

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 173-3-06

Rule Type: Amendment

Rule Title/Tagline: Older Americans Act: requirements to include in every AAA-provider agreement.

Agency Name: Department of Aging

Division:

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I. Rule Summary

1. **Is this a five year rule review?** Yes
 - A. **What is the rule's five year review date?** 3/2/2018
2. **Is this rule the result of recent legislation?** Yes
 - A. **If so, what is the bill number, General Assembly and Sponsor?** HB 49 - 132 - Smith
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 173.01, 173.02, 173.392; 42 U.S.C 3025(a)(1)(C); 45 C.F.R. 1321.11(a).
5. **What statute(s) does the rule implement or amplify?** 173.39, 173.392; 42 U.S.C. 3030d; 45 C.F.R. Part 75, 1321.11(b), 1321.53, 1321.65, 1321.67.
6. **What are the reasons for proposing the rule?**

This rule exists as part of a chapter of rules ODA adopted to (1) implement the Older Americans Act Program for Ohio, (2) comply with the mandate in ORC§173.392, and (3) implement statewide, uniform standards (45 CFR Part 75) for AAA-provider

agreements in Ohio for goods and services paid, wholly or in part, with Older Americans Act funds.

After reviewing the current version of this rule plus an amendment to ORC§5101.61 in HB49 (132nd GA), ODA now proposes to amend this rule.

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

This rule requires every AAA-provider agreement to require compliance with 45 CFR 75.327 to 75.335, including Appendix II to 45 CFR Part 75. After consulting with JCARR's attorney, ODA believes those references are general references, not federal standards incorporated by reference. AAA-provider agreements would be subject to those federal rules even if ODA didn't make general reference to them. ODA is not requiring standards that would not exist had ODA not referred to them in this rule. Therefore, to eliminate the problem caused by dating references, ODA proposes to delete dates from its general references to federal standards.

ODA also proposes the following amendments:

(1) Delete the quotation marks around "agreement" in (A).

(2) Implement changes being made by HB49 (132nd GA) to section ORC §5101.61 by adding a sunrise provision requiring compliance with ORC §5101.61 through September 28, 2018 and with ORC §5101.63 on and after July 29, 2018.

8. Does the rule incorporate material by reference? No

9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.71 to 121.76, please explain the basis for the exemption and how an individual can find the referenced material.

Not Applicable

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

Not Applicable

II. Fiscal Analysis

11. As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium

or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.

This will have no impact on revenues or expenditures.

\$0.00

ODA estimates the proposed amendments to this rule will have no impact upon the biennial budget the Ohio General Assembly established for ODA.

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

Providers are directly affected by AAA-provider agreements. An inherent adverse impact of AAA-provider agreements on providers is complying with the requirements for providers in those agreements. None of ODA's proposed amendments to this rule will require AAAs to add more requirements to AAA-provider agreements.

ODA estimates providers will not experience an increased adverse impact resulting from ODA's proposed amendments to remove dates from general references to federal law in this rule. These amendments may produce the following positive impacts:

(1) The current version of this rule forces AAAs to use the version of federal rules last cited in the current version of this rule, even if the federal standard has since changed. The amendments will allow this rule to keep in step with evolving federal standards.

(2) AAAs and providers will no longer be required to retain access to old federal standards to comply with this rule.

ODA estimates there is no adverse impact to AAAs or providers from adding a sunrise provision to match the sunrise provision for adult protective services in HB49 (132nd GA). Without the amendment, later this year, AAAs and providers may attempt to review ORC§5101.61 only to discover it will appear to have been repealed, when in fact, it will have been renumbered. ODA also wants to eliminate the possibility that a provider may interpret the apparent repeal of ORC§5101.61 as a release from its responsibility to be a mandatory reporter of abuse, neglect, and exploitation of elders to the Adult Protective Services program. Overall, ODA's proposed amendment is not an adverse impact; it's helpful.

Please review the BIA for additional information.

13. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No**
14. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**

III. Common Sense Initiative (CSI) Questions

15. **Was this rule filed with the Common Sense Initiative Office? Yes**
16. **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**

ORC§173.39 prohibits ODA from paying a provider for the goods and services it provides unless it enters into a contract or grant agreement (i.e., an AAA-provider agreement) subject to the rules ODA adopts under ORC§173.392. OAC173-3-04 requires AAAs to enter into such agreements to provide goods and services to consumers.

Instead of containing the requirement to have an AAA-provider agreement, this rule contains the standards for what goes into an AAA-provider agreement.

- 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**

The rule requires AAA-provider agreements to require the following:

- (1) Providers shall retain records to verify their provision of goods and services to consumers.
- (2) Providers shall return any Older Americans Act funds payments for goods or services it provided that were out of compliance with state or other laws.