

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 173-3-06.9

Rule Type: New

Rule Title/Tagline: Older Americans Act: case management.

Agency Name: Department of Aging

Division:

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I. Rule Summary

1. Is this a five year rule review? No
 - A. What is the rule's five year review date?
2. Is this rule the result of recent legislation? No
3. What statute is this rule being promulgated under? 119.03
4. What statute(s) grant rule writing authority? 121.07, 173.01, 173.02, 173.392; 42 U.S.C. 3025; 45 C.F.R. 1321.9
5. What statute(s) does the rule implement or amplify? 173.39, 173.392; 42 U.S.C. 3002, 45 C.F.R. Part 75, 1321.9, 1321.55, 1321.73
6. Does the rule implement a federal law or rule in a manner that is more stringent or burdensome than the federal law or regulation requires? Yes
 - A. If so, what is the citation to the federal law or rule? 42 USC 3002(11), 3026(a)(2), 3026(a)(8), and 3030d define and establish basic standards for case management paid, in whole or in part, with Older Americans Act funds. This proposed new rule will implement those basic standards (e.g., the requirement to provide case management in each planning and service area (PSA), comprehensive assessment, informing consumers of provider options, informing consumers of their right to choose from among providers, conflict

of interest, service plan, coordination, monitoring the service plan, periodic reassessment, revising the service plan). The proposed rule will also require the following: 1. Conducting the required assessments (A) in person for some services or (B) either in person or by video conference for other services. 2. Conducting the required assessments using an ODA-approved assessment tool. 3. Establishing one year after the start of a service plan as the time to conduct required reassessments, with an exception for a consumer who receives a one-time service or who is on a waiting list for a service.

7. What are the reasons for proposing the rule?

RCÂ§173.392 requires ODA to adopt rules to establish standards for contracts and grant agreements between ODA's designees and long-term care service providers. Regarding Older Americans Act funds, ODA's designees under RCÂ§173.011 are area agencies on aging (AAAs) and the contracts and grant agreements are called "AAA-provider agreements" in Chapters 173-3 and 173-4 of the Administrative Code. This proposed new rule will establish the standards for AAA-provider agreements for case management paid, in whole or in part, with Older Americans Act funds. 42 USC 3030d defines case management as a supportive service, which is also called a "Title III-B service."

Congress and the Administration for Community Living (ACL) under the U.S. Dept. of Health and Human Services established the requirement to case manage each consumer of an adult day service, chore, homemaker service, personal care, or home-delivered meal by requiring providers, AAAs, and ODA to report data to ACL on how consumers qualify for these services.

42 USC 3012(a)(26) and (f)(1) require ACL to operate the National Aging Program Information System (NAPIS) and to design uniform data-collection procedures for what and how to report into NAPIS. This data collected in NAPIS is used to develop state performance reports (SPRs), which ACL shares with Congress under 42 USC 3018.

ACL's design for NAPIS, SPRs, and data collection requires dividing services into different clusters. In "State Performance Report for State Units on Aging, Appendix A: Data Element Definitions" (09/15/2021), ACL defines "cluster 1 service" as "a serviceâfor which ADL limitations and IADL limitations characteristics are reported in addition to other consumer demographics and characteristics. These services are personal care, homemaker, chore, home-delivered nutrition, adult day care/health and case management." ACL requires reporting on any service in cluster 1 by providing information that can be gathered only through an assessment, which is the primary case-management activity.

45 CFR 1321.73(b) requires AAAs and providers to report data for each cluster 1 service to ODA for NAPIS and SPRs. In turn, 42 USC 3027(a)(2)(A) requires ODA to report the data to ACL.

Additionally, 42 USC 3026(a)(2) and (a)(8) explicitly require the following:

1. Each AAA's area plan must ensure that Older Americans Act funds are spent on providing case management to consumers in the AAA's PSA.
2. The case management must not duplicate case management provided under other federal and state programs.
3. The case management must coordinate with case management provided under other federal and state programs.
4. The case management provider must be a government agency or a private nonprofit agency.
5. The case management provider must give each consumer seeking services a list of service providers in the PSA.
6. The case management provider must inform each consumer of the consumer's right to make an independent choice of service providers.
7. The case management provider must act as an agent for consumers receiving services and not as a promoter of the provider's other services.

The conflict-of-interest standards in #5, #6, and #7 above would prevent a provider from providing an adult day service, chores, homemaker, personal care, or home-delivered meals to a consumer if the provider also case manages the consumer. 42 USC 3026(a)(8) includes an ability to waive standards in #5, #6, and #7 above if the case-management provider is located in a rural area.

42 USC 3027(a)(8) prohibits an AAA from directly providing a service, but makes an exception for case management. In Ohio, AAAs are directly providing case management rather than procuring with a provider to do so.

Not all of Ohio's AAAs comply with these already-established federal requirements. ODA proposes to adopt this new rule to bring Ohio's AAAs into compliance with the requirements cited in this response.

8. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.

This proposed new rule will refer to the definition of "case management" in the Older Americans Act. [When ODA refiled this proposed new rule on November 4, 2024, ODA removed the definition because ODA already defines the term in rule 173-3-01 of the Administrative Code. Additionally, in another rule package, ODA is proposing to move that definition to rule 173-2-01 of the Administrative Code and for that definition to apply to Chapters 173-2, 173-3, and 173-4 of the Administrative Code.]

Every AAA -provider agreement in Ohio that is paid, in whole or in part, with Older Americans Act funds (agreement), including an agreement for case management, is subject to the general standards for agreements in rule 173 3 06 of the Administrative Code. This proposed new rule will include a helpful reference to rule 173-3 06 of the Administrative Code to make this clear to a reader who reads the rule apart from its context in Chapter 173-3 of the Administrative Code.

The proposed new rule will indicate that the provider is responsible for providing case management to every consumer in the PSA who receives one or more of the following 5 services paid, in whole or in part, with Older Americans Act funds:

1. Adult day service.
2. Chores.
3. Homemaker service.
4. Personal care.
5. Home-delivered meals.

These are services that ACL considers to be "cluster 1" services.

This proposed new rule will establish the requirements for providing case management itself (e.g., assessments, information, service plans, and monitoring).

In response to comments from the public-comment period, the proposed new rule will not require ongoing case management for a consumer who does not continue to receive the aforementioned services. [ODA's refile of this rule changed this provision to a standard that no longer requires ongoing case management for a consumer who receives only a one-time service or who is on a waiting list to receive a service.]

This proposed new rule will establish the following qualifications to be a case manager:

1. The person has a thorough knowledge of Older Americans Act services in the PSA.
2. The person has the knowledge, skills, and expertise necessary to provide case management.

Additionally, this proposed new rule will establish the reporting items needed to comply with the service verification requirements in rule 173-3-06 of the Administrative Code.

9. **Does the rule incorporate material by reference?** No
10. **If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

Not Applicable

11. **If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

ODA refiled this proposed new rule to achieve the following:

1. Reference the federal requirement in 42 USC 3026(a)(8) to provide case management in each planning and service area. [(A) and (B)(1)]
2. Reference the federal requirement in 42 USC 3026(a)(8) to not duplicate other case management offered through other federal or state programs and to coordinate that case management and emphasize that a case-management provider is responsible under that federal law for using a similar assessment conducted through another federal or state program as an assessment for the Older Americans Act program rather than duplicating the assessment conducted under the other federal or state program if the assessment from the other federal or state program was conducted within one year of the consumer's service authorization. [(B)(3)(a)(iv)]
3. Allow greater flexibility in how case management is provided to reduce costs—allowing for video conferencing rather than in-person visits in consumers' homes if the only service received is chores or home-delivered meals. [(B)(3)(a)(ii)]
4. No longer require the service plan to record how to provide each service. [formerly (B)(3)(e)(ii)]

5. Require recording milestones in the service plan only as appropriate. [(B)(3)(e)(iii)]
6. No longer require the service plan to record the standards for assessing accomplishment on milestones and progress toward established goals. [formerly (B)(3)(e)(v)]
7. No longer require case managers to assist the consumer or caregiver in obtaining needed services and resources through education and advocacy. [formerly (B)(3)(f)(v)]
8. No longer require case managers to provide direct intervention to assist the overall goals of the consumer's or caregiver's plan. [formerly (B)(3)(f)(vi)]
9. No longer state that the annual reassessment to determine the consumer's eligibility is conducted as an in-home visit. [(B)(3)(i)]
10. Modify the standard that a case-management provider is not responsible for competing certain case-management activities (A) after a consumer no longer receives a service to (B) if the consumer obtains only a one-time service or is on a waitlist. [(B)(4)]

ODA proposes to make non-substantive improvements to this rule. One of these improvements is to no longer define "case management" in this rule. Doing so is duplicative of the definition in rule 173-3-01 of the Administrative Code. [In another rule package, ODA proposes to move that definition from rule 173-3-01 of the Administrative Code to rule 173-2-01 of the Administrative Code. ODA also proposes for the definitions in proposed new rule 173-2-01 of the Administrative Code to apply to Chapters 173-3 and 173-4 of the Administrative Code.]

ODA also revised this RSFA.

II. Fiscal Analysis

12. Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.

This will have no impact on revenues or expenditures.

\$0.00

Adopting this new rule will not impact the biennial budget that the Ohio General Assembly established for ODA in Am. Sub. H.B. 33 (135th G.A.).

13. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?

ODA estimates that the cost of compliance for providers of case management is to comply with AAA-provider agreements that comply with the requirements in this rule. These requirements cover the general standards for AAA-provider agreements in rule 173-3-06 of the Administrative Code, federal standards for case management under 42 USC 3026(a)(8), and the basic activities of case management (e.g., assessments, information, service plans, and monitoring).

ODA estimates that the cost of compliance for providers is also hiring people who meet this rule's qualifications to be a case manager.

Please review ODA's response to questions #15, #16, and #17 of the business impact analysis (BIA) for additional information.

To reduce the cost of compliance, ODA revised this rule on September 16, 2024 to no longer propose to require in-home visits to consumers every 6 months to monitor the service plan.

To further reduce the cost of compliance, ODA refiled this rule on November 4, 2024 to achieve the following:

1. Allow for video conferencing rather than in-home visits if the only service a consumer receives is chores or home-delivered meals. [(B)(3)(a)(ii)]
2. No longer require the service plan to record how to provide each service. [formerly (B)(3)(e)(ii)]
3. Require recording milestones in the service plan only as appropriate. [(B)(3)(e)(iii)]
4. No longer require the service plan to record the standards for assessing accomplishment on milestones and progress toward established goals. [formerly (B)(3)(e)(v)]
5. No longer require case managers to assist the consumer or caregiver in obtaining needed services and resources through education and advocacy. [formerly (B)(3)(f)(v)]
6. No longer require case managers to provide direct intervention to assist the overall goals of the consumer's or caregiver's plan. [formerly (B)(3)(f)(vi)]

7. No longer state that the annual reassessment to determine the consumer's eligibility is conducted as an in-home visit. [(B)(3)(i)]

8. Modify the standard that a case-management provider is not responsible for competing certain case-management activities (A) after a consumer no longer receives a service to (B) if the consumer obtains only a one-time service or is on a waitlist. [(B)(4)]

To even further reduce the cost of compliance, ODA is emphasizing that 42 USC 3026(a)(8) requires case management providers to coordinate with case management provided under other federal and state programs (e.g., the PASSPORT Program), which means that if a case manager has assessed a consumer for another such program, then the case manager should use that assessment for the Older Americans Act program rather than duplicate the assessment. If the case management provider for the "other" program is different than the case-management provider for the Older Americans Act program, then a cost of compliance may involve obtaining the consumer's authorization to share a copy of the assessment from the "other" provider and the cost of contacting the "other" provider to share that authorization and to obtain a copy of the consumer's assessment.

42 USC 3002(11) defines case management to include coordination with other plans and provides hospital discharge plans as an example. This also emphasizes that case management providers should use such assessments for the Older Americans Act program rather than duplicate them.

Additionally, for AAAs that directly provide case management, nothing in this rule prohibits the AAA from using the same case managers for the PASSPORT and Older Americans Act programs, which may lead to cost savings—especially for consumers who are assessed for both programs.

If an AAA entered an AAA-provider agreement with a provider to provide case-management-like assessments and another service, a cost of compliance for the AAA and the provider may be to revise the agreement to clarify when those assessments are part of case management and when they are part of another service. This may result in a new cost of compliance for a case management provider [or the AAA if the AAA directly provides case management], a cost reduction for the provider of the other service that was assessing consumers, and a transfer of Older Americans Act funds to the case-management provider [or AAA] from the provider of the other service that will no longer assess consumers.

Because case management is a Title III-B service, while a home-delivered meal is a Title III-C service, this may result in a need to spend more Title III-B funds on case

management if the service provider conducting case-management-like assessments of consumers is a provider of home-delivered meals. This would simultaneously free up Title III-C funds to pay for more meals.

Additionally, ODA will soon propose amend other rules to no longer require providers of services other than case management to conduct an assessment of a consumer that would duplicate an assessment required for federally-mandated case management. This will reduce costs for providers who do not provide case management of the cost of providing duplicative assessments.

14. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No**
15. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**
16. **If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.**

Not Applicable

III. Common Sense Initiative (CSI) Questions

17. **Was this rule filed with the Common Sense Initiative Office? Yes**
18. **Does this rule have an adverse impact on business? Yes**
 - A. **Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? No**
 - B. **Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? No**
 - C. **Does this rule require specific expenditures or the report of information as a condition of compliance? Yes**

Please review ODA's response to question #13 of this RSFA for details.

- D. **Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? Yes**

If an AAA entered an AAA-provider agreement with a provider to provide assessments and another service, a cost of compliance for the AAA and the provider may be to revise the agreement to clarify when assessments are part of case management and when they are part of another service. This may result in a new cost of compliance for a case management provider [or the AAA if the AAA directly provides case management], a cost reduction for the provider of the other service that was assessing consumers, and a transfer of Older Americans Act funds to the case-management provider [or AAA] from a provider of the other service that will no longer assess consumers.

Because case management is a Title III-B service, while a home-delivered meal is a Title III-C service, this may result in a need to spend more Title III-B funds on case management if the service provider conducting case-management-like assessments of consumers is a provider of home-delivered meals. This would simultaneously free up Title III-C funds to pay for more meals.

IV. Regulatory Restriction Requirements under S.B. 9. Note: This section only applies to agencies described in R.C. 121.95(A).

19. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? No

A. How many new regulatory restrictions do you propose adding to this rule?

Not Applicable

B. How many existing regulatory restrictions do you propose removing from this rule?

Not Applicable

C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.

Not Applicable

D. Please justify the adoption of the new regulatory restriction(s).

Not Applicable