

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Department of Aging (ODA)

Regulation/Package Title: Senior Facilities Program

Rule Number(s): Chapter 173-11 of the Administrative Code

Date: August 13, 2013 (Revised November 14, 2013)

**Rule Type:**

☒ New [173-11-03]

☒ 5-Year Review [entire chapter]

☐ Amended

☒ Rescinded [entire chapter]

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

### **Regulatory Intent**

**1. Please briefly describe the draft regulation in plain language.**

*Please include the key provisions of the regulation as well as any proposed amendments.*

ODA appreciates the vital role that multi-purpose senior centers play in caring for older Ohioans. Over the years, ODA was honored to distribute funds from the Senior Facilities Program<sup>1</sup> to counties, townships, municipal corporations, and local non-profit organizations to build multi-purpose senior centers, to renovate buildings that would become multi-purpose senior centers, or to purchase services for the multi-purpose senior centers.

In 1978, H.B.1084 (112<sup>th</sup> GA) established the Senior Facilities Program and, in 1980 and 1984, H.B.827 (113<sup>th</sup> GA) and H.B.660 (115<sup>th</sup> GA) respectively modified the program. However, since 2001, the program has been dormant due to a lack of

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<sup>1</sup> The program is also called the "Multi-Purpose Senior Center Program."

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adequate funding. The General Assembly discontinued funding the program and no person or organization has awarded a grant or gift to the program.

Although the program is dormant, section 173.11 of the Revised Code continues to establish the program, which leaves the potential for an adequate funding source to resuscitate it. Part of the requirement in section 173.11 of the Revised Code is for ODA to adopt rules under which counties, townships, municipal corporations, or local non-profit organizations may apply to ODA to participate in the program if future funding resuscitates the program from its dormancy.

Because section 173.11 of the Revised Code continues to require ODA to adopt rules, ODA continues to comply with its regulatory duties concerning the rules, including the periodic review.<sup>2</sup> Section 119.032 of the Revised Code requires ODA to review Chapter 173-11 of the Administrative Code this year, which for the first time, includes subjecting the rules to the Common-Sense Initiative that S.B.3 (129<sup>th</sup> GA) created.

Earlier in the year, ODA reviewed Chapter 173-11 of the Administrative Code, proposed to make non-substantive amendments to each rule, and then submitted the proposal to the Common-Sense Initiative Office (CSIO).

However, on November 14, ODA officially changed its proposal.

On November 14, CSIO released its official comments on the proposed amendments. CSIO acknowledged that the Senior Facilities Program is dormant, but that section 173.11 of the Revised Code continues to require ODA to adopt rules during the dormancy. CSIO commented that it would make no recommendations regarding the rule package with the understanding that ODA would proceed with a common-sense, single-rule alternative that would be more appropriate for a dormant program. In the weeks preceding the November 14 comments, CSIO had been working with ODA to develop the alternative proposal.

Specifically, CSIO asked ODA to: (1) rescind the existing rules for the program, (2) draft a single new rule that provides a basic framework for counties, townships, municipal corporations, or local non-profit organizations (which may include existing senior centers) to apply to ODA to participate in the program; and (3) include language that says the rule applies if future funding resuscitates the program from its dormancy.

Therefore, ODA is now proposing to facilitate (1) above by rescinding all of Chapter 173-11 of the Administrative Code. In place of the chapter, ODA is proposing to adopt new rule 173-11-03 of the Administrative Code to facilitate (2) and (3) above.

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<sup>2</sup> Aka, "The five-year rule review."

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**2. Please list the Ohio statute authorizing the Agency to adopt this regulation.**

- Section 173.11 of the Revised Code gives ODA specific authority to adopt rules “under which counties, townships, municipal corporations, or local nonprofit organizations may make application to the department to operate a multipurpose senior center or to participate in a multipurpose senior center program.”
- Section 173.01 of the Revised Code gives ODA general authority to adopt rules to “govern the operation of services *and facilities* for the elderly that are provided, operated, contracted for, or supported by the department.”
- Section 173.02 of the Revised Code gives ODA general authority to adopt rules to regulate services provided through programs that it administers.

**3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

*If yes, please briefly explain the source and substance of the federal requirement.*

Chapter 173-11 of the Administrative Code does not implement a federal requirement.

**4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Chapter 173-11 of the Administrative Code does not implement a federal requirement.

**5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

So long as the program’s dormancy continues, the primary public purpose for Chapter 173-11 of the Administrative Code is for ODA to remain in compliance with section 173.11 of the Administrative Code. The section requires ODA to adopt rules under which counties, townships, municipal corporations, or local non-profit organizations may apply to ODA to participate in the program if future funding resuscitates the program from its dormancy.

**6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

ODA (and ODA’s designees) would monitor for compliance.

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## Development of the Regulation

**7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

*If applicable, please include the date and medium by which the stakeholders were initially contacted.*

On April 11, ODA made a presentation to a monthly meeting of the Ohio Association of Senior Centers (OASC) about the Common-Sense Initiative and ODA's 2013 rule projects, including this rule project.

On July 11, ODA wrote the following to OASC:

The members of the Ohio Assn. of Senior Centers may have an interest in the Senior Facilities Program. ODA will soon begin to review the rules for possible amendments *etc.* to comply with the requirement under section 119.032 of the Revised Code to review every rule before the review date that ODA assigned to the rule, which for this program is November 30, 2013.

Certainly, this program has limits. The General Assembly has not funded it in years. Only legislation will change the funding for the program or any statutes that regulate the program.

If any senior center is interested in commenting upon the rules, they will be able to find copies of the rules under Chapter 173-11 of the Ohio Administrative Code, which ODA presents in its online rules library. Follow [this link](#) to go directly to Chapter 173-11.

Please send any comments to me at [rules@age.ohio.gov](mailto:rules@age.ohio.gov).

On August 8, at a monthly OASC meeting, ODA reminded the senior centers of the rule project.

On August 13, ODA reminded OASC of the rule review and opportunity to provide early input. ODA set August 13 as the deadline for early input on the review of the rules.

Additionally, from August 14 to September 1, ODA posted the rule proposals on its website to seek public comments. On August 14, ODA distributed an email to announce that ODA had placed the rules and the business impact analysis on our website to seek public comments. ODA distributed the email to the 1,419 subscribers<sup>3</sup> of ODA's email notification service who indicated they wanted notices about rules.

**8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

Although given opportunities, no senior center contacted ODA to recommend amendments to Chapter 173-11 of the Administrative Code.

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<sup>3</sup> Counted on August 9.

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- 9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

ODA did not use scientific data to review the existing rules or to develop proposed new rule 173-11-03 of the Administrative Code.

- 10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

Although given opportunities, no senior center contacted ODA to recommend amendments to Chapter 173-11 of the Administrative Code.

- 11. Did the Agency specifically consider a performance-based regulation? Please explain.**  
*Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

ODA did not consider performance regulations. The program is presently dormant, so there are no performance goals for grant recipients.

- 12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

ODA reviewed the Ohio Administrative Code and found no duplication. No other state agency adopts rules for the Senior Facilities Program.

- 13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

ODA posts all proposed and currently-effective rules on its website. (<http://aging.ohio.gov/information/rules/default.aspx>) Before a rule takes effect, ODA posts it on its website and sends an email to any subscriber of our rule notification service.

Through its regular monitoring activities, ODA would work with its designees (*i.e.*, Area Agencies on Aging (AAAs)) to ensure that the regulation is applied uniformly. However, the program is dormant, so neither the AAAs or ODA are presently enforcing the regulations.

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## Adverse Impact to Business

**14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

**a. Identify the scope of the impacted business community;**

There is presently no impacted business community because the General Assembly has not funded the Senior Facilities Program since 2001 and no person or organization has awarded a grant or gift to the program. Therefore, no county, township, municipal corporation, or local non-profit organization is able to apply to ODA for a grant from the program.

**b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

So long as the program remains dormant, the proposed rescission of Chapter 173-11 and the proposed adoption of new rule 173-11-03 of the Administrative Code would create an adverse impact upon any county, township, municipal corporation, or local non-profit organization. If the program was funded, the adverse impact would be (1) the possibility that ODA would choose other applicants to receive grants, (2) the burden of applying for a grant, and (3) any reversionary interest ODA may retain in a facility that it paid to construct or renovate.

Regarding (3), ODA presently has no reversionary interest in any multi-purpose senior center that it constructed or renovated so reversionary interest is not an adverse impact. Rule 173-11-06 of the Administrative Code required a 10-year period during which ODA would maintain reversionary interest in the facilities it constructed or renovated. However, because the Senior Facilities Program has had no funds to grant since 2001, none of the previous recipients of previously awarded funds are any longer subject to the 10-year period of reversionary interest.

**c. Quantify the expected adverse impact from the regulation.**

*The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.*

The program does not present any adverse impact upon a senior center because the Ohio General Assembly has not funded the program in over a decade. As a result, the program not only has no grants to offer, it also has no regulatory burdens to require. The program is in a state of dormancy so long as it remains unfunded.

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**15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

To comply with section 173.11 of the Revised Code, ODA must adopt at least one rule under which counties, townships, municipal corporations, or local non-profit organizations may apply to ODA to participate in the program if future funding resuscitates the program from its dormancy.

### **Regulatory Flexibility**

**16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

Neither the statute nor the rules permit ODA to operate the Senior Facilities Program in a manner that treats a potential grant recipient or an existing multi-purpose senior center differently based upon the size of their workforce.

**17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

ODA will comply with section 119.14 of the Revised Code by exempting from penalties an act of non-compliance with the rules for first-time paperwork violations, so long as the first notice of the non-compliance does not reveal a significant pattern of non-compliance.

**18. What resources are available to assist small businesses with compliance of the regulation?**

ODA is available to help counties, townships, municipal corporations, local non-profit organizations, and existing multi-purpose senior centers of any size with their questions about the statutes and rules. Any organization may write to ODA's regulatory ombudsman at [rules@age.ohio.gov](mailto:rules@age.ohio.gov).