



## Common Sense Initiative

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

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### Business Impact Analysis

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

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

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

#### OLDER AMERICANS ACT PROGRAMS: TRANSPORTATION

Chapter 173-3 of the Administrative Code establishes requirements to include in, or exclude from, AAA-provider agreements (i.e., contracts) that are paid, in whole or in part, with Older Americans Act funds.

**Rule Number(s):** 173-3-06.6

**Date of Submission for CSI Review:** March 16, 2023.

**Public Comment Period End Date:** March 29, 2023 at 11:59PM.

**Rule Type/Number of Rules:**

☐ New/ # rules

☐ No Change/ # rules (FYR? ☐)

☒ Amended/ 1 rules (FYR? ☒)

☐ Rescinded/ # rules (FYR? ☐)

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

#### **Reason for Submission**

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

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

Please review the next page.

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**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.*

When ODA adopted amendments to this rule on January 1, 2023, ODA adopted incorrect references to version dates for vehicle inspection forms. As a result, ODA now proposes to revisit the previous rule filing to address this matter.

Chapter 173-3 of the Administrative Code establishes requirements to include in, or exclude from, AAA<sup>1</sup>-provider agreements (i.e., contracts) that are paid, in whole or in part, with Older Americans Act funds. Rule 173-3-06.6 of the Administrative Code establishes requirements applying only to AAA-provider agreements for transportation. ODA proposes to amend this rule to refer to ODA-approved inspection forms rather than refer to each form by name, number, and version date. This will allow innovative providers to propose alternative electronic forms (or paper forms) that ODA can consider for approval in addition to the already-approved inspection forms.

Lastly, ODA also proposes to make additional non-substantive changes to this rule by removing verbosity from 3 paragraphs.

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

R.C. §§ [121.07](#), [173.01](#), [173.02](#), [173.392](#), [4766.14](#),<sup>2</sup> and [4766.15](#).<sup>3</sup>

**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 U.S.C. 3025](#) says ODA is “primarily responsible” for Older Americans Act policy development in Ohio and [45 C.F.R. 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.**

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<sup>1</sup> “AAA” means “area agency on aging.”

<sup>2</sup> R.C. §§ 4766.14 and 4766.15 apply to only rules 173-39-02.13 and 173-39-02.18 of the Administrative Code.

<sup>3</sup> *Ibid.*

This 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 regulation ODA listed in its response to #3, which require ODA to develop policies for all aspects of the Older Americans Act programs in Ohio.

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

This rule exists to (1) comply with the state laws mentioned in ODA's response to #3, which require ODA to establish requirements for AAA-provider agreements, and (2) 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 C.F.R. Part 75, Subpart F](#): (1) ODA regularly monitors AAAs for compliance with this rule and (2) AAAs regularly monitor providers for their compliance with AAA-provider agreements, this rule is judged as being successful when (1) ODA funds few violations in AAA-provider agreements and (2) AAAs find few violations against AAA-provider agreements.

**8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

No.

**Development of the Regulation**

**9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

*If applicable, please include the date and medium by which the stakeholders were initially contacted.*

ODA's guide [Participating in ODA's Rule Development](#) and the [main rules webpage](#) on ODA's website encourage stakeholders and the general public to give input on improving ODA's rules and provide contact information for doing so. From this rule's effective date to the date of this BIA, ODA has received no input from stakeholders or the general public on this rule.

On May 17, 2022, ODA emailed the following stakeholders to explain how artificial intelligence has added a new dimension to interpreting rules, define *regulatory restrictions*, declare the need to reduce regulatory restrictions, explain how ODA can reduce regulatory restrictions by eliminating duplicate uses of regulatory restrictions, provide stakeholders with an opportunity to make recommendations on ODA's plan, and provide stakeholders with an opportunity to make recommendations on eliminating any regulatory restriction in any chapter of ODA's rules:

- Catholic Social Services of the Miami Valley.
- LeadingAge Ohio.
- Ohio Assisted Living Association (OALA).
- Ohio Academy of Senior Health Sciences, Inc.
- Ohio Adult Day Healthcare Association (OADHA).
- Ohio Association of Area Agencies on Aging (O4A).

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- Ohio Association of Medical Equipment Suppliers (OAMES).
- Ohio Association of Senior Centers (OASC).
- Ohio Council for Home Care and Hospice (OCHCH).
- Ohio Health Care Association (OHCA).
- Ohio Jewish Communities.
- State Long-Term Care Ombudsman.

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

In response to its May 17, 2022 emails, ODA received 0 recommendations from stakeholders on this rule.

**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?**

No.

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

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

**13. 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 to establish requirements for AAA-provider agreements.

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

Before the proposed amendments take effect, ODA will send an email to subscribers of our rule-notification service to feature the rules. Through regular monitoring (*i.e.*, auditing) requirements under [45 C.F.R. 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**

**15. 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**

Every provider with an AAA-provider agreement for transportation.

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

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***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 adverse impact of this rule is to ensure every AAA-provider agreement for transportation complies with the general requirements for AAA-provider agreements in rule 173-3-06 of the Administrative Code plus the following specific requirements:

- **Availability:** Possessing a back-up plan for transporting individuals when a driver of vehicle is unavailable.
- **Transferring:** Helping individuals to safely transfer between the vehicle and the pick-up point or drop-off point according to the terms of the AAA-provider agreement.
- **Vehicle Maintenance:** Maintaining vehicles and wheelchair lifts according to manufacturer's standards.
- **Vehicle Inspections:** Provider inspections on each day a vehicle is used and an annual mechanic inspection—with exemptions.
- **Driver Qualifications (with exemptions for drivers of licensed ambulettes, EMTs, first responders, and transit drivers):**
  - The requirements under R.C. §4766.14(A)(3) and (B).
  - Valid driver's license for at least 2 years.
  - A driver's license endorsement, if necessary to operate the type of vehicle used.
  - The ability to understand written and oral instructions.
  - The ability to help individuals to safely transfer between the vehicle and the pick-up point or destination point.
  - The ability to conduct the daily vehicle inspection.
  - The ability to comply with service verification requirements.
  - Successful completion of a passenger-assistance training course.

ODA's proposed amendments to this rule will not increase the adverse impact upon providers.

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

If the provider's bid wins, the provider is paid what it bid during the open and free competition for the AAA-provider agreement (*cf.*, [45 C.F.R. 75.329](#) and rules [173-3-04](#) and [173-3-05](#) of the Administrative Code).

**16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors.*)**

ODA's proposal to use ODA-approved inspection forms rather than specific forms will allow innovative providers to propose alternative electronic forms (or paper forms) that ODA can consider for approval in addition to the already-approved inspection forms.

ODA will continue to exempt licensed ambulettes and certain busses from the annual vehicle-inspection requirements because those vehicles are subject to similar government-inspection requirements.

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ODA will continue to exempt ambulette drivers, emergency medical technicians, first responders, and transit drivers from many of this rule's qualifications to be a driver.

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

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

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

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

Lastly, this rule gives providers flexibility, as noted in ODA's response to question # 16.

**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, this rule treats all providers the same, regardless of their size.

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

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

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

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