

Rule Summary and Fiscal Analysis (Part A)**Department of Aging**

Agency Name

Division

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173-3-07

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Consumer cost-sharing policies.**RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **Yes**

2. Are you proposing this rule as a result of recent legislation? **No**

3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**

4. Statute(s) authorizing agency to adopt the rule: **173.01; 173.02; 173.04; 173.392; Section 305(a)(1)(C) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; 45 C.F.R. 1321.11 (October 1, 2012 edition)**

5. Statute(s) the rule, as filed, amplifies or implements: **173.04; 173.392; Section 315 of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; 45 C.F.R. 1321.67 (October 1, 2012 edition); 209.30 of H.B.59 (130th G.A.)**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

Federal law PERMITS ODA to implement cost sharing, but requires ODA to implement voluntary contributions. State law REQUIRES ODA to implement cost sharing. Thus, the reason for ODA to file this rule is to implement federal law and comply with state law. The specifics follow.

Section 305(a)(1)(C) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; and 45 C.F.R. 1321.11 (October 1, 2012 edition) authorize the state unit on aging (i.e., ODA) to adopt policies to implement the provisions of the Act.

Section 315(a)(1) of the Act permits ODA to implement cost sharing. However, because of the uncodified budget language that ODA lists below, ODA is required to implement cost sharing for services purchased with Older Americans Act funds.

Section 315(b) of the Act requires the acceptance of voluntary contributions and section 315(b)(4)(D) requires are agencies on aging (AAAs) to account for the contributions.

Uncodified section 209.30 of pending H.B.59 (130th G.A.) would require, and section 209.30 of H.B.487 (129th G.A.) and previous budget bills already require, ODA to implement cost sharing for services purchased with Senior Community Services funds. Senior Community Services funds are used as a match for Older Americans Act funds in accordance with Section 304 of the Act. Requiring cost sharing for the Senior-Community-Services side of the match obligates ODA to require cost sharing for the Older-Americans-Act side of the match. ODA is mentioning both H.B.59 and H.B.487 because ODA is filing the rule while one bill is in effect, but ODA will adopt the rule after the proposed rule takes effect. The language in both rules is the same.)

Section 173.392 of the Revised Code gives ODA authority to adopt rules regarding provider agreements (i.e., contracts and grants) for providers that provide services to consumers who are enrolled in ODA's non-Medicaid programs (i.e., programs that do not require provider certification). Pursuant to rule 173-3-06 of the Administrative Code, a requirement for every provider agreement is to comply with the cost sharing and voluntary contributions requirements in rule 173-3-07 of the Administrative Code.

Section 173.04 of the Revised Code gives ODA authority to adopt rules to govern the Alzheimer's Respite Program. Alzheimer's Respite Program funds are used as a match for Older Americans Act funds, particularly funds the federal government appropriates to states for the National Family Caregiver Support Program, which requires a 25% match according to Section 373(g)(2)(B) of the Act. As previously stated, because Ohio's budget bills have been requiring ODA to require cost sharing for programs that use Older Americans Act funds, ODA must require cost sharing for Older Americans Act funds. Requiring cost sharing for the

Older-Americans-Act side of the match obligates ODA to require cost sharing for the Alzheimer's-Respite-Program side of the match. Likewise, accepting voluntary contributions for the Older-Americans-Act side of the match obligates ODA to accept voluntary contributions for the Alzheimer's-Respite-Program side of the match.

Additionally, Section 119.032 of the Revised Code requires ODA to review each rule no later than the rule's assigned review date. Accordingly, ODA has reviewed the rule 173-3-07 of the Administrative Code before its review date and is now proposing to amend the rule to make 3 corrections, 1 clarification, and 4 non-substantive changes.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

3 CORRECTIONS: ODA is proposing to amend the rule to:

1. Correct paragraph (C)(3) of the rule to require the area agencies on aging (AAAs) to establish a procedure to safeguard and account for cost share payments consumers make for each service provider involved, not just consumer-directed providers. This correction has no adverse impact, because the Sections 315(a)(5) and 315(a)(5)(B) of the Act require area agencies on aging (AAAs) to establish such a procedure, even if the rule--up to this point--has not. ODA will make this correction by replacing "a consumer" with "consumers, including from consumers."

2. Correct paragraph (E) of the rule by inserting "paragraph (C) of" in between "The AAA may request a waiver of" and "this rule." This correction would eliminate language that says AAAs may request waivers from the requirement to accept voluntary contributions. The proposed correction has no adverse impact because Section 315(a)(6) of the Act allows for waivers against the requirement to cost share, but not against the requirement to accept voluntary contributions. Fortunately, no AAA has attempted to request a waiver from the requirement to collect voluntary contributions.

3. Correct the previous effective dates that ODA lists at the end of the rule. The rule first took effect on January 17, 1999, not December 14, 1994. Following the advice of the Legislative Service Commission, ODA is proposing to list the effective dates in the following manner because the rule's number has changed multiple times: "173-2-02: 01/17/1999; 173-3-01: 05/15/2000, 09/30/2001, 05/16/2005; 173-3-07: 02/15/2009."

1 CLARIFICATION: ODA is proposing to clarify in paragraph (E) of the rule that a decision on whether or not ODA would approve a request for a waiver is not subjective. Instead, it is based upon a preponderance of the evidence. To

accomplish this, ODA is proposing to amend the rule to replace "convincingly demonstrates to ODA's satisfaction any of the following..." with "demonstrates to ODA by a preponderance of the evidence that...." Because no AAA has ever requested a waiver from the requirement to adopt a cost-sharing policy, ODA anticipates that there would be no new adverse impact created by this proposed amendment--especially because ODA is not proposing to change the criteria that ODA would consider.

4 NON-SUBSTANTIVE CHANGES: ODA is proposing to amend the rule to:

1. Replace the title so that it reflects both cost sharing and voluntary contributions, not just cost sharing.
2. Replace "Title III, Part E" in paragraph (B)(2) of the rule with "National Family Caregiver Support Program." In doing so, readers of the rule could see the common name of the program rather than the section of legislation that authorizes it.
3. Replace, in reference to the federal poverty guidelines, the phrase "which are updated periodically in the register by the U.S. department of health and human services under 42 U.S.C. 3302 (2)" with "as defined in section 5101.46 of the Revised Code."
4. Add the edition citation to the C.F.R. cited in the "statutory authority" section after the rule language to comply with Section 121.75 of the Revised Code. ODA does not need to fully cite the Older Americans Act in the rule because, in rule 173-3-01 of the Administrative Code, ODA fully cites "Older Americans Act" in its definition for the term which applies to all uses of "Older Americans Act" throughout Chapter 173-3 of the Administrative Code.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

The rule references the Older Americans Act of 1965, as amended in 2006, which is generally available to the public.

Furthermore, ODA provides a full citation to the Older Americans Act of 1965, as amended in 2006, in rule 173-3-01 of the Administrative Code. The definition of the Act in that rule applies to all rules of Chapter 173-3 of the Administrative Code.

The rule also references the Code of Federal Regulations. All CFRs are generally available to the public through the U.S. Government Printing Office's website.

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

ODA did not file the text of the Older Americans Act of 1965, as amended in 2006, electronically because ODA merely made a citation to the federal law and the federal law is generally available to persons who reasonably can be expected to be affected by the rule.

ODA did not file the text of the Code of Federal Regulations electronically because ODA merely made a citation to the CFR and CFRs are generally available to the public through the U.S. Government Printing Office's website.

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

On July 1, 2013, ODA revise-filed the rule to make changes to the rule's language. The changes fall into three categories:

VOLUNTARY CONTRIBUTIONS: ODA proposes to repeat two federal requirements for providers regarding voluntary contributions. The requirements already exist, so mentioning them in the rules would not create an adverse impact. Additionally, the rule would not require anything in excess of the federal requirements. This would have the effect of unburying the federal requirements.

COST SHARING: ODA would move the examples of services subject to cost sharing from the introductory paragraph to the paragraph under the "cost sharing" subheading.

OTHER NON-SUBSTANTIAL: ODA would make the following non-substantial revisions:

Replace the title with "Consumer contributions."

Delete the verbose additions of "consumer" before occurrences of the words "cost-sharing" and "cost sharing."

Make the rule easier to navigate by organizing the paragraphs under the following

subheadings: "Introduction," "Voluntary contributions," and "Cost sharing."

Insert "of income" after "self-declaration" in paragraph (C)(3)(b) of the rule.

Replace "less funds" with "fewer funds" in paragraph (C)(5)(b) of the rule.

Add the following to the "Rule amplifies" section: "45 C.F.R 1321.67 (October 1, 2012 edition)."

Replace "H.B.487 (129th G.A.)" in the "Rule amplifies" section with "H.B.59 (130th G.A.)."

On July 1, 2013, ODA also revised this RSFA accordingly.

On July 11, 2013, ODA refiled the rule to:

1. Delete the following sentence from the end of paragraph (B)(3)(a) of the rule: "ODA may allow an AAA to substitute the sliding-fee schedule below with another sliding-fee schedule" and also delete the reference to the substitute sliding-fee schedule in (B)(3)(d)(iii) of the rule. Section 315(a)(4) of the Older Americans Act of 1965, as amended in 2006, says, "If a State permits the cost sharing described in paragraph (1), such State shall establish a sliding scale, based solely on individual income and the cost of delivering services." Sections 315(a)(5) and 315(a)(5)(G) together say, "If a State permits the cost sharing described in paragraph (1), such State shall require each area agency on aging in the State to ensure that each service provider involved, and the area agency on aging, will...widely distribute State created written materials in languages reflecting the reading abilities of older individuals that describe the criteria for cost sharing, the State's sliding scale, and the mandate described under subparagraph (E)." Therefore, ODA is deleting contrary language that says an AAA may substitute the state's sliding-fee schedule with one of their own.

2. Upload a public hearing notice for a 2nd public hearing.

3. Revise this RSFA accordingly.

On July 19, 2013, ODA refilled the rule to:

1. Replace, in paragraph (B)(1) of the rule, "Pursuant to...each provider shall" with "in accordance with...a provider may." This is a correction to ODA's July 1, 2013 revised filing of the rule. On July 1, ODA mistakenly said "Pursuant to 45 C.F.R. 1321.67(c) (October 1, 2012 edition), each provider shall develop a suggested contributions schedule for voluntary contributions." However, the federal regulation actually says, "Each service provider under the Older Americans Act may develop a suggested contributions schedule for services provided under this part." The need to correct this error was highlighted by the testimony that the Area Agency on Aging of Northwest Ohio, Inc. emailed to ODA in lieu of personal appearance at ODA's second public hearing for the rule on July 18, 2013.

2. Revise this RSFA.

12. 119.032 Rule Review Date: 5/30/2013

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

\$0.00

ODA estimates that the biennial budget that the Ohio General Assembly appropriated to ODA would be unaffected by the proposed amendments to the rule.

Because of this rule, providers collected over \$6.5 million in cost shares and voluntary contributions in 2012. Specifically, providers collected \$140,681 in cost shares and \$6,361,213 in voluntary contributions--45x more voluntary contributions than cost shares.

As ODA indicated in the BIA, Ohio providers collect 50% more program income from consumers than the national average. Nationwide, voluntary contributions for 2009 accounted for 4% of the amount providers received for their services. Ohio providers' combined cost shares and voluntary contributions for 2009 accounted for 6% of the of the amount they received for their services. The percentage was also 6% in 2012.

The cost shares and voluntary contributions are for use as income for providers to offer more of the same services for which the cost shares and voluntary contributions were made. In the tables that ODA published in the BIA, ODA compiled a history of how much program income has been received over the past four program years. The tables show (1) cost sharing by service by year, (2) voluntary contributions by service by year, and (3) cost sharing and voluntary contributions combined as a percentage of each funds spent on each service by

year.

Highlights of the aforementioned tables reveal that providers of congregate meals, home-delivered meals, and transportation are most likely to receive such program income. Such income has been accounting for 14%, 8%, and 4% of the amount they receive for their services, respectively.

Program income does not directly affect the General Assembly's appropriations for ODA.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

GRF-490-411 Senior Community Services.

GRF-490-414 Alzheimer's Respite.

3220-490-618 Federal Aging Grants.

3M40-490-612 Federal Independence Services.

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

As ODA indicated in the BIA, there are two costs to consider: (1) the cost to account for cost shares and voluntary contributions and (2) the cost shares and voluntary contributions. The former is an administrative cost that is offset by the latter which becomes program income for the provider to expand services.

None of ODA's proposed amendments to the rule would add any new compliance costs, as follows:

1. ODA is proposing to correct paragraph (C)(3) of the rule to require the AAAs to establish a procedure to safeguard and account for cost share payments consumers make for each service provider involved, not just consumer-directed providers. This correction has no cost of compliance, because the Sections 315(a)(5) and 315(a)(5)(B) of the Act require AAAs to establish such a procedure, even if the rule has not.

2. ODA is proposing to correct paragraph (E) of the rule by inserting "paragraph (C) of" in between "The AAA may request a waiver of" and "this rule." This correction would prevent AAAs from requesting waivers from the requirement to accept voluntary contributions. The proposed correction has no cost of compliance because Section 315(a)(6) of the Act allows for waivers against the requirement to cost share, but not against the requirement to accept voluntary contributions.

Additionally, no AAA has ever requested a waiver from the requirement to collect voluntary contributions.

3. ODA is proposing to amend the rule to clarify in paragraph (E) of the rule that a decision on whether or not ODA would approve a request for a waiver is not subjective. Instead, ODA's decision would be based upon a preponderance of the evidence. To accomplish this, ODA is proposing to replace "convincingly demonstrates to ODA's satisfaction any of the following..." with "demonstrates to ODA by a preponderance of the evidence that...." Because no AAA has ever requested a waiver from the requirement to adopt a cost-sharing policy, ODA anticipates that the proposed amendment would not create any cost of compliance--especially because ODA is not proposing to change the criteria that ODA would consider.

4. ODA is also proposing to make 4 non-substantive changes to the rule. Making the non-substantive changes would not add any new cost of compliance.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

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**

As ODA cited in the BIA, quantifying the general requirement to collect cost shares and voluntary contributions requires considering two costs: (1) the cost to account

for cost shares and voluntary contributions and (2) the cost shares and voluntary contributions.

The accounting involves reporting the cost shares and voluntary contributions to the AAA according to the method established by the AAA. Sections 315(a)(5) and 315(a)(5)(B) of the Act require ODA to require AAAs to establish a cost-sharing policy that includes a procedure on how to "account for cost share payments." Section 315(b)(4)(D) requires the AAAs to establish a procedure on how to "account for all contributions." Thus, accounting for cost shares and voluntary contributions is not a burden of this rule, but a burden mandated by the Act and designed by the AAA.