules (FYR? ☑)**
173-3-06.4 and 173-3-06.5

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?

   Please review the next page.

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.

OVERVIEW

Providers voluntarily bid, through open and free competition[1] 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 funds. 173-3-06.4 currently regulates AAA-provider agreements for homemaker and 173-3-06.5 currently regulates AAA-provider agreements for personal care.

ODA proposes to rescind the current versions of 173-3-06.3 and 173-3-06.4 and adopt new rules of the same numbers in their place. ODA proposes to amend 173-3-01 and 173-3-07 to make collateral amendments to those being made in 173-3-06.4 regarding participant-directed providers, plus additional non-substantive amendments (*e.g.*, terminology and cross-reference updates).

The net effect of this rule package will be a reduction in the adverse impact on current providers in the following ways (*cf.*, ODA's response to #14c):

1. ODA's proposes to allow a person who meets any of the qualifications to be a PCA in 173-3-06.5 to qualify to be a homemaker aide in 173-3-06.4, which will increase the pool of persons qualified to provide homemaker, thereby reducing providers' administrative costs in finding qualified employees.

2. Because Medicare's standards in 42 C.F.R. 484.80 allow persons to qualify as home health aide by multiple options including competency evaluation without training, ODA proposes to simply require meeting Medicare's qualification to be a home health aide and remove any language in 173-3-06.5 indicating training is required to qualify when qualifying by means of meeting Medicare's standards. This will increase increase the pool of persons qualified to provide personal care, thereby reducing providers' administrative costs in finding qualified employees.

   This will also help providers who are paid for providing personal care by by Older Americans Act funds and Medicaid funds through the PASSPORT Program by easing the standards to match those in 173-39-02.11 for ODA-certified providers of personal care.

[1] See 173-3-04 and 173-3-05.

3. ODA proposes to remove the requirement in 173-3-06.5 for providers to conduct competency evaluation on a PCA before allowing a person to begin serving as a PCA. Because a person must complete competency evaluation to qualify as a PCA, this will eliminate a duplicate round of competency evaluation.

   This will also help providers who are paid for providing personal care by by Older Americans Act funds and Medicaid funds through the PASSPORT Program by easing the standards to match those in 173-39-02.11 for ODA-certified providers of personal care.

4. An employee may routinely serve 3 consumers a day. Consumers 1 and 2 require personal care (which includes homemaker), so the employee is a PCA for those consumers. Consumer 3 only requires personal care, so the employee is a homemaker aide for that consumer. This places the employee under both 173-3-06.4 and 173-3-06.5, which each require 8 hours of in-service training for a total of 16 hours of training per year.

   ODA proposes to deem that 8 hours of continuing education may satisfy the annual requirements for both 173-3-06.4 and 173-3-06.5 at the same time will reduce the adverse impact of employing a person who is both a homemaker aide and a PCA. Without the amendment, the aide/PCA must complete 8 hours to be an aide and another 8 to be a PCA.

SPECIFIC AMENDMENTS

Titles

An analysis of ODA's website traffic revealed that most views of ODA's rules are the result of internet searches. Therefore, ODA proposes to add "Older Americans Act" to the beginning of the titles in 173-3-06.4 and 173-3-06.5. This will help the public to more easily find the correct rules when performing internet searches.

Definitions

To the definition of "personal care" in 173-3-06.5, ODA proposes to replace "respite services" with "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." This will allow the rule to clearly explain how Older Americans Act funds pay for personal care as respite.

To the definition of "homemaker" in 173-3-06.4, ODA proposes to add "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." This mirrors the language ODA proposes to use in 173-3-06.5 and reflects the fact that ODA already uses Title III-E funds to pay for homemaker provided as respite to the consumer's caregiver (*cf.*, ODA's response to #14c). This proposal will neither create a new right nor an adverse impact. Instead, it will allow the rule to clearly state how Older Americans Act funds pay for homemaker as respite.

ODA proposes to define "aide" in 173-3-06.4.

ODA proposes to define "PCA" in 173-3-01, which will apply to the entire chapter and be used in 173-3-06.4, 173-3-06.5, and possibly (in the future) 173-3-06.1.

ODA proposes to define "competency evaluation" in 173-3-01, which will apply to the entire chapter and be used in 173-3-06.4 and 173-3-06.5.

Organization

ODA proposes to change the order of paragraphs in 173-3-06.4 and 173-3-06.5. This involves the following:

ODA proposes to move all elements of definitions under (A) and all agency provider requirements under (B).

Under (B) of each rule, ODA proposes for the paragraphs to follow this pattern:

(1) General requirements.
(2) Availability.
(3) Aides/PCAs.

(4) Supervisors, trainers, and testers.
(5) Provider policies.
(6) Service verification.
(7) Reporting.

R.C. §173.392
ODA proposes for these rules to regulate the AAA-providers agreements instead of directly regulating providers, which will allow the rules to more closely comply with R.C. §173.392. This will involve minor changes.

Availability (*i.e.*, "Adequate Staffing Levels")
In the current versions of 173-3-06.4 and 173-3-06.5, language on the required availability of aides/PCAs appears near the beginning of each rule, but language on the availability of aide supervisors/PCA supervisors appears much later in each rule. ODA proposes to combine the requirements into a single requirement appearing near the beginning of each rule.

Initial Qualifications for Aides and PCAs
173-3-06.4 and 173-3-06.5 allow providers to use aides to provide homemaker or personal care activities if the aides meet at least one of the ways to qualify to be aides/PCAs. (These requirements only apply when being paid, in whole or in part, with Older Americans Act funds.) As reflected in the tables below, ODA proposes to *reduce* the adverse impact by making it possible for *more* persons to qualify as homemaker aides and personal care aides (PCAs). Specifically, ODA proposes the following:

- ODA proposes to add language to 173-3-06.4 that allows a person who meets any of the qualifications to be a PCA in 173-3-06.5 to also qualify to be a homemaker aide.

- ODA proposes to update the cross-references to the Code of Federal Regulations in 173-3-06.5 regarding Medicare's standards for home health aides.

- Because Medicare's standards in 42 C.F.R. 484.80 allow persons to qualify as home health aide by multiple options including competency evaluation without training, ODA proposes to remove any language in 173-3-06.5 indicating training is required to qualify when qualifying by means of meeting Medicare's standards. As previously noted, this will reduce the adverse impact upon providers.

- ODA proposes to remove the requirement in 173-3-06.5 for providers to conduct competency evaluation on a PCA before allowing a person to begin serving as a PCA. Because a person must complete competency evaluation to qualify as a PCA, this will eliminate a duplicate round of competency evaluation. As previously noted, this will reduce the adverse impact upon providers.

	OPTIONS FOR QUALIFYING AS A HOMEMAKER AIDE The provider shall only allow a person to serve as an aide if the person meets at least one of the following qualifications		
	ODA-Certified Providers 173-39-02.8 (Current)	Older Americans Act 173-3-06.4 (Current)	Older Americans Act 173-3-06.4 (Proposed)
Successful completion of ODH's NATCEP for state-tested nurse aides	Yes	No	Yes*
Meets qualifications for Medicare HHAs	Yes	No	Yes*
1 yr. supervised employment experience with competency evaluation	Yes	No	Yes*

	OPTIONS FOR QUALIFYING AS A HOMEMAKER AIDE The provider shall only allow a person to serve as an aide if the person meets at least one of the following qualifications		
	ODA-Certified Providers 173-39-02.8 (Current)	Older Americans Act 173-3-06.4 (Current)	Older Americans Act 173-3-06.4 (Proposed)
Successful completion of vocational program with competency evaluation	Yes	No	Yes*
60 hrs. training with competency evaluation	No	No	Yes*
20 hrs. training with competency evaluation	Yes	Yes	Yes

*Rather than restate the same options available to would-be PCAs in 173-3-06.4, ODA proposes to allow any person who meets at least one of the ways to qualify to be a PCA in 173-3-06.5, including this option, to qualify a person to be a homemaker aide.

	OPTIONS FOR QUALIFYING AS A PCA The provider shall only allow a person to serve as a PCA if the person meets at least one of the following qualifications		
	ODA-Certified Providers 173-39-02.11 (Current)	Older Americans Act 173-3-06.5 (Current)	Older Americans Act 173-3-06.5 (Proposed)
Successful completion of ODH's NATCEP for state-tested nurse aides	Yes	Yes	Yes
Meets qualifications for Medicare HHAs	Yes (Simply requires meeting Medicare standards.)	Yes (Requires Medicare standards plus training.)	Yes (Simply requires meeting Medicare standards.)
1 yr. supervised employment experience in as HHA or nurse aide with competency evaluation.	Yes	No	Yes
Successful completion of COALA or a vocational program with 60 hrs. training and competency evaluation.	Yes (COALA combined with other vocational programs.)	Yes (COALA and vocational programs listed separately.)	Yes (COALA combined with other vocational programs.)
60 hrs. training with competency evaluation.	Yes	Yes	Yes

Person-Centered Training

ODA proposes to delete the requirement in 173-3-06.5 for "additional training" but add a requirement for PCA orientation to cover the topic of person-centered care.

ODA proposes to require agency homemaker providers in 173-3-06.4 to complete to cover the topic of person-centered care in their aide orientation.

In-Service Training

A person may serve as both a PCA and a homemaker aide. If such a person routinely provided personal care to 2 consumers every weekday morning and homemaker to 1 consumer every weekday afternoon, the current rules require the person to complete 8 hours of continuing education every year to comply with 173-3-06.4 and another 8 hours of continuing education

every year to comply with 173-3-06.5. ODA proposes to allow 8 hours of continuing education completed by such a person to count satisfy the requirements in both at the same time.

Supervisor Visits
ODA proposes to retain the requirement in 173-3-06.4 for homemaker supervisors to visit each consumer at least once every 93 days. (For more information, please review ODA's response to BIA question #8.)

ODA proposes to replace the requirement in 173-3-06.5 for PCA supervisors to visit each consumer at least once every 62 days to at least once every 60 days.

Records Retention
ODA proposes to delete the requirements to retain records from both rules because they duplicate the requirement on records retention for every AAA-provider agreement in 173-3-06.

Reporting
ODA proposes to mention in both rules that providers must comply with 45 C.F.R. 1321.65.

Self-Employed (*i.e.* Non-Agency) and Participant-Directed Providers
In 173-3-06.4, ODA proposes to require self-employed and participant-directed homemaker providers to meet the initial qualifications for homemaker aides of agency providers before an AAA may enter into an AAA-provider agreement with that provider.

In 173-3-06.4, ODA proposes to require self-employed and participant-directed homemaker providers to meet the in-service training requirements for homemaker aides of agency providers.

Terminology
ODA proposes the following changes throughout the rules:

- "Activity plan,' "care plan," and "service plan" → "activities plan" (in 173-3-06.4 and 173-3-06.5).
- "Capacity" → "adequate staffing levels" (in 173-3-06.4 and 173-3-06.5).
- "Components," "tasks," and some occurrences of "services" → "activities" (in 173-3-06.4 and 173-3-06.5).
- "Consumer-directed provider" → "participant-directed provider" (in 173-3-01, 173-3-06.4, and 173-3-07).
- "Furnish" and some occurrences of "perform" → "provide" (in 173-3-06.4 and 173-3-06.5).
- "Goods and services" → "services" (in 173-3-01 and 173-3-07).
- "In-service continuing education" or "continuing education" → "in-service training" (in 173-3-06.4 and 173-3-06.5).
- "Mandatory clauses" → "requirements for every provider" (in 173-3-06.4 and 173-3-06.5).
- "ODA's designee" → "the AAA" (in 173-3-06.4 and 173-3-06.5).
- "Policies and procedures" → "policies" (in 173-3-06.4 and 173-3-06.5).
- Some occurrences of "service" → "personal care" (in 173-3-06.5).
- "Transportation assistance" → "escort" (in 173-3-06.4).
- "Universal precautions for infection control" → "basic infection control" (in 173-3-06.5).

Incorporation by Reference
ODA proposes to update all citations to the Code of Federal Regulations in these rules. ODA also proposes to replace citations to federal acts with citations to the United States Code, which readers are likely to more easily find in basic internet searches.

Additionally, because it is difficult to find or read official copies of a revised act of Congress, ODA proposes to replace references in 173-3-01 and 173-3-07 to such acts with corresponding references to the United States Code, which readers may easily find by placing a citation into an Internet search engine.

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

R.C. §§ 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 rule exists 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 regulations ODA listed in its response to #3, which require ODA to develop policies for all aspects of the Older Americans Act programs.

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 finds few violations in AAA-provider agreements and (2) AAAs find few violations from 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.

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.

On August 23, 2018, ODA emailed each AAA and each provider for whom ODA had an email address asking for their suggestions to improve these rules.

On March 29, 2019, ODA emailed each AAA to see if any had entered into an AAA-provider agreement with self-employed providers.

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

One AAA and one provider responded to ODA's August 23, 2018 email regarding these rules.

- AAA5 asked ODA to require personal care providers to maintain adequate staffing levels for 7 days/week instead of the current 5 days/week. Although providers may maintain adequate staffing levels to provide personal care 7 days per week, ODA does not intend to require providers to do so.

- AAA5 asked why 173-3-06.4 allowed for self-employed providers and participant-directed providers. ODA proposes to retain these options for use in the future.

- LifeCare Alliance asked if the requirement in 173-3-06.4 for aide supervisors *to visit the consumer at least once* every 93 days could be replaced with a requirement *to conduct at least two face-to-face visits and 2 telephone calls every* 93 days. ODA does not intend to increase the number of supervisory assessments in a 93-day period without a demonstrated need. LifeCare Alliance did not submit any information documenting a need for this many supervisory assessments.

Ten of the 12 AAAs responded to the March 29, 2019 email survey. All indicated that they are not in an AAA-provider agreement with a self-employed provider. As previously mentioned, two asked ODA to retain the language because they may want to use those options in the future.

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?

ODA obtained data on the volume of providers and the amounts providers charge the Older Americans Act Program from its databases. ODA also determined the likelihood of adverse impact on changing the maximum length of time allowed to elapse without a PCA supervisor visit from 62-60 days with CDC data.[2]

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, which 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 rule.

Through its regular monitoring activities, ODA and its designees will monitor providers for compliance.

[2] U.S. DEPT. OF HEALTH & HUMAN SERVICES: CENTERS FOR DISEASE CONTROL & PREVENTION: NATIONAL CENTER FOR HEALTH STATISTICS, *Characteristics and Use of Home Health Care by men and Women Aged 65 and Over*, 2013-2014 (Apr. 12, 2012), National Health Statistics Reports, No. 52, p. 3, figure 3.

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 adopt rules establishing requirements for AAA-provider agreements.

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 amended rule takes effect, ODA will post it on ODA's website. ODA will also send an email to subscribers of our rule-notification service to feature the rule.

Through 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.

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 required by these rules directly regulate providers.

AGENCY PROVIDERS WITH AAA-PROVIDER AGREEMENTS	2018
173-3-06.4 Homemaker	82[3]
173-3-06.5 Personal Care	95[4]

Currently, every AAA-provider agreement for homemaker or personal care is between an AAA and am *agency* provider. Although 173-3-06.4 allows an AAA to enter into an AAA-provider agreement with *self-employed* and *participant-directed* providers, there are currently no AAA-provider agreements in force between an AAA and a *self-employed* provider or between an AAA and a *participant-directed* provider.

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

173-3-01 introduces Chapter 173-3 and defines terms used in the chapter. It makes no requirements on providers and, therefore, has no adverse impact.

173-3-06.4 and 173-3-06.5 require AAAs to include the following provider requirements in every AAA-provider agreement for homemaker (173-3-06.4) or personal care (173-3-06.5):

REQUIREMENT	173-3-06.4	173-3-06.5
Comply with the requirements for every AAA-provider agreement in 173-3-06	Yes	Yes
Maintain adequate availability[5]	Yes	Yes

[3] For planning and service areas (PSAs) in which the AAA enters into AAA-provider agreements with a comprehensive and coordinated system of providers through a care coordination program, the AAA lists itself as the provider. Therefore, in PSAs with care coordination programs, the number of providers would be higher than the figure cited in this BIA.
[4] *Ibid.*
[5] For agency providers, the requirement is to maintain adequate staffing levels.

Aides/PCAs	Only allow qualified people to be aides/PCAs	Yes	Yes
	Provide orientation[6]	Yes	Yes
	Assure aides/PCAs complete adequate hours of continuing education	Yes	Yes
Supervisors[7]	Supervise aides	Yes	Yes
	Visit consumers to evaluate activity plans and consumer satisfaction	Yes	Yes
Implement provider policies[8]		Yes	Yes
Use monitoring system when required by R.C. §121.36[9]		No	Yes
Verify job provided		Yes	Yes
Report on services provided pursuant to 45 C.F.R. 1321.65		Yes	Yes

These are standard requirements for homemaker and personal care.

173-3-07 regulates the collection of consumer contributions. It requires providers to give consumers an opportunity to contribute to the cost of the services they receive as required by 42 U.S.C. 3030c-2 and 45 C.F.R. 1321.67.

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.

The amount an AAA pays a provider for a homemaker or personal care is an all-inclusive rate. It's intended to cover the all costs incurred in providing the service, including costs related to administration, training, supervision, and reporting. Providers establish the rate per hour when they respond to a request for proposal (RFP) by submitting their bid to the AAA for how much they will charge per unit. 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)

The table below shows the average rates providers were paid per unit in 2018.

	2018			
	TITLE III-B[10] FUNDS		TITLE III-E[11] FUNDS	
	HOURS	$\bar{x}$ $/HOUR	HOURS	$\bar{x}$ $/HOUR
173-3-06.4 Homemaker	156,110.05	$20.93	15,138.66	$19.61
173-3-06.5 Personal Care	131,482.22	$19.38	86,363.48	$21.49

ODA proposes to maintain the current requirement for adequate staffing levels. (See ODA's response to #8.)

ODA's proposal to allow a person who meets any of the qualifications to be a PCA in 173-3-06.5 to qualify to be a homemaker aide in 173-3-06.4 would increase the pool of persons qualified to provide homemaker, thereby reducing providers' administrative costs in finding qualified employees.

ODA's proposal to allow a person who meets Medicare's standards for home health aides to qualify as a PCA without requiring training in addition to Medicare's requirements may (1) reduce the cost of providing training programs for providers who offer them to comply and (2) reduce providers' administrative costs in finding qualified employees.

[6] Orientation requirements only apply to agency providers.
[7] Supervisor requirements only apply to agency providers.
[8] Policy requirements only apply to agency providers.
[9] Monitoring system requirements only apply to agency providers.
[10] "Title III-B" means Older Americans Act funds for supportive services under Title III-B of the Older Americans Act (42 U.S.C. 3030d).
[11] "Title III-E" means Older Americans Act funds for the National Family Caregiver Support Program under Title III-E of the Older Americans Act (42 U.S.C. 3030s to 3030s-2).

ODA's proposal to remove the requirement in 173-3-06.5 for providers to conduct competency evaluation on a PCA before allowing a person to begin serving as a PCA, will eliminate a duplicate round of competency evaluation.

ODA's proposal to no longer require PCAs to undergo "additional training," but for providers to include person-centered care as an orientation topic may be a neutral trade. ODA's proposal to require homemaker providers to include person-centered care as an orientation topic for homemaker aides may increase the cost of orientation by the cost of the time it takes to explain person-centered care.

ODA's proposal to deem that 8 hours of continuing education may satisfy the annual requirements for both 173-3-06.4 and 173-3-06.5 at the same time will reduce the adverse impact of employing a person who is both a homemaker aide and a PCA. Without the amendment, the aide/PCA must complete 8 hours to be an aide and another 8 to be a PCA.

ODA's proposal to require PCA supervisor visits every 60 days instead of every 62 days will not increase providers' adverse impact. Providers could, but are unlikely to, experience an adverse impact, as follows:

- Agency providers who ensure individuals receive PCA supervisor visits at least every other calendar month—regardless of the number of days in the month—are likely to find no increased adverse impact by the 60-day so long as the provider schedules the supervisory visits no more than 60 days apart during the 2 62-day periods (i.e., December -January and July-August).

- Agency providers who provide individuals with PCA supervisor visits more often than every 60 days would find no increased adverse impact by the 60-day period.

- Agency providers who wait to provide supervisor visits on the last-possible day of each period (i.e., the 62nd day) to ensure they provide the fewest-possible visits for each individual's lifetimes are also not likely to see a new adverse impact. At most, such providers would only need to provide an additional PCA supervisor visit every 5 years for an individual who continuously receives personal care for 5 years. Because only 14% of men and 20% of women receive "home health" for more than 1 year,[12] it seems unlikely a large percentage of individuals would continuously receive personal care for more than 5 years.

ODA proposes to require self-employed and participant-directed homemaker providers to (1) meet the qualifications for homemaker aides and (2) comply with the in-service training requirements for homemaker aides working for agency providers. Because all current AAA-provider agreements are only with agency providers, these new requirements would not affect any current provider. They would, however, require potential future self-employed and participant-directed provides to meet these requirements.

As indicated in 173-3-07, asking consumers to make voluntary contributions or to share costs is a federal requirement. When consumers make contributions, it increases the provider's program income for providing services. Thus, it is not an adverse impact.

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

To ensure the health and safety of consumers receiving services paid with Older Americans Act funds, ODA is required to develop rules establishing requirements for AAA-provider agreements. 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, wholly or in part, with Older Americans Act funds, and (2) the provider's bid is the 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.

[12] U.S. DEPT. OF HEALTH & HUMAN SERVICES: CENTERS FOR DISEASE CONTROL & PREVENTION: NATIONAL CENTER FOR HEALTH STATISTICS.

The requirements in the proposed new versions of 173-3-06.4 and 173-3-06.5, and the amended version of 173-3-07 are reasonable compared to the health and safety of the consumers being served.[13]

Providers who offer person-centered care are more likely to be selected by consumers because people want to have a say in the care provided to them. Therefore, any expense associated with the cost of meeting ODA's proposal to require homemaker providers to cover the topic in orientation topic should be met by increased business.

As previously mentioned, ODA proposes to require self-employed and participant-directed homemaker providers to (1) meet the qualifications for homemaker aides and (2) comply with the in-service training requirements for homemaker aides working for agency providers. These requirements are justifiable. Without them, there would be no way to assure that a self-employed or consumer-directed provider had any ability to adequately provide homemaker.

As previously mentioned, this rule package will reduce the adverse impact of these rules on providers in the following ways:

1. ODA's proposal to allow a person who meets any of the qualifications to be a PCA in 173-3-06.5 to qualify to be a homemaker aide would increase the pool of persons qualified to provide homemaker, thereby reducing providers' administrative costs in finding qualified employees.

2. ODA's proposal to simply require meeting Medicare's qualification to be a home health aide and remove any language in 173-3-06.5 indicating training is required to qualify when qualifying by means of meeting Medicare's standards. This will increase increase the pool of persons qualified to provide personal care, thereby reducing providers' administrative costs in finding qualified employees.

3. ODA's proposal to remove the requirement in 173-3-06.5 for providers to conduct competency evaluation on a PCA before allowing a person to begin serving as a PCA, will eliminate a duplicate round of competency evaluation.

4. ODA's proposal to deem that 8 hours of continuing education may satisfy the annual requirements for both 173-3-06.4 and 173-3-06.5 at the same time will reduce the adverse impact of employing a person who is both a homemaker aide and a PCA. Without the amendment, the aide/PCA must complete 8 hours to be an aide and another 8 to be a PCA.

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 AAAs 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?

[13] 173-3-01 introduces the chapter and defines terms used in the chapter. It does not make requirements on providers or on the making of AAA-provider agreements.

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.

As noted in *State Plan on Aging 2019-2022*[14], ODA plans to standardize the administration and use of SAMS, which is the software used comply with the federal reporting requirements in 45 C.F.R. 1321.65. This should assist providers by simplifying the reporting process.

Additionally, ODA maintains an online rules library to help AAAs and providers find rules regulating them. Providers may access the online library 24 hours per day, 365 days per year.

[14] p. 51.