CSI - Ohio
The Common Sense Initiative

Business Impact Analysis

Agency Name:	**Ohio Department of Aging (ODA)**
Regulation/Package Title:	**Competition for Provider Agreements**
Rule Number(s):	**173-3-01, 173-3-04, 173-3-05, and 173-3-09**
Date:	**February 4, 2014 (Revised on February 27, 2014)**

Rule Types:

X New: 173-3-04, 173-3-05
X Amended: 173-3-01, 173-3-09
X 5-Year Review: All 4 rules
X Rescinded: 173-3-04, 173-3-05

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.

Business Impact Analysis

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.

INTRODUCTION

Competition for Provider Agreements

Rules 173-3-01, 173-3-04, 173-3-05, and 173-3-09 of the Administrative Code pertain to provider agreements obtained through open and free competition (*i.e.*, competitive bidding), not through provider certification.[1] In general, open and free competition allows a winner to have a provider agreement, while provider certification allows any willing and qualified provider to have a provider agreement.

Rule 173-3-05 of the Administrative Code is the primary rule of this 4-rule package. It expounds upon federal codes[2] that require open and free competition for provider agreements. Open and free competition gives any provider that wants a provider agreement (*i.e.*, a contract or grant) to provide goods or services a fair chance at obtaining a provider agreement. Because the providers that win provider agreements do so by offering better goods and services and lower prices, open and free competition spurs providers to find ways to offer better goods and services and lower prices.

The three remaining rules of the package cover related topics. Rule 173-3-01 of the Administrative Code introduces Chapter 173-3 of the Administrative Code and defines terms used in the chapter. Rule 173-3-04 of the Administrative Code regulates provider agreements in general (*e.g.*, limits to multi-year provider agreements). Rule 173-3-09 of the Administrative Code regulates appeals for when a bidder doesn't win a provider agreement with an area agency on aging (AAA) and has already appealed the matter to the AAA.

Goals of Rule Proposals

1. **Highlight Options for Open and Free Competition:** The primary goal of this rule package is to eliminate the need for AAAs to use the sealed-bidding method for open and free competition. The method costs AAAs more than other methods because it requires more administration. The method also costs providers more for the same reason.

[1] There are 2 routes for doing business with ODA. (1) A provider who provides goods or services to consumers who are enrolled in a Medicaid waiver program *must become certified* by ODA in order for ODA to reimburse the provider for its expenses. In order to become certified, the provider must comply with the conditions of participation listed in rule 173-39-02 of the Administrative Code. (2) A provider who provides services to consumers who are enrolled in ODA's non-Medicaid-funded programs (*e.g.*, Alzheimer's Respite or Older Americans Act Programs) *must enter into a provider agreement* with an area agency on aging in order for the programs to pay the providers for their expenses. Every provider agreement must contain the mandatory clauses in rule 173-3-06 of the Administrative Code (which are very similar to the conditions of participation in rule 173-39-02 of the Administrative Code). It is necessary to "win" a round of competitive bidding in order to enter into such a provider agreement. Many providers provide goods and services to both consumers who are enrolled in Medicaid waiver programs and in non-Medicaid funded programs. Accordingly, many providers are simultaneously working under rules for certified providers and for providers under provider agreements.

[2] See ODA's response to #3 of this BIA.

Although the current version of rule 173-3-05 of the Administrative Code does not mention sealed bidding, it implies that sealed bidding is required. That is because the rule details a request-for-proposal process that is part of sealed bidding. ODA believes that AAAs regularly procure goods and services by sealed bidding because of current language in rule 173-3-05 of the Administrative Code.

Therefore, ODA is proposing to adopt a new rule 173-3-05 of the Administrative Code that clearly indicates that sealed bidding is not always required. What the federal law requires is open and free competition and the federal law also gives AAAs a few ways to achieve the open and free competition. ODA intends to highlight those ways in the rule.

One of the non-sealed-bidding methods is a small-purchase method. It is similar to the way a homeowner would shop for a plumber. If the homeowner wanted to contract with a plumber, he or she would contact a few plumbers and choose, discuss needs and prices, then hire the plumber who offered to do the job correctly for the lowest cost.

Federal law permits an AAA to use the small-purchase methods for services that cost less than $100,000. In rural parts of the state, most provider agreements would be for less than $100,000. An AAA with a mostly-rural planning and service area may be able to use the small-purchase methods for most of their provider agreements. This would be a significant reduction in administrative costs for the AAA and the providers.

One way that ODA proposes to highlight the small-purchase method is by stating the threshold amount in the rule.

2. **Clarify When, and By What Authority, An AAA May Use Non-Competitive Procurement:** The current version of rule 173-3-05 of the Administrative Code contained language that said an AAA could ask ODA for permission to not offer open and free competition. Federal law outlines situations under which an AAA may forego open and free competition. An AAA does not need to ask ODA for permission to forego open and free competition in those situations. Under other situations, federal law *requires* AAAs to use open and free competition. ODA cannot waive the federal law. Therefore, ODA is proposing to remove that language from the rule.

3. **Make Rule 173-3-04 More Readable:** ODA is proposing to organize the rule 173-3-04 of the Administrative Code under new sub-titles.

4. **Clarify the Providers' Modes of Business under ODA Programs:** The introduction to Chapter 173-3 of the Administrative Code in the current version of rule 173-3-01 of the Administrative Code implies that some providers are certified, while other providers are not. However, that is not the case.

Providers can enter many lines of business and often are both certified and non-certified at once. This doesn't compare to being licensed and unlicensed at once, which wouldn't be possible. Instead, it means that they serve consumers who are enrolled in multiple ODA-administered programs: (1) Some programs refer business to providers through a process that involves provider certification. Any willing provider may provide the service so long as the provider meets the conditions of participation for that program. (2) Other programs procure goods and services from providers by allowing providers to compete for the business.

A provider may provide one service (*e.g.*, an adult day service) to consumers who are enrolled in a variety of programs all at once. For example, some consumers could be enrolled in a Medicaid-waiver program like the PASSPORT, Choices, or Assisted Living Programs. Providers who serve these consumers do so as certified providers. Other consumers could receive services from the Alzheimer's Respite or Older Americans Act Programs. Providers who serve these consumers do so as non-certified providers. A provider that serves consumers who are enrolled in the PASSPORT Program and who receive services through the Older Americans Act are providing one service through two means at once: certified and uncertified.

Occasion for Rule Review

Section 119.032 of the Revised Code requires ODA to review each rule no later than the rule's assigned review date, although on September 12, 2103, JCARR granted a request to extend ODA's deadlines by 180 days. Accordingly, ODA has reviewed the rules 173-3-01, 173-3-04, 173-3-05, and 173-3-09 of the Administrative Code either before their review dates or before the extended review dates.

Clarification

For the purposes of this BIA, the business that faces an adverse impact as described in section 107.52 of the Revised Code, is a provider of community-based long-term care services. In this BIA, ODA will simply refer to such a business as "provider." The AAAs are often called "ODA's designees" because ODA designates them as AAAs under the Older Americans Act. The grants that ODA receives from the federal government through the Older Americans Act, it sub-grants to the AAAs, which in turn use open and free competition to procure services from providers.

RULE-BY-RULE DETAILS

173-3-05 (primary rule of 4-rule package)

ODA is proposing to rescind the rule and, simultaneously, to adopt a new rule of the same number. By replacing this rule, ODA is proposing to:

1. Change the title from "Competitive bidding process" to "Procuring goods and services by open and free competition." "Competition" is a term the title in 45 C.F.R. 74.43 (10-01-2013 edition) and a sub-title under 45 C.F.R. 92.36 (10-01-2013 edition).[3]

2. Cite the edition numbers of the C.F.R. citations in the rule to comply with section 121.75 of the Revised Code. {*E.g.*, "(10-01-2013 edition)"}

3. Move language regarding debarred providers from this rule to rule 173-3-04 of the Administrative Code.

4. Highlight that there are four methods for using federal funds to procure service: 3 of which are competitive. The rule now lists by name and explanation "small-purchase procurement," "sealed-bidding procurement," and "competitive-proposals procurement."

5. Structure the rule so that exemptions that appear in the federal code also appear in the rule.

6. Add language to state an AAA's responsibilities under Section 306(a)(7)(B)(ii) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006, to "facilitate the provision, by service providers, of long-term care in home and community-based settings." This will come into play if the AAA determines that only one entity can provide the good or services they want to procure—whether the one entity is a provider or the AAA itself.

7. Add a new paragraph (D) of the rule that says the AAA shall repay ODA if it violates federal procurement requirements, including improperly procuring goods or services through a non-competitive process.

173-3-01

ODA is proposing to amend the rule to:

1. Add clarity to the introduction to Chapter 173-3 of the Administrative Code in paragraph (A) of the rule. The current language in the paragraph implies that a provider was *either* a certified provider or a non-certified provider. Instead, most providers provide services to consumers through ODA-administered programs that require certification and other ODA-administered programs that do not require certification.

[3] See ODA's response under question #3 of this BIA for more information on federal rules.

2. State that the definitions in rule 173-3-01 apply to both chapters 173-3 and 173-4 of the Administrative Code. Chapter 173-4 of the Administrative Code contains rules for nutrition programs and nutrition-related services for which an AAA procures through provider agreements. Those provider agreements are subject to the rules in Chapter 173-3 of the Administrative Code, so it makes sense for one set of definitions to cover both chapters. When ODA reviews rule 173-4-01 of the Administrative Code later this year, this will allow ODA to remove duplicative definitions.

3. Replace the definition of "Assistance with self-administration of medication" with the following: "...has the same meaning as in paragraph (C) of rule 4723-13-02 of the Administrative Code when the assistance is provided by an unlicensed person." This is in response to a comment that ODA received during its public-comment period. ODA will now cite the Ohio Board of Nursing's rule, which is the state's authority on what a licensed *vs.*, unlicensed person can perform in this area.

4. Highlight, in paragraph (B)(2) of the rule that ODA lists every AAA in rule 173-2-04 of the Administrative Code.

5. Replace the definition for "family caregiver" with the more-commonly-used "caregiver." Technically, the terms have the same meaning.

6. Amend the definition of "plan of treatment" because developing a plan of treatment now falls into the scope of practice of healthcare professional other than just physicians. (*e.g.*, physician assistants, certified nurse practitioners)

7. Add a helpful statement to the end of the definition of "self-employed provider." The statement would say, "(Chapter 173-39 of the Administrative Code refers to a self-employed provider as a 'non-agency provider'.)" ODA proposed to add the statement after the public-comment period.

8. Add a definition for "planning and service area."

9. Define "RFP" as "request for proposal."

173-3-04

ODA is proposing to amend the rule to:

1. Add sub-titles to help readers thumb through the rule. (*E.g.*, "Authority," "Federal uniform financial and program management requirements," "Purchase-of-service provider agreements," "Cost-reimbursement provider agreements," "No retroactive provider agreements," "Debarred providers," "Not earning funds," and "Multi-year provider agreement limitations.")

2. Organize paragraphs under the new sub-titles.

3. Move language regarding debarred providers from rule 173-3-05 of the Administrative Code to this rule—under the sub-title "Debarred providers."

4. Cite the edition numbers of the C.F.R. citations in the rule to comply with section 121.75 of the Revised Code.

5. Add new language that repeats federal circular requirements for AAAs to place spending limits on cost-reimbursement provider agreements.

6. Clarify that an AAA may not enter into a multi-year provider agreement that has extends into the future past the date that the AAA's area plan expires.

173-3-09

ODA is proposing to amend the rule to:

1. Replace two occurrences of "he/she" with "the provider."

2. Replace "request" with "requests" in paragraph (A) of the rule.

3. Delete the requirement for providers to request hearings from ODA via certified mail.

   ~~Increase the processing time from 30 to 90 days to accommodate factors beyond ODA's control such as the time a provider's attorney or an AAA takes to supply ODA with information. [In response to a comment received during the public-comment period, ODA no longer proposes to increase the processing time. Additionally, ODA proposes to make it clear that this does not regard *processing*, but *scheduling* of the hearing.~~[4]

4. Clarify that paragraph (C)(3) refers to *scheduling* a hearing, not *processing a request.* Therefore, ODA is changing the sub-title to the paragraph accordingly, and retaining the current language that requires ODA to schedule the request no later than 30 days after the date that ODA receives the request. This is in response to the public-comment period.

5. Convert all uses of "business days" in this rule to "days" which are easier to count. However, ODA is also proposing to extend any deadline that falls on a weekend or holiday to the business day that immediately follows the deadline. This is in response to a comment ODA received during the public-comment period.

[4] This change is in response to the public-comment period.

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

- Section 173.392 of the Revised Code requires ODA to adopt rules to do the following: (1) govern provider agreements between ODA (or ODA's designee) and providers and (2) govern payment for community-based long-term care services when a provider performs those services through a program that does not involve provider certification, including Older Americans Act programs.

- 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 give ODA general authority to adopt rules to regulate services provided through programs that it administers, including rules that "develop and strengthen the services available" for Ohio's aging.

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.

- Section 305(a)(1)(C) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006, authorizes ODA, ODA, as the state's designated sole state agency (*cf.*, Section 173.01 of the Revised Code) to adopt policies to be responsible for "policy development ... of all State activities related to the objective of [the] Act."

- Section 306(a)(7)(B)(ii) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006, requires AAAs to "facilitate the provision, by service providers, of long-term care in home and community-based settings."

- 45 C.F.R. 1321.11 (October 1, 2013 edition) authorizes ODA, as the state's unit on aging (*cf.*, Section 173.01 of the Revised Code) to adopt policies to implement the provisions of the Older Americans Act.

- 45 C.F.R. 74.43 and 45 C.F.R. 92.36 (October 1, 2013 edition) require all programs operating on federal funds, including Older Americans Act funds, to use open and free competition when procuring services from providers.

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

173-3-05 (primary rule of 4-rule package)

For any AAA that chooses to enter into a provide agreement without using open and free competition, ODA is requiring AAAs to provide evidence that there is no competition. This places no adverse impact upon providers. Instead, it is a protection to promote open and free competition for provider agreements.

It may appear that the rule requires the non-profit AAAs to follow the spelled-out standards for government AAAs. However, that is not the case. All but 2 AAAs are non-profit agencies that ODA designated as its AAAs. These AAAs are responsible to foster open and free competition for provider agreements according to 42 C.F.R. 74.43 (October 1, 2013 edition). The remaining 2 AAAs are government agencies that ODA designated as its AAAs. These AAAs are responsible to foster open and free competition for provider agreements according to 42 C.F.R., Part 92 (October 1, 2013 edition). Although 42 C.F.R. 92.36 is more specific than 42 C.F.R. Part 74.43, it is generally understood that the requirements in both are equal.

173-3-01

This rule does not contain provisions that exceed federal law.

173-3-04

The rule does not allow AAAs to reimburse providers for the goods and services they provide except as agreed upon in the provider agreement. This protects providers from deceptive bidding practices. If a provider wins a provider agreement over another provider, then asks the AAA to for higher reimbursement rates, the provider may have attempted to deceive the AAA with its low bid. If a provider cannot continue to provide a service at the rate it has agreed to accept in the provider agreement, the AAA needs to open a bidding period to allow the provider to compete again with other providers. Other providers may be able to provide the service for a lower price. Ultimately, this does not create an adverse impact upon providers because (1) providers are paid the amount they asked to be paid in their bid and (2) if a provider submitted a deceptive bid to win, but later reveals that the service cannot be provider for the price that was bid, all interested providers have an opportunity to bid to furnish the goods or services again.

The rule prohibits AAAs from entering into multi-year provider agreements that are in effect for more than a 4-year period. Otherwise, there would be no opportunity for providers to compete for provider agreements to furnish goods and services. Section 306 of the Older Americans Act requires each AAA adopt an area plan that it follows to develop “a comprehensive, coordinated system for providing long-term care in home and community-based settings, in a manner responsive to the needs and preferences of older individuals and their family caregivers, by...collaborating, coordinating activities, and consulting with other local public and private agencies and organizations responsible for administering programs, benefits, and services related to providing long-term care.” Because the section also requires the AAAs to

adopt an area plan at least once every 4 years, ODA believes that this also limits the ability to enter into a multi-year provider agreement to four years.

173-3-09

This rule does not exceed federal law.

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)?**

   The rules have multiple public purposes, including:

   - ODA is required to comply with state statutes that require ODA to adopt rules that govern provider agreements. Please see ODA's response to question #2 on this BIA.

   - ODA is required to comply with federal rules that require open and free competition. Please see ODA's response to question #3 on this BIA.

   - Open and free competition spurs innovation. A provider who finds ways to furnish a higher-quality service at a lower-price than another provider is the provider who should win an open and free competition for a provider agreement. As ODA stated under question #1 of this BIA, the requirements for AAAs to practice open and free competition protect providers from losing business to cronyism, nepotism, conflicting interests, and to an AAA giving itself a "provider agreement" instead of issuing a RFP.

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

   ODA will monitor the AAAs for compliance.

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.

ODA contacted a significant number of stakeholders on multiple occasions to seek input on this rule.

On March 15, 2013, ODA wrote an email to the agencies that enter into provider agreements through competitive bidding as ODA's designees. ODA asked the Ohio Association of Area Agencies on Aging if they had any suggestions for improving the rules in light of the 5-year rule review.

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

On June 4, 2013, ODA wrote an email to the providers and provider associations that bid to compete for provider agreements. ODA asked an assortment of providers and provider associations for any suggestions for improving the rules while they are under the 5-year rule review. ODA emailed the Ohio Council for Home Care and Hospice, Midwest Care Alliance, Simply-EZ Home-Delivered Meals, Mobile Meals of Toledo, LifeCare Alliance, Ohio Association of Senior Centers, Legal Aid of Western Ohio, Senior Resource Connection, Sycamore Senior Center, Wesley Community Services, Lorain County Office on Aging, and the Ohio Association of Medical Equipment Suppliers.

On September 13, ODA wrote an email to 9 providers of various types of long-term care services in both rural and urban settings. ODA surveyed the providers for a snapshot on the administrative hours various employees spent on developing bids for provider agreements.

Additionally, before ODA filed the rules with the Joint Committee on Agency Rule Review (JCARR) to begin the legislature's formal rule-review process, ODA published the rule proposals and this BIA on its website for a public-comment period. The period began on February 4 and ended on February 16.[5]

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

On April 2, 2013, the Ohio Association of Area Agencies on Aging said they "[didn't] have any comments on these rules at this time."

[5] However, ODA continued to public the rule proposals on its website until at least February 27, 2014.

On April 11, 2013, ODA made a presentation to a monthly meeting of the Ohio Association of Senior Centers about the Common-Sense Initiative and ODA's pending rule projects, including this rule project. Although the senior centers commented on other rule projects, no senior center raised a concern about these rules.

On June 5, 2013, Senior Resource Connections wrote, "If it is definitively known prior to the bid process that there will be only one provider available for the service. Is it possible to create a more concise version of a provider proposal? For example we are presently providing HDM and congregate under Title III in 4 counties under a 3 year agreement. We picked up 2 of the counties on this last go around due to [another provider] deciding to leave that service. I believe we were required to submit complete proposals on all which is 2 x 4. As you know there is a fair amount redundancy involved. I was wondering if there would be a way to eliminate some of that if that situation arises again. Other than that question we are fairly [accustomed] to the format as it is written now."

On June 5, 2013, ODA responded to Senior Resource Connection by saying, "Paragraph (F)(1)(a) of Rule 173-3-05 of the Administrative Code says that an AAA is not required to use the competitive-bidding process if the service for which they want to obtain is available from only one source." The proposed new version of rule 173-3-05 of the Administrative Code would not eliminate this exception.

On June 7, 2013, Wesley Community Services said, "I reviewed the proposed rule changes and they appear to be reasonable."

On September 13 and 16, ODA received responses from 7 of the 9 providers that ODA emailed on September 13. The providers 7 providers detailed administrative expenses to prepare bids.[6]

During ODA's online public-comment period, ODA did not receive any comments from any businesses mentioned above, nor any other businesses. However, ODA did receive comments from some of its designees, the area agencies on aging. These comments were organized by the Ohio Association for Area Agencies on Aging. ODA lists the comments and ODA's responses below.

COMMENT	RESPONSE
173-3-01 (B)(4): "Section (B)(4) has been removed because it is, "no longer defined in Revised Code". Although "assistance with self- administration of medication" is no longer defined in ORC, shouldn't it still be present here and defined to provide clarification regarding what that activity entails since it is still a task identified in the Personal Care rule (OAC 173-3-06.5)?**" [AAA5]**	Because the Board of Nursing is the authority on scope of practice for licensed *vs.*, unlicensed persons, ODA now proposes to say, "'Assistance with self-administration of medication' has the same meaning as in paragraph (C) of rule 4723-13-02 of the Administrative Code when the assistance is provided by an unlicensed person."

[6] See ODA's response to question #14C of this BIA for details.

COMMENT	RESPONSE
173-3-04 (H)(2): **"**We agree with the intent of the rule, which is to assure competition by limiting the length of a multi-year provider agreement; however, the proposed revised language creates an unnecessary administrative burden on the providers and our AAA. Our Title III provider agreements are for 3 years, while our approved area plan is a 4-year plan. Obviously, the two periods will not always synchronize and as a result, our provider agreements can periodically span two area plans. We respectfully request that you retain the wording " . . . more than a four year period," to provide maximum flexibility to AAAs in administering provider agreements that are less than four years in length.**" [AAA2]** **"**2014 is the first year of a new 4-year contract cycle for us (we issued a 4 year RFP in 2013). We will need to issue an RFP again in 2017. The new area plan cycle will be for 2015-2018. so it sounds like we can only issue that RFP in 2017 for 1 contract year (2018) to coincide with the last year of our area plan. We would then need to issue another RFP in 2018 that would then cover the new 4 year area plan cycle of 2019-2022.**" [AAA6]**	An AAA has no authority to into a provider agreement that extends into a period of time that is not covered by an AAA's area plan. The purpose of an area plan is for an AAA to solicit public input on what the needs of seniors are in each planning and service area and, from that input, develop an area plan to address those needs.
173-3-05: "A typo noted in section (B)(3)(d) – "aware" should be "award". A typo noted in section (C)(2)(a) – in fourth line "form" should be "from".**" [AAA5]**	ODA will make these corrections before filing the rules with JCARR.
173-3-09: "Section (C)(3) has increased scheduling of the hearing from thirty days to no later than ninety days. This section does not include "business" or "calendar". The timeframe has also been increased in section (C)(5) and identified as business days. When considering the maximum time possible, that extends to 18 weeks or longer in both sections. This seems to be a long period.**" [AAA5]**	ODA now proposes to clarify that paragraph (C)(3) refers to *scheduling* a hearing, not *processing a request.* Therefore, ODA is changing the sub-title to the paragraph accordingly, and retaining the current language that requires ODA to schedule the request no later than 30 days after the date that ODA receives the request. Additionally, ODA is now proposing to convert all uses of "business days" in this rule to "days" which are easier to count. However, ODA is also proposing to extend any deadline that falls on a weekend or holiday to the business day that immediately follows the deadline.

~~During the public-comment period, ODA also received additional internal inquiry, which led to the realization that the term "focal point" is not used in Chapter 173-3 of the Administrative Code. Therefore, ODA now proposes to delete the definition of "focal point" from rule 173-3-01 of the Administrative Code.~~[7]

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 used statistics from the Bureau of Labor Statistics to develop the calculations for its response to question #14c.[8]

[7] ODA later determined that the chapter does use "focal point" and, therefore, made no effort to delete the definition.
[8] United States Department of Labor: Bureau of Labor Statistics. May, 2012 Occupational Employment Statistics for Ohio. www.bls.gov.

ODA used the Wisconsin Dept. of Public Instruction's explanations of the different methods for procuring federal funds to explain the same in this document.[9]

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?**

    As ODA mentioned in its response to question #8 of this BIA, Senior Resource Connection asked if the process for open and free competition could be eliminated if it is clear that only one provider is capable of performing the service the AAA wants to procure.

    ODA instructed Senior Resource Connection that paragraph (F)(1)(a) of currently-effective rule 173-3-05 of the Administrative Code says that an AAA is not required to use the competitive-bidding process if the service for which they want to obtain is available from only one source." The proposed new version of rule 173-3-05 of the Administrative Code would not eliminate this exception.

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.

    Rule 173-3-05 of the Administrative Code expounds upon federal rules that require ODA's designees, the AAAs, to use open and free competition without dictating to providers how to develop the bids. Awarding provider agreements to providers who win bids is, in a sense, a performance-based regulation.

    Furthermore, ODA has reduced the burden on its designees, the AAAs, in part, by rescinding the current version of rule 173-3-05 of the Administrative Code and by adopting a proposed new rule of the same number that no longer has language to instruct AAAs how to conduct sealed-bidding procurement.

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

    Section 173.01 of the Revised Code says that ODA is "the sole state agency to administer funds granted by the federal government under the "Older Americans Act of 1965," 79 Stat. 219, 42 U.S.C. 3001, as amended." Therefore, no other state agency has authorization to adopt such a regulation.

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.**

[9] Wisconsin Dept. of Public Instruction: Special Education Team. Untilted. © November 8, 2011. *Pg.*, 14

Business Impact Analysis

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 under rule 173-2-07 of the Administrative Code, ODA will work with its designees, the AAAs, to ensure that the regulation is applied uniformly.

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;

As previously mentioned in ODA's response to item #1 of this BIA, the goal of open and free competition is to allow businesses that innovate to offer good services at the lower prices to win competitions to obtain the state's business.

Because the competition is open and free, any provider of long-term care services that seeks to enter into a provider agreement with an area agency on aging (AAA) must compete with other providers to obtain the provider agreement. Therefore, any provider could be part of the impacted business community.

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

173-3-05 (primary rule of 4-rule package)

The adverse impact of proposed new rule 173-3-05 of the Administrative Code falls into 2 categories: (1) failure to obtain a provider agreement and (2) administrative costs.

FAILURE TO OBTAIN A PROVIDER AGREEMENT

Before ODA will allow AAAs to pay a provider to furnish services to consumers using Older Americans Act funds, the AAAs must procure the services through an open and free competitive process. The competition itself is not an adverse impact, unless a provider a provider loses a competition and is unable to enter into a provider agreement.

Fortunately, providers who lose a competitive process can remain in business by serving consumers with goods and services that are financed by private funds, by Medicaid-funded programs that ODA administers that operate on an any-willing-provider basis, by Medicare, by VA, or by a state-administered program that is administered by a state agency other than ODA, such as a program for individuals with developmental disabilities.

Additionally, AAAs are in the business of fostering the long-term care industry. AAAs award multiple provider agreements to comply with section 306(a)(7) of the Older Americans Act of 1965, as amended in 2006. The section requires each AAA to "facilitate the area-wide development and implementation of a comprehensive, coordinated system for providing long-term care in home and community-based settings, in a manner responsive to the needs and preferences of older individuals and their family caregivers, by...collaborating, coordinating

activities, and consulting with other local public and private agencies and organizations responsible for administering programs, benefits, and services related to providing long-term care." The practice of awarding multiple provider agreements gives seniors options that facilitate person-centered care and assures that back-up options are available if one provider reaches maximum capacity for consumers.

ADMINISTRATIVE COSTS

The nature of the adverse impact that one generally associates with open and free competition is the administrative time necessary to develop a bid to submit to the AAA. A bid is necessary in order to compete with other providers for a provider agreement.

This type of adverse impact will vary greatly depending upon the cost of the volume of goods and services the AAA is procuring. If the AAA is procuring goods or services that cost less than $100,000[10], the AAA can use small-purchase procurement.

> For routine, commercial type purchases, comparing price or rate quotes obtained from an adequate number of qualified vendors is sufficient price analysis. If the small purchase is for professional or technical services, or the [AAA] needs to evaluate other factors than price, then at least a limited cost analysis is appropriate. In either case, the [AAA's] analysis should include comparing the proposed prices to past prices it has paid for the same or similar items or services.[11]

For example, if the AAA is procuring plumbing services that cost less than $100,000, the AAA may obtain estimates from 3 plumbers. This would only require the plumber to develop an estimate, which is what plumbers routinely do for every plumbing service.

Please refer to the attached request for proposals (or "RFP") document to see that many of the allotments to some Ohio counties do not add up to $100,000. This means the small-purchase procurement method mentioned in this rule should provide a simpler way for the AAA to handle smaller purchases rather than to issue an RFP for a sealed-bidding process. The federal rules still require open and free competition. What is different is that ODA's rule now allows the AAA to use the small-purchase method for open and free competition, which sis a simpler method.

Please refer to the August, 2011 request for proposals from AAA9 that is attached to this BIA. Because the allotments for funds in most counties in PSA9 are less than $100,000, most provider agreements are also for less than $100,000. This means that adding the small-purchase

[10] If the good or services being procured cost less than the federal simplified acquisition threshold defined in 41 USC 134 (October 1, 2013), which is currently $100,000, the AAA shall obtain price or rate quotes from an adequate number of bidders who are qualified to provide the goods or services.

[11] Wisconsin Dept. of Public Instruction: Special Education Team. Untitled. © November 8, 2011. *Pg.*, 14.

procurement method to the rule should reduce the regulatory burden on the AAAs. The rule would allow AAA9 to use a small-purchase procurement method for provider agreements for less than $100,000.

If the AAA is trying to procure goods or services that cost at least $100,000, it the AAA must allow providers to compete through sealed bidding or competitive proposals.

> [Sealed bidding] is the preferred method for contracting for supplies, equipment and construction. Normally, the competitive pricing forces of the marketplace determine the reasonableness of the low price obtained through sealed bidding. [12]

> [Competitive proposals help to] determine the reasonableness of proposed costs, cost breakdowns must be obtained from the potential contractors showing all the elements of their proposed total costs. A cost analysis must be performed for each proposal. All proposed costs contained in each potential contractor's price must be analyzed. [13]

Likewise, procurement by sealed bidding or competitive proposals has a greater adverse impact upon businesses than small-purchase procurement. Providers who want a provider agreement to furnish goods or service costing at least $100,000 must submit a formal bid to the AAA that is procuring the service.

The complexity of formal bids varies depending upon the complexity of the goods or services the AAA is procuring. It is generally assumed that there is a positive correlation between (1) simple goods and services and a simple effort to calculate a bid and (2) complex goods and services (*e.g.*, therapeutic meals) and a complex effort to calculate a bid.

173-3-01
This rule creates no adverse impact for a provider because it merely introduces Chapter 173-3 of the Administrative Code and defines terms used in the chapter. Furthermore, within the rule is the definition of "consumer's signature," which makes it clear to providers that any place in Chapter 173-3 of the Administrative Code that requires a consumer's signature allows for "consumer's signatures" as defined by rule 173-3-01 of the Administrative Code. This allows providers to use service-verification software instead of asking frail, elderly consumers to sign for the services they receive.

173-3-04
This rule creates no adverse impact for a provider. Instead it is a rule that regulates ODA's designees, the AAAs.

173-3-09

[12] Wisconsin Dept. of Public Instruction: Special Education Team. Untitled. © November 8, 2011. *Pg.*, 14.
[13] Wisconsin Dept. of Public Instruction: Special Education Team. Untitled. © November 8, 2011. *Pg.*, 14.

As previously stated, rule 173-3-09 of the Administrative Code regulates appeals for when a bidder doesn't win a provider agreement with an area agency on aging (AAA) and has already appealed the matter to the AAA. For a provider that appeals to ODA after a negative decision over an appeal to the AAA, the provider's adverse impact could vary greatly. The factors for determining an adverse impact would revolve around the following dichotomies: (1) appeal/don't appeal, (2) attorney/no attorney, (3) in-house counsel/contracted counsel, and (4) simple issues/complex issues.

Appeals made to ODA under rule 173-3-09 of the Administrative Code are not hearings under Chapter 119. of the Revised Code. The rule does not require a provider to appeal or to be represented by counsel at an appeals hearing with ODA. However, corporations may need to be represented at ODA's hearings by a licensed attorney as a matter of Ohio law, but as a requirement of the rule.

Appeals hearings under rule 173-3-09 of the Administrative Code are formal opportunities to complain about an AAA's practices in regards to provider agreements. However, it is not a true adjudication. ODA is not a party to the provider agreements, which are between AAAs and providers. However, ODA could, as a result of a hearing, decide that an AAA inappropriately denied a provider agreement. In that case, ODA would disallow the AAA's costs under the awarded provider agreement and the AAA would be given the opportunity to appeal ODA's decision.

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.

173-3-05: Survey
On September 13, 2013, ODA surveyed a variety of providers who submit bids to AAAs for provider agreements to provide long-term care services costing at least $100,000. The amount of time the providers reported that they spent developing their bids varied, as follows:

- **49 Hours:** A rural provider of multiple services said, "I put 35 real hours of my time. I kept track this year. Also two other employees spent 10 hours and 4 hours respectively. They were my Community Services Director and my Administrative Assistant. We spent 49 hours including downloading, form filling, researching, proof reading and delivering the proposals. The last time it took much more time because our AAA went with a new system. Having done it once, the second time went more smoothly."

- **1.5 Hours (Because Majority of Bid Was Prepared by Administrator):** An urban provider of one service that is part of a nationwide organization that operates many adult day centers said, "Those contracts/grants were handled by an Administrator and we're not that involved since most of the supporting documentation existed already...1-1½ hours." ODA is not aware of the administrative burden of the administrator.

- **48 Hours:** A rural provider of multiple services, including meals, provided a table with the following estimate:

CEO	8 hours
Director of Food Services	20 hours
Director of Fiscal and Facility Operations	8 hours
Secretarial Support	12 hours

- **80 Hours:** An urban provider of multiple services, including meals, said, "Depending on the extent of the contract, I would spend the majority of the time in preparation, with financial input from our controller, on any contract. Usually it is probably 80 or so hours for our RFP process with [the AAA]. It could be more depending on the complexity."

- **12 Hours:** A large, regional provider that focuses its business on providing a single service said, "The only bid we've really done...was the first one we've done, so may not be as accurate. I'd say it took 12 hours total – my time, CEO's time, VPs' time. I think grants and other bids are probably more."

- **140 Hours:** A rural provider of multiple services, including meals, said that the amount of administrative time needed to develop a bid depends on which service the bid pertains to and what procurement method is involved. The provider estimated these as its averages:

CEO	65-112 hours
Department Managers/Other Staff	10-25 hours
Lawyer	2-3 hours

173-3-05: Survey Conclusions

The results of ODA's September 13 survey show patterns that help to predict the adverse impact a provider faces when it bids for a provider agreement.

- **More Services → More Adverse Impact:** Providers who only furnished one type of service spent considerably less time developing a bid. Multi-purpose senior centers and other providers of multiple services spend considerably greater time developing a bid.

- **CEOs:** All providers reported that the CEO is the most-involved employee in bid development. Thus, the person who is probably the highest-paid employee is at the center of bid development.

- **Executive Staff:** Most providers reported that vice-presidents, fiscal officers, department directors, and department managers are also involved in bid development. For the purposes of this BIA, ODA will assume that

- **Administrative/Professional Staff:**

    - No providers itemized any professional occupations as involved in developing bids other than one provider who uses a lawyer.

    - One provider clearly delineated "secretarial support" and another combined "other staff" with "department managers."

    - No provider reported using fundraisers (*i.e.*, "grant writers").

173-3-05: Worst-Case Scenario

The accounts providers furnished varied too much to use them for making averages. Instead, to account for the magnitude of the adverse impact, ODA has compiled a worst-case scenario. Based upon the survey's results, the worst-case scenario requires as much administrative time as the greatest amount of time that any provider reported. ODA has listed the scenario in the table below along with wage information from BLS for Ohio.[14]

BLS	Occupation	Mean Wage	Hours	Cost
11-1011	CEO	$84.72/hr.	40hrs.	$3,389
11-1021	GM[15]	$51.32/hr.	20hrs.	$1,026
43-1011	Admin Support	$23.46.hr.	12hrs.	$282
23-1011	Lawyer	$53.76/hr.	3hrs.	$161
				$4,858

In the worst-case scenario, a provider would accumulate $4,858 in administrative expenses in order to bid for a provider agreement of at least $100,000. If the provider agreement in this worst-case scenario was for only $100,000, the provider would have expended administrative time to gain the provider agreement that was valued at approximately less than 5% of the provider agreement's value.

173-3-01

[14] United States Department of Labor: Bureau of Labor Statistics. May, 2012 Occupational Employment Statistics for Ohio. www.bls.gov.

[15] A director of food services is likely to be a dietitian. BLS (United States Department of Labor: Bureau of Labor Statistics. May, 2012 Occupational Employment Statistics for Ohio. www.bls.gov.) reports that a dietitian (29-1031) made $24.29/hr. Because no provider reported using a dietitian to develop an RFP, but instead listed a "director of food service," which could be a dietitian, ODA will consider the higher pay of a general manager (GM) as the director's pay.

This rule creates no adverse impact.

173-3-04
This rule creates no adverse impact.

173-3-09
ODA has received a request for a hearing under rule 173-3-09 of the Administrative Code about once every two years. Attorneys represented about half of the providers who requested hearings. The represented providers would have spent varying amounts on attorneys due to (1) the relationship to the attorney and (2) the length of the hearing.

- In-house counsel represented some providers while attorneys on a retainer represented other providers.

- The length of ODA's hearings has varied from hearing to hearing depending on the complexity of the issues. Most hearings have lasted no more than 2 hours. However, one hearing lasted for 2 days.

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

ODA justifies the adverse impact of bidding for provider agreements because open and free competition spurs innovation. A provider who finds ways to furnish a higher-quality service at a lower-price than another provider is the provider who should win an open and free competition for a provider agreement. As ODA stated under question #1 of this BIA, the requirements for AAAs to practice open and free competition protect providers from losing business to cronyism, nepotism, conflicting interests, and to an AAA giving itself a "provider agreement" instead of issuing a RFP.

Additionally, ODA justifies the adverse impact of bidding for provider agreements because the federal laws that ODA cited under question #3 of this BIA require open and free competition.

Business Impact Analysis

Regulatory Flexibility

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

    Neither the Older Americans Act or section 173.392 of the Revised Code, authorize ODA to adopt rules that create different standards for provider agreements based upon the size of a provider's workforce.

    Additionally, most providers of long-term care services are small businesses.

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. In this case, the exemption would apply to AAAs, not to the providers. Rules 173-3-01, 173-3-04, and 173-3-05 of the Administrative Code regulate the AAA in regards to how it enters into provider agreements. The rules don't regulate providers. Therefore, ODA does not penalize a provider based upon those rules and would not need to issue an exemption from penalties.

    Rule 173-3-09 of the Administrative Code does regulate providers by establishing the process for a provider to take if the provider appeals to ODA regarding an adverse action after already appealing to an AAA. The rule defines "adverse action: as "an AAA's action concerning a particular provider to not award a provider agreement to that provider; to prematurely terminate a provider agreement with that provider; or to not renew a multi-year provider agreement with that provider for the second, third, or fourth year of the provider agreement." Therefore, the rule is related to penalties that could be exempted if they are for first-time paperwork violations. However, the adverse action that would be exempted would regard a failure to comply with a rule other than rule 173-3-09 of the Administrative Code. Instead, it would regard rules 173-3-06 or 173-3-07 of the Administrative Code or any rule in Chapters 173-3 or 173-4 of the Administrative Code that regulates a service that a provider furnishes.

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

    The staff at Area Agencies on Aging (AAAs) and ODA are available to help direct-care providers of any size with their questions about the statutes and rules. Providers may address their questions to the AAAs or to ODA, including ODA's regulatory ombudsman.

Business Impact Analysis

On June 6, 2013, AAA9 said the following in reference to providers who are preparing bids to respond to RFPs “Technical Assistance is always available during any point in the process.”

AREA AGENCY ON AGING
REGION 9, INC.

Area Agency on Aging, Region 9, Inc.
60788 Southgate Road
Byesville, OH 43723
(800) 945-4250

2012-2013

AAA9 REQUESTS FOR PROPOSALS

Title III & State Block Grant

Application – Instructions

August 2011

GENERAL INFORMATION & CONDITIONS

We remain committed to meeting our obligations to maximize the use of available public funds, to provide both program & fiscal accountability, to build increasing community confidence in senior programs, to provide for quality services to older adults, to protect client rights and to advise bidders of expectations. We also remain committed to simplifying processes whenever feasible.

***All Rights and Privileges Reserved*:**
The AAA9 yields no rights or privileges in soliciting, selecting or operating contracts or Providers. Specifically reserved rights and privileges include, but are not limited to, the list under #1 in the Assurances section of the Application.

Public Information:
All bidders are hereby advised that any information submitted to or collected by AAA9 in the course of applying for or operating any resulting contract Agreement may be considered public information. This includes, but is not limited to, narrative descriptions, budget information, reports, unit audits, monitoring findings, hearing testimony, etc. Personal information regarding individual clients has certain special protections under law, including the federal HIPAA privacy requirements.

Signatures:
An important requirement for 2012-2013 applications is that **ALL original signatures MUST be in BLUE ink**. AAA9 auditors and ODA monitoring staff must be assured that AAA9 does in fact have legally-binding original signatures on file. We wish to ease that burden and will insist on the blue ink for our file copies.

Tentative AAA9 Provider Selection Timetable:

August 1, 2011	Public Notices & Mailings
August 30, 2011	Applications due at AAA9 by 4:30pm; early submission encouraged
August 31-September 16, 2011	Proposal Review & Scoring, Recommendations to Executive Director
September 20, 2011	Proposal Review by Regional Advisory Council & Board of Trustee Committee
September 22, 2011	Presentation to full Regional Advisory Council for recommendations
September 22, 2011	Final presentation for vote by the full Board of Trustees
September 22-23, 2011	Final negotiations, issue notices of intent to contract or deny (email, phone, fax or mail)
October 7, 2011	End of latest appeal period (10 working days from issuance of notice)
November 1, 2011	Tentative date for preparation & issuance of contracts for 2012
January 1, 2012	Effective date of contracts

Factors for Application Consideration:

To be considered a "responsive application", applications must be submitted by the deadline, be complete with all required narratives and attachments, and have the valid original signature of the authorized party IN BLUE INK on all signature forms. Further, additional past performance data and references from bidders not previously under contract will be requested by AAA9 and must be received by a negotiated deadline to be considered responsive.

Technical Requirements:

The Ohio Department of Aging (ODA) Administrative Rules are posted on http://aging.ohio.gov/information/rules/current.aspx . ODA Conditions of Participation are available on request in either printed copy, MS Word on disc or email. Due to their bulky nature, OAC and AAA9 Policy & Procedure may be available on floppy disk or email only; there may also be a reasonable charge for the costs associated with preparing and delivering these materials; both are available for review at the AAA9 office during usual 8am-4:30 p.m., Monday-Friday office hours. An "unofficial" version of the Older Americans Act may be found at The Center for Social Gerontology website http://www.tcsg.org/law/oaa/reauth.htm, with regulations (current but still dating back to 1988) at the federal Administration on Aging http://www.aoa.gov/aoaroot/aoa_programs/oaa/oaa_full.asp

Elements of the Bid Price:

Unit prices for all purchase-of-service bids are expected to include all costs of providing the service; the bidder is offering to provide the proposed number of units of service at the proposed unit rate with no expectation of further financial support from AAA9. Example: For record-keeping, reporting & billing purposes, a unit for service may be an hour, but the unit cost should include an expected average for all expenses incurred in providing that hour of service. As an example, legal services have an hour unit of service; that rate must include any ancillary costs, such copying, filing fees, etc. Exceptions are the allowable-cost reimbursement contracts for Home Repair and Long-Term Care Ombudsman and selected awards throughout the year.

Procurement of Equipment:

There is no direct allowance under purchase-of-service contracting for procurement of equipment. Payment at the negotiated unit rate includes the cost of any equipment. AAA9 reserves the right and privilege to possibly make supplemental awards during the course of a contract Agreement period for procurement of equipment under a separate allowable cost arrangement, subject to State and federal regulations and availability of funding.

Application review criteria:

The six primary considerations for selecting Providers for 2012-2013 will be:

(1) complete, accurate & timely submittal of the application;
(2) AAA9 priority service categories [(1) home-delivered meals, (2) congregate meals, (3) transportation, (4) personal care assistance, (5) homemaking, and (6) adult day care services];
(3) indicators of quality, contract compliance and capacity, such as past performance and Budget Narrative responses;

(4) clientele to be served (higher percentages of age 75+, female, minority and low-income will increase the score);
(5) number of units and resulting unit rates for a service, including Title III and Ohio Senior Community Services Block Grant share, as calculated on the Budget Summary exhibit (higher numbers of units and lower unit rates are more favorable; producing more units and having more cash involved in the service from other sources will increase the score);
(6) amounts of Title III matching funds, client contributions/cost-sharing and other cash (higher amounts are more favorable; more matching dollars, client contributions/cost-sharing or cash from other sources will increase the score);

For new bidders, similar information and references will be required in a timely fashion for review; a new bidder's proposed performance will be also compared to current or previous providers. In addition, a preference will be given to organizations serving on a countywide basis. Additional information will be required for new meal providers and will require an on-site visit to ensure compliance with Uniform Food Safety Code and requirements for OAC meal service requirements.

The Area Agency on Aging Region 9, Inc. (AAA9) wants all potential bidders to understand that the Older Americans Act (OAA) was never intended to be a sole source of funding for services. It is designed to provide a foundation of funding, direction and regulation for local communities to build upon. The federal requirement for a minimum of 15% matching funds is an example of that intention. There are similar requirements & expectations for pooling resources with sources such as Title XX/SSBG or local senior services levies and the OAA opportunity for client contributions & cost-sharing.

The 2012-2013 Budget Summary exhibit and review criteria require showing ALL expected cash resources
that will be used to provide a service to all older adult clients age 60 & over, their spouse and certain other qualifying individuals.
(Note the exception below for transportation coordination projects)

Bidders exhibiting higher relative amounts of local cash match, client contributions/cost-sharing and other cash will receive higher review scores.

A notable exception showing all cash resources will be transportation providers involved in official community-wide ODoT Transportation Coordination projects; see 'With Regards to Transportation Coordination Projects' located toward the end of this section.

For previous or current providers, AAA9 will use performance data & indicators from current and prior periods to rate bidders on quality, contract compliance and capacity. Data & indicators will include but not be limited to reports, unit audits, field visits and responses to plans of correction. Bidders that have closely met previous planned levels of service delivery and use of funding from other sources, submitted timely reports with few errors, met quality standards and been responsive to requests for improvement will receive greater consideration.

The Older Americans Act (OAA) requires targeting socially and economically challenged older adults. Bidders proposing to serve higher proportions of low income, minority, age 75+ and female will receive higher scores. Reviewers will also consider proposed and past performance in serving handicapped, low-income minority, rural and isolated/living alone persons. Reporting systems and unit audits will capture this data for performance monitoring, including consideration of contract Agreement renewals and succeeding contracts.

Inflationary effects on the very limited Title III-A administrative funds, along with issues of cost-effectiveness, encourage AAA9 to seek ways to reduce AAA9 administrative burdens. One way is to focus funds into a limited number of services to reduce staffing needs for monitoring, contract maintenance, etc. Similar inflationary effects on both Title III B&C funds, with about 50 cents in buying power compared to 1980, as well as language in the Older Americans Act, encourage AAA9 to concentrate on basic services to support independence. In order of priority, Title III priority services for 2012-2013 include (1) home-delivered meals, (2) congregate meals, (3) transportation (especially transportation to support congregate meal site attendance), (4) personal care assistance, (5) homemaking, and (6) adult day care/day health services. Those bidders seeking to provide priority services will receive higher scores. A 5% set-aside is required for legal services by the ODA; AAA9 allocates 5.5% to better meet spending expectations of ODA.

All applicants are advised to ***carefully*** consider their realistic ability to achieve the goals set for performance and costs. There is no advantage – in fact, **there are disadvantages**, including possible disallowance of renewal for the second year of the cycle – **to over- or under-estimating income, expenses, number of units or types of clientele** to be served. In evaluating the merits of new applications, AAA9 will compare prior year-end planned vs. actual data as well as current year performance through the month of June. An unrealistic calculation can cause you to not earn all funds available or for payments to be suspended mid-year until unit rates & earnings are adjusted to cause earnings throughout all twelve months of the contract Agreement period. Unjustifiable figures – high or low - also call into question the credibility of the application for reviewers. Exceptions to earnings/purchase of service are any Home Repair or Long-Term Care Ombudsman contracts, which are allowable-cost reimbursement contract Agreements.

Title III & State Block Grant Implications for the Entire Contract Agreement Period:
Be advised that **using OAA Title III or State Block Grant funds to support ANY portion** (part of a cost, part of the contract Agreement period, etc) **of a service impacts ALL portions of that service** to older adults age 60 and over, their spouses or certain dependents. ALL Conditions of Participation, Service Specifications, AAA9 contract Agreement language, and federal, ODA or AAA9 regulations, rules or policies will apply throughout the entire contract Agreement year to ALL portions of a funded type of service for older adults age 60 and over or other qualifying parties, regardless of whether or not AAA9 funds have been applied, earned or exhausted. If you do not wish to have AAA9 involved in all aspects of all units for all clients age 60+, you should choose to not apply for AAA9 dollar funding for that particular service.

Services for a Fee:
It is extremely difficult for a provider to have both Title III clients **and** private pay clients age 60 or over for the same service without conflicting with the Older Americans Act non-discrimination

features. That is also true for Title XX/SSBG age 60 and over clients. An applicant or provider wishing to segregate either private pay or Title XX/SSBG or any other older adult age 60 or over from coverage under the Title III contracted service must produce convincing evidence to the satisfaction of the AAA9 executive director that there is a way to eliminate the potential for discrimination because of means-testing, income level or refusal to make a cash donation or cost-share payment under the Older Americans Act. If an applicant or provider wishes to have private pay clients age 60 or over, they should provide such evidence or choose to not apply for Area Agency dollar funding for that particular service.

Cost-sharing (OAC 173-3-07):Lawriter - OAC - 173-3-07 Consumer cost-sharing policies.
http://aging.ohio.gov/resources/publications/173-3-07%20As%20Adopted%202009-02-15.pdf
Cost-sharing was adopted by the Ohio Department of Aging. Under ODA rules, it is required for all age 60+ parties receiving **non-exempted services** funded in part or in whole by Title III or State Block Grant funds; this would include local senior services levy programs providing partial funding to a non-exempt service. Copies of or direction to Internet resources for these ODA rules can be provided on request.

Services subject to consumer cost sharing are the adult day service; the chore service; an emergency response system; the home maintenance, repair, or modification services; the homemaker service; and the personal care service; and a home medical equipment service.

The following services are not subject to cost sharing, although, under Section 315 (b) of the Older Americans Act, providers may solicit and accept voluntary contributions for all services reimbursed with OAA funds:

1. Information and assistance, outreach, benefits counseling, case-management, disease prevention, health promotion, or volunteer placement;

2. Education, training, or a support-group service provided through the Alzheimer's respite care program or Title III, Part E of the OAA;

3. A meal service;

4. Ombudsman, elder abuse prevention, legal assistance, or another consumer protection service, and;

5. A transportation service, although the AAA may apply to ODA for a waiver of this exemption if the transportation service is coordinated with other services and is funded in whole or in part through OAA funds

The amount of a cost-share will hinge upon the portion of the total unit cost supported by Title III and/or State funding. For this reason, the 2012-2013 Budget Summary exhibit includes a calculation for "shares" of the total unit cost that represent Title III and/or State funds. As with all other requirements, this "share" would apply to all units served in the contract Agreement period, regardless of earnings status from AAA9.

Examples of the impact of ODA-mandated "cost-sharing" may include:

1. If an Applicant or Provider does not want ODA **cost-sharing** mandates to apply to their services, including services using county levy funds to support any part of the Title III or Ohio Senior Community Services Block Grant service, they could concentrate Title III and State funds in **exempted** services (such as meals, legal services, ombudsman or transportation) only; or, they could concentrate the funds into **one non-exempt service** that would have the least impact on people over 150% of poverty level (where cost-sharing sliding-fee scale begins to apply); or, they could choose to **not apply** for Title III or State funding. ODA cost-share rules would not apply to any services funded entirely from other sources & not including either Title III or State Block Grant.

2. If a 2012-2013 contract Agreement provider of a **non-exempt** service (such as personal care or homemaking) wishes to direct all available Title III and State Block Grant funding to an **exempted** service (meals, legal, transportation), they must submit a letter in format satisfactory to the AAA9 that those non-exempt services previously provided will be maintained at their current funding and/or unit of service level from other funding sources as a "maintenance of effort". No assurance is offered that directing all funding toward exempted services will be acceptable to the ODA, since AAA9 has an obligation under the revised Older Americans Act Section 306(a) to:

   " (2) provide assurances that an adequate proportion, as required under section 307(a)(2), of the amount allotted for part B to the planning and service area will be expended for the delivery of each of the following categories of services --
   (A) services associated with access to services (transportation, outreach, information and assistance and case management services);
   (B) in-home services , including supportive services for families of older individuals victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction; and
   (C) legal assistance"

   Further, ODA policy 205.00 states that "Area Agencies on Aging will allocate an 'adequate proportion (a minimum of 5% before transfers) of Title IIIB funds for each of the following categories of services or demonstrate to the satisfaction of ODA that services are being furnished for such category are sufficient to meet the need for such services in such are (Section 306(b)(2) OAA)", the latter a reference to the 306(a) cited above. AAA9 must seek ODA approval if less than 5% is requested for non-exempt in-home services.

   4. Pending Board and ODA approval, any funds from Title III or State funds for which there are no bids may be placed in the Areawide Care Coordination funding pool administered through AAA9 case-managed care plans. Other options may include re-bidding, transfers among Titles, supplemental awards or carry-over to the general funding pool for re-formulation in a following period on an Areawide basis.

AAA9 will, on an on-going basis, evaluate the information, instructions, guidelines, policies and rules

issued by ODA. Changing ODA expectations for cost-sharing administrative activities may have an impact on the cost of providing a unit of service during the two-year contract cycle.

Earnings:

Realistic projections of
all age 60+ units & all age 60+ funding
are critical to the success of a contract.

Prior to 2002, AAA9 had historically paid providers at arbitrary fixed rates or at negotiated unit rates under performance-based/purchase-of-service contracts on a reimbursement basis. From 2002 onward, the process has been amended to allow for Title III and State Block Grant funds to be distributed proportionately per-unit on the basis of how these funds relate to the total funding anticipated by the Applicant for the service to older adults.

The unit rate to be paid for each eligible unit served for AAA9 dollars will be the same rate as the combined "cost share/unit rate" figure in the highlighted box on line K of the Budget Summary exhibit. AAA9 will reimburse at that rate for every eligible unit up to the maximum funding available, with contract agreements specifying the maximum number of Title III units and separate State Block Grant units (each at the same rate). This "cost share/unit rate" will coincide with the amount to be used for calculating any obligation under the ODA cost-sharing for non-exempt services. Do NOT include any AAA9 Care Coordination or AAA9 PASSPORT funds or units in this Application – see the Budget Summary exhibit instructions for that discussion.

Special Note: **ALL units to be billed to Title III or State Block Grant during the contract Agreement year MUST be included in the Budget Summary exhibit, along with ANY funding source that may directly help to support them.**

A primary role of AAAs is providing assurance & confidence to clients, to the community and to other funders that services are being delivered in accord with accepted standards & conditions throughout the entire contract period. To ensure AAA9 investment and involvement in the oversight, program auditing and performance & delivery of the services throughout the period, Providers will not be allowed to earn the full Title III or State Block Grant value of contract Agreements before nearing the end of the contract Agreement period. This method also protects clients dependent on the services if the Provider ceases service delivery during the contract Agreement; AAA9 can access the remaining funds to continue services – if the allocation were already spent by drawing down funds at mid-year, the clients would be at extreme risk of suddenly having no service at all and no transition period.

In the event of a serious calculation error, clerical error, AAA9 review error or a mid-year change in the Provider's ability to perform that exceeds the number of units proposed in the Budget Summary exhibit, the **AAA9 may choose to limit earnings** month-to-month **and to renegotiate the Budget Summary** exhibit **& resulting unit rates, preferably only once in each contract year**. In accordance with previously-existing AAA9 contract Agreement conditions, AAA9 may choose to limit monthly earnings to a maximum of 8.34% ($1/12^{th}$) of the annual allocation for the number months that have

passed to-date in the contract Agreement year.

This could mean a substantial mid-year change in cash flow at the Provider level that will require changes in local cash expectations and in Provider management practices. This practice is intended provide an incentive and assurance that services will be provided as planned throughout the course of the contract Agreement period, as well as encouraging good financial, production and management planning by the Provider. Under existing contract Agreement conditions, a Provider could apply for exemption by submitting a letter to the AAA9 executive director detailing the circumstances and reasons for seeking an exemption. The more likely AAA9 response will be to renegotiate the Budget Summary exhibit and adjust unit rates & year-to-date earnings accordingly.

Example:

AAA9 issues a contract for 1,200 units of service in a year. One-twelfth equals 100 units.

A Provider provides 90 units in the month of January, they get paid for 90 units; if they provide 110 units in February, they get paid for all 110 units, because they can be paid for up to 100 a month (January + February maximum= 200 units; January 90 + February 110 = 200 units).

If, instead, they provided 150 units in February, they could only be paid for 110. The expectation is that any monthly overages year-to-date would either even-out over the year or be renegotiated due to error.

Providers will be given the flexibility of receiving payment for up to 10% over the year-to-date percentage to account for minor fluctuations in productivity from month to month.

Thoughtful and truthful projections of both units to be served and all cash resources to be used will reduce or eliminate the need for mid-year unit rate adjustments while allowing for modest (plus or minus 10%) month-to-month changes in productivity.

Application Document as Part of Binding Contract Agreement:

The Application submitted by successful applicants will become a legally-binding part of the resulting AAA9 service contract Agreement, incorporating any negotiated revisions. AAA9 has streamlined the Application by using an "assurance" format wherever possible.

Possible Renewal for a Second Year:

AAA9 Title III and State funds performance-based contract Agreements are issued with the intention of a two-year cycle, with Providers eligible – but not assured - for a second year renewal pending satisfactory performance, maintenance of effort and status quo. Either influences beyond the control of AAA9, changing circumstances in the funding or operations environment for AAA9 and corresponding AAA9 Board of Trustees action may cause that intention to be revoked, selectively or universally, for either Title III or State funds services, by service, type of funding and/or Provider.

In the event of renewal and unless otherwise noted or amended in the renewal application, all Application statements regarding the applicant organization, service delivery and clientele will thus become part of the AAA9 service contract Agreement for the second year of the cycle as well. The contract Agreement renewal application format is planned to be a modified version of the original application, but may be subject to change. Unit rates, unit production and client characteristics will be negotiable for the second year.

Appealing an Application for Funding Denial:

The AAA9 policy 607.0 *Hearing for Appeal*, as amended 7-24-03, reads (emphasis added):

"607.0 Policy: Hearing for Appeal

The AAA shall provide the opportunity for an appeal hearing to:

1. Any contractor/grantee whose Older Americans Act or Senior Community Service Block Grant contract or grant has been suspended, terminated, or not renewed.
2. Any agency or organization whose application for Older Americans Act or Senior Community Service Block Grant funding is denied.

Procedure A. Written Request

2. The agency or organization who desires a hearing **must, within ten (10) working days of the notice of adverse action, submit a written request** to the AAA, which specifically requests a hearing and states the reason(s) that such a hearing should be granted. The **reasons cited in such request must be specific and related to factual matters** regarding the suspension, termination, non-renewal, application for funding or the selection process. Any testimony, argument or evidence presented at a resulting hearing must be relevant and **limited to those factual matters on the original application** in the opinion of the hearing officer(s). The hearing officer(s) shall reject any unsupported or hearsay evidence presented

Procedure B. AAA Response

1. Upon receipt of the request, the AAA shall:
    a. Time and date stamp the request
    b. Within five (5) working days, the AAA9 Executive Director or designee shall contact the appellant, discuss the grounds and reasons for the appeal request and ascertain that the appellant wishes to proceed further.
    c. Within ten (10) working days, notify the agency or organization of the date, time and location of the hearing to be held.
    d. **All parties or respondents that may reasonably be directly affected by the appeal shall be notified** at the same time as the appellant and invited to participate with observation or provision of testimony, **including competing applicants**
    e. Any such hearing must be held within twenty (20) days after receipt of the request.
2. The AAA9 Executive Director shall designate a hearing officer(s) to preside over the hearing.
3. Appellants shall be provided **up to 10 minutes to present their appeal**. Affected parties or respondents and AAA9 shall be provided up to 10 minutes each to respond to the appellant's presentation. Such presentations shall include **all relevant points** to be made and **factual information** to support those points. The hearing officer(s) may ask questions of the presenters at the conclusion of each presentation and of all presenters at the end of all presentations."
4. Following the hearing, the hearing officer(s) shall privately consider all information provided for or obtained at the hearing and compare it to the criteria set forth in published selection criteria, published selection process, information previously submitted or created as part of the selection process and any related written contract provisions or

correspondence, as may be applicable. The hearing officers may acquire further information from the AAA9 staff as needed before rendering their recommendation.

5. The hearing officer(s) shall have five (5) working days to render a recommendation to the Board of Trustees.
6. The Board of Trustees shall have up to twenty (20) working days to render a final decision.
7. The AAA shall give written notification of the final decision. Said notification shall include notice of the right to appeal to the Ohio Department of Aging
8. The AAA may terminate hearing procedures at any point if:
    a. The agency or organization which made the hearing request, negotiates a written agreement that resolves the issue(s) which prompted the hearing; or
    b. The agency or organization withdraws the appeal in writing."

In addition, the Ohio Department of Aging has another level of appeal. The OAC 173-3-09 Appeals (A*) Introduction: Each AAA and ODA, subject to the conditions specified in the procedures below, shall honor all written request for appeal hearings that are submitted by providers against whom an AAA has taken an adverse action. (An appeal hearing under this rule is not an adjudication hearing under Chapter 119 of the Revised Code).*

With Respect to Transportation Coordination Projects:

AAA9 wishes to be supportive of the ODoT-sponsored transportation coordination projects. Such participation, however, poses several new challenges to our administrative, contracting and oversight systems. Issues of sub-contracting, verifiable unit of service delivery for earnings and AAA9 responsibility for quality assurance for all units are a few of the challenges.

For the 2012-2013 contract Agreement cycle (or until further notice), transportation providers involved in official ODoT-sponsored transportation coordination projects will have certain exemptions from the requirement to show all financial resources and all units served in the Budget Narrative exhibit and resulting billings under a contract Agreement:

1. The Budget Summary exhibit must show all financial resources and units benefiting older adults age 60+ except those resources not from AAA9 dollars specifically dedicated to the coordination project. Providers will be expected, however, to be able to produce a separate budget with projected financial resources & units for the coordination activities on request.
2. The Budget Summary exhibit must include at least minimum cash match and may & should include 'Other Cash' funds from other sources - just not the same dollars as the set-aside for transportation coordination. Applicants continue to score review points for inclusion of match above the15% ratio and for 'Other Cash'.
3. Units to be billed to the AAA9 contract Agreement must only include units delivered by the Provider directly; that is, by personnel and vehicles under the direct control of the Provider (ie, staff on payroll, volunteers covered Provider insurance, vehicles owned or leased in the Provider name). All such units billed must be for the benefit of a person age 60+. Units delivered by other participants in the coordination project cannot be billed to the AAA9 contract Agreement. Units produced by the Provider that do not benefit an older adult (for example, miles driven by a Provider van with only younger adults, teens or children riding aboard) cannot be billed to the AAA9 contract Agreement.

Further, AAA9 expresses in the Application regarding Transportation Services in general:
"**Additional Conditions of Participation for Applicants to provide Transportation Services**: Transportation service providers will give first priority for use of AAA9 dollars and local matching funds transportation services for transporting participants to congregate meal sites and will coordinate with AAA9 Title III-C providers to assure transportation availability whenever meal sites are open. Further, the Applicant agrees to offer transportation services on a county-wide basis to a variety of community destinations, including but not limited to essential shopping, banking and non-emergency medical destinations and not limited to destinations associated with the Provider organization, such as a Provider senior center or Provider medical facility. The Applicant also agrees to work cooperatively with other transportation providers to facilitate ODoT-sponsored coordinated transportation systems and to facilitate inter-county transportation for non-emergency medical and other essential purposes…".

--- End of General Information & Conditions ---

GENERAL INSTRUCTIONS

The 2012-2013 AAA9 Title III and State Block Grant contract application information follows.

READ ALL INSTRUCTIONS before beginning to prepare the application. Applicants are expected to also retain copies of and access to their completed application packet(s).

1. The main section of the application is the "Application & Assurances" section, pages A-1 to A-6. Prepare ***one*** **"Application & Assurances" set for the organization;** if applying for **multiple counties,** provide one set for **each county**. This section has all pages and forms requiring signatures, and includes identification information, conditions, assurances, reserved rights & privileges and a list of required attachments.

2. Prepare one Budget Summary (insert at A-7), and one Budget Narrative (page A-8 to A-10 as issued) and one set of attachments **for each service** category. If applying for **multiple counties,** provide one set **for each county.** All required attachments must be firmly secured to this section (heavy-duty staples, binder clips, etc.).

3. Prepare good-quality readable copies of all requested attachments.

4. Submit TWO original printed copies with original signatures in **BLUE** ink to be **received** at the AAA9 office no later than **4:30 p.m., Tuesday August 30, 2011**.

Responses should be direct, to-the-point and responsive only to the question asked. Content will be more important than the number of words.

Note that pages numbered A-11 through A-26 as issued contain a set of Assurance that the Applicant is agreeing to implement by signing and submitting page A-4. If the Applicant chooses to use Microsoft WORD and insert the narrative response sections of page A-9 & A-10, the numbering on these pages will change upward. DO NOT include these pages in the Application packet that you submit; they are for your information, acceptance & reference.

Also attached is the **"Appendix"**. This section contains selected definitions, service category & unit of service information, current AAA9 'community focal points' and demographic information necessary for completing the applications.

Applicants can request a copy of any of the current ODA/AAA9 Service Specifications and Conditions of Participation for those services currently having such standards. These standards became minimum service requirements effective January 1, 1991 with subsequent revisions by ODA to Ohio Administrative Code most recently in 2009. Applicants also request direction to ODA and AAA9 policies and procedures; due to their number, length and bulk, they may only be available for on-site inspection at the AAA9 office or in computer files in Microsoft Word format. Please direct all requests to: Diane Phillips, Quality & Planning Division Director, c/o AAA9, 60788 Southgate Rd., Byesville, OH 43723, (800) 932-7277 extension 4913 or fax request to (740) 439-3592 or email to dphillips@aaa9.org.

DETAILED APPLICATION REVIEW AND CRITERIA

Completed applications are due at the AAA9 office, 60788 Southgate Road, Byesville, OH 43723 **by 4:30 p.m., Tuesday August 30, 2011**; earlier submittal is encouraged. The review process is expected to be completed in late September and contracts issued in December following action by the AAA9 Regional Advisory Council and Board of Trustees.

Applications from existing Providers will each be reviewed individually and judged on their own merit. The AAA9 may compare all narrative, statistical and financial information for previous full contract years, current mid-year through June 30th and current year/twelve-month projection performance data from information available to the AAA9; **similar past performance information and references will be requested of any new applicants**. Application review may also use aggregate data such as that from the Ohio Department of Aging OASIS or NAPIS reporting systems, the Ohio Data Users Center, the U.S. 2000 Census, 2010 Census and various AAA9 internal data (ie, prior years, other programs) & other publicly available information related to social service delivery.

COMPETING BIDS: The six primary considerations for selecting Providers for 2012-2013 will be:

(1) complete, accurate & timely submittal of the application;
(2) AAA9 priority service categories [(1) home-delivered meals, (2) congregate meals, (3) transportation, (4) personal care assistance, (5) homemaking, and (6) adult day care services];
(3) indicators of quality, contract compliance and capacity, such as past performance and Budget Narrative responses;
(4) clientele to be served (higher percentages of age 75+, female, minority and low-income will increase the score);
(5) number of units and resulting unit rates for a service, including Title III and State Block Grant share, as calculated on the Budget Summary exhibit (higher numbers of units and lower unit rates are more favorable; producing more units and having more cash involved in the service from other sources will increase the score);
(6) amounts of Title III matching funds, client contributions, and other cash (higher amounts are more favorable; more matching dollars, client contributions or cash from other sources will increase the score);

For legal services, additional considerations will be applied as called for under Older Americans Section 307 et al; see 'With Regards to Legal Services' at the end of the General Information section and may require the provision of additional information for review.

Review points from the Budget Summary exhibit will be awarded for each element of one point for each percent of local cash match above the required minimum 15%; one point for each percent of client contributions compared to total cash cost; one point for each percent of each client characteristic of minority, low-income, age 75+ and female that is above the census percentage in the county or zone.

Points may be subjectively awarded for each element of: {a} complete, accurate & timely submittal

(5 pts max); {b} hours of operation (10 pts); {c} projected number of units appropriate (10 pts); {d} countywide service to meet need (10 pts); {e} coordination of services (10 pts); {f} meets OAA targeting & service expectations (10 pts); {g} priority service (10 pts). Objective points will be scored for Annual Structural Review results (no findings-15 pts; 5 or less-10 pts; 5 to 10-7 pts; over 10 3 pts) and history of report ((OASIS, NAPIS/SAMS, fiscal, etc) submittal (late 51%-5 pts; late 25 to 50%-7 pts; less than 25% late-10 pts). An objective 'maintenance of effort' score based on % change for each of number of Units and number of Clients from 2010 actual to 2012 planned; if you propose to serve less units or less clients than you actually reported for 2012, you will lose points.

AAA9 reserves the privilege of using, in a subjective manner, mid-year performance in the current year (planned vs actual, etc), Budget Narrative responses and other experiential information regarding previous AAA9 contract operation & compliance (or references of new bidders) if applicable, and the apparent ability of the provider to deliver high-quality service in the quantities proposed. These observations will influence the selection of contractors and any negotiation of special terms or proposal revisions.

NON-COMPETING BIDS: In the event of a single bid for a single county or zone, AAA9 reserves the right and privilege to negotiate with a sole bidder regarding number of units to be served, client characteristics, unit costs and indicators of quality, contract compliance and capacity. Such negotiations will be carried out in good faith, based on information from contracting in previous periods for similar services in similar areas and/or other similar applications. Negotiations must conclude to the satisfaction of the AAA9 Executive Director. Alternatives to awarding a contract to a sole bidder may include a second open public bidding process, a selective limited process for the county or zone(s) and service(s) affected by any such non-renewal or withdrawal, or, pending AAA9 Board and ODA approval, transfer of funds into the AAA9 Care Coordination funding pool.

APPLICATION INSTRUCTIONS

APPLICATION & ASSURANCES

Page A-1, AAA9 Title III & State Block Grant Application for 2012-2013 Service Provision:

1. Dates of Program Period: pre-completed by AAA9.
2. Contact Person: the person designated to respond to questions about this Application.
3. Organization Name: the legal name and operating name of the Applicant organization
4. Address: Street address and mailing address for receiving communications about this Application
5. Telephone #: the main voice telephone for inquiries about this Application or service(s)
6. Fax #: the main facsimile ("fax" number for corresponding with this organization
7. Email address(es): the primary electronic mail addresses for the organization
8. Type of Application: pre-completed by AAA9
4. Federal Identification Number: number is issued by the Internal Revenue Service, usually 31-_.
5. Type of Agency: Check only one box indicating your operational status. To qualify as a public non-profit, you must be an official operational part of a unit of government or council of governments (COG). To qualify as a private non-profit, your must be recognized as an IRS Code Section 501 (C)(3) or 501 (C)(4) organization. Remove "X" at non-profit as needed.
6. Name & Title of Official Authorized...: Identify the person authorized by your organization to commit to contractual & performance obligations; this is typically the president or chairman of a Board of Trustees or a Chief Executive Officer to which the Board has officially delegated such responsibility.
7. Name & Title of Official to Receive...: Identify the manager or staff person to receive regular correspondence regarding the contract Agreement and program throughout the contract Agreement period; this person is the primary communication link between the AAA9 and your organization. All general correspondence will be directed to this person, unless otherwise requested in writing. This person is typically the organization's Executive Director or the Program Director(s) of an operating division.
9. Person to receive inquiries… by service category: identify person to be contacted about particular services, if preferred; insert 'not applicable" if not preferred.

Pages A-2 & A-3, Final Preparation Checklist:

Check each item and attachment line as the packet is assembled. All attachments must be submitted with the application prior to deadline. Submit page A-2 & A-3 as part of your application packets.

Page A-4, Authorization to Submit & Acceptance of Terms:

Review the two choices presented, select the appropriate one (use a checkmark or X), complete the requested information on blank lines provided (private non-profit organizations will typically select the first choice). **Authority source citation MUST be included.** Insert organization name as listed in item 1 on page A-1. Put all signatures in BLUE ink only.

Page A-5, Assurance of Compliance, Section 504:

Self-explanatory; be sure to check either {a} or {b} in mid-page. **Required.** Must be signed in BLUE ink by person listed in item 6, page A-1.

Page A-6, Assurance of Compliance, Title VI/Civil Rights:

Self-explanatory. **Required.** Must be signed in BLUE ink by person listed in item 6, page A-1.

Page(s) A-7, Budget Summaries

Use Microsoft Excel forms for the Budget Summaries. Contact the Area Agency on Aging if you are unable to use this format

Prepare one Budget Summary & Budget Narrative for each service & each county

Budget Summary: The budget summary is prepared in Microsoft Excel spreadsheet format. If you use this format, it will automatically perform the calculations in the shaded areas from your entries in the clear boxes. The shaded areas are 'protected' from accidental overwriting of formulas; do NOT remove the protection from the spreadsheet except at the direction of AAA9 staff member. If you have difficulty using Excel, contact AAA9 for advice.

Do NOT include PASSPORT or AAA9 Care Coordination clients, units or dollars in these Budget Summary calculations. In theory, they are supported totally from other funds and AAA9 is not allowed by ODA to directly supplement those parts of your operation. You may want, however, to consider the number of units, clients and dollars that resulted from your total operation including all revenue sources, make a calculation to figure your 'real' total unit cost, and work from there; you will likely want to consider how your PASSPORT or AAA9 Care Coordination unit rates compare to the 'real' unit cost and budget accordingly. Any "profit" that you might earn from PASSPORT or Care Coordination becomes 'local cash' and you can use it as you see fit – it would no longer be federal or state funds and you could use it as either match or local cash for Title III or State Block Grant services, but do not label it as "PASSPORT" or "Care Coordination" in the Budget Narrative.

I.A. Applicant Name: enter the official name of your organization

I.B. Service Name: enter only one service category (congregate meals, home-delivered meals, transportation, etc)

I.C. Unit of Service: enter the unit of service from the Service Specifications (one hour, one mile, etc)

I.D. County: enter the county in which the service will be performed on a countywide basis; submit one separate Budget Summary/Budget Narrative set for each county you seek to serve.

I.E. Original/Revised Budget: pre-completed by AAA9

II. Number of units of service:

Current providers must enter the actual number of units that you previously served under AAA9 Title III and/or State Block Grant contract in the **left-hand column**, using your year-end 2004 OASIS and NAPIS/SAMS report data. New applicants can leave this blank and expect a request for similar data.

All applicants must enter the number of planned units to be served for 2006 in the **center column**. For current providers, a reference percentage will appear in the **right-hand column** automatically after you make your entry for notice by reviewers regarding "maintenance of effort'.

III. Projected Revenue/***Title III-B & State Block Grant: Non-nutrition services***

A or B. Title III: insert the dollar amount of Title III B and/or D on the appropriate line in the center white column. You do not have to apply for both sources; D can only be used for health education, health promotion or disease prevention activities.

C. Match: insert the dollar amount of matching funds that you are committing to Title III-B or D; to find the minimum amount necessary, divide the Title III amount by 85, then multiply the result by 15. Additional matching funds above the 85%/15% requirement are welcome and generate one point for each percent above 15% in the review (see how the points change in the right-hand column with different amounts); additional match is very helpful for future funding flexibility. Matching funds may only be non-federal funds (with the exception of LSCA funds for Legal services) and cannot include client donation/contributions/cost-shares ('program income') or Ohio Senior Community Services Block Grant (SCSBG) funds; show federal revenue sources like Title XX/SSBG under "Other Cash" below. ***ALL local cash should appear as "Local Match" if it is not already pledged or planned to be pledged as local match for another federal program.***

D. Sub-Total: protected cell, will automatically add A, B & C together.

E. SCSBG requested: insert the dollar amount of Ohio Senior Community Services Block Grant (SCSBG) you are requesting for this service; no match is required and it cannot be used by Providers to match Title III per ODA policy.

F. Client Donations/Program Income: insert the amount of voluntary donations or 'cost-shares' that you expect to receive from participants in this service. YOU MUST SHOW DONATIONS SIMILAR TO THOSE RECEIVED IN PRIOR PERIODS – no zero goals will be accepted due to the mandatory Older Americans Act requirements. Note that no older adults can be discriminated against for inability to or choice not to contribute. Higher level of Client Donations/Program Income increase your score one point for each additional percent overall.

G. Total Other Cash: insert all other cash resources that are used to support this service for ALL older adults age 60+ served through your organization. This includes Title XX/SSBG, local senior services levy funds, etc. Note that no older adults can be charged a fee for the same service from your organization unless you demonstrate to the AAA9 executive director how it cannot be discriminatory under the Older Americans Act. Higher levels of Total Other Cash increase your score one point for each additional percent overall.

H. Total Cash: protected cell, will automatically add D, E, F & G together.

I. Inkind: insert the value of donated time, goods or services; sources must be documented in accordance with customary accounting practices and must be from non-federal sources. NOTE: Only include "Inkind" if you can & do thoroughly document the cost or value & its proportion of direct impact on the cost of providing the proposed service(s) sufficiently for audit purposes; "Inkind" is not required & does not enhance your application score.

J. Total Revenue: protected cell, will automatically add H & I together.

K. Cost-share/Unit Rate: **this is the amount that a selected contractor will be reimbursed for each eligible unit of service provided, up to the maximum funding available**; protected cell, will automatically add Title III & State Block Grant dollar figures A, B & E together and divide by number of proposed units. This represents the amount that the Applicant would earn during the contract Agreement period from AAA9 for each verifiable unit served, up to

the limits of funding availability & contract compliance. This is also the amount that will be used as basis for calculating client cost-sharing recommended shares under ODA rules.

The figure at the end of the right-hand column totals the revenue points.

III. Projected Revenue/***Title III-C & State Block Grant*: - Nutrition programs only**
Instructions are basically the same as Title III-B/SBG above, with the exceptions of deleting the Title III-D line and adding in a NSIP (formerly USDA) reimbursement line. The NSIP line will automatically calculate the amount that may be earned for each eligible meal served (the current rate at 6/05 times the planned units for 2012).

IV. Planned Clients-

A. Current providers must enter the actual number of clients that you previously served under AAA9 Title III and/or State Block Grant contract in the **left-hand column**, using your year-end 10 OASIS and NAPIS/SAMS report data. New applicants can leave this blank and expect a request for similar data. All applicants must enter the number of planned units to be served for 2012 in the **center column**. For current providers, a reference percentage will appear in the **right-hand column** automatically for notice by reviewers regarding "maintenance of effort'.

B. 1 thru 8: Current providers must enter the actual number of clients & characteristics that you previously served under AAA9 Title III and/or State Block Grant contract in the **left-hand column**, using your year-end 2010 OASIS and NAPIS/SAMS report data. New applicants can leave this blank and expect a request for similar data. All applicants must enter the number of planned "unduplicated" clients and their characteristics in the '#Year 2012 Planned' **center column**.

In accordance with ODA 204.02 'Service Priority To Specific Client Groups', "*AAAs shall set specific goals to ensure that services are provided to older individuals (aged sixty and over) with greatest economic need and greatest social need, with special emphasis on low-income minority individuals, in at least the proportion of the priority population within the respective service provider's geographic boundaries*", each applicant must set an initial goal for each characteristic of low income, minority, age 75+ and female clients to be served will meet **at least** the same percentage as the county (or other zone); see the Appendix for available statistics from the 2000-2010 Census. When reliable information from the 2000 Census becomes available for low-income minority, handicapped, rural and isolated/living alone, AAA9 will ask providers to update their goals. **NO 'zero' goals are acceptable for any characteristic.**

Enter into the **right-hand** 'County/zone' column the demographics available for your county from the 'AAA9 Application Demographics' sheet. Then compare the percentages; the Planned' percentages must be the same or higher than the 'County/zone' percentage. If you are for some reason proposing to serve less than countywide, contact AAA9 staff for advice.

V. Unit/Client Ratio: protected cell, will automatically divide II. By IV.A. For current providers, a reference percentage will appear in the **right-hand column** automatically for notice by reviewers regarding "maintenance of effort'.

Pages A-8 through A-10 on, Budget Narratives:

The following narrative responses are required under either the Older Americans Act, ODA policy, Ohio Administrative Code or AAA9 policy or practice. Note that they are your opportunity to describe your service and to demonstrate elements of quality and capacity. These responses are a vital part of the subjective review points of Application to compare you any competition during provider selection and for monitoring if you are the successful bidder.

Page A-8 asks for a detailed list of sources for matching funds (which must be from non-federal sources); complete the Word form or insert a page behind page A-8.

Pageg A-9 & A-10 ask for narrative responses to a number of questions, most required by ODA or the OAA; please answer them in order of presentation, one question right after the other, starting on a separate piece of paper or insert answers after each question in MicroSoft WORD and continuing until done. Please make your responses direct, to-the-point and specific to the question asked. If prepared separately, insert printed pages into the document behind page A-10.

Page A-11 thru A-25: 2012-2013 AAA9 Title III & State Block Grant Assurances
All applicants must accept the *AAA9 Title III & State Block Grant Assurances* and acknowledge their acceptance by signing the *Authorization to Submit & Acceptance of Terms* form on page A-4. Other contractual requirements will be included in the actual contract for services.

DO NOT INCLUDE PAGES A-11 THROUGH A-25 when you submit your completed application packet; you acknowledge their presence and your acceptance in signing page A-4

Attachments
All attachments must be current at the time of submittal; please check expiration dates carefully. Certificates or licenses expiring before grant period begins must be promptly re-submitted for a contract Agreement to be processed and remain in effect. All attachments (other than those specified in the Budget Narrative instructions, pages A-8 through A-10) must be secured to this section behind page A-10.

- End of Instructions -

ASSISTANCE & DEADLINE INFORMATION

* * * * * * * * * *

All applications are due by 4:30 p.m., Tuesday August 30, 2011 at the AAA9, Attn: Diane Phillips, Quality & Planning Director, 60788 Southgate Rd., Byesville, OH 43723, (740) 435-4913

* * * * * * * * * *

FOR ASSISTANCE IN PREPARING YOUR APPLICATIONS, CONTACT:

Diane Phillips, Quality & Planning Division Director

AAA9, 60788 Southgate Rd., Byesville, OH 43723

(740) 435-4913

(740) 439-3592 fax

dphillips@aaa9.org

* * * * * * * * * *

APPENDIX

Demographics

Poverty Guidelines – Low Income

Acronyms

Definitions

Clients Rights

Community Focal Points

Allocations by County & Fund

AAA9 2012 Application Demographics

NOTE: Age 60+, Age 75+, Female and Minority data are from the 2000-2010 U.S. Census. The essential Low Income figures are *italicized* and derived from the 1990 census. Current figures not incorporated for LI Minority, Rural or Living Alone". Figures for planning and performance monitoring will be released when available.

Belmont Co.:	*Number*	*Percent*
All Age 60+:	17,170	100.0%
Minority 60+:	340	2.1%
Low Income 60+:	*2,066*	12.8%
Lo-Inc Minority 60+:	n/a	
Age 75+:	9,133	53.2%
Handicapped:	n/a	
Rural:	17,170	100%
Female:	9,704	56.5%
Isolated/Living Alone:	n/a	

Carroll Co.:	*Number*	*Percent*
All Age 60+:	6,777	100.0%
Minority 60+:	56	1.0%
Low Income 60+:	*468*	8.5%
Lo-Inc Minority 60+:	n/a	
Age 75+:	2,690	39.7%
Handicapped:	n/a	
Rural:	6,777	100%
Female:	3,572	52.7%
Isolated/Living Alone:	n/a	

Coshocton Co.:	*Number*	*Percent*
All Age 60+:	8,291	100.0%
Minority 60+:	105	1.5%
Low Income 60+:	*791*	11.0%
Lo-Inc Minority 60+:	n/a	
Age 75+:	2,690	32.4%
Handicapped:	n/a	
Rural:	8,291	100%
Female:	4,549	54.9%
Isolated/Living Alone:	n/a	

Guernsey Co.:	*Number*	*Percent*
All Age 60+:	9,011	100.0%
Minority 60+:	120	1.5%
Low Income 60+:	*1,026*	13.0%
Low Income Minority 60+:	n/a	
Age 75+:	2850	31.6%
Handicapped:	n/a	
Rural:	9,011	100%
Female:	4,890	54.3%
Isolated/Living Alone:	n/a	

Harrison Co.:	*Number*	*Percent*
All Age 60+:	3,931	100.0%
Minority 60+:	81	2.3%
Low Income 60+:	*427*	11.9%
Lo-Inc Minority 60+:	n/a	
Age 75+:	1,303	33.2%
Handicapped:	n/a	
Rural:	3,931	100%
Female:	2,094	53.3%
Isolated/Living Alone:	n/a	

Holmes Co.:	*Number*	*Percent*
All Age 60+:	6,743	100.0%
Minority 60+:	54	1.0%
Low Income 60+:	*620*	11.5%
Low Income Minority 60+:	n/a	
Age 75+:	2,244	33.3%
Handicapped:	n/a	
Rural:	6,743	100%
Female:	3,629	53.8%
Isolated/Living Alone:	n/a	

Jefferson Co.:	*Number*	*Percent*
All Age 60+:	17,567	100.0%
Minority 60+:	893	5.1%
Low Income 60+:	*1,938*	11.0%
Lo-Inc Minority 60+:	n/a	
Age 75+:	6,202	35.3%
Handicapped:	n/a	
Rural:	17,567	100%
Female:	9,817	55.9%
Isolated/Living Alone:	n/a	

Muskingum Co.:	*Number*	*Percent*
All Age 60+:	18,272	100.0%
Minority 60+:	589	3.7%
Low Income 60+:	*1,594*	10.1%
Low Income Minority 60+:	n/a	
Age 75+:	6,236	34.2%
Handicapped:	n/a	
Rural:	18,272	100%
Female:	10,318	56.5%
Isolated/Living Alone:	n/a	

Tuscarawas Co.:	*Number*	*Percent*
All Age 60+:	20,925	100.0%
Minority 60+:	195	1.1%
Low Income 60+:	*1,653*	9.4%
Lo-Inc Minority 60+:	n/a	
Age 75+:	7,410	35.4%
Handicapped:	n/a	
Rural:	20,925	100%
Female:	11,691	55.9%
Isolated/Living Alone:	n/a	

Areawide-PSA 9:	*Number*	*Percent*
All Age 60+:	108,687	100.0%
Minority 60+:	2,433	2.5%
Low Income 60+:	*10,583*	10.9%
Low Income Minority 60+:	n/a	
Age 75+:	40,136	36.9%
Handicapped:	n/a	
Rural:	108,687	100%
Female:	60,264	55.5%
Isolated/Living Alone:	n/a	

2011 Federal Poverty Level Annual Income	% Gross Yearly Income									
Family Size	75%	100%	125%	150%	175%	185%	200%	225%	250%	300%
1	$ 10,890	$ 8,168	$ 10,890	$ 13,613	$ 16,335	$ 19,058	$ 20,147	$ 21,780	$ 24,503	$ 27,225	$ 32,670
2	$ 14,710	$ 11,033	$ 14,710	$ 18,388	$ 22,065	$ 25,743	$ 27,214	$ 29,420	$ 33,098	$ 36,775	$ 44,130
3	$ 18,530	$ 13,898	$ 18,530	$ 23,163	$ 27,795	$ 32,428	$ 34,281	$ 37,060	$ 41,693	$ 46,325	$ 55,590
4	$ 22,350	$ 16,763	$ 22,350	$ 27,938	$ 33,525	$ 39,113	$ 41,348	$ 44,700	$ 50,288	$ 55,875	$ 67,050
5	$ 26,170	$ 19,628	$ 26,170	$ 32,713	$ 39,255	$ 45,798	$ 48,415	$ 52,340	$ 58,883	$ 65,425	$ 78,510
6	$ 29,990	$ 22,493	$ 29,990	$ 37,488	$ 44,985	$ 52,483	$ 55,482	$ 59,980	$ 67,478	$ 74,975	$ 89,970
7	$ 33,810	$ 25,358	$ 33,810	$ 42,263	$ 50,715	$ 59,168	$ 62,549	$ 67,620	$ 76,073	$ 84,525	$ 101,430
8	$ 37,630	$ 28,223	$ 37,630	$ 47,038	$ 56,445	$ 65,853	$ 69,616	$ 75,260	$ 84,668	$ 94,075	$ 112,890

Monthly income	% Gross Monthly Income									
Family Size	75%	100%	125%	150%	175%	185%	200%	225%	250%	300%
1	$ 908	$ 681	$ 908	$ 1,134	$ 1,361	$ 1,588	$ 1,679	$ 1,815	$ 2,042	$ 2,269	$ 2,723
2	$ 1,226	$ 919	$ 1,226	$ 1,532	$ 1,839	$ 2,145	$ 2,268	$ 2,452	$ 2,758	$ 3,065	$ 3,678
3	$ 1,544	$ 1,158	$ 1,544	$ 1,930	$ 2,316	$ 2,702	$ 2,857	$ 3,088	$ 3,474	$ 3,860	$ 4,633
4	$ 1,863	$ 1,397	$ 1,863	$ 2,328	$ 2,794	$ 3,259	$ 3,446	$ 3,725	$ 4,191	$ 4,656	$ 5,588
5	$ 2,181	$ 1,636	$ 2,181	$ 2,726	$ 3,271	$ 3,816	$ 4,035	$ 4,362	$ 4,907	$ 5,452	$ 6,543
6	$ 2,499	$ 1,874	$ 2,499	$ 3,124	$ 3,749	$ 4,374	$ 4,623	$ 4,998	$ 5,623	$ 6,248	$ 7,498
7	$ 2,818	$ 2,113	$ 2,818	$ 3,522	$ 4,226	$ 4,931	$ 5,212	$ 5,635	$ 6,339	$ 7,044	$ 8,453
8	$ 3,136	$ 2,352	$ 3,136	$ 3,920	$ 4,704	$ 5,488	$ 5,801	$ 6,272	$ 7,056	$ 7,840	$ 9,408

Source: Federal Register Vol. 76,No.13, January 20, 2011, pp. 3637-3638.

Monthly and yearly percentage data calculated by AAA9 and rounded to the nearest dollar.

ACRONYMS

These acronyms are used in the Application and ODA Conditions of Participation & Service Specifications:

AA	Associate of Arts
AAA	Area Agency on Aging
AAA9	Area Agency on Aging, Region 9, Inc., Cambridge/Byesville, OH
ADL	Activity of Daily Living
ADS	Adult Day Service (Formerly Adult Day Care)
BA	Bachelor of Arts degree
BS	Bachelor of Science degree
CFR	Code Of Federal Regulations (federal law)
COP	Conditions Of Participation
CPR	Cardiopulmonary Resuscitation
DRI	Dietary Reference Intake (formerly RDA - Recommended Dietary Allowance)
DRIVE	Specialized training for transportation workers (also see PAT)
EBT	Electronic Benefit Transfer
GAAP	Generally Accepted Accounting Principles
GED	General Education Diploma
HACCP	Hazardous Analysis Critical Control Point
HIPAA	Health Insurance Portability Assurance Act of 1996 (incl. federal privacy regs)
HDM	Home-Delivered Meal (aka "Meals-on-Wheels")
HMK	Homemaker
IADL	Instrumental Activity Of Daily Living
LD	Licensed Dietitian (also see RD)
LPN	Licensed Practical Nurse (also see RN)
LISW	Licensed Independent Social Worker
LSW	Licensed Social Worker
LTCO	see "RLTCO"
NSI	Nutrition Screening Initiative
NSIP	Nutrition Services Incentive Plan/per-unit supplement to Title III-C meals
OAA	Older Americans Act
OAC	Ohio Administrative Code
OBMV	Ohio Bureau Of Motor Vehicles
ODA	Ohio Department Of Aging
ORC	Ohio Revised Code
OT	Occupational Therapy
PASSPORT	Ohio's Medicaid Sec. 2176 waiver for inhome service to older adults age 60+
PAT	Passenger Assistance Training
PCA	Personal Care Assistance
PCS	Personal Care Services
PSA	Planning & Service Area (geographic area assigned to each AAA)
PP	PASSPORT
PT	Physical Therapy
RD	Registered Dietitian
RDA	Recommended Daily Allowance
RLTCOP	Regional Long-Term Care Ombudsmen Program
RN	Registered Nurse (also see LPN)

RT	Recreational Therapy
SCSBG	Ohio Senior Community Services Block Grant
ST	Speech Therapy
STNA	State-Tested Nurse Aide
Title III	Title III of the Older Americans Act
Title III-B	Title III of the Older Americans Act, Supportive Services (non-nutrition)
Title III-C	Title III of the Older Americans Act, Nutrition Services
Title III-D	Title III of the Older Americans Act, Health Promotion/Disease Prevention
Title III-F	Changed to Title III-D in 11/00 revision of the Older Americans Act
US	United States of America
USDA	United States Department of Agriculture; Also see “NSIP”

DEFINITIONS

Definitions from ODA policy 204.02, 'Service Priority to Specific Client Groups':
ADL: The term "activity of daily living" means a personal care skill performed, with or without the use of assistive devices, on a regular basis that enables the individual to meet basic life needs for food, hygiene, and appearance. The term "ADL" may refer to any activity as defined in rule 5101:3-3-06 (B)(1) of the Ohio Administrative Code. (*Also see "ADL" below – AAA9)*

Frail: The term "frail" means that an older individual is determined to be functionally impaired because the individual is unable to perform at least two activities of daily living without substantial human assistance, including verbal reminding, physical cueing, or supervision.

Greatest Economic Need: The term "greatest economic need" means the need resulting from an income level at or below the official federal poverty line.

Greatest Social Need: The term "greatest social need" means the need caused by non-economic factors, which include physical and mental disabilities; language barriers; and cultural, social, or geographical isolation, including isolation caused by racial or ethnic status, that restricts the ability of an individual to perform normal daily tasks or threatens the capacity of the individual to live independently.

IADL: The term "instrumental activity of daily living" means a community living skill performed, with or without the use of assistive devices, on a regular basis that enables the individual to independently manage the individual's living arrangement. The term "IADL" may refer to any activity defined in rule 5101:3-3-08(B)(4) of the Ohio Administrative Code. *(also see "IADL" below – AAA9)*.

Low Income: The term "low income" refers to an older person whose annual income is at or below 100% of the official poverty line as prescribed in the most current version of the Older Americans Act.

Minority: The term "minority" refers to individuals who are Black Non-Hispanic, Hispanic, American Indian/Alaskan Natives and Oriental/Asian/Pacific Islanders.

Poverty Line: The official poverty line as issued by the Department of Health and Human Services.

Rural: The term "rural" refers to any area which is not part of a Metropolitan Statistical Area and therefore includes rural farm, rural non-farm, and towns and cities up to 50,000 in population.

Severe Disabilities: The term "severe disabilities" means a severe, chronic disability attributable to mental or physical impairment, or a combination of mental and physical impairments that is likely to continue indefinitely and expressive language, learning, mobility, self-direction, capacity for independent living,

Definitions for other selected terms used in the Application:
"ADL" means the Activities of Daily Living and these include bathing, grooming, toileting, dressing, eating and mobility, which includes bed mobility, transfer, and locomotion. Deficiencies in these areas often require the assistance of trained Personal Care Assistance personnel. Also see "IADL".

"Agreement" means any resulting contract between the AAA9 and an Applicant to become a Provider.

"Applicant" means a party or organization applying to become a Provider for an ensuing time period.

"Application" means the format and attachments submitted by an Applicant as part of an AAA9 'request for proposal' (RFP) or 'invitation to bid' (ITB) process

"Approved Source" means a designation given to food handling and processing entities that comply with state and federal food safety regulations and inspections.

"Caregiver" means relatives, friends, or significant others who provide assistance to the participant and are responsible for the participant's care on a continuing or regular basis; for OAA Title III-G, it can also mean providing care on an intermittent basis.

"Caregiver, Family" - The term `family caregiver' means an adult family member, or another individual, who is an informal provider of in-home and community care to an older individual (OAA Title III-G, 2000).

"Caregiver, Relative" - The term `grandparent or older individual who is a relative caregiver' means a grandparent or stepgrandparent of a child, or a relative of a child by blood or marriage, who is 60 years of age or older and - (A) lives with the child; (B) is the primary caregiver of the child because the biological or adoptive parents are unable or unwilling to serve as the primary caregiver of the child; and (C) has a legal relationship to the child, as such legal custody or guardianship, or is raising the child informally (OAA Title III-G, 2000).

"Direct Service Staff" means individuals involved in the provision of a service to a participant. involvement may include the coordination, supervision, or provison of personal care or health-related services and routine contact with the participant such a hands-on physical assistance, verbal cuing, reminding, or monitoring activities according to service specifications.

"Handicapped"(ODA) means 'a person who has at least one of the following disabilities, which would restrict participation in a service without special aids or facilities, made available by the service provider:1. Walker; 2. Crutches/cane; 3. Wheelchair; 4. Legally blind; 5. Alcoholism/drug dependence; 6. Deafness; (or) 7. Any other physical or mental disability that would prevent the participant from fulfilling a major life task (i.e., eating, dressing, and bathing).'

"IADL" means the Instrumental Activities of Daily Living, which include: shopping; meal preparation; laundry; community access activities like telephoning, transportation, legal, or financial management; and, environmental activities like house cleaning, heavy chores, yard work or minor home maintenance. Deficiencies in these areas often require the assistance of trained Homemaking personnel. Also see "ADL".

"Lower concentrated sweets/sodium/fat modified diet" means any food regimen ordered by the participant or recommended by a health professional requiring the avoidance or decreased frequency of, and substitutions for, foods that are high in sugar, sodium, or fat (e.g., no added-salt diets).

"Older Americans Act" means the federal Older Americans Act of 1965 (42 U.S. Code, § 3001 Et Seq.), as amended October-November, 2000 in Public Law 106-501.

"Provider" means an Applicant that was selected by AAA9 to perform services under contract

"Return Demonstration" means a test of proficiency completed by a paraprofessional to demonstrate proficiency in a task for which the paraprofessional has received training.

"SCSBG" refers to the Senior Community Services Block Grant received by the Ohio Department of Aging through legislation enacted by the Ohio General Assembly and administered by AAA9.

"Shelf stable meal/emergency meal" means a nutritious meal that is used in emergency situations, and which does not require refrigeration or heating to maintain food safety.

"Termination" means the agreement between the AAA and the Provider has ended, and the provider will no longer be paid for services provided to Title III and SCSBG participants.

"Textured modified diet" means any food regimen ordered by the participant or recommended by a health professional requiring the substitution of one or more foods with a firm or fibrous quality with either (1) the same food in a chopped, ground, or pureed form; or (2) foods that are similar in nutritive value with a softer consistency to help chewing and swallowing (e.g., tomato juice for tossed salad).

"Therapeutic diet" means any physician ordered food regimen requiring a daily minimum or maximum amount of one or more specific nutrients, or a specific distribution of one or more nutrients. examples are calorie specific diabetic diets, complex renal diets with specific protein, sodium, potassium, and fluid restrictions.

"Title III" refers to that part of the Older Americans Act which funds supportive and nutrition services.

"USDA eligible meal" means any meal meeting these united states department of agriculture requirements: served to persons age sixty or older, and their spouses, regardless of age; contains one-third the rda or approximately one-third the rda to accommodate special needs related to health requirements or religious and ethnic customs; and served by a nutrition service provider that is under the jurisdiction, control, management, and audit authority of ODA or the AAA. a nutrition service provider is not required to be the recipient of funds provided by either ODA or the AAA. Funding may come from any source. However, ODA or the AAA must oversee the nutrition service operations of the provider to ensure all these criteria are followed, as well as any other applicable regulations and policies prescribed by the US Department of Health & Human Services and USDA.

Other selected definitions from the Older Americans of 1965, as amended 2000:

(Edited for clarity and to paragraph structure; do not use for legal interpretation)

"Abuse" means the willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm or pain or mental anguish; or deprivation by a person, including a caregiver, of goods or services that are necessary to avoid physical harm, mental anguish, or mental illness.

"Administration" (or "AoA") means the federal Administration on Aging.

"Adult child with a disability" means a child who is 18 years of age or older, is financially dependent on an older individual who is a parent of the child; and has a disability.

"Aging network" means the network of State agencies, Area Agencies on Aging, Title VI grantees, and the Administration; and organizations that are providers of direct services to older individuals; or are institutions of higher education; and receive funding under this Act.

"Area Agency on Aging" means an agency designated under section 305(a)(2)(A) or a State agency performing the functions of an area agency on aging under section 305(b)(5).

"Assistive technology" means technology, engineering methodologies, or scientific principles appropriate to meet the needs of, and address the barriers confronted by, older individuals with functional limitations.

"Board and care facility" means an institution regulated by a State pursuant to section 1616(e) of the Social Security Act (42 U.S.C. 1382e(e)).

"Case management service" means a service provided to an older individual, at the direction of the older individual or a family member of the individual by an individual who is trained or experienced in the case management skills that are required to deliver the services and coordination described in subparagraph (B); and to assess the needs, and to arrange, coordinate, and monitor an optimum package of services to meet the needs, of the older individual; and (B) includes services and coordination such as: comprehensive assessment of the older individual (including the physical, psychological, and social needs of the individual); development and implementation of a service plan with the older individual to mobilize the formal and

informal resources and services identified in the assessment to meet the needs of the older individual, including coordination of the resources and services with any other plans that exist for various formal services, such as hospital discharge plans and with the information and assistance services provided under this Act; coordination and monitoring of formal and informal service delivery, including coordination and monitoring to ensure that services specified in the plan are being provided; periodic reassessment and revision of the status of the older individual with the older individual or, if necessary, a primary caregiver or family member of the older individual, and in accordance with the wishes of the older individual, advocacy on behalf of the older individual for needed services or resources.

"Child" means an individual who is not more than 18 years of age.

"Disability" means (except when such term is used in the phrase 'severe disability', 'developmental disabilities', 'physical or mental disability', 'physical and mental disabilities', or 'physical disabilities') a disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that results in substantial functional limitations in 1 or more of the following areas of major life activity: (A) self-care, (B)receptive and expressive language, (C) learning, (D)mobility, (E) self-direction, (F) capacity for independent living, (G) economic self-sufficiency, (H) cognitive functioning, and (I) emotional adjustment.

"Disease prevention and health promotion services" means (A) health risk assessments; (B) routine health screening, which may include hypertension, glaucoma, cholesterol, cancer, vision, hearing, diabetes, bone density, and nutrition screening; (C) nutritional counseling and educational services for individuals and their primary caregivers; (D) health promotion programs, including but not limited to programs relating to prevention and reduction of effects of chronic disabling conditions (including osteoporosis and cardiovascular disease), alcohol and substance abuse reduction, smoking cessation, weight loss and control, and stress management; (E) programs regarding physical fitness, group exercise, and music therapy, art therapy, and dance-movement therapy, including programs for multigenerational participation that are provided by an institution of higher education, a local educational agency, as defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801); or a community-based organization; (F) home injury control services, including screening of high-risk home environments and provision of educational programs on injury prevention (including fall and fracture prevention) in the home environment; (G) screening for the prevention of depression, coordination of community mental health services, provision of educational activities, and referral to psychiatric and psychological services; (H) educational programs on the availability, benefits, and appropriate use of preventive health services covered under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.); (I) medication management screening and education to prevent incorrect medication and adverse drug reactions; (J) information concerning diagnosis, prevention, treatment, and rehabilitation concerning age-related diseases and chronic disabling conditions, including osteoporosis, cardiovascular diseases, diabetes, and Alzheimer's disease and related disorders with neurological and organic brain dysfunction; (K) gerontological counseling; and (L) counseling regarding social services and follow-up health services based on any of the services described in subparagraphs (A) through (K). The term shall not include services for which payment may be made under titles XVIII and XIX of the Social Security Act (42 U.S.C. 1395 et seq., 1396 et seq.).;

"Elder abuse, neglect, and exploitation" means abuse, neglect, and exploitation, of an older individual.

"Elder abuse" means abuse of an older individual.

"Elder Right" - means a right of an older individual.

"Exploitation" means the illegal or improper act or process of an individual, including a caregiver, using the resources of an older individual for monetary or personal benefit, profit, or gain.

"Family violence" has the same meaning given the term in the Family Violence Prevention and Services Act (42 U.S.C. 10408).

"Focal point" means a facility established to encourage the maximum collocation and coordination of services for older individuals.

"Frail" means, with respect to an older individual in a State, that the older individual is determined to be functionally impaired because the individual is unable to perform at least two activities of daily living without substantial human assistance, including verbal reminding, physical cueing, or supervision; or at the

option of the State, is unable to perform at least three such activities without such assistance; or due to a cognitive or other mental impairment, requires substantial supervision because the individual behaves in a manner that poses a serious health or safety hazard to the individual or to another individual.
"Greatest economic need" means the need resulting from an income level at or below the poverty line.
"Greatest social need" means the need caused by non-economic factors, which include physical and mental disabilities, language barriers; and cultural, social, or geographical isolation, including isolation caused by racial or ethnic status, that restricts the ability of an individual to perform normal daily tasks or threatens the capacity of the individual to live independently.
"Information and Assistance service" means a service for older individuals that provides the individuals with current information on all opportunities and services available to the individuals within their communities, including information relating to assistive technology, assesses the problems and capacities of the individuals, links the individuals to the opportunities and services that are available, to the maximum extent practicable, ensures that the individuals receive the services needed by the individuals, and are aware of the opportunities available to the individuals, by establishing adequate followup procedures; and serves the entire community of older individuals, particularly older individuals with the greatest social (and) greatest economic need.
"In-home services" includes services of homemakers and home health aides; visiting and telephone reassurance; chore maintenance; in-home respite care for families, and adult day care as a respite service for families; minor modification of homes that is necessary to facilitate the ability of older individuals to remain at home and that is not available under another program (other than a program carried out under this Act); personal care services; and other in-home services as defined by the State agency in the State plan submitted in accordance with section 307; and by the area agency on aging in the area plan submitted in accordance with section 306.
"Institution of higher education" has the meaning given the term in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).
"Legal assistance" means legal advice and representation by an attorney to older individuals with economic or social needs; and includes to the extent feasible, counseling or other appropriate assistance by a paralegal or law student under the supervision of an attorney; and counseling or representation by a non-lawyer where permitted by law. See Older Americans Act sections 102 (31), 307 (a) and 321 (a).
"Long-term care facility" means any skilled nursing facility, as defined in section 1819(a) of the Social Security Act (42 U.S.C. 1395i-3(a)), any nursing facility, as defined in section 1919(a) of the Social Security Act (42 U.S.C.1396r(a)), for purposes of sections 307(a)(12) and 712 … a board and care facility; and any other adult care home similar to a facility or institution described in subparagraphs (A) through (C).
"Multigenerational Activity" includes an opportunity to serve as a mentor or adviser in a child care program, a youth day care program, an educational assistance program, an at-risk youth intervention program, a juvenile delinquency treatment program, or a family support program.
"Multipurpose senior center" (MPSC) means a community facility for the organization and provision of a broad spectrum of services, which shall include provisions of health (including mental health), social, nutritional, and educational services and the provision of facilities for recreational activities for older individuals.
"Native American" means an Indian as defined in paragraph (5); and a Native Hawaiian, as defined in section 625… "Indian" means a person who is a member of an Indian tribe, (and) the term "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians (including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (Public Law 92-203; 85 Stat. 688)), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or is located on, or in proximity to, a Federal or State reservation or rancheria; 'Hawaiian Native' means any individual any of whose ancestors were natives of the area which consists of the Hawaiian Islands prior to 1778
"Neglect" means the failure to provide for oneself the goods or services that are necessary to avoid physical harm, mental anguish, or mental illness, or the failure of a caregiver to provide the goods or

services.
"Nonprofit" means an agency, institution, or organization which is, or is owned and operated by, one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.
"Older individual" (older adult, older person, etc) means any individual who is 60 years of age or older.
"Ombudsman" *(see OAA (section 712(a)(2) for complete text)* means an individual with expertise and experience in the fields of long-term care and advocacy (that does): identify, investigate, and resolve complaints that are made by, or on behalf of residents; and relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents (including the welfare and rights of the residents with respect to the appointment and activities of guardians and representative payees), of providers, or representatives of providers, of long term care services, public agencies; or health and social service agencies; provide services to assist the residents in protecting the health, safety, welfare, and rights of the residents; inform the residents about means of obtaining services provided by providers or agencies); ensure that the residents have regular and timely access to the services provided through the Office and that residents and complainants receive timely responses from representatives of the Office to complaints; represent the interests of residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents; provide administrative and technical assistance to entities designated under paragraph (5) to assist the entities in participating in the program (et al).
"Pension and other retirement benefits" means private, civil service, and other public pensions and retirement benefits, including benefits provided under the Social Security program under title II of the Social Security Act (42 U.S.C. 401 et seq.), the railroad retirement program under the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.), the government retirement benefits programs under the Civil Service Retirement System set forth in chapter 83 of title 5, United States Code, the Federal Employees Retirement System set forth in chapter 84 of title 5, United States Code, or other Federal retirement systems; or employee pension benefit plans as defined in section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2)).
"Pension counseling and information program" means a program described in subsection (b)… pension assistance and counseling programs to provide outreach, information, counseling, referral, and other assistance regarding pension and other retirement benefits, and rights related to such benefits, to individuals in the United States
"Physical harm" means bodily pain, injury, impairment, or disease.
"Planning and service area" (PSA) means an area designated by a State agency under OAA section 305(a)(1)(E), including a single planning and service area described in section 305(a)(1)(E).
"Poverty line" means the official poverty line (as defined by the Office of Management and Budget, and adjusted by the Secretary in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).
"Representative payee" means a person who is appointed by a governmental entity to receive, on behalf of an older individual who is unable to manage funds by reason of a physical or mental incapacity, and funds owed to such individual by such entity.
"Severe disability" means a severe, chronic disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that (A) is likely to continue indefinitely; and (B) results in substantial functional limitation in 3 or more of the major life activities specified in subparagraphs (A) through (G) of paragraph (8).
"Sexual assault" has the meaning given the term in section 2003 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg-2).
"State agency" (SUA) means the State agency designated by a State under section 305(a)(1).
"Supportive service" means a service described in section 321(a) – *ie, Title III-B non-nutrition services*.

Clients Rights

The federal Older Americans Act (OAA) requires that a service provider under Title III must promote the rights of each older adult who receives services. Section 314 of the Older Americans Act of 1965, as amended 2000, defines participant rights to include:

(1) "The right
   a. to be fully informed in advance about each in home service provided by such entity under this title and about any change in such service that may affect the well-being of such individual; and
   b. to participate in planning and changing an in-home service provided under this title by such entity unless such individual is judicially adjudged incompetent.

(2) The right to voice a grievance with respect to such service that is or fails to be so provided, without discrimination or reprisal as a result of voicing such grievance.

(3) The right to confidentiality of records relating to such individual.

(4) The right to have the property of such individual treated with respect.

(5) The right to be fully informed (orally and in writing), in advance of receiving an in-home service under this title, of such individual's rights and obligations under this title."

Attachment A
AAA9 Community Focal Points

Belmont County
Belmont Senior Services, Inc.
Oak View County Offices
Tim Johnson, Executive Director
45240 National Road
St. Clairsville, Ohio 43950
740-695-4142

Carroll County
Carroll County Council on Aging
Susan Henderson, Director
100 Kensington Road
P. O. Box 14
Carrollton, Ohio 44615
330-627-7017

Coshocton County
Coshocton County Senior Center
Jamie Thomas, Director
210 Brown's Lane
Coshocton, Ohio 43812
740-622-4852

Guernsey County
Guernsey County Senior Citizens Center
Shon Gress, Executive Director
1022 Carlisle Avenue
Cambridge, Ohio 43725
740-439-6681

Harrison County
Harrison County Council on Aging
Suzanne Bauer, Director
120 North Main Street
Cadiz, Ohio 43907
740-942-3238

Holmes County
Holmes County Council on Aging
Georgianna Cool, Interim Director
170 Parkview Drive
Millersburg, Ohio 44654
330-674-0580

Jefferson County
Prime Time Office on Aging
Judy Owings, Interim Director
1 Ross Park
Steubenville, Ohio 43952
740-283-7220

Muskingum County
Muskingum County Center for Seniors
Terry Dunn, Director
200 Sunrise Center
Zanesville, Ohio 43701
740-454-9761

Tuscarawas County
Tuscarawas County Committee on Aging
Pam Ferrell, Executive Director
425 Prospect Street
Dover, Ohio 44622
330-364-6612

TENTATIVE AAA9 2012 ALLOCATIONS BY COUNTY, SERVICES AND FUND

(projected only; subject Board approval and to availability of funds, including federal & State allocations and 2011 audited carryover)

County	Funding Source	Amount
Belmont	Title III B Supportive Services	$ 78,287
	Title III C1 Congregate	$ 54,652
	Title III C2 Home Delivered Meals	$ 70,534
	Title III D Health Education	$ 3,098
	Senior Community Services	$ 21,996

County	Funding Source	Amount
Carroll	Title III B Supportive Services	$ 45,261
	Title III C1 Congregate Meals	$ 31,272
	Title III C2 Home Delivered Meals	$ 43,389
	Title III D Health Education	$ 1,894
	Senior Community Services	$13,447

County	Funding Source	Amount
Coshocton	Title III B Supportive Services	$ 49,886
	Title III C1 Congregate Meals	$34,467
	Title III C2 Home Delivered Meals	$48,080
	Title III D Health Education	$2,088
	Senior Community Services	$14,820

County	Funding Source	Amount
Guernsey	Title III B Supportive Services	$ 55,073
	Title III C1 Congregate Meals	$ 36,636
	Title III C2 Home Delivered Meals	$ 48,125
	Title III D Health Education	$ 2,189
	Senior Community Services	$ 15,540

County	Funding Source	Amount
Harrison	Title III B Supportive Services	$ 44,073
	Title III C1 Congregate Meals	$ 27,674
	Title III C2 Home Delivered Meals	$,36,853
	Title III D Health Education	$ 1,675
	Senior Community Services	$ 11,900

County	Funding Source	Amount
Holmes	Title III B Supportive Services	$ 47,736
	Title III C1 Congregate Meals	$31,617
	Title III C2 Home Delivered Meals	$42,526
	Title III D Health Education	$1,914
	Senior Community Services	$13,595

County	Funding Source	Amount
Jefferson	Title III B Supportive Services	$80,454
	Title III C1 Congregate Meals	$56,890
	Title III C2 Home Delivered Meals	$74,024
	Title III D Health Education	$3,368
	Senior Community Services	$23,904

County	Funding Source	Amount
Muskingum	Title III B Supportive Services	$77,089
	Title III C1 Congregate Meals	$55,305
	Title III C2 Home Delivered Meals	$73,931
	Title III D Health Education	$3,225
	Senior Community Services	$22,895

County	Funding Source	Amount
Tuscarawas	Title III B Supportive Services	$81,269
	Title III C1 Congregate Meals	$53,796
	Title III C2 Home Delivered Meals	$71,638
	Title III D Health Education	$3,259
	Senior Community Services	$23,133

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This was added as a helpful note for providers who ask which chapter applies to them: 173-3 or 173-39. In short, it depends upon the program through which each *consumer* receives services and could be both.

173-3-01 **Introduction and definitions.**

(A) Introduction: Chapter 173-3 of the Administrative Code establishes criteria that each AAA shall follow when entering into a provider agreement to procure goods or services that serve consumers through an Older Americans Act program or the Alzheimer's respite program. The chapter establishes general requirements regarding provider agreements, procurement by open and free competition (Older Americans Act only), mandatory clauses for every provider agreement, specific requirements for various goods or services, requirements for consumer contributions, and appeals. (If a provider provides goods or services to consumers through an Older Americans Act program or the Alzheimer's respite program and also provides goods or services to consumers through a medicaid waiver program, the provider shall also comply with the provider-certification requirements of Chapter 173-39 of the Administrative Code.) ~~for the provision of a service by a non-certified provider under section 173.392 of the Revised Code. (See Chapter 173-39 of the Administrative Code for criteria regarding providers certified under section 173.391 of the Revised Code.)~~

Consistent use of "goods and services"

(B) Definitions for ~~this chapter~~ chapters 173-3 and 173-4 of the Administrative Code:

These two chapters are inter-related. This will eliminate the duplication between rules 173-3-01 and 173-4-01.

(1) "Activities of daily living" ("ADLs") means eating, dressing, bathing, toileting, transferring in and out of bed/chair, and walking.

(2) "Area agency on aging" ("AAA") means a public or non-profit entity that ODA designates, under Section 305 of the Older Americans Act, to serve as an AAA. Each AAA receives state and federal funds from ODA to administer aging-related programs within a particular ~~PSA~~ planning and service area. ODA lists every AAA in rule 173-2-04 of the Administrative Code.

Redundant

(3) "Assessment" means a gathering of information about a person's ~~current situation and ability to function. It is comprehensive and identifies the person's~~ strengths, problems, and care needs in the following major functional areas: physical health, utilization of medical care, ADLs, IADLs, mental and social functioning, financial resources, physical environment, and utilization of services and supports.

(4) "Assistance with self-administration of medication" has the same meaning as in as in paragraph (C) of rule 4723-13-02 of the Administrative Code when the assistance is provided by an unlicensed person ~~section 3722.011 of the Revised Code~~.

See BIA.

(5) "Care-coordination program" means a program that an AAA may develop to coordinate and monitor the delivery of services. ~~Examples of services that an AAA may coordinate through a care-coordination program are screening,~~

Examples are not limiting factors, but they are sometimes interpreted as such. ODA does not want this definition to appear to be the limiting factor on what can be care coordinated.

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~~assessment, and reassessment; care planning; and ongoing contact between the case manager and the consumer.~~

"*Family* caregiver" is confusing because the OAA doesn't require the caregiver to be family

(6) "Caregiver" and "family caregiver" have the same meaning as "family caregiver" in Section 302 of the Older Americans Act.

~~(6)~~(7) "Consumer's signature" means the signature, mark, or electronic signature of a consumer, or the consumer's family caregiver, who may verify that a service was performed. Examples of means to record an electronic signature are the "SAMS Scan," "MJM Swipe Card," call-in verification, etc.

~~(7) "Family caregiver" has the same meaning as in Section 302 of the Older Americans Act.~~

Rule 173-3-06 uses "focal point."

(8) "Focal point" means a highly visible facility designated by an AAA as a focal point, under Section 306 of the Older Americans Act, where anyone in the community may obtain information and access to services for older persons and that encourages the maximum collocation and coordination of services.

(9) "Incident" means an event that is inconsistent with the routine care or routine delivery of services to a consumer. An incident may involve a consumer, ~~family~~ caregiver (to the extent that it impacts a consumer), provider, provider's staff or facility, another facility, AAA's staff, ODA's staff, or other administrative authorities. Examples of an incident are abuse, neglect, abandonment, an accident, or an unusual situation that results in an injury to a person or damage to the person's property or equipment.

(10) "Instrumental activities of daily living" ("IADLs") means preparing meals, shopping for personal items, medication management, managing money, using the telephone, doing heavy housework, doing light housework, and the ability to use available transportation without assistance.

(11) "Licensed practical nurse" ("LPN") has the same meaning as in section 4723.01 of the Revised Code.

LSC's Rule Drafting Manual rule doesn't allow capitalization of "Dept" or "Aging."

(12) "ODA" means ~~"~~the Ohio department of aging.~~"~~

(13) "Older Americans Act" means the "Older Americans Act of 1965," 79 Stat. 219, 42 U.S.C. 3001, as amended in 2006.

(14) "Older Americans Act funds" means funds appropriated to ODA through Title III of the Older Americans Act and any source used to match those funds. For the purposes of this chapter, "Older Americans Act funds" does not mean

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When a rule requires a plan of treatment, this would allow that plan to be one that was drafted by a less-expensive, non-physican professional if the Ohio Revised Code states that it fits in the professional's scope of practice. ODA has been making similar changes rule by rule.

funds for an ombudsman program.

(15) "Older person" means, for the purposes of services reimbursed with Older Americans Act funds, any person sixty years of age or older, unless a different age is required by a state or federal law.

(16) "Plan of treatment" means ~~a physician's~~ the orders of a physician or other healthcare professional with a scope of practice that includes making a plan of treatment.

Rule 173-3-07 uses "PSA."

(17) "Planning and service area" ("PSA") means a geographical region of Ohio that ODA designates as a PSA under Section 305 of the Older Americans Act. ODA lists every PSA in rule 173-2-02 of the Administrative Code.

~~(17)~~(18) "Provider" means a person or entity ~~who~~ that enters into a provider agreement with an AAA to provide ~~a service, product, or program~~ goods or services to consumers under this chapter or Chapter 173-4 of the Administrative Code. These are the three categories of providers:

Consistency with "goods and services" elsewhere in the chapter.

(a) "Agency provider" means a legally-organized entity that employs staff.

(b) "Self-employed provider" means a legally-organized entity that is owned and controlled by one person and that does not employ a staff. (Chapter 173-39 of the Administrative Code refers to a self-employed provider as a "non-agency provider.")

(c) "Consumer-directed individual provider" means the consumer's relative, friend, neighbor, or other person who is hired by the consumer to provide a service to the consumer under this chapter or Chapter 173-4 of the Administrative Code.

~~(18)~~(19) "Provider agreement" means a written agreement entered into between a provider and an AAA to procure a specific service, product, or program.

~~(19)~~(20) "Registered nurse" ("RN") has the same meaning as in section 4723.01 of the Revised Code.

(21) "RFP" means "request for proposal."

~~(20)~~(22) "Service plan" means a written outline of services that are provided to a consumer, regardless of the funding source for the services.

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ODA presents rule 173-3-04 first as an amended rule, then as a new rule. ODA will file the rule with JCARR as a new rule.

173-3-04 **Provider agreements in general.**

(A) Authority: Each ~~AAA~~ entity ~~is authorized to~~ that ODA designates in rule 173-2-04 of the Administrative Code to be an AAA shall enter into provider agreements to develop and implement a comprehensive and coordinated system of services for consumers and their family caregivers. Each AAA is ultimately responsible to ODA for ensuring that all state and federal funds received from ODA are used in a manner that complies with state and federal laws.

(B) Federal uniform financial and program management requirements: When entering into a provider agreement, whether a grant or contract, the AAA that is a non-profit agency shall comply with the procurement requirements under 45 C.F.R., Part 74 (October 1, 2013 edition) and the AAA that is a local government agency shall comply with the procurement requirements under in 45 C.F.R., Part 92 (October 1, 2013 edition).

(C) Purchase-of-service provider agreements:

~~(C)~~(1) The AAA shall only enter into a provider agreement that is a purchase-of-service provider agreement, unless the AAA chooses the alternative ~~in~~ under paragraph (D) of this rule. ~~"Purchase-of-service provider agreement" means a contract or grant through which a provider is paid for only the services the provider actually delivers based upon a pre-determined price per unit of service delivered. The price paid per unit of service encompasses all elements associated with the production of the unit of service.~~

(2) As used in this rule, "purchase-of-service provider agreement" means a contract or grant through which a provider is paid for only the services the provider actually delivers based upon a pre-determined price per unit of service delivered. The price paid per unit of service encompasses all elements associated with the production of the unit of service.

(D) Cost-reimbursement provider agreements:

(1) The AAA may use a cost-reimbursement provider agreement as an alternative to a purchase-of-service provider agreement for a chore service; client finding; home maintenance, modification, or repair service; information and assistance (referrals); mass outreach; socialization; telephoning; visiting; a service provided through the national family caregiver support program; or any other service if ODA gives the AAA written or electronic permission to enter into a cost-reimbursement provider agreement for the other service.

(2) If an AAA enters into a cost-reimbursement provider agreement, the agreement shall place a limit on the dollar amount of the AAA's obligation under the agreement, and the provider shall submit evidence to supports its costs before

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the AAA pays the provider.

~~(D)~~(3) ~~The AAA may use a cost-reimbursement provider agreement as an alternative to a purchase-of-service provider agreement for a chore service, client finding, home maintenance service, home repair service, information and assistance (referrals), mass outreach, socialization, telephoning, visiting; supplemental services funded by Title III, Part E of the Older Americans Act; or any other service approved by ODA.~~ As used in this rule, "~~Cost-reimbursement~~ cost-reimbursement provider agreement" means a contract or grant through which a provider is paid for services based upon allowable costs related to actual expenditures incurred by the provider to deliver a service, regardless of the number of units of services provided.

(E) No retroactive provider agreements: The AAA shall not reimburse a provider for any service unless a valid provider agreement is in place at the time the service is provided. No provider agreement is valid unless and until the agreement is signed by authorized representatives from both the AAA and the provider.

(F) Debarred providers: The AAA shall not enter into a provider agreement with any provider that is listed on the non-procurement portion of the general services administration's "System for Award Management" ("SAM") database. Before entering into any provider agreement, the AAA shall check the SAM database to see if the provider is debarred or suspended by the federal government. Access to the SAM database is readily available on www.sam.gov.

(G) Not earning funds: If an AAA determines that a provider is not, in a timely manner, earning the funds that it was awarded in an existing provider agreement, given the amount of the award and the length of the contract period, the AAA may make a portion of those funds available for use by one or more other existing providers, without first going through a sealed-bidding process.

(H) Multi-year provider agreement limitations:

~~(F)~~(1) Except as otherwise provided for in the RFP upon which the provider agreement is based, the AAA shall not increase the amount of reimbursement it pays to a provider for each unit of goods or services provided under an existing multi-year provider agreement.

~~(G)~~(2) The AAA shall not award a multi-year provider agreement that is in effect for ~~more than a four-year period~~ longer than the AAA's approved area plan.

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173-3-04 **Provider agreements in general.**

(A) Authority: Each entity that ODA designates in rule 173-2-04 of the Administrative Code to be an AAA shall enter into provider agreements to develop and implement a comprehensive and coordinated system of services for consumers and their family caregivers. Each AAA is ultimately responsible to ODA for ensuring that all state and federal funds received from ODA are used in a manner that complies with state and federal laws.

(B) Federal uniform financial and program management requirements: When entering into a provider agreement, whether a grant or contract, the AAA that is a non-profit agency shall comply with the procurement requirements under 45 C.F.R., Part 74 (October 1, 2013 edition) and the AAA that is a local government agency shall comply with the procurement requirements under in 45 C.F.R., Part 92 (October 1, 2013 edition).

(C) Purchase-of-service provider agreements:

Split into 2 paragraphs to make reading easier.

(1) The AAA shall only enter into a provider agreement that is a purchase-of-service provider agreement, unless the AAA chooses the alternative under paragraph (D) of this rule.

(2) As used in this rule, "purchase-of-service provider agreement" means a contract or grant through which a provider is paid for only the services the provider actually delivers based upon a pre-determined price per unit of service delivered. The price paid per unit of service encompasses all elements associated with the production of the unit of service.

(D) Cost-reimbursement provider agreements:

Split into 2 paragraphs [(D)(1) and (D)(3)] to make reading easier.

(1) The AAA may use a cost-reimbursement provider agreement as an alternative to a purchase-of-service provider agreement for a chore service; client finding; home maintenance, modification, or repair service; information and assistance (referrals); mass outreach; socialization; telephoning; visiting; a service provided through the national family caregiver support program; or any other service if ODA gives the AAA written or electronic permission to enter into a cost-reimbursement provider agreement for the other service.

(2) If an AAA enters into a cost-reimbursement provider agreement, the agreement shall place a limit on the dollar amount of the AAA's obligation under the agreement, and the provider shall submit evidence to supports its costs before the AAA pays the provider.

New to rule, but repeats federal circulars.

(3) As used in this rule, "cost-reimbursement provider agreement" means a contract or grant through which a provider is paid for services based upon allowable costs related to actual expenditures incurred by the provider to deliver a service, regardless of the number of units of services provided.

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(E) No retroactive provider agreements: The AAA shall not reimburse a provider for any service unless a valid provider agreement is in place at the time the service is provided. No provider agreement is valid unless and until the agreement is signed by authorized representatives from both the AAA and the provider.

(F) Debarred providers: The AAA shall not enter into a provider agreement with any provider that is listed on the non-procurement portion of the general services administration's "System for Award Management" ("SAM") database. Before entering into any provider agreement, the AAA shall check the SAM database to see if the provider is debarred or suspended by the federal government. Access to the SAM database is readily available on www.sam.gov.

This re-quirement previously appeared in rule 173-3-05. Also, "EPLS" is now "SAMS."

(G) Not earning funds: If an AAA determines that a provider is not, in a timely manner, earning the funds that it was awarded in an existing provider agreement, given the amount of the award and the length of the contract period, the AAA may make a portion of those funds available for use by one or more other existing providers, without first going through a sealed-bidding process.

This prevents an AAA from starting a new round of competitive bidding.

(H) Multi-year provider agreement limitations:

(1) Except as otherwise provided for in the RFP upon which the provider agreement is based, the AAA shall not increase the amount of reimbursement it pays to a provider for each unit of goods or services provided under an existing multi-year provider agreement.

(2) The AAA shall not award a multi-year provider agreement that is in effect for longer than the AAA's approved area plan.

New language. See BIA for more information.

The current rule doesn't mention sealed bidding, but its requirements imply that AAAs are required to use sealed bidding to procure goods and services.
The new rule clearly outlines the 3 methods of competitive procurement than an AAA may use, only 1 of which is sealed bidding. The new rule is modeled after 45 C.F.R. 74.43 and 92.36.

173-3-05 **Procuring goods and services by open and free competition.**

(A) Applicability: An AAA shall procure goods and services according to this rule any time the AAA procures the services with Older Americans Act funds, whether AAA pays for the goods or services wholly with the Older Americans Act funds or with a mix of Older Americans Act funds and other funds.

(B) Competitive procurement: Except as otherwise stated in paragraph (C) of this rule, each AAA shall use one of the following three methods of procurement when purchasing goods and services:

(1) Small-purchase procurement: An AAA may use this type of competitive procurement for small purchases. For purposes of this rule, a "small purchase" is any purchase that costs less than the federal simplified acquisition threshold. The federal procurement law under 41 U.S.C. 134 (October 1, 2013) establishes the threshold at $100,000. If an AAA uses this type of competitive procurement, the AAA shall obtain price or rate quotes from an adequate number of bidders who are qualified to provide the goods or services.

If the feds amend 41 U.S.C. 134, ODA will amend this rule. The feds may amend the rule in Dec. 2014.

(2) Sealed-bidding procurement: An AAA may use this type of competitive procurement for goods or services if a complete, adequate, and realistic specification or description of the items to be purchased is available; two or more responsible bidders are willing and able to compete effectively for the business; the procurement lends itself to a fixed-price provider agreement; and the selection of the successful bidder can be made principally on the basis of price.

(3) Competitive-proposals procurement: An AAA may use this type of competitive procurement when the conditions are not appropriate for the use of sealed bidding, but adequate competition exists. If an AAA uses this method, the AAA shall comply with the following four requirements:

(a) The AAA shall publish the RFP and identify all evaluation factors and their relative importance. The AAA shall honor any request to a publicized proposal to the maximum extent practical.

(b) The AAA shall solicit proposals from an adequate number of bidders who are qualified to provide the goods or services.

(c) The AAA shall have a method for conducting technical evaluations of the proposals it receives and for selecting awardees.

(d) The AAA shall award the responsible provider whose proposal is most advantageous to the program with price and other factors considered.

(C) Non-competitive procurement: An AAA shall not procure goods or services through a non-competitive process unless all of the following four conditions are met:

The new rule lists the federal criteria that must exist if an AAA wants to use non-competitive procurement.

(1) The three competitive methods under paragraph (B) of this rule are infeasible.

(2) One of the following three circumstances exists:

(a) After soliciting a number of sources, the AAA can verify that competition is inadequate for competitive procurement because the goods or services that the AAA would have procured with open and free competition are available from only a single source. However, the AAA may not determine that competition is inadequate if its procurement was anti-competitive. 45 C.F.R 92.36(c) (10-01-2013 edition) says that any of the following seven situations are anti-competitive:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business.

(ii) Requiring unnecessary experience and excessive bonding.

(iii) Non-competitive pricing practices between firms or between affiliated companies.

(iv) Non-competitive awards to consultants that are on retainer contracts.

(v) Organizational conflicts of interest.

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement.

(vii) Any arbitrary action in the procurement process.

(b) A public exigency or emergency for the goods or services exists that would not permit the delay that would necessarily result if the AAA would procure by open and free competition.

(c) The federal government mandates procuring for the goods or services by a means other than open and free competition.

(3) The AAA submits a request to ODA for authority to conduct a non-competitive procurement and provides ODA with evidence to verify that the circumstances in paragraphs (C)(1) and (C)(2) of this rule exist. If the AAA wants to procure goods or services from a single source, the AAA shall also verify that the circumstances in paragraphs (C)(1) and (C)(2) of this rule exist by including the names of all known providers of the goods or services that are located in, or willing to do business in, the planning and service area, combined with letters or emails from each of those providers that verifies that

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they are unable to provide the goods or services that the AAA wants to procure.

(4) ODA authorized the non-competitive procurement transaction and authorizes so before the AAA makes the purchase.

(D) Notwithstanding ODA's approval, an AAA that procures goods or services through a non-competitive process, or in violation of federal procurement requirements, shall be liable to ODA for the repayment of any costs that are later disallowed by the federal government.

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173-3-09 **Appeals.**

(A) Introduction: Each AAA and ODA, subject to the conditions specified in the procedures below, shall honor all written ~~request~~ requests for appeal hearings that are submitted by providers against whom an AAA has taken an adverse action. (An appeal hearing under this rule is not an adjudication hearing under Chapter 119. of the Revised Code.)

(B) Appeal to the AAA:

(1) Written process: Each AAA shall maintain in writing a process that allows a provider to appeal an adverse action related to a provider agreement funded with Older Americans Act funds.

(2) Final AAA decision: An AAA that conducts an appeal hearing shall forward a copy of the provider's written request for the appeal hearing and a copy of the AAA's final decision on the matter to ODA no later than five ~~business~~ days after the date the AAA renders its final decision. If the fifth day falls on a weekend or holiday, the deadline is extended to the business day that immediately follows the fifth day.

(C) Appeal to ODA:

(1) AAA first: ODA shall only honor a request for an appeal hearing before ODA if the provider has fully complied with the written process for appealing an adverse action by the AAA that committed the adverse action and that AAA has rendered its final decision on the appeal.

ODA will no longer require certified mail.

(2) Request a hearing: To request a hearing before ODA, the provider shall submit a written request to ODA's director ~~via certified mail~~ no later than fifteen ~~business~~ days after the date the AAA renders its final decision. In the request, the provider shall describe the adverse action ~~he/she~~ the provider is appealing and why ~~he/she~~ the provider believes the AAA's decision on the matter ~~is~~ was inappropriate. If the fifteenth day falls on a weekend or holiday, the deadline is extended to the business day that immediately follows the fifteenth day.

See BIA.

(3) ~~Processing a request~~Scheduling a hearing: After ODA receives the request for an appeal hearing, ODA shall, in a timely manner, schedule a hearing and select a hearing officer to preside over the hearing. ODA shall schedule the hearing no later than thirty days after the date that ODA receives the provider's request for a hearing. If the thirtieth day falls on a weekend or holiday, the deadline is extended to the business day that immediately follows the thirtieth day. ODA shall notify the provider and the AAA whose final decision the provider is appealing of the date, time, and location of ODA's

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appeal hearing.

(4) Hearing process:

(a) The hearing officer shall afford an adequate opportunity for both the provider and the AAA to present their positions and provide evidence, but may limit or terminate the discussion/testimony if:

(i) The provider or the AAA is unruly or combative;

(ii) The provider's or AAA's discussion/testimony is unnecessarily redundant;

(iii) The provider or the AAA negotiate a written agreement that resolves the issue(s) that prompted the hearing; or,

(iv) The provider, in a written statement, withdraws its request for the hearing.

(b) The hearing officer shall make an audio recording of the hearing or ODA shall pay a court reporter to record the hearing.

(5) Final ODA decision: The hearing officer shall review the testimony or evidence collected at the hearing and shall make a written recommendation to ODA regarding whether the AAA's action was appropriate. ODA shall render its final decision on the appeal no later than thirty ~~business~~ days after the date of the hearing and shall send a copy of the decision, and the rationale for the decision, to the provider and the AAA. If the thirtieth day falls on a weekend or holiday, the deadline is extended to the business day that immediately follows the thirtieth day.

See BIA.

(D) As used in this rule, "adverse action" means an AAA's action concerning a particular provider to not award a provider agreement to that provider; to prematurely terminate a provider agreement with that provider; or to not renew a multi-year provider agreement with that provider for the second, third, or fourth year of the provider agreement.