



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Carrie Kuruc**, Director

### MEMORANDUM

**TO:** Tom Simmons, Ohio Department of Aging

**FROM:** Emily Groseclose, Senior Policy and Business Advocate

**DATE:** August 12, 2020

**RE:** **CSI Review – Older Americans Act Nutrition Program (OAC 173-4-05, 173-4-10, and 173-4-11)**

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On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

#### Analysis

This package contains three amended rules submitted by the Ohio Department of Aging. The rule package was submitted to CSI on July 10, 2020 as part of the statutorily required five-year review process, and the public comment period was held open through July 23, 2020. One comment was received during that time and the Department provided its response on July 29, 2020. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI office on July 10, 2020.

These rules implement requirements of the federal Older Americans Act (Act), which requires the Department to develop policies governing all aspects of the Act's programs. The rules also implement Ohio statutes requiring the Department to establish standards for area agencies on aging (AAA) provider agreements. Providers of home and community-based services voluntarily bid for agreements with AAAs in which services are paid with Act funds. The proposed rules establish general requirements for nutrition project agreements, and expectations for grocery shopping assistance or grocery ordering and delivery.

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Changes are proposed to align the rules with the federal Supporting Older Americans Act of 2020, which requires providers to adjust the nutrient content of meals for cultural considerations and preferences and medically tailored needs. Additionally, the Department proposed to amend the rules to reflect the Act more accurately by clarifying that National Family Caregiver Support Program, or Title III-E, funds may also be used to pay for these services.

As part of early stakeholder outreach, the Department posted the rules on its website and solicited feedback from Community First, Guernsey County Senior Citizens Center, Inc., Licking County Aging Program (LCAP), LifeCare Alliance (LCA), Meals on Wheels of SW Ohio and N Kentucky, Ohio Association of Area Agencies on Aging, Senior Resource Connection, Vantage Aging, and the Wood County Committee on Aging. In addition to supportive comments, the Department received concerns from the LCAP regarding the change to allow consumer preference as a reason for adjusting a meal's nutrition, and the LCA recommended eliminating the requirement to conduct annual nutrition screenings and aligning language on payment resources throughout the rules. In response, the Department noted requirements of the Act and that its rules must be consistent with the purpose of the Act and cannot conflict, and that it does propose to make payment source language consistent.

One comment was received during the CSI public comment period from the Ohio Academy of Nutrition and Dietetics. The commenter requested that the Department create new regulations for providers who offer snacks in addition to meals. In response, the Department stated that it does not intend to add new snack requirements at this time but will take the suggestion into consideration in the future when it revisits the rule.

The rules impact Ohio's 12 AAAs and providers. The Department noted in the BIA that adverse impacts related to AAA-provider agreements include requirements for employee training and adhering to regulations found in OAC 173-3-06 and federal nutrition project requirements, as well as required documentation to verify that grocery assistance or delivery was provided. Additional potential adverse impacts noted by CSI include requirements for providers to offer annual nutrition health screenings and obtain dietician approval of menus.

The Department stated that the rules put necessary safeguards in place to protect the health and safety of consumers receiving services paid with Act funds. The Department also noted that providers voluntarily bid for AAA agreements and that they may provide the same services without entering into an agreement, when paid by other funds. Additionally, the amount a provider is paid is an all-inclusive rate intended to cover all costs incurred providing the service.

### **Recommendations**

For the reasons described above, the CSI office has no recommendations on this rule package.

### **Conclusion**

Based on its review of the proposed rule package, CSI recommends that the Ohio Department of Aging proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.