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Hearing Date: 10/22/2024

Today's Date: 11/1/2024

Agency: Ohio Department of Aging

Rule Number(s): 173-3-04, 173-3-06.9

If no comments at the hearing, please check the box. ☐

List organizations or individuals giving or submitting testimony before, during or after the public hearing and indicate the rule number(s) in question.

1. All testimony was on rule 173-3-06.9 of the Administrative Code. Please see the attached chart of comments and responses.

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Hearing Summary Report

Consolidated Summary of Comments Received

Please review all comments received and complete a consolidated summary paragraph of the comments and indicate the rule number(s).

Please see the attached chart of comments and responses.

Hearing Summary Report

Incorporated Comments into Rule(s)

Indicate how comments received during the hearing process were incorporated into the rule(s). If no comments were incorporated, explain why not.

ODA plans to refile the 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.
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.
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.
4. No longer require the service plan to record how to provide each service.
5. Require recording milestones in the service plan only as appropriate.
6. No longer require the service plan to record the standards for assessing accomplishment on milestones and progress toward established goals.
7. No longer require case managers to assist the consumer or caregiver in obtaining needed services and resources through education and advocacy.
8. No longer require case managers to provide direct intervention to assist the overall goals of the consumer's or caregiver's plan.
9. No longer state the annual reassessment to determine the consumer's eligibility is conducted as an in-home visit.
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.

Hearing Summary Report

PUBLIC HEARING SUMMARY

OLDER AMERICANS ACT: CASE MANAGEMENT

Date of Hearing: October 22, 2024

ODA received testimony from three of the twelve area agencies on aging, OhioAging, and seven service providers. The table below presents the comments raised in testimony and ODA's responses to those comments.

	Party Testifying	Comment	ODA's Response
1	AAA4 AAA6 AAA7 Maumee Senior Center (PSA4) MemoryLane Care Services (PSA4) OhioAging LifeCare Alliance (PSAs 2, 5, 6) SourcePoint (PSA6) Fulton County Senior Center (PSA4)	Paying for case management will reduce the availability of OAA funds for other services and lead to waiting lists.	42 USC 3026(a)(2) and (a)(8) require each area plan to assure that case management is provided in the planning and service area. This is not a new requirement.
2	AAA6 OhioAging SourcePoint (PSA6)	Allow assessments conducted by non-OAA-funded case management to apply to OAA programs. Case management provided by multiple funding streams can provide assessment data for OAA purposes.	42 USC 3026(a)(8) prohibits duplicating case management provided through other federal and state programs and requires coordinating case management with case management provided through other federal and state programs. Therefore, a case management provider must use an assessment that another state or federal program (e.g., the PASSPORT Program) conducts on a consumer rather than conduct a duplicate assessment of the same consumer.
3	AAA1	AAA1 currently pays for case management of OAA consumers with local levy funds, thereby leaving all OAA funds for other services. This rule would require using OAA funds.	An AAA may spend local levy funds for case management. An AAA may also use local funds as the non-federal share of total Older Americans Act expenditures (i.e. as part of the state and local match) to fulfill the case management requirement in 42 USC 3026(a)(2) if the AAA meets its adequate minimum proportion.

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	Party Testifying	Comment	ODA's Response
4	WCCOA	42 USC 3026 prohibits using OAA funds to duplicate case management provided by other federal and state programs.	Please review ODA's response to comment #2.
5	AAA6 AAA7 OhioAging Great Lakes Community Action Partnership (PSA4) SourcePoint (PSA6)	Allow providers who assess ADLs and IADLs and who collect consumers' data for NAPIS to provide other services. Disagree that there is a conflict of interest.	A provider of case management generally cannot also be a provider of another service because 42 USC 3026(a)(8)(C) prohibits a case management provider from being both the agent of the consumer and the promoter of its other services, unless waived. Additionally, 42 USC 3026(a)(8) requires a case management provider be either a government or private nonprofit agency, to inform consumers of all providers of services in the planning and service area and to inform those consumers of their right to choose from which of those providers to receive services. 45 CFR 1321.47 includes competing duties such as these as examples of a conflict of interest.
6	MemoryLane Care Services (PSA4)	Can a provider provide an adult day service and case management to the same consumer?	Please review ODA's response to comment #5.
7	WCCOA	Prohibiting a provider from providing case management and another service will lead to inefficiencies and may create dangers for consumers. ¹	Please review ODA's response to comment #5.
8	AAA6 OhioAging SourcePoint (PSA6)	Give AAAs time to implement this new rule.	ODA agrees with this comment. This is a long-standing federal requirement cited in ODA's response to comment #1.
9	LifeCare Alliance (PSAs 2, 5, 6)	What is the envisioned deadline for implementing this proposed new rule's requirements?	1/1/25
10	OhioAging SourcePoint (PSA6)	Acknowledges that [in PSAs where] assessments of consumers are done by providers of services other than case management will require [the AAAs for those PSAs] amending contracts with service providers to move assessment responsibilities to case-management providers and urges doing so in a way to minimize administrative burden and to minimize reduction of services.	Paragraph (B)(7)(b) of rule 173-3-06 of the Administrative Code requires AAAs to fully implement this rule, including through contract renewals at the earliest opportunity.
11	AAA4	The AAA uses Title III-C funds to pay for assessments of consumers who receive home-delivered meals.	Comparable assessments are permitted to be used to satisfy this rule. This rule will take priority over rule 173-4-03 of the Administrative Code, which will be amended in the near future to clarify this issue.

¹ Testimony cited slow response times to providers' reports of incidents to case managers at PASSPORT administrative agencies.

	Party Testifying	Comment	ODA's Response
12	AAA4	Estimates that the cost of case management exceeds the AAA's total OAA funding.	ODA, and the AAAs as ODA's designees, must comply with federal law. 42 USC 3026(a)(8) requires case management and requires coordinating the case management with case management under other federal and state programs. This allows for case management for Older Americans Act programs to use recent assessments done for other federal and state programs rather than duplicating them.
13	AAA7	Claims that the new rule will remove freedom of choice from a consumer who wants home-delivered meals or wants to use an adult day center, but does not want case management.	ODA must implement federal law, but will monitor for any adverse consequences that may be ameliorated. Additionally, case managers increase freedom of choice by informing consumers of service options that can meet their needs.
14	AAA4	Recommends assessing ADLs and IADLs instead of full case management for ADS, chores, and home-delivered meals.	Case management must be provided as defined in federal law.
15	AAA6	Recommends requiring case management of only consumers with the highest need for services and case management.	Case management is required for cluster one services that are reported to ACL. ODA will revise this rule to allow greater flexibility in how case management assessments are completed to allow for video conferencing as appropriate.
16	OhioAging	Disagrees that case management is a federal requirement.	ODA disagrees. <ul style="list-style-type: none"> • 42 U.S.C. 3026(a)(2)(A) requires an adequate proportion of funds be spent on access services, including case management. • 42 U.S.C. 3026(a)(8) sets requirements for case management • 42 U.S.C. 3030d(a)(5)(A) includes case management as a supportive service. • 45 CFR 1321.9(b) requires ODA to ensure that ODA's case management requirements follow ACL's "regulations, policy guidance, and other information developed by the Assistant Secretary for Aging."
16	OhioAging	Recommends not requiring ongoing case management if the consumer does not receive ongoing services.	ODA agrees. Case management is not required if the consumer is not receiving any additional service.

	Party Testifying	Comment	ODA's Response
17	MemoryLane Care Services (PSA4)	The new rule may indirectly increase costs for providers who would need to contact case managers for authorization and to report changes in consumer status, use of services, etc.	This is a federal requirement to avoid a conflict of interest by a trained individual to provide case management.
18	MemoryLane Care Services (PSA4)	Recording the accomplishment of milestones in a consumer's service plan may not make sense if the service is a chore like snow removal or lawn mowing.	ODA agrees. ODA will revise this rule to record milestones "as appropriate."
19	MemoryLane Care Services (PSA4)	Training and supervision of case managers is important for the quality of case management and for reducing employee turnover.	ODA agrees. At this time, ODA is not establishing specific training or supervision standards in this rule.
20	LifeCare Alliance (PSAs 2, 5, 6)	What initial training and ongoing technical assistance will ODA provide to AAAs and providers regarding service planning requirements?	ODA is preparing to provide technical guidance and support to AAAs for case management and OAA regulations.
21	MemoryLane Care Services (PSA4)	Recording the name of each employee providing case management may be difficult if provided by several staff—for example, in an adult day center.	ODA agrees. This is not a requirement of this rule. Please also review ODA's response to comment #5 regarding conflict of interest.
22	LifeCare Alliance (PSAs 2, 5, 6)	The definition of <i>case management</i> in 42 USC 3002 doesn't include goals or progress. What is the definition of <i>goal</i> ?	The federal definition of "case management" states that developing and monitoring service plans are part of case management. It also states that the purpose of monitoring is to "ensure that services specified in the plan are being provided."
23	LifeCare Alliance (PSAs 2, 5, 6)	What is the definition of <i>unit</i> ?	Unit is defined in paragraph (C) of the rule.
24	LifeCare Alliance (PSAs 2, 5, 6)	What activities of case management may the provider conduct by phone (vs. in person)?	ODA agrees in part. Please see the forthcoming revisions to paragraph (B)(3)(a) to the rule.
25	Fulton County Senior Center (PSA4)	Case management is intrusive and may "detour" older Ohioans "from receiving necessary help or services."	Case management increases freedom of choice by informing consumers of service options that can meet their needs.