

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 173-3-09

Rule Type: Amendment

Rule Title/Tagline: Older Americans Act: administrative hearings for adversely-affected providers.

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?** 10/5/2021
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. 1321.11
5. **What statute(s) does the rule implement or amplify?** 173.39, 173.391; 42 U.S.C. 3020c
6. **What are the reasons for proposing the rule?**

Section 173.392 of the Revised Code requires ODA to adopt rules to establish 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. The rules in Chapter 173-3 of the Administrative Code establish these requirements.

ODA proposes to amend this rule.

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

Rule 173-3-09 of the Administrative Code establishes the process for administrative hearings for adversely-affected providers.

ODA proposes to amend this rule to achieve the following:

1. Allow emailed requests for hearings.
2. Reduce or replace words that imply requirements for outdated modes of communication (e.g. "maintain in writing," "written," "submit a written," and "copy").
3. Replace references to "Chapter. 119 of the Revised Code" with "Chapter 119 of the Revised Code" to comply with the Legislative Service Commission's new Rule Drafting Manual.
4. Move the requirement in the first sentence of paragraph (C)(5) of this rule to a new paragraph (C)(4)(c) of this rule.
5. Replace one of the reasons that a hearing officer may limit or terminate testimony at a hearing from "the provider or the AAA negotiate a written agreement that resolves the adverse action(s) that prompted the hearing" to "The provider and the AAA entered into a settlement that resolved the adverse action(s) that prompted the hearing."
6. Replace the requirement for the hearing officer to record the hearing or for ODA to pay for a court reporter to a requirement for the hearing officer to record the hearing unless ODA pays for a court reporter.
7. Move the first sentence of paragraph (C)(5) of this rule to become paragraph (C)(4)(c) of this rule and allow, in that paragraph, the hearing officer to transmit the testimony, evidence, and the hearing officer's recommendation to ODA in email. However, ODA proposes to discard the 2nd regulatory restriction in that sentence when moving the sentence from (C)(5) to (C)(4)(c).

ODA also proposes to make non-substantive amendments to this rule.

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. 121.75, 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. **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 the proposed amendments to this rule will not affect the biennial budget that the Ohio General Assembly established for ODA in H.B. 110 (134th G.A.).

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

If a provider wants a hearing, the provider must request the hearing.

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**

15. **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

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

17. 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**

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, it must 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.

- 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**

If a provider wants a hearing, the provider must request a hearing.

- 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? No**

IV. Regulatory Restrictions (This section only applies to agencies indicated in R.C. 121.95 (A))

18. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? Yes

- A. How many new regulatory restrictions do you propose adding? 0**

- B. How many existing regulatory restrictions do you propose removing? 3**

(C)(2) "To request a hearing before ODA, the provider shall submit a written request to ODA's director...."

(C)(4)(b) "...or ODA shall pay a court reporter to record the hearing."

(C)(5) "...and shall make a written recommendation to ODA...."