CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: OHIO DEPARTMENT OF AGING

Package Title: OLDER AMERICANS ACT

Rule Number(s): 173-3-01, 173-3-04, 173-3-05, 173-3-05.1, 173-3-06, 173-3-07, 173-3-09

Date: March 15, 2016, Revised April 14, 2016

Rule Types:

☑ **5-Year Review:**	173-3-01, 173-3-04, 173-3-05, 173-3-06, 173-3-07, 173-3-09
☑ **New:**	173-3-05.1
☑ **Amend:**	173-3-09
☑ **Rescind → New:**	173-3-01, 173-3-04, 173-3-05, 173-3-06, 173-3-07
☐ **No change:**	None

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.

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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.

Primary Goal
ODA proposes to implement 45 C.F.R. Part 75 (December 26, 2014) and 2 C.F.R. 180 (December 26, 2014) into this rule package. Please see Appendix B to this BIA for more information on open and free competition.

Updated Terminology
ODA proposes to make non-substantive updates to the rules as part of a strategy to systematically update the terminology in all ODA rules. For more information, please review Appendix A.

OAC173-3-01
This rule introduces OAC Chapter 173-3 and defines terms used in the chapter and OAC Chapter 173-4. On the attached copies of the rule, ODA identifies amendments that it proposes to make to the rule as it proposes to rescind the current rule and replace it with a new rule.

OAC173-3-04
The rule contains general requirements for AAA-provider agreements paid, in whole or in part, with Older Americans Act funds. On the attached copies of the rule, ODA identifies amendments that it proposes to make to the rule as it proposes to rescind the current rule and replace it with a new rule.

OAC173-3-05
The rule requires AAAs to use open and free competition for AAA-provider agreements when procuring for goods and services. On the attached copies of the rule, ODA identifies amendments that it proposes to make to the rule as it proposes to rescind the current rule and replace it with a new rule. Again, please review Appendix B.

OAC173-3-05.1
ODA proposes to adopt this new rule to consolidate the regulations on AAA-provider agreements with multi-year terms from OAC 173-3-04 and 173-3-06 into a single rule with one topic and a title that helps the public to find that topic when browsing through the Ohio Administrative Code. ODA proposes to add the following 2 new requirements to any RFP that includes multi-year terms:

- ODA proposes to require AAAs to clearly state in RFPs that the AAA-provider agreement upon which provides would bid is for a multi-year term, or renewable after the initial term, or is a combination of a multi-year term and the opportunity to renew.

- ODA proposes to require each AAA to clearly state in any RFP for an AAA-provider agreement with a multi-year term that the AAA retains the right to decline to renew the contract. This would allow the AAA to determine if it would be better for consumers in their planning and service area to use free and open competition to procure goods and services instead of renewing.

OAC173-3-06
This rule lists the requirements that must appear in every AAA-provider agreement. On the attached copies of the rule, ODA identifies amendments that it proposes to make to the rule as it proposes to rescind the current rule and replace it with a new rule.

OAC173-3-07
This rule regulates consumer contributions (*i.e.*, voluntary contributions and cost sharing). On the attached copies of the rule, ODA identifies amendments that it proposes to make to the rule as it proposes to rescind the current rule and replace it with a new rule. For more information on consumer contributions, please see Appendix C.

OAC173-3-09
This rule regulates the appeals process. On the attached copy of the rule, ODA identifies amendments that it proposes to make to the rule.

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

- ORC§173.01 authorizes ODA 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."

- ORC§173.02 authorizes ODA 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.

- ORC§173.392 requires ODA to adopt rules to do the following: (1) govern agreements between ODA (or its designees) 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.

- §209.30 of H.B.64 (131st G.A.) requires ODA to implement cost sharing for services purchased with Senior Community Services funds.

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.

- §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.*, ORC§173.01) to adopt policies to be responsible for "policy development ... of all State activities related to the objective of [the] Act."

- §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."

- §315(a)(1) of the Act, permits ODA to implement cost sharing. However, because of the uncodified budget language ODA cited under #2, ODA is required to implement cost sharing for services purchased with Older Americans Act funds.

- §315(b) of the Act requires the acceptance of voluntary contributions and §315(b)(4)(D) requires AAAs to account for the contributions.

- 45 C.F.R., Part 75 (December 26, 2014) is called "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards." It requires all programs operating on federal funds, including Older Americans Act funds, to use open and free competition when procuring goods and services.

- 45 C.F.R. 1321.11 (October, 2015 edition) authorizes ODA, as the state's unit on aging (*cf.*, ORC§173.01) to adopt policies "governing *all aspects* of programs"[1] operated under 45 C.FR. Part 1321.

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

ODA's proposed new rules would retain certain state-level requirements found in ODA's current rules that ensure Ohio's procurement process is transparent, fair, and encourages competition. ODA's proposed new rules would also contain new state-level requirements to that better ensure that Ohio's procurement process if fair, encourages completion, and is used often enough to respond to the needs identified in area plans (a requirement of the Older Americans Act). For more information on additional state requirements, please review Appendix B.

One of ODA's proposed new rules, OAC173-3-07, would continue to implement the federally-required voluntary contributions standards. The rule would also continue to implement cost sharing. Although cost sharing is an option under §315 of the Older Americans Act, §209.30 of H.B.64 (131st G.A.) requires ODA to implement cost sharing for services purchased with Senior Community Services funds. Because Senior Community Services funds are used as a match for Older Americans Act funds in accordance with §304 of the Act, requiring cost sharing for the Senior-Community-Services side of the match obligates ODA to require cost sharing for the Older-Americans-Act side of the match.

[1] *Italics* added.

5. What is the public purpose for the regulations (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 AAA-provider agreements, open and free competition, and consumer contributions.
- Open and free competition is fair, spurs innovation, and reduces fraud. See Appendix B for more information.
- Consumer contributions generate income that is recycled into more goods and services for consumers. See Appendix C for more information.

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

Through its regular monitoring activities under OAC173-2-07, ODA will work with its designees, the AAAs, to ensure that the regulation is applied uniformly.

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.

In 2013, ODA contacted providers and provider associations representing various types of long-term care services to gauge adverse impact. ODA also selected 9 providers of various types in both rural and urban settings to attempt to measure the adverse impact.

Throughout 2014 and 2015, ODA has been in contact with many providers and AAAs regarding the nutrition program, which is subject to the rules on open and free competition and also subject to consumer contributions.

In 2014 and 2015, ODA contacted manufacturers of electronic systems that reduce administrative expenses for meal providers.

In February, 2015, ODA requested a copy of the most-recently-issued RFPs from each AAA. ODA also contacted 3 companies that had the capacity to provide meals to consumers in the Cincinnati area, but did not qualify to bid for the AAA-provider agreement.

Before ODA filed its proposed rules with the Joint Committee on Agency Rule Review (JCARR) to begin the legislature's formal rule-review process, ODA conducted an online public-comment period from March 15, 2016 to April 3, 2016.

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

7 of the 9 providers contacted in 2013 provided ODA with detailed on the administrative expenses involved in preparing and submitting bids that ODA used to develop a worst-case scenario for adverse impact calculations.

Some providers were unaware that they were regulated by ODA's rules on AAA-provider agreements paid, in whole or in part, with Older Americans Act funds. ODA now proposes to have every RFP and every AAA-provider agreement include a statement to make it clear that the provider is subject to the rules. ODA also proposes to add "Older Americans Act" to the beginning to each rule's title to assist when doing internet searches for the rules. ODA's analysis of its website traffic shows that the vast majority of people who access rules in ODA's online rules library do so through Google, Yahoo, and Bing.

In a public comment for another rule project, a provider protested that ODA was trying to make rules to regulate the provision of goods and services that are paid with local funds like county tax levies. ODA's consistent use of terminology about the Older Americans Act funds should make it clear that the rules would not regulate the provision of any goods or services that are paid with 0% Older Americans Act funds. However, if the goods or services are paid with 1% local funds that are used as a match to the federal funds, the use of the matching funds is as subject to the rules as a project that is paid with 50% local funds and 50% federal funds.

Most meal providers who informed ODA that they used electronic systems to reduce administrative expenses used, ServTracker or SSAID. All meal providers who informed ODA that they could not afford to use such electronic systems said that they looked into using SAMS Scan or MJM (which is affiliated with SAMS). As a result, in the proposed new definition of "consumer's signature," in OAC173-39-01, ODA is expanding the list of examples of electronic means to acquire signatures by listing product names other than only SAMS Scan and MJM.

Manufacturers of electronic systems notified ODA that they can offer administrative savings in the area of consumer contributions. This is reflected in the impact section of Appendix C.

Most meal providers who used electronic systems indicated that they did not use the electronic systems to reduce the administrative burdens associated with receiving voluntary contributions. This is also reflected in Appendix C.

During the online public-comment period, 1 Ohio business, 3 area agencies on aging, and 1 association representing area agencies on aging made a combined 22 comments, some of which were nearly identical to one another.[2] In response to those comments, ODA made the following 4 revisions in 3 of its proposed new rules:

- **POST-COMMENT-PERIOD REVISIONS to OAC173-3-04:**
    - ODA reverted to current rule's standards for time-and-materials agreements regarding for what good or services the AAA must obtain written permission from ODA before entering into a time-and-materials type of AAA-provider agreement. This revision would not impact the adverse impact of the proposed new rule upon providers.
    - ODA deleted the word "vigilantly" before the word "monitor." In exchange, ODA's response to the public comment warns AAAs of the dangers of time-and-materials agreements. This revision would not impact the adverse impact of the proposed new rule upon providers.
- **POST-COMMENT-PERIOD REVISION to OAC173-3-06:** ODA required AAAs to determine which AAA-provider agreements comply with federal confidentiality laws like HIPAA and to require compliance with those laws only for those agreements. This would work to highlight laws already in force without mistakenly subjecting all AAA-provider agreements to HIPAA. It is a protection for providers against being required to follow a federal law that may not apply to their work. Thus, it is a protection against potential adverse impacts.
- **POST-COMMENT-PERIOD REVISION to OAC173-3-07:** ODA corrected the definition of "federal poverty level" because the Older Americans Act only requires factoring a consumers' self-declared *individual*, not *family*, income. If ODA did not make this correction, the adverse impact would have been upon the consumer, not the provider.

For an exhaustive list of the comments and ODA's responses to those comments, please review Appendix D.

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 relied upon statistics from its databases, provider interviews, and national reports. ODA cites these sources in the appendices to this BIA.

[2] Identical comments indicate that multiple businesses shared comments with one another and that multiple businesses had identical concerns.

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?

ODA did not consider any alternative regulations.

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.

Regulations that require open and free competition are inherently performance-based regulations.

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

ORC§173.01 designates ODA as "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." The Ohio General Assembly only designated rule-making authority for Older Americans Act programs to the sole state agency.

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.

Before rules take effect, ODA publishes them in ODA's Online Rules Library and distributes an email to subscribers of our rule-notification service.

Through its regular monitoring activities under OAC173-2-07, 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;

Every AAA is required to procure goods and services for consumers by using open and free competition to allow providers to bid on AAA-provider agreements to provide those goods and services.

Every AAA and provider that enters into an AAA-provider agreement paid, in full or in part, with Older Americans Act funds is subject to the rules.

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

Please see the adverse impact section of Appendix B regarding open and free competition.

Please see the impact section of Appendix C regarding consumer contributions.

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.

Please see the adverse impact section of Appendix B regarding open and free competition.

Please see the impact section of Appendix C regarding consumer contributions.

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

Please see the manifold purpose and federal law sections of Appendix B regarding open and free competition.

Please see the cost-sharing *vs.* cost-sharing section of Appendix C regarding consumer contributions.

Regulatory Flexibility

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

The rules treat all providers the same, regardless of their size. Additionally, virtually all providers 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?

ORC§119.14 establishes the exemption for small businesses from penalties for first-time paperwork violations.

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

ODA does not offer different discriminate between responsible parties, applicants, or employees based upon the size of the business or organization. In fact, the vast majority of businesses that OAC Chapter 173-3 regulates are small businesses according to ORC§119.14.[3]

ODA maintains an online rules library to help AAAs and providers find rules regulating their business with ODA-administered programs. The AAAs, providers, and the general public may access http://aging.ohio.gov/information/rules/default.aspx 24 hours per day, 365 days per year.

ODA and the AAAs are available to help providers with their questions.

Additionally, any person may contact Tom Simmons, ODA's policy development manager, with questions about the rules. (rules@age.ohio.gov)

[3]ORC§119.14 defines "small business: to have the same meaning as in 13 C.F.R., Part 121 (January 1, 2014 edition), which uses North American Industry Classification System (NAICS) codes to classify small businesses. For NAICS codes 621310 [personal care], 621910 [personal emergency response systems], 624210 [meal delivery programs], and 624120 [adult day centers, senior centers, homemaker services], 13 C.F.R., Part 121 establishes the standard threshold for a small business in terms of annual receipts of $14-million/year for 621310 and 621910 and $10 million/year for 624210 and 624120.

Ohio | Department of Aging

John Kasich, Governor
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APPENDIX A

TERMINOLOGY BACKGROUND

April 7, 2016

Disclaimer

This appendix does not define terms used in ODA's rules. Instead, it provides background on why ODA uses certain terminology. Please review definitions in ODA's rules for official definitions.

Background for Terminology ODA Proposes to Incorporate into New and Amended Rules.[1]

AAA-provider agreement: ODA proposes to use "AAA-provider agreement" instead of "provider agreement" to represent agreements between an AAA and the provider. The term is used much in OAC Chapter 173-3, which regulates AAA-provider agreements that pay providers, in whole or in part, with Older Americans Act funds. For now, OAC Chapter 173-4 may use "contract" in place of "AAA-provider agreement." *Compare to "certification agreement" and "Medicaid-provider agreement."*

Alzheimer's Respite Program: ODA proposes to remove all references to the Alzheimer's Respite Program in its rules unless ODA takes its permissive authority in ORC§173.04 to adopt rules. However, if any Alzheimer's Respite Program funds are used as a state match for federal Older Americans Act funds, the goods and services purchased with the Alzheimer's Respite Program funds are subject to the rules for goods and services purchased, in whole or in part, with Older Americans Act funds.

Before: ODA proposes to continue using "before" instead of "prior to." Please also review "days and deadlines."

Beneficiaries: ODA proposes to consistently use 1 term to describe the beneficiary of a program, good, or service within the rules for each program. ODA also proposes to continue using different terms for different programs and the chapters that regulate them, as follows:

- In OAC Chapters 173-3, 173-4, and 173-45, ODA proposes to continue using "consumer" for Older Americans Act programs and the Long-Term Care Consumer Guide.

[1] ODA may not propose to replace all current terminology with the proposed terminology in this appendix at the next review of each rule. ODA may implement the terminology in phases for some rules.

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- In OAC Chapters 173-14 and 173-45, ODA proposes to continue using "resident" when referring to a nursing facility or assisted-living facility resident.

- In OAC Chapters 173-38, 173-39, 173-40, 173-42, 173-43, 173-44, and 173-51, ODA proposes to replace "consumer" with "individual," except when referring to one of the following: (1) consumer-directed providers, in which case ODA proposes to replace "consumer" with "participant"; or, (2) person-centered planning, in which case ODA proposes to use "person" where "consumer" would have been used if the term "consumer-centered planning" existed in the current rules.

- In OAC Chapter 173-50, ODA proposes to continue using "participant" to match federal terminology for PACE.

Certification Agreement: ODA proposes to use "certification agreement" instead of "provider agreement" or "contract" to represent agreements between ODA's designee and the provider. *Compare to "AAA-provider agreement" and "Medicaid-provider agreement."*

Certified Provider: Because "certified provider" and "certified long-term care provider" have the same meaning in ODA's rules, ODA proposes to delete the unnecessary use of "long-term care."

Certified Service: ODA does not certify services; it certifies providers to provide services. Therefore, ODA proposes to replace all occurrences of "certified services" with "goods or services ODA certified the provider to provide."

Choices: ODA proposes to delete all references to the now-defunct Choices Program.

Compliance Reviews: ODA proposes to use "compliance reviews" refer to the reviews in OAC173-39-04. The term would have the same meaning as "audit or structural compliance review" in ORC§173.391 and "provider structural compliance review" in the current version of OAC173-39-04. Using a general term minimizes the potential for interpreting that OAC173-39-04 only applies to specific types of compliance reviews.

Consumer: Please review "Beneficiaries."

Days + Deadlines: Unless the context indicates otherwise, ODA proposes to consider a day to be a 24-hour period that begins and ends at Midnight.[2] The term would not require the modifier "calendar" to differentiate a day from a *business* day.

Additionally, ODA proposes to refrain from using "business day" because the term could be interpreted to mean weekdays, weekdays-minus weekday holidays, days not on vacations (*i.e.*, "holidays"), *etc.* Additionally, "holidays" could be interpreted to mean major holidays, government holidays, vacations, *etc.*

ODA proposes to use the following terminology because (1) it accounts for deadlines that would occur on a day other than a business day, (2) would not be prone to misinterpretation by adversarial interests, and (3) would create a statewide standard within ODA-administered programs:

[2] If a rule would refer to a 24-hour period that would begin and end at a time other than Midnight, the term would be "twenty-four hour period."

> ...no later than five days after X. If the fifth day falls on a weekend or legal holiday, as defined in section 1.14 of the Revised Code, the deadline is extended to the day that immediately follows the fifth day that is not on a weekend or a legal holiday.

ODA proposes to denote deadlines with terms that would not allow 2 directions of days. For example, "within five days of X" could mean 5 days before *or* after X, or an 11-day period, while "no later than 5 days after X" only means 5 days after X.

Disciplinary Actions: Although people sometimes refer to "sanctions," ODA proposes to continue using "disciplinary actions" in its rules. "Disciplinary actions" is used in ORC§173.391 where it refers to the actions taken by ODA that involve hearings. Disciplinary actions are regulated by OAC173-39-05. "Non-disciplinary actions" refers to the actions taken by ODA in ORC§173.391 that do not involve hearings. Non-disciplinary actions are regulated by OAC173-39-05.1.

Expired: ODA proposes to no longer use "expired" to refer to individuals who are deceased. Instead, ODA proposes to use "deceased."

Goods + Services: Meals and home medical equipment include service components (*e.g.*, delivery) but are traditionally considered goods, not services. Therefore, ODA proposes to generally use "goods and services" when referring to goods and services but to use "services" when referring to only services.

It is also verbose and unnecessary to insert "service" after the name of goods. It's also verbose and unnecessary to insert "service" after the name of certain services (*e.g.*, assisted living, chores, and personal care). The same goes for inserting the word "service" before "requirements." The requirements stand without the word "service."

Together, ODA's proposal to use "*goods and* services" and to eliminate "*service* requirements" would prevent potential misconceptions that certain requirements would not apply to providers of goods without changing the meaning of any rule.

For rules that only regulate a service, ODA would continue to use the word "service."

Includes: ODA proposes to continue using "includes" but not "includes, but is not limited to." Both have the same meaning, but the latter is redundant.

Individual: Please review "Beneficiaries."

Legalisms: ODA proposes to minimize unnecessary legalisms in rule language, such as replacing "in accordance with" with "according to."

Medicaid-Provider Agreement: ODA proposes to use "Medicaid-provider agreement" to represent agreements between ODM and the provider. *Compare to "AAA-provider agreement" and "certification agreement."*

Minimum requirements: ODA proposes to continue replacing occurrences of "minimum requirements" with "requirements" because ODA is not authorized to adopt a rule that, in turn, authorizes extra-rule requirements that are not incorporated into the rule by reference and readily available to the general public free of charge.

Multi-Paragraph Run-On Sentences: ODA proposes to continue converting multi-paragraph run-on sentences into paragraphs that end in periods.

ODA's designee: In 2015, ODA adopted a new version of OAC173-39-01 that included a new definition for "ODA's designee." In the BIA for the rule project,[3] ODA explained the following:

> In rule 173-39-01 of the Administrative Code, ODA proposes to redefine the term "ODA's designee" in a way that would allow the 13 current PASSPORT administrative agencies to continue to be designees, but that also allows ODA to designate another entity if necessary. The current definition says the following:
>
> > "ODA's designee" has the same meaning as "PASSPORT administrative agency" in section 173.42 of the Revised Code. The current PASSPORT administrative agencies are the area agencies on aging that ODA lists in rule 173-2-04 of the Administrative Code plus "Catholic Social Services of the Miami Valley."
>
> ODA proposes for the new definition to say the following:
>
> > "ODA's designee" is an entity to which ODA delegates one or more of its administrative duties. ODA's current designees include the area agencies on aging that ODA lists in rule 173-2-04 of the Administrative Code and "Catholic Social Services of the Miami Valley."

In the same BIA, ODA also explained the following:[4]

> If ODA wanted to designate another entity to perform administrative duties, the adverse impact would be the entity that ODA didn't designate for to perform these duties. If ODA uses free and open competition to choose the "designee," the adverse impact would be the result of submitting a bid that was not the winning bid.

ODA proposes to continue using "ODA's designee" in this manner.

Instead of using the phrase "ODA (or ODA's designee)," ODA may use "ODA (or its designee)."

Ohio Administrative Code + Ohio Revised Code Citations: §5.2.1 of the Legislative Service Commission's (LSC's) Rule Drafting Manual requires state agencies to make citations to these bodies of law use the following formulas: "rule 123-4-56 of the Administrative Code" and "section 123.45 of the Revised Code."[5] However, to make the BIA and related documents shorter and easier to read, ODA proposes to use the following unofficial citation formulas in the BIA and related non-rule documents: "OAC123-4-56" and "ORC§123.45."

Older Americans Act funds: When referring to Older Americans Act funds, ODA refers to goods and services "paid, in whole or in part, with Older Americans Act funds." In OAC173-3-01, ODA also proposes to define "Older Americans Act funds" in a way that explains that state and local funds used to match federal funds become subject to the rules that regulate the federal funds. Therefore, the provision of goods and services purchased with Senior Community Services funds are subject to rules over the provision of goods and services purchased, in whole or in part, with Older Americans Act funds because Senior Community Services funds are Ohio's state match for the federal Older Americans Act fund dollars.

Participant: Please review "Beneficiaries."

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[3] Ohio Dept. of Aging. *ODA Provider Certification: Terminology*. Business Impact Analysis. Revised, Sept 10, 2015. *Pg.* 2.
[4] *Id. Pg.* 10.
[5] ORC§1.01 allows LSC to draft legislation using "R.C."

Participant-directed: ODA proposes to use "participant-directed" instead of "consumer-directed." This would be an exception to the ODA's proposal to change occurrences "consumer" to "individual." Otherwise, "consumer-directed individual provider" would become "individual-directed individual provider." The latter term could be mistaken for a self-employed (*i.e.*, non-agency) provider.

Pay: ODA proposes to use forms of "pay" (*e.g.*, "payment") instead of forms of "reimburse" (*e.g.*, "reimbursement"). ODA[6] and ODM[7] have proposed or made similar changes on previous occasions.

Provide: ODA proposes to consistently use the verb "provide" instead of "furnish," "deliver," "perform," "serve," *etc.*

Provider: Because all of OAC Chapter 173-39 is about ODA provider certification and because each rule begins by requiring ODA-certified providers to comply, there is no need to use "certified" or "ODA-certified" before "provider" in the rest of each rule's text. This reduces verbosity.

When describing the relationship between a provider and a government authority, ODA proposes to consistently use the following terms throughout OAC Chapter 173-39:

- Licensure is a matter between (1) a provider/provider's employee who requires a license to practice a profession in Ohio and the state's licensing board or agency or (2) a facility (*e.g.*, a residential care facility) that requires a license to operate in Ohio and the state's licensing board or agency. Although ODA is not a licensing board or agency, to obtain ODA's certification, a provider shall have all licenses required by state law.

- "ODA provider certification" and "certification" refer to ODA's certification of providers. This is the primary topic of OAC Chapter 173-39.

- "Current, valid Ohio Medicaid provider agreement" or "agreement" is an agreement between a provider and the Ohio Dept. of Medicaid to obtain a Medicaid provider number. The number is necessary for billing for the goods and services provided to individuals enrolled in the Assisted Living or PASSPORT Programs.

- "Contract" is an agreement between a provider and ODA's designee that establishes the rates of payment for each job, item (*i.e.*, "good"), or unit of service.[8]

Requirements: ODA proposes to use "requirements" instead of "criteria" because the singular form of "criteria" is "criterion." Most readers would not know the meaning of "criterion." Fortunately, the single form of "requirements" is simply "requirement."

ODA proposes to use "requirements" instead of "conditions" because "conditions" is a term more associated with weather (*e.g.*, *weather conditions*) than provider qualifications. Thus, references to "conditions of participation" in OAC173-39-02 become references to the "requirements" in OAC173-39-02.

[6] Ohio Dept. of Aging. *Nutrition Rules*. Business Impact Analysis. Revised, Dec 31, 2015.
[7] Ohio Dept. of Medicaid. *Modifications to Administrative Rules 5160-4-12 and 5160-4-13.* (MHTL 3334-14-XX) Undated.
[8] Please review OAC5160-31-07.

Together, using "requirements" instead of "criteria" or "conditions" would offer consistent terminology for readers of ODA's rules.

Resident: Please review "Beneficiaries."

Rule Titles: Chapters of the Ohio Administrative Code do not have official titles. Publishers assign their own titles to chapters. Over the years, ODA inserted helpful cross-references in its rules when it seemed helpful to let the reader know that they may want to be reading another chapter of rules. Now, ODA proposes to delete many cross references because ODA is systematically adding "chapter title" language to each rule's title. For example, ODA has 2 adult day service rules, each of which regulate on a different basis. Because ODA is proposing (in another rule project) to insert "Older Americans Act" in front of "adult day service" for the rule that regulates adult day services provided to consumers paid with Older Americans Act funds and to insert "ODA provider certification" in front of "adult day service" for the rule that regulates adult day services provided to individuals enrolled in the PASSPORT Program, greatly diminishes the need to insert cross-references into rules to inform readers that they may be reading a rule that regulates another funding stream or program than what they intended to read.

Service plan: ODA proposes to amend the definitions of "service plan" to say that the term includes "person-centered planning" conducted according to OAC5160-44-02.

Shall: §5.8.3 of the LSC's Rule Drafting Manual requires state agencies to make requirements of providers with the term "shall," not "must."

Waiver Services: ODA proposes to eliminate "waiver" as it appears before "services" in rules. ODA requires providers to comply with OAC Chapter 173-39 when they are providing goods and services to individuals enrolled in both the *State-funded* and *Medicaid-funded* components of the PASSPORT and Assisted Living Programs. Thus not all services are authorized by Medicaid waivers.

Within: Please review "days and deadlines."

Ohio | Department of Aging

John Kasich, Governor
Bonnie K. Burman, Sc.D., Director

APPENDIX B
OPEN + FREE COMPETITION FOR AAA-PROVIDER AGREEMENTS

April 7, 2016

Spurs Innovation

Open and free competition gives any Ohio business that wants to be paid, in whole or in part, with Older Americans Act funds for providing goods and services to consumers a fair opportunity to win an AAA-provider agreement to provide goods or services. Open and free competition spurs innovation because the provider who finds ways to provide a high-quality goods or services at low prices is the provider who should win an open and free competition for an AAA-provider agreement. Open and free competition protect providers from losing business to cronyism, nepotism, conflicting interests, and to an AAA that may want to award itself funds to directly provide goods and services instead of awarding funds to one or more providers.[1]

Federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards

45 C.F.R., Part 75 is called "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards." A rule in Part 75, 45 C.F.R. 75.329, requires all programs operating on federal funds, including Older Americans Act funds, to use open and free competition when procuring goods and services. 45 C.F.R. 75.329 and other federal rules in Part 75 are implemented into paragraph (A) of proposed new OAC173-3-05.

Additional State Requirements

To foster open and free competition in Ohio, in 2009, ODA adopted a rule to require AAAs to use only the sealed-bidding method for procurement. In 2014, ODA's strategy decided to rescind its requirement for sealed bidding. In its place, ODA added new strategies for fostering open and free competition.

ODA's proposed new rules would retain certain state-level requirements found in ODA's 2014 rules that ensure Ohio's procurement process is transparent, fair, and encourages competition, as follows:

[1] The Older Americans Act prohibits any AAA from being both the giver and taker of funds. §307(a)(8)(A) of the Act prohibits any AAA from awarding itself funds to directly provide supportive services, nutrition services, or in-home services unless ODA grants the AAA a waiver to do so according to narrow parameters under which the Act would grant the issuance of such a waiver.

- ODA would continue to prohibit AAA-provider agreements to extend beyond the effective dates of an AAA's area plan. Because entering into multi-year AAA-provider agreements and renewing AAA-provider agreements avoids annual competition, ODA's prohibition ensures new opportunities for competition at least once every area plan cycle.

- ODA would continue to prohibit an AAA from using non-competitive procurement methods if the AAA does not verify that the circumstances in 45 C.F.R. 75.329(f)(1) exist by including the names of all known providers of the goods or services that it seeks to procure that are located in, or willing to do business in, the planning and service area. This requirement applies to situations when an AAA says that no provider of X is willing to bid on an AAA-provider agreement to provide X, so it requests a waiver to directly provide X itself, but ODA is aware that the AAA has entered into a certification agreement[2] with providers of X for the PASSPORT Program in the same geographic area.

- ODA would continue to implement requirements of the Ohio General Assembly like requirements for AAAs to include in every AAA-provider agreement requirements to (1) conduct criminal records checks on employees in direct-care positions, and (2) report abuse, neglect, and exploitation.

To ensure that obtaining AAA-provider agreements is fair, ODA has adopted additional state requirements and is proposing to adopt more additional state requirements to better ensure that Ohio's procurement process if fair, encourages completion, and is used often enough to respond to the needs identified in area plans (a requirement of the Older Americans Act), as follows:

- ODA proposes to require AAAs to indicate in RFPs and AAA-provider agreements if an agreement is renewable and, if it is renewable, to require the AAA to state that it retains the right to decline to renew.

- In the same manner that ODA presently prohibits AAA-provider agreements to extend beyond an AAA's area plan, ODA proposes to also prohibit renewable AAA-provider agreements from being renewed into a period that extends beyond an AAA's area plan. This language would appear in new OAC173-3-05.1.

- In proposed new OAC173-3-05.1, ODA proposes to require AAAs to indicate in RFPs and AAA-provider agreements if an agreement is renewable and, if it is renewable, to require the AAA to state that it retains the right to decline to renew. ODA also proposes to retain rule language that limits multi-year agreements to the term of an AAA's area plan. Because renewing an AAA-provider agreements avoids open and free competition, this would ensure that new opportunities for competition arise as ODA and AAAs seek innovation and response to new needs.

- In OAC173-3-05, ODA proposes to require AAAs to identify the name of the program and ODA, the pass-through entity, in every RFP so providers know federal rules on open and free competition apply *and* ODA's rules apply.

- In OAC173-3-06, ODA proposes to require identifying the names of the federal program and the pass-through entity (ODA) in each AAA-provider agreement so providers know federal rules on open and free competition apply *and* ODA's rules apply.

[2] All of Ohio's AAAs are presently also operating as PASSPORT administrative agencies (PAAs). A "certification agreement" is an agreement between a PAA and a provider.

- In OAC173-3-06, ODA proposes to deem providers ineligible to provide services if other laws prohibit them from doing the work for which the AAA purchases with Older Americans Act funds. For example, if the Ohio Dept. of Agriculture inspects a food manufacturing facility, then shuts down the facility for sanitation reasons, ODA would deem the provider to also be unable to provide meals to consumers. This would replace a requirement that said providers should comply with all other applicable state and federal laws. Some AAAs interpreted the current language to require them to enforce the laws of other state agencies. Because ODA and its designees do not have authority to enforce laws of other state agencies, it's ODA's and its designees' duties to report a reasonable cause to suspect non-compliance to the appropriate authorities. It is not the duty of ODA or its designees to develop duplicate inspection efforts. This would not only be an inappropriate use of Older Americans Act funds, it would be an adverse impact to providers to undergo duplicate inspections on identical matters.

Ohio | Department of Aging

John Kasich, Governor
Bonnie K. Burman, Sc.D., Director

APPENDIX C
CONSUMER CONTRIBUTIONS

October 14, 2015
Revised on April 7, 2016

Voluntary Contributions *vs.* Cost Sharing

Voluntary contributions and cost sharing are funds that consumers voluntarily contribute towards the costs of the goods and services they receive. Area agencies on aging (AAAs) or providers of goods and services collect the voluntary contributions and cost sharing from consumers and use the income to offer more of the same goods and services for which the contributions and shares were made.[1]

The National Association of States United for Aging and Disabilities claimed that voluntary contributions and cost sharing can provide a way for higher-income consumers to contribute to the goods and services they receive. In turn, the income from the voluntary contributions and cost sharing could subsidize the provision of the same goods and services for lower-income consumers."[2]

The Older Americans Act (the Act) *requires* collecting voluntary contributions, but *permits* states to implement cost sharing.

The Act allows AAAs and providers to collect voluntary contributions for any good or service, but prohibits collecting cost sharing for certain services.[3]

State Option on Cost Sharing

As previously stated, §315(b) of the Act requires collecting voluntary contributions, but §315(a) of the Act gives each state an option on implementing cost-sharing requirements.

Through §209.30 of H.B. 64 (131st G.A.), and previous budget bills, the Ohio General Assembly has been requiring ODA to implement cost sharing for goods and services purchased with Senior Community Services funds. The

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[1] Department of Health and Human Services: Office of Inspector General. "Cost Sharing for Older Americans Act Services." © September, 2006.
[2] Government Accountability Office. "Older Americans Act: More Should Be Done to Measure the Extent of Unmet Need for Services." Report to the Chairman, Special Committee on Aging, U.S. Senate. © February, 2011. *Pp.*, 27-28.
[3] More on this later.

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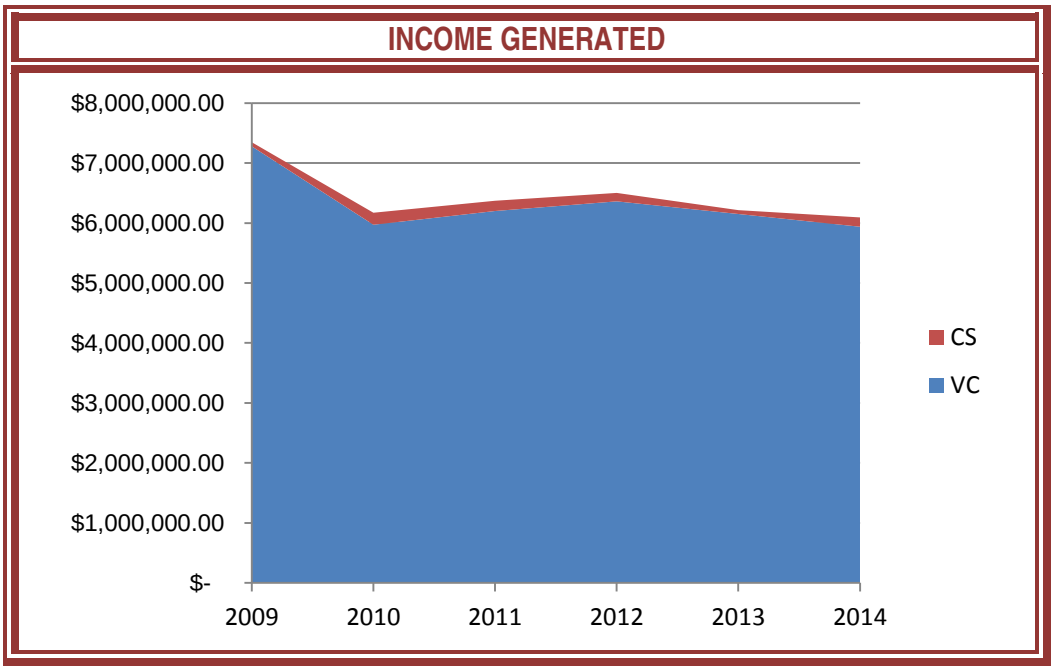
General Assembly also appropriates Senior Community Services funds to ODA to use as a match[4] for Older Americans Act funds in accordance with §304 of the Act. Requiring cost sharing for the Senior-Community-Services side of the match obligates ODA to require cost sharing for the Older-Americans-Act side of the match.

ODA first adopted a rule on January 17, 1999 to require cost sharing. ODA amended the rule on February 15, 2009 to incorporate the Act's requirements for voluntary contributions.

Income Generated

The table below shows the income generated from voluntary contributions and cost sharing between 2009 and 2014.



In 2015, Ohio collected 59 times as many dollars in voluntary contributions ($5,611,501) as it did through cost sharing ($94,699). In 2014, 2013, and 2012, Ohio collected 38, 49, and 45 times as many dollars in voluntary contributions as it did through cost sharing.

The "Adverse" Impact of Collecting Income

Quantifying the general requirement to collect voluntary contributions and cost sharing requires considering two items:

1. The income generated from voluntary contributions and cost sharing.

2. The cost to facilitate receiving income from voluntary contributions and cost sharing.

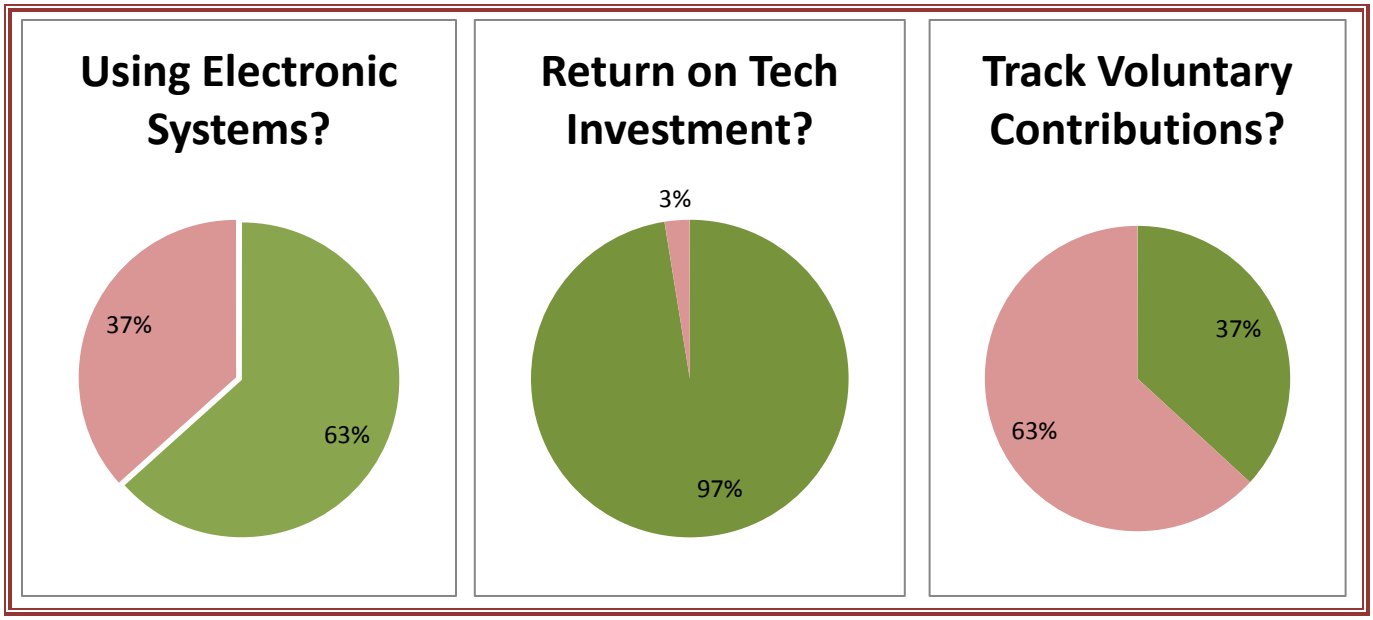
The cost to facilitate receiving income from voluntary contributions and cost sharing is listed in the table below.

[4] Or, "maintenance of effort."

COST TO FACILITATE	
VOLUNTARY CONTRIBUTIONS	**COST SHARING**
Providers may suggest contributions amounts but are not required to do so	Distributing materials to consumers about cost sharing
Asking for voluntary contributions	Asking for cost shares
Accounting for voluntary contributions	Accounting for cost shares, including providing a receipt for cost shares
Safeguarding voluntary contributions	Safeguarding cost shares

To minimize the administrative impact, technology manufacturers are using electronic systems that facilitate much of the asking and accounting.

ODA's 2014 survey of nutrition providers revealed that 63% of the providers were using electronic systems to reduce their administrative burdens. After ODA concluded the survey, at least one high-volume provider has also employed the use of electronic systems, which would have increased the percentage to 67%. The survey also showed that 97% of the providers that used such systems had already experienced a return on their technology investment, but only 37% used such systems to facilitate the receipt of voluntary contributions.



ODA's survey also revealed that the 2 electronic systems in most use in Ohio were SERVtracker and SSAID. Both of these products have the capacity to administrate voluntary contributions.

Catmatt Software Solutions manufactures SeniorDine, which allows consumers to use a website to upload their voluntary contributions onto the card before using it to dine at restaurant-based congregate dining locations. SeniorDine's cards require the provider to have a point-of-sale "credit card" machine, which virtually all restaurants

already own. Although ODA is aware of providers using SeniorDine in Connecticut, Michigan, and Pennsylvania, ODA is unaware of any Ohio providers using SeniorDine at this time.

Ohio *vs.* Nation

In 2009, Ohio's AAAs and providers collect 50% more income from voluntary contributions and cost sharing than the national average. The national average for such income was 4% of the total costs of the goods or services for which the voluntary contribution or cost sharing was made.

Since 2009, Ohio's income from voluntary contributions and cost sharing has remained rather steady.

INCOME AS PERCENTAGE OF TOTAL COSTS	
2009	6%
2010	5%
2011	6%
2012	6%
2013	6%
2014	5%
2015	5%

Nutrition Program *vs.* All Other Goods and Services

The Older Americans Act allows consumers to voluntarily contribute to any goods or services, but prohibits states from implementing cost sharing for certain goods and services. As previously mentioned, in 2015, Ohio collected 59 times as many dollars in voluntary contributions as it did through cost sharing.

The income received for goods and services is nowhere more significant than it is for the nutrition program. In 2014 and 2015, 83% and 85% of the income received from voluntarily contributing consumers was received for the nutrition program, especially for congregate and home-delivered meals.

VOLUNTARY CONTRIBUTIONS		
	2014	2015
Congregate meals	$2,118,432	$1,904,657
Home-delivered meals	$2,803,526	$2,851,778
Other nutrition	$31,149	$29,536
All nutrition	**$4,953,107**	**$4,785,971**
All goods and services	**$5,937,981**	**$5,611,501**

Although more income was received from consumers who received home-delivered meals, the voluntary contributions received for congregate meals had the highest percentage of income to cost. In 2014 and 2015, the

voluntary contributions comprised 14% and 13% of the total cost of the congregate meals and 7% and 8% of the total cost of home-delivered meals.

Under the Radar

ODA's 2014-2015 nutrition provider interviews revealed that some providers provide meals to consumers who would qualify for assistance through the Act, but the provider doesn't consider the meal to be subject to the Act. In one case, a provider indicated difficulty working with an AAA as a reason to avoid considering the meals to be meals provided through the nutrition program. In another case, the provider said that area consumers could easily afford the meals so there was no reason to subject the meals to the Act. On one hand, the providers are free to use the income they receive from consumers to produce more meals. This would be a practice that achieved similar results to that of the Act's practice of voluntary contributions. On the other hand, if the providers considered all meals that they provided to be through the Act's nutrition program, the voluntary contributions they receive from consumers would further boost Ohio's overall income and give the state a more realistic perspective on the volume of meals that providers provide to consumers.

Ohio | Department of Aging

John Kasich, Governor
Bonnie K. Burman, Sc.D., Director

APPENDIX D
ONLINE PUBLIC-COMMENT PERIOD

April 14, 2016

ODA conducted an online public-comment period from March 16, 2016 to April 3, 2016 for the proposals for OAC 173-3-01, 173-3-04, 173-3-05, 173-05.1, 173-3-06, 173-3-07, and 173-3-09. During the public-comment period, 1 Ohio business, 3 area agencies on aging, and 1 association representing area agencies on aging made 22 comments, some of which were nearly identical to one another.[1]

ODA presents the comments below:

OAC173-3-01 OLDER AMERICANS ACT: INTRODUCTION AND DEFINITIONS	
COMMENT RECEIVED	ODA's RESPONSE
ODA received no comments.	NA

[1] Identical comments indicates that multiple businesses shared comments with one another and that multiple businesses had identical concerns.

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OAC173-3-04 OLDER AMERICANS ACT: GENERAL REQUIREMENTS FOR AAA-PROVIDER AGREEMENTS	
COMMENT RECEIVED	COMMENT RECEIVED
OAC173-3-04(C): Time-and-Materials Agreements The rule requires AAAs to *vigilantly monitor* providers with whom they enter into time-and-materials agreements. What does *vigilant monitoring* mean? This is not defined in the rule. **Ohio Association of Area Agencies on Aging (O4A)**	ODA's use of "vigilantly monitor" in the proposed new rule corresponded to "high degree of oversight" in HHS's 45 C.F.R. 75.327(j)(2). In the version of OAC173-3-04 that ODA will file with JCARR, ODA will remove "vigilantly" from "vigilantly monitor." In 45 C.F.R. 75.327(j)(2), HHS issued the following warning: > Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls. ODA joins HHS in warning AAAs of the dangers of time-and-materials agreements. Any AAA that uses time-and-materials agreements will be responsible to pay for any disallowed costs with its own funds, not with Older Americans Act funds or any funds designated to the AAA as a match for Older Americans Act funds. This is why the proposed new rule says, "Only expenses that are reasonable under 45 C.F.R. Part 75…are allowable for payment using Older Americans Act funds." (The definition of "Older Americans Act funds" in OAC173-3-01 includes funds used as a match for Older Americans Act funds.)
OAC173-3-04(C): Time-and-Materials Agreements AAAs need to *vigilantly monitor* providers with whom they enter into time-and-materials agreements. What comprises *vigilant monitoring?* This is not defined in the rule. **Autumn Richards, Quality Improvement Director** **AAA4, Toledo, Ohio**	Please review ODA's response to the previous comment.

OAC173-3-04 OLDER AMERICANS ACT: GENERAL REQUIREMENTS FOR AAA-PROVIDER AGREEMENTS	
COMMENT RECEIVED	COMMENT RECEIVED
OAC173-3-04(C): Time-and-Materials Agreements o4a recommends allowing the AAAs to enter into time-and-materials contracts for services listed in the rule without receiving ODA's prior approval. The services which are listed are not conducive to purchase-of- service; the requirement of requesting ODA approval for time-and materials provider agreements for each is an unnecessary burden for AAAs and ODA. **Ohio Association of Area Agencies on Aging** *AAA10B commented in agreement with this comment.*	In the version of the proposed new rule that ODA will file with JCARR, ODA will retain the current rule's permission for AAAs to enter into time-and-materials agreements for goods or services not listed in the rule, but as also required in the current rule, ODA would require approval from ODA before entering into a time-and-materials agreement for goods or services not listed in the rule. Please also review ODA's response to previous comments that explains the dangers of time-and-materials agreements.
OAC173-3-04(C): Time-and-Materials Agreements PSA 2 recommends allowing the AAAs to enter into time-and-materials contracts for services listed in the rule without receiving ODA's prior approval. The services which are listed are not conducive to purchase-of-service; the requirement of requesting ODA approval for time-and materials provider agreements for each is an unnecessary burden for AAAs and ODA. **Jeanne Mbagwu, Community Services Manager** **AAA2, Dayton, Ohio**	Please review ODA's response to the previous comment.

OAC173-3-04 OLDER AMERICANS ACT: GENERAL REQUIREMENTS FOR AAA-PROVIDER AGREEMENTS	
COMMENT RECEIVED	COMMENT RECEIVED
OAC173-3-04(C)(1)(b): Time-and-Materials Agreements When the text was rearranged, the meaning was changed. Presently, AAA's may enter this type of agreement for specific services (i.e. information and referral, home repair) 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. The proposed language now would require the AAA receive written permission from ODA before entering any time-and-materials agreement. In addition, only specific services are listed as eligible for these types of contracts. There is not an option for obtaining permission for a service not listed. The services remain chore, client finding, home maintenance/modification/repair, I&R, mass outreach, socialization, telephoning, visiting or caregiver support goods and services. Recommend allowing AAAs to continue to enter into time-and-materials contracts for services mentioned above without receiving ODA's prior approval. In addition, recommend, maintaining the option of entering into this type of contract for other services with ODA's prior approval. **Autumn Richards, Quality Improvement Director** **AAA4, Toledo, Ohio** *AAA10B commented in agreement with this comment.*	Please review ODA's response to the previous comment.
OAC173-3-04(C): Time-and-Materials Agreements o4a is concerned that requesting approval from ODA for services *not* listed in the rule regarding time-and-materials provider agreements is no longer an option. We believe that quantifying activities of the Ombudsman program as a purchase-of-service contract is difficult. We also believe it is difficult to quantify evidence-based & health-promotion programs funded through Title III D and SCS dollars as purchase-of-service contracts. We recommend maintaining the option of entering into time-and-materials contracts for *other services* with ODA's prior approval in order to allow maximum flexibility on existing and new services. **Ohio Association of Area Agencies on Aging (O4A)**	In the version of the rule that ODA files with JCARR, ODA will retain the current rule's requirement to obtain permission from ODA before entering into a time-and-materials agreement, but only if the agreement would be for goods or services ODA did not list in the rule. Thus, ODA would not require an AAA to obtain ODA's permission before entering into time-and-materials agreements if the agreements would be for goods or services ODA listed in the rule. ODA wants to be clear that OAC Chapter 173-3 does not apply to ombudsman services. The definition for "Older Americans Act funds" in OAC173-3-01 specifically excludes the ombudsman program. Please also review ODA's response to previous comments that explains the dangers of time-and-materials agreements.

OAC173-3-04 OLDER AMERICANS ACT: GENERAL REQUIREMENTS FOR AAA-PROVIDER AGREEMENTS	
COMMENT RECEIVED	COMMENT RECEIVED
OAC173-3-04(C): Time-and-Materials Agreements PSA 2 is concerned that requesting approval from ODA for services *not* listed in the rule regarding time-and-materials provider agreements is no longer an option. We believe that quantifying activities of the Ombudsman program as a purchase-of-service contract is difficult. We also believe it is difficult to quantify evidence-based & health-promotion programs funded through Title III D and SCS dollars as purchase-of-service contracts. We recommend maintaining the option of entering into time-and-materials contracts for *other services* with ODA's prior approval in order to allow maximum flexibility on existing and new services. **Jeanne Mbagwu, Community Services Manager** **AAA2, Dayton, Ohio**	Please review ODA's response to the previous comment.
OAC173-3-04(E): Ineligible Providers o4a requests clarification on what "ineligible" includes since that language now replaces the existing rule's use of "debarred" and whether the lists that AAAs are checking includes *ineligible providers* as defined in the new rules. Is the SAM database the sole source for reviewing provider eligibility under this provision? **Ohio Association of Area Agencies on Aging (O4A)**	ODA will proceed with the currently-proposed new language, which says, > The AAA shall comply with … which prohibits the AAA from entering into an agreement with any provider the SAM database lists as excluded or disqualified from agreements involving federal funds. There is no need to define "ineligible." Ineligibility is determined by sam.gov. The glossary on sam.gov indicates that sam.gov may list 4 types of excluded providers. If an AAA searches the sam.gov database and finds that it lists a provider as belonging to any one of the 4 types excluded providers, the AAA shall not enter into an AAA-provider agreement with that provider.
OAC173-3-04(F) *For Rescission*: Ineligible Providers Comments refer to the old provisions of 173-3-04: 173-3-04 (F)-changing debarred to ineligible: we need to understand what ineligible includes and whether the list that we are checking includes ineligible providers as defined in the new rules or if there is something additional that we need to check to assure that the providers are not debarred but also not ineligible. **Abigail Morgan, Vice-President, Planning & Quality Improvement** **AAA10B, Uniontown, Ohio**	Please review ODA's response to the previous comment.

OAC173-3-05 OLDER AMERICANS ACT: PROCUREMENT STANDARDS FOR AAA-PROVIDER AGREEMENTS	
COMMENT RECEIVED	COMMENT RECEIVED
OAC173-3-05(B)(4): Direct Service Provision by AAAs (vs. by Providers) Through the public hearing process completed prior to submitting a Direct Service Waiver request to ODA, the AAA may receive community support to maintain a portion of Title III funds to furnish select services in an efficient and cost-effective manner. The AAA is concerned as to how this rule regarding procurement of goods and services impacts the request and approval process ODA has established for Direct Service Waivers. **Ohio Association of Area Agencies on Aging (O4A)**	There is no impact, OAC173-3-05 does *not* address the direct provision of services by ODA's designees or address direct-services waivers. Instead, §307(a)(8)(A) of the Older Americans Act is the law on the matter. OAC173-3-05 establishes procurement standards for AAAs to use when procuring goods and services paid for, in whole or in part, with Older Americans Act funds. An AAA that has been granted a direct-service waiver to provide a good or service directly is not procuring goods and services paid for, in whole or in part, with Older Americans Act funds from anyone other than itself, and ODA should, in that circumstance, have already approved of such a waiver.

OAC173-3-05 OLDER AMERICANS ACT: PROCUREMENT STANDARDS FOR AAA-PROVIDER AGREEMENTS	
COMMENT RECEIVED	COMMENT RECEIVED
OAC173-3-05(B)(4): Additional State Requirements to Obtain ODA Permission to Use A Non-Competitive Procurement Process o4a has concerns related to following the process proposed when determining providers for Title III-B and III-E I&R services. Section 306 of the Older Americans Act identifies a focal point as a highly visible facility designated by an AAA where anyone (it is understood that this would apply to information, and services only for eligible persons) in the community may obtain information and access to services for older persons and that encourages the maximum collocation and coordination of services. This OAC rule seems to be in conflict with the OAA expectations for focal points regarding dissemination of information to the community concerning issues important to older persons. Our focal points have been furnishing information and referral services for decades as mandated by the OAA, and have become well-respected organizations within their individual community where individuals routinely turn to seek answers and assistance. Being required to solicit other entities to provide this service does not seem to promote the intentions of the OAA. **Ohio Association of Area Agencies on Aging (O4A)**	This rule does not prevent an AAA from entering into an AAA-provider agreement with a provider that the AAA has done business with for a long period of time. It merely requires the AAA to consider all of its options and be able to prove that the provider the AAA chooses is the best provider for the job. An AAA is required to not only develop a system of service providers within a planning and service area, but to also enhance that system over time. And, in doing so, it must be proactive and consider all of its options before entering into, or renewing its AAA-provider agreements. The AAA should not be viewed as a guaranteed funding source by, or for, any one provider. The fact that a provider has held an AAA-provider agreement for a long period of time, and is viewed by the AAA or the community as having done a good job over the course of its long relationship with an AAA, does not relieve the AAA of its obligation to be a good steward of taxpayer dollars, and to comply with the procurement standards outlined in federal and state law, including OAC173-3-05. Except in very limited circumstances, the procurement standards require full and open competition. But, competition is not only required by the law, it also makes sense. An AAA has no way of knowing whether a different provider exists that could offer an even better service, or the same level of service but at a lower cost to taxpayers than the one offered by the current provider, unless the AAA actively looks. Further, competition has a way of bringing out the best in a provider; as it incentivizes the provider to improve its performance and develop better ways of doing business. This is true whether or not the AAA has designated a focal point. The Older Americans Act requires AAAs to designate focal points, “where feasible,” for comprehensive service delivery in each community. It does not, however, require AAAs to enter into AAA-provider agreements with those focal points to actually be providers that provide given goods or services at that location. And it makes little or no sense to designate a focal point, if that designation results in lower quality, and/or more expensive services.

OAC173-3-05.1 OLDER AMERICANS ACT: PROCUREMENT REQUIREMENTS FOR RENEWABLE AND MULTI-YEAR AAA-PROVIDER AGREEMENTS	
COMMENT RECEIVED	COMMENT RECEIVED
ODA received no comments.	NA

OAC173-3-06 OLDER AMERICANS ACT: REQUIREMENTS FOR EVERY AAA-PROVIDER AGREEMENT	
COMMENT RECEIVED	COMMENT RECEIVED
OAC173-3-06(B)(4)(c): Confidentiality Electronic storage of data by providers is not adequately protected by encryption only. That is a component of assuring data security, but the scope of the requirements to preserve the security of the consumer data and protect it from unauthorized uses or disclosures is much broader. O4a recommends that if a provider stores and exchanges consumer data electronically, that the provider abides by the applicable state and federal to include, without limitation, HIPAA. **Ohio Association of Area Agencies on Aging (O4A)**	Providers making healthcare determinations are subject to HIPAA. Providers offering social services through the Older Americans Act are usually not subject to HIPAA. In the version of the rule that ODA will file with JCARR, ODA will require AAAs to state, in each AAA-provider agreement, any federal or state confidentiality laws to which the provider must comply in addition to the few requirements established by ODA in the rule. This would allow AAA-provider agreements to only contain HIPAA language if the provider would be offering a service that would subject its records to HIPAA.
OAC173-3-06(B)(4)(c): Confidentiality recognition that providers may store consumer data electronically. While this is a good point to address, the electronic storage of data is not adequately protected by encryption only. That is a component of assuring data security, but the scope of the requirements to preserve the security of the consumer data and protect it from unauthorized uses or disclosures is much broader. I would assure that if a provider stores and exchanges consumer data electronically, that the provider abides by the applicable state and federal to include, without limitation, HIPAA. **Abigail Morgan, Vice-President, Planning & Quality Improvement** **AAA10B, Uniontown, Ohio**	Please review ODA's response to the previous comment.

OAC173-3-06 OLDER AMERICANS ACT: REQUIREMENTS FOR EVERY AAA-PROVIDER AGREEMENT	
COMMENT RECEIVED	COMMENT RECEIVED
OAC173-3-06(B)(6): Sub-Contracting o4a requests clarification on this issue: Is the intent of the language change to allow for an assignment of duties in a case of a provider merging with another entity, but not in the case where the provider desires to transfer the responsibility to another provider with which the provider is not affiliated? **Ohio Association of Area Agencies on Aging (O4A)**	It's the other way around. The rule in no way addresses provider mergers. If a provider and a provider's sub-contractor merged, there would be no sub-contracting. The requirement reserves the power to procure goods and services to the AAA, not a provider. It can also involve unfair competition. If a provider submits a winning bid to provide Service X, but the AAA later discovers that the provider has no staff qualified to provide Service X, the provider should not have bid for Service X unless the provider indicated in its bid that it would sub-contract for certain elements of a service (*e.g.*, a registered nurse). The competition for the AAA-provider agreement was not fair if Bidder A is qualified to provide Service X, but Bidder B wins the provider agreement but is not qualified and must enter into sub-contracts. In effect, this would remove the AAAs power to procure and would put Bidder B in the place to procure.
OAC173-3-06(B)(6): Sub-Contracting Is the intent of the language to allow for an assignment of duties in a case of a provider merging with another entity, but not in the case where the provider desires to transfer the responsibility to another provider with which the provider is not affiliated? I think that we need more clarification as to what this change in terminology means. **Abigail Morgan, Vice-President, Planning & Quality Improvement** **AAA10B, Uniontown, Ohio**	Please review ODA's response to the previous comment.

OAC173-3-06 OLDER AMERICANS ACT: REQUIREMENTS FOR EVERY AAA-PROVIDER AGREEMENT	
COMMENT RECEIVED	COMMENT RECEIVED
OAC173-3-06(B)(9)(a): Service Verification o4a recommends the AAA be allowed to prohibit an electronic system that is highly susceptible to fraud or not a reasonably acceptable form of provision [verification?] of service. For example, acceptable systems would be those requiring the participant's unique electronic signature/swipe card. Some OAA service software tracking systems are utilized to track goods and services provided, i.e. meals. However, these systems do not require the electronic signature of a participant. The provider may solely enter the service information. Therefore, this would not sufficiently verify the provision of goods and services to that individual. **Ohio Association of Area Agencies on Aging (O4A)**	ODA's rules do not require collecting signatures in all cases. An electronically-captured signature is not the only alternative to a handwritten signature. ODA will systematically modify all of its rules requiring verification. The new language will allow providers to use an electronic system of their choosing so long as it meets a service regulation's requirements. Here is an example from a recently-proposed new rule for congregate dining: Meal verification: By one of the following two methods, the provider shall verify that each meal for which it bills was provided: The provider may use an electronic system if the system does all of the following: Collects the consumer's name, date, and an identifier (e.g., electronic signature, fingerprint, password, swipe card, bar code) unique to the consumer. Retains the information it collects. Produces reports, upon request, that the AAA can monitor for compliance. The provider may use a manual system if the provider documents the consumer's name, date, and handwritten signature of the consumer. If the consumer is unable to produce a handwritten signature, the consumer's handwritten initials, stamp, or mark are acceptable if the AAA authorizes such an alternative. In the contract, the AAA shall not prohibit a provider from using an electronic system to collect and retain the records this rule requires. The language requires using a system that produces reports, upon request, that an AAA can monitor. Additionally, if an AAA finds evidence of fraud, the AAA may proceed with disciplinary and legal action regardless of the brand of electronic verification system the provider uses. For more information, please review Appendix J to the BIA for ODA's nutrition rules (December 31, 2015).

OAC173-3-06 OLDER AMERICANS ACT: REQUIREMENTS FOR EVERY AAA-PROVIDER AGREEMENT	
COMMENT RECEIVED	COMMENT RECEIVED
OAC173-3-06(B)(9)(a): Service Verification Pertaining to *In no agreement, shall an AAA prohibit a provider from using electronic systems to verify the provision of goods or services or to retain records.* Recommend the AAA be allowed to prohibit an electronic system that is highly susceptible to fraud or not a reasonably acceptable form of provision of service. For example, acceptable systems would be those requiring the participants unique electronic signature/swipe card. Some OAA service software tracking systems are utilized to track goods and services provided, i.e. meals. However, these system does not require the electronic signature of a participant. The provider may solely enter the service information. Therefore, this would not be acceptable to verify the provision of goods and services. **Autumn Richards, Quality Improvement Director** **AAA4, Toledo, Ohio** *AAA10B commented in agreement with this comment.*	Please review ODA's response to the previous comment.

OAC173-3-07 OLDER AMERICANS ACT: CONSUMER CONTRIBUTIONS	
COMMENT RECEIVED	COMMENT RECEIVED
OAC173-3-07(A): Applicability to Senior Community Services Funds (A) Introduction: The proposed rule does not include "senior community services" funds as being subjected to cost sharing whereas it was included in the second sentence of the paragraph. Will this mean that providers will no longer be required to collect cost-sharing contributions for goods and services funded with senior community services? **Pauline Stephenson** **Carol Strawn Center, Newark, Ohio**	The introductory paragraph in OAC173-3-01 says, "The chapter [which includes OAC173-3-07] regulates AAA-provider agreements for goods and services paid, in whole or in part, with Older Americans Act funds." OAC173-3-07 starts with similar language. Because Senior Community Services funds are used as a state match to federal Older Americans Act funds, the goods and services paid by those funds are automatically subject to the entire chapter of rules.

OAC173-3-07 OLDER AMERICANS ACT: CONSUMER CONTRIBUTIONS	
COMMENT RECEIVED	COMMENT RECEIVED
OAC173-3-07(C)(2)(a) + (D): Federal Poverty Level The proposed rule states that "the AAA shall suggest that a consumer pay based upon the consumer's individual income as a percentage of the federal poverty level". However, in the proposed (D) Definition for this rule: "Federal poverty level" means ... as was in effect on January 25, 2016, for a family size equal to the size of the consumer's family whose income is being determined. This is confusing. It seems to suggest that providers should obtain the consumer's individual income and then compare this individual income to the poverty level for the consumer's entire family size. As it appears to read, it is possible for a consumer with a higher level of income who resides with family members (e.g. a child and that child's family) to qualify for lower suggested cost-share contributions that he or she would not qualify for if the entire family size were not taken into consideration. Perhaps this is the intent of the proposed rule but if not, it is confusing. **Pauline Stephenson** **Carol Strawn Center, Newark, Ohio**	Because §315(a)(4) of the Older Americans Act requires ODA to base payment rates "solely on *individual* income…," In the version of the rule that ODA files with JCARR, ODA will amend the definition of "Federal poverty level" to delete the clause at the end of the sentence that refers to *family* size and *family* income.

OAC173-3-09 OLDER AMERICANS ACT: ADMINISTRATIVE HEARINGS FOR ADVERSELY-AFFECTED PROVIDERS	
COMMENT RECEIVED	COMMENT RECEIVED
ODA received no comments.	NA

To this document, ODA attached the rules as they appeared on ODA's website during the online public-comment.

DRAFT for ONLINE PUBLIC-COMMENT PERIOD

ODA proposes to add "Older Americans Act" to the beginning of every rule in Chapters 173-3 and 173-4 of the Administrative Code.

*** DRAFT - NOT YET FILED ***

TO BE RESCINDED

ODA is simultaneously proposing to replace the rule with a new rule of the same number.

In the new rule that would replace this rule, ODA proposes to no longer refer to the Alzheimer's Respite Program. The chapter would not apply to goods and services funded solely by that program's funds. However, Alzheimer's respite funds used as a match would be considered "Older Americans Act funds" and would be subject to the chapter.

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

In the new rule that would replace this rule, ODA proposes to simplify this paragraph.

(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.)

In the new rule that would replace this rule, ODA proposes to organize terms by alphabetical order without numeration.

In the proposed new rule, ODA proposes to add "grooming," and to place the terms in alphabetical order.

(B) Definitions for Chapters 173-3 and 173-4 of the Administrative Code:

(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 planning and service area. ODA lists every AAA in rule 173-2-04 of the Administrative Code.

In the proposed new rule, ODA proposes shorten this definition.

Financial resources are not major functional areas. In the proposed new rule, ODA proposes to insert "financial resources," between "problems," and "and care needs,"

(3) "Assessment" means a gathering of information about a 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.

Definitions define. They don't give authority. In the proposed new rule, ODA proposes only describe care coordination.

(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.

(5) "Care-coordination program" means a program that an AAA may develop to coordinate and monitor the delivery of services.

In the proposed new rule, ODA proposes to replace "the delivery of services" with "the provision of good and services."

The term "focal point" only appears once in the chapter. Because the presentation of "focal point" in rule 173-3-06 also references §306 of the Act, ODA proposes to *not* include this definition in the proposed new rule. Additionally, it's not possible for "anyone" to obtain "services for older persons." However, ODA's proposal to *not* include this definition in the proposed new rule, nullifies the need to correct the wording.

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

In the proposed new rule, ODA proposes to add more examples.

(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.

(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, 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.

In the proposed new rule, ODA proposes to insert "get and" before "use available transportation." (*cf.*, OAC5160-3-05)

(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.

(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.

In the proposed new rule, ODA proposes to replace "any source used to match those funds" with "any state or local funds used as matching funds for those federal funds."

(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 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

In the proposed new rule, ODA proposes to consistently use "consumer."

In another rule project, ODA is proposing to amend the only use of this term in the chapter, which is in rule 173-3-06.1. ODA proposes to delete this term from this rule.

In the proposed new rule, ODA proposes to simply say, "...means an Ohio region that ODA designated as a planning and services area under rule 173-2-02 of the Administrative Code."

different age is required by a state or federal law.

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

(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.

In the proposed new rule, ODA proposes to simplify the definition of "provider."

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

(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.

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

In the proposed new rule and in all other proposed new or amended rules of the Chapter, ODA proposes to use "AAA-provider agreements." Some rules may contain "contracts" and "provider agreements" until ODA has the opportunity to review each rule.

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

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

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

In the proposed new rule, ODA proposes to replace "provided to" with "authorized for." Just because a service appears in a service plan does not mean that a consumer receives it. Also, a service plan is drafted before providing services, so it would not list a history of services "provided to" a consumer.

In the proposed new rule and in all other proposed new or amended rules of the Chapter, ODA proposes to consistently use the term "goods and services" instead of "service, product, or program" and when "services" actually could refer to a good or to good and services.

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under:	119.03
Statutory Authority:	173.01, 173.02, 173.04, 173.392; Section 305(a)(1)(C) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; 45 C.F.R. 1321.11 (10-1-2013 edition)
Rule Amplifies:	173.04, 173.392; Section 305(a)(1)(C) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006
Prior Effective Dates:	02/15/2009, 06/01/2014

In the new rule that would replace this rule, ODA proposes to no longer refer to the Alzheimer's Respite Program. The chapter would not apply to goods and services funded solely by that program's funds. However, Alzheimer's respite funds used as a match would be considered "Older Americans Act funds" and would be subject to the chapter.

173-3-01 Older Americans Act: introduction and definitions.

(A) Introduction to Chapter 173-3 of the Administrative Code: This chapter regulates AAA provider agreements for goods and services paid, in whole or in part, with Older Americans Act funds.

(B) Definitions for Chapters 173-3 and 173-4 of the Administrative Code:

"AAA-provider agreement" ("agreement") means a contract between an AAA and a provider for the provision of goods or services to consumers

"Activities of daily living" ("ADLs") means bathing; dressing; eating; grooming; toileting; transferring in and out of a bed or chair; and walking.

"Area agency on aging" ("AAA") means an entity ODA designates to be an AAA under rule 173-2-04 of the Administrative Code.

"Assessment" means a gathering of information about a person's strengths, problems, financial resources, and care needs in the following major functional areas: physical health, utilization of medical care, ADLs, IADLs, mental and social functioning, physical environment, and utilization of services and supports.

"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.

"Care-coordination program" means a program coordinating and monitoring the provision of goods and services.

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

"Consumer" means, for the purposes of goods or services paid for, in whole or in part, 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.

"Consumer's signature" means the signature, mark, or electronic signature of a consumer, or the consumer's caregiver verifying the provision of goods and services. Examples of technologies used to record electronic signatures are "Co-Pilot," "MealService," "MJM," "MySenior Center," "SAMS Scan," "Santrax," "SeniorDine," "SERVtracker," "SSAID," and call-in verification.

"Contract" has the same meaning as "AAA-provider agreement," unless the context clearly indicates otherwise.

"Day" means a twenty-four-hour period beginning and ending at midnight.

"Incident" means an event that is inconsistent with the routine care or routine

provision of goods and services to a consumer. An incident may involve a consumer, caregiver (to the extent it impacts a consumer), provider, provider's staff or facility, another facility, an AAA's staff, ODA's staff, or other administrative authorities. Examples of an incident are abuse, neglect, abandonment, an accident, or an unusual situation resulting in an injury to a person or damage to the person's property or equipment.

"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 get and use available transportation without assistance.

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

"ODA" means the Ohio department of aging.

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

"Older Americans Act funds" means the federal funds awarded to ODA through Title III of the Older Americans Act and any state or local funds used to match those federal funds, regardless of whether the local funds are public or private funds. For the purposes of this chapter and Chapter 173-4 of the Administrative Code, "Older Americans Act funds" does not mean funds for an ombudsman program.

"Planning and service area" ("PSA") means a geographic region of Ohio that ODA designated as a planning and service area under rule 173-2-02 of the Administrative Code.

"Provider" means a person or entity entering into an AAA-provider agreement with an AAA to provide goods or services to consumers. The three categories of providers are agency providers, self-employed providers, and consumer-directed providers. "Agency provider" means a provider hiring persons to provide goods and services to consumers. "Self-employed provider" means a provider who provides goods and services to consumers and who does not hire, or contract with, other person to provide those goods or services. "Consumer-directed individual provider" means a provider (e.g., relative, friend, neighbor, or other person) a consumer hired and directs to provide goods and services to the consumer.

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

"RFP" means "request for proposal."

"Service plan" means a written outline of goods and services authorized for a consumer regardless of the funding source for the goods or services.

ODA is systematically adding "Older Americans Act" to the beginning of each rule title in Chapters 173-3 and 173-4. This will be reflected in the proposed new rule.

** DRAFT - NOT YET FILED ***

TO BE RESCINDED

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

ODA is systematically replacing "provider agreements" with "contracts and grant agreements." The proposed new rule will reflect this.

(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).

In the proposed new rule, ODA proposes to combine paragraphs (A) and (B) into one shorter, simpler paragraph.

(C) Purchase-of-service provider agreements:

(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.

45 C.F.R. Part 75 now calls this a "time and materials" type.

(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 the AAA pays the provider.

(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.

(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.

In the proposed new rule, ODA proposes to refer to the providers as "ineligible," not "debarred," and to reference 2 C.F.R. Part 180 and 2 C.F.R. Part 376.

(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.

In the proposed new rule, ODA will refer to the manifold competitive procurement methods under 45 C.F.R 75.329, not just sealed bidding.

(H) Multi-year provider agreement limitations:

ODA proposes to present the multi-year regulations in propose new rule 173-3-05.1 of the Adminstrative Code instead of in this rule.

(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.

Effective:

Five Year Review (FYR) Dates:

_____

Certification

_____

Date

Promulgated Under:	119.03
Statutory Authority:	173.01, 173.02, 173.392; Section 305(a)(1)(C) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; 45 C.F.R. 1321.11 (October, 2015 edition)
Rule Amplifies:	173.392; Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; 45 C.F.R. Part 75 (December 26, 2014)
Prior Effective Dates:	02/19/2009, 06/01/2014

173-3-04 **Older Americans Act: general requirements for AAA provider agreements.**

(A) Authority: Each AAA shall enter into AAA-provider agreements ("agreements") to develop and implement a comprehensive and coordinated system of services for consumers and their 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 this chapter and the uniform administrative requirements, cost principles, and audit requirements for federal awards under 45 C.F.R. Part 75 (December 26, 2014).

(B) Purchase-of-service agreements:

(1) The AAA shall only enter into purchase-of-service agreements, unless the requirements of paragraph (C) of this rule are met.

(2) As used in this rule, "purchase-of-service agreements" means an agreement through which a provider is paid, wholly or in part, with Older Americans Act funds a pre-determined unit rate for only the goods or services it actually provides in accordance with the agreement.

(C) Time-and-materials agreements:

(1) The AAA shall not enter into a time-and-materials agreement as an alternative to a purchase-of-service agreement unless both of the following requirements are met:

(a) Before the AAA enters into the time-and-materials agreement, the AAA receives written permission (hard copy or electronic) from ODA to do so.

(b) The time-and-materials agreement only pertains to the provision of one or more of the following: a chore service; client finding; home maintenance, modification, or repair; information and assistance (referrals); mass outreach; socialization; telephoning; visiting; or goods or services provided through the national family caregiver support program.

(2) If an AAA enters into a time-and-materials agreement, in the agreement, the AAA shall place a limit on the dollar amount of the AAA's obligation under the agreement, and the provider shall submit evidence to verify its costs before the AAA pays the provider. Only expenses that are reasonable under 45 C.F.R. Part 75 (December 26, 2014) are allowable for payment using Older Americans Act funds. The AAA shall vigilantly monitor providers with whom it has entered into time and materials agreements to ensure that the providers' expenses do not exceed the limits that the AAA established in the agreements.

(3) As used in this rule, "time-and-materials type agreement" means a agreement through which a provider is paid, in whole or in part, with Older Americans Act funds for the goods and services it provides to consumers based upon their actual costs (i.e., time and materials) to the provider and not upon a pre-determined unit rate.

(D) Retroactive: The AAA shall not pay a provider for any goods or services unless a valid agreement is in place before the provider begins to provide the goods or services. No agreement is valid unless, and until, it is signed by authorized representatives from both the AAA and the provider.

(E) Ineligible providers: The AAA shall comply with 2 C.F.R. Part 180 (December 26, 2014), as supplemented by 2 C.F.R. Part 376 (December 26, 2014), which prohibits the AAA from entering into an agreement with any provider the SAM database lists as excluded or disqualified from agreements involving federal funds. As used in this paragraph, "SAM database" means the general service administration's "System for Award Management," which is available to the general public for free on www.sam.gov.

(F) Not earning funds: An AAA shall only make a portion of the funds awarded to a provider available for use by one or more other existing providers without first going through one of the competitive procurement processes under 45 C.F.R. 75.329 (December 26, 2014) if, in the agreement, the AAA stated that it may redistribute funds if a provider is not, in a timely manner, earning the funds it was awarded and if the AAA determines that the provider is not, in a timely manner earning the funds it was awarded in an existing agreement. A provider may appeal an AAA's decision to redistribute funds under rule 173-3-09 of the Administrative Code.

In the proposed new rule, ODA proposes to consistently use the same language regarding Older Americans Act funds and matching funds.

*** DRAFT - NOT YET FILED ***

TO BE RESCINDED

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

ODA is systematically adding "Older Americans Act" to the beginning of each rule title in Chapters 173-3 and 173-4. This will be reflected

(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.

In the proposed new rule, ODA proposes to consistently use "goods *and* services."

(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:

In the proposed new rule, ODA proposes to replace the list of competitive procurement methods with a requirement to comply with the federal governments requiements for competition in 45 C.F.R. Part 75.

45 C.F.R. Part 75 also now allows for micro-purchasing for contract and grant agreements valued under $3,000.

(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.

(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:

(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) (10/1/2013 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.

In June, 2014, ODA added this requirement to the rule. In the proposed new rule, ODA proposes to highlight that it is a state requirement that ODA is adding to the federal requirements. The goal is to ensure open and free competition.

(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 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.

Effective:

Five Year Review (FYR) Dates:

_____

Certification

_____

Date

Promulgated Under:	119.03
Statutory Authority:	173.01, 173.02, 173.392; Section 305(a)(1)(C) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; 45 C.F.R. 1321.11 (October, 2015 edition)
Rule Amplifies:	173.392; Section 305(a)(1)(C) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; 45 C.F.R. Part 75 (December 26, 2014)
Prior Effective Dates:	02/15/2009, 06/01/2014

173-3-05 **Older Americans Act: procurement standards.**

(A) Federal requirements: When an AAA procures goods or services paid, in whole or in part, with Older Americans Act funds, the AAA shall comply with the requirements under 45 C.F.R. 75.327 to 75.335 (December 26, 2014).

(1) 48 C.F.R. Subpart 2.1 (December 26, 2014) establishes the federal micro-purchase threshold at three thousand dollars, except as otherwise discussed in Subpart 2.1. An AAA shall not use micro-purchase procurement for AAA-provider agreements ("agreements"") worth more than three thousand dollars.

(2) 2 C.F.R. Part 300 (December 26, 2014) establishes the federal simplified acquisition threshold at one hundred fifty thousand dollars. An AAA shall not use small-purchase procurement for agreements worth more than one hundred fifty thousand dollars.

(B) Additional state requirements: If an AAA submits a written request to ODA seeking permission to use a non-competitive procurement process, the AAA shall comply with paragraph (A) of this rule and the following:

(1) The AAA shall submit its written request to ODA no fewer than thirty days before the AAA needs a decision from ODA.

(2) The AAA's written request shall not consider a public exigency or emergency to be a basis for non-competitive procurement if the AAA created the exigency or emergency.

(3) The AAA's request shall provide ODA with evidence to verify that the circumstances in 45 C.F.R. 75.329(f) (December 26, 2014) exist.

(4) If the AAA wants to procure goods or services from a single source, the AAA's request shall verify that the circumstances in 45 C.F.R. 75.329(f)(1) (December 26, 2014) 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. The AAA's request shall also include emails or letters from each of those providers to verify that the providers are unable to provide the goods or services that the AAA wants to procure.

173-3-05.1 **Older Americans Act: procurement standards for renewable and multi-year AAA-provider agreements.**

(A) An AAA shall not offer a provider a renewable or multi-year AAA-provider agreement ("agreement") unless the AAA procured for the agreement with multi-year terms according to rule 173-3-05 of the Administrative Code and this rule.

To be certain that competition is fair, ODA proposes to require RFPs to indicate if AAA-provider agreements are renewable. If the RFP doesn't indicate that it is, after an agreement expires, a new round of competition begins. This topic exists in practice, but is not addressed by the current rules.

(B) Renewable:

(1) If an agreement is to be renewable after the agreement's initial term, the AAA shall clearly state the following in the RFP for the renewable agreement:

(a) The AAA shall state that the agreement is renewable after the initial term.

(b) The AAA shall state that it retains the right to decline to renew the agreement.

(c) If the agreement upon which providers would bid includes an opportunity for rate increases upon renewal, the AAA shall state the methodology by which the AAA would determine the amount, if any, of rate increases upon renewal. If the agreement upon which providers would bid does not include an opportunity for rate increases upon renewal, the AAA shall state that the agreement would not include an opportunity for rate increases upon renewal.

(d) The AAA shall state the circumstances, if any, under which it may terminate a renewed agreement.

(2) The AAA shall clearly state the following in each renewable agreement:

(a) The AAA shall state that the agreement is renewable after the initial term.

To ensure open and free competition, ODA proposes to require AAAs to add language to AAA-provider agreements that give it the right to decline to renew.

(b) The AAA shall state that it retains the right to decline to renew the agreement.

(c) If the agreement includes an opportunity for rate increases upon renewal, the AAA shall state the methodology by which the AAA would determine the amount, if any, of rate increases upon renewal. If the agreement does not include an opportunity for rate increases upon renewal, the AAA shall state that the agreement does not include an opportunity for rate increases upon renewal.

(d) A statement indicating the circumstances, if any, under which the AAA may terminate a renewed agreement.

(3) An AAA shall not award a renewable agreement that would remain in effect, whether in its initial term or a renewed term, after the last day the AAA's

[stylesheet: rule

ODA first adopted similar language for multi-year contracts into rule 173-3-04 on June 1, 2014. ODA now proposes to require AAAs to begin new AAA-provider agreements with every new area plan. New area plans should reflect new trends in the area. This should allow AAAs to offer new bidding opportunities to providers who may not currently have an AAA-provider agreement with the AAA, but who have the skill to solve new problems trending in the area.

approved area plan is in effect.

(C) Multi-year term:

ODA proposes to consolidate language for multi-year AAA-provider agreements from rules 173-3-04 and 173-3-06 into this new rule.

(1) If the agreement is for a multi-year term, the AAA shall clearly state the following in the RFP:

(a) The AAA shall state that the agreement is for a multi-year term.

(b) The AAA shall state that it may terminate the agreement, rather than fulfill all years of the multi-year term, under the any one or more of the following circumstances:

(i) The provider does not demonstrate satisfactory performance.

(ii) The AAA does not have funds to pay for the goods or services for a subsequent year.

(iii) A situation arises that was unforeseen at the time the AAA and the provider entered into the agreement. Examples of unforeseen situations are changes in market conditions or changes in the law regulating the goods or services the agreement covers.

(c) If the agreement upon which providers would bid includes an opportunity for rate increases during the multi-year term, the AAA shall state the methodology by which the AAA would determine the amount, if any, of rate increases during the multi-year term. If the agreement upon which providers would bid does not include an opportunity for rate increases during the multi-year term, the AAA shall state that the agreement would not include an opportunity for rate increases.

(2) The AAA shall clearly state the following in each agreement with a multi-year term:

(a) The AAA shall state that the agreement is for a multi-year term.

(b) The AAA shall state that it may terminate the agreement, rather than fulfill all the years of the multi-year term, under any one or more of the following circumstances:

(i) The provider does not demonstrate satisfactory performance.

(ii) The AAA does not have funds to pay for the goods or services for a subsequent year.

(iii) A situation arises that was unforeseen at the time that the AAA and the provider entered into the agreement. Examples of unforeseen

situations are changes in market conditions or changes in the law that regulates the goods or services the agreement covers.

(c) If the agreement upon which providers would bid includes an opportunity for rate increases during the multi-year term, in the agreement, the AAA shall include the methodology by which the AAA would determine the amount, if any, of rate increases during the multi-year term. If the agreement does not include an opportunity for rate increases during the multi-year term, in the agreement, the AAA shall state that it does not include an opportunity for rate increases.

(3) An AAA shall not award a multi-year agreement that would remain in effect after the last day the AAA's approved area plan is in effect.

This paragraph is retained from language ODA adopted into rule 173-3-04 on June 1, 2014.

DRAFT for ONLINE PUBLIC-COMMENT PERIOD

In the proposed new rule, ODA proposes to replace the long-winded, multi-paragraph, run-on sentence that comprises most of the rule with topically-organized paragraphs that each consist of complete sentences.

*** DRAFT - NOT YET FILED ***

ODA proposes to delete the reference to the Alzheimer's Respite program because the chapter does not apply to that program.

TO BE RESCINDED

173-3-06 **Mandatory clauses.**

In the proposed new rule, ODA proposes to replace the title with "Older Americans Act: requirements for every contract and grant agreement."

(A) In each provider agreement entered into under Chapter 173-3 or Chapter 173-4 of the Administrative Code, for the provision of services that are funded in part or in full with Older Americans Act funds, senior community services funds, or Alzheimer's respite program funds, the AAA shall include:

ODA has discovered that providers do not know that their AAA-provider agreements are regulated by the Older Americans Act and this chapter. How, then, would they know if their agreement was valid? Would they know their appeal rights? In (B)(1) of the proposed new rule, ODA proposes to replace this requirement with a requirement to insert a statement that informs providers of the name of the federal program that funds them and the name of the pass-through entity that regulates them.

(1) A clause requiring the provider to comply with rule 173-3-06.1 of the Administrative Code, if providing an adult day service; rule 173-3-06.2 of the Administrative Code, if providing a chore service; rule 173-3-06.3 of the Administrative Code, if providing a home maintenance, modification, or repair service; rule 173-3-06.4 of the Administrative Code, if providing a homemaker service; rule 173-3-06.5 of the Administrative Code, if providing a personal care service; rule 173-3-06.6 of the Administrative Code, if providing a transportation service; rule 173-4-05 of the Administrative Code, if providing a meal service; rule 173-4-06 of the Administrative Code, if providing a nutrition consultation service; rule 173-4-07 of the Administrative Code, if providing a nutrition education service; rule 173-4-08 of the Administrative Code, if providing a nutrition health screening; or rule 173-4-09 of the Administrative Code, if providing a grocery shopping assistance service; or, if the service the AAA is procuring is not specified in the above rules, a clause requiring the provider to comply with a written specification of the service (e.g., a description of the service and any conditions for providing the service);

(2) A reference to any federal, state, and local laws, regulations, and federal circulars to which the provider is required to comply;

(3) A reference to the funding source for the provider agreement by part (as noted in Title III of the Older Americans Act) and by source (e.g., senior community services);

(4) A description of the compensation, including the amount, method of payment, and any possible non-federal match;

See (B)(6) of proposed new rule for "sub-contracting" language.

(5) A clause prohibiting the provider from assigning any of its duties under the provider agreement to another provider without the authorization of the AAA;

(6) Any clause regarding equal employment opportunities required under Appendix

This has been mistaken to imply that AAAs have authority to enforce the laws that fall under the jurisdiction of other government agencies. The intent is to not to allow an AAA-provider agreement to stand if the provider needs to operate under the authority of another government agency, but the government agency prohibits the provider from doing so. (*E.g.*, The provider loses a license that is necessary to provide services.) (B)(5)(b) of the proposed new rule clears this up.

A to 45 C.F.R. 74 (October 1, 2013 edition) or 45 C.F.R 92.36(i) (October 1, 2013 edition);

(7) If the provider agreement regards services reimbursed by Older Americans Act funds, a clause requiring the provider to satisfy the service needs of older persons with the greatest economic and social needs with particular attention to older persons who are low-income, who are low-income minorities, who have limited proficiency in the English language, who reside in rural areas, and who are at risk for institutional placement;

(8) If the provider agreement regards services reimbursed by Older Americans Act funds, a clause requiring the provider to meet the AAA's specific objectives for giving service priority to specific consumer groups;

(9) A list of focal points in the service area covered by the provider agreement that the AAA has designated under Section 306(a)(3)(B) of the Older Americans Act;

(10) A clause requiring the provider to comply with the requirements regarding consumer contributions under rule 173-3-07 of the Administrative Code;

(11) A clause requiring the provider to cooperate with the AAA and ODA, to assess the extent of the disaster impact upon persons aged sixty years and over, and to coordinate the public and private resources in the field of aging in order to assist older disaster victims whenever the president of the United States declares that the provider's service area is a disaster area;

(12) A clause requiring any provider who is a mandatory reporter to immediately notify the county department of job and family services, or the agency the county department of job and family services designates to provide adult protective services, once the provider has reasonable cause to believe a consumer is the victim of abuse, neglect, or exploitation;

(13) A clause requiring the provider to notify the AAA of any significant change that may necessitate a reassessment the service needs of a consumer in a care-coordination program no later than one business day after the provider is aware of a repeated refusal to receive services; changes in the consumer's physical, mental, or emotional status; documented changes in the consumer's environmental conditions; or, other significant, documented changes to the consumer's health and safety;

(14) A clause requiring the provider to notify the AAA and the consumer in writing

of the anticipated last day of service to a consumer in a care-coordination program no later than thirty business days before the anticipated last day of service, unless the reason for discontinuing the service is the hospitalization, institutionalization, or death of the consumer; serious risk to the health or safety of the provider; the consumer's decision to discontinue the service; or a similar reason why the provider is unable to notify the AAA thirty days before the anticipated last day of service. The provider shall also notify the consumer how he or she may reach a long-term care ombudsman;

(15) A clause prohibiting the provider from using or disclosing any information concerning a consumer for any purpose directly associated with the provision of services, unless the provider has documentation of the consumer's consent to do so;

(16) A clause prohibiting the provider from using or disclosing any information concerning a consumer for any purpose not directly associated with the provision of services, even if the consumer consents to doing so;

See (B)(5)(a) of proposed new rule for new language that unveils a "hidden" requirement to open sealed criminal records in ORC§179.572(B)(1).

(17) A clause requiring the provider to comply with the database reviews and criminal records check requirements under section 173.38 of the Revised Code and Chapter 173-9 of the Administrative Code;

(18) A clause requiring the provider to return any funds received for providing services, if the provision of the services did not comply with the Administrative Code, the Revised Code, or any other law that regulates the provider or the services provided;

(19) A clause requiring the provider to store consumer records in a designated, locked storage space;

See (B)(4)(c) of proposed new rule an allowance for storing records electronically.

(20) A clause requiring the provider to retain any record relating to costs, work performed, supporting documentation for payment of work performed, and all deliverables until the latter of:

(a) Three years after the date the provider receives payment for the service;

(b) The date on which ODA, the AAA, or a duly-authorized law enforcement official concludes monitoring the records and any findings are finally settled; or,

(c) The date on which the auditor of the state of Ohio, the inspector general, or a duly-authorized law enforcement official concludes an audit of the

records and any findings are finally settled.

(21) A description of the review, monitoring, and audit rights of the provider, the AAA, ODA, and the administration on aging;

(22) A description of the grounds (and the process) for modifying, suspending, or terminating the provider agreement;

(23) A statement that any amendments to laws, rules, or regulations cited in the provider agreement will result in a correlative modification to the provider agreement without the necessity of executing a written amendment;

(24) If the provider agreement regards a service that is reimbursed by Older Americans Act funds, a description of the right to appeal (and the process for appealing) a decision on provider agreement that cites rule 173-3-09 of the Administrative Code; and,

(25) A statement that the AAA may terminate the agreement without obligation if ODA determines, through the appeals process or through monitoring, that the provider agreement was entered into inappropriately.

(B) If a provider agreement contains a clause that allows the AAA to renew the agreement after the agreement has been in effect for a year, the AAA shall include the following clauses in the agreement:

(1) If the provider does not demonstrate satisfactory performance, the AAA may terminate the agreement;

(2) If funds are not available to pay for the service, product, or program for a subsequent year, the AAA may terminate the agreement; or,

(3) If a situation arises that was unforeseen at the time that the AAA and the provider entered into the provider agreement, the AAA may terminate the agreement. Examples of an unforeseen situation are a change in market conditions or a change in the law that regulates the service, product, or program that is procured by the agreement.

(C) An AAA may incorporate additional clauses into a provider agreement beyond those required by paragraphs (A) and (B) of this rule, so long as the additional clauses do not conflict with any state or federal law. (e.g., delegation of the collection of consumer contributions)

It is no longer necessary to retain this rule language.

(D) This rule applies only to provider agreements entered into by the AAA after February fifteen, two thousand nine, which was the effective date of the first time ODA adopted this rule.

Effective:

Five Year Review (FYR) Dates:

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Certification

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Date

Promulgated Under:	119.03
Statutory Authority:	173.01, 173.02, 173.392; Section 305(a)(1)(C) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; 45 C.F.R. 1321.11 (October, 2015 edition)
Rule Amplifies:	173.392; Section 305(a)(1)(C) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; 45 C.F.R. Part 75 (December 26, 2014)
Prior Effective Dates:	02/15/2009, 02/14/2010, 08/30/2010, 01/01/2013, 12/19/2013

173-3-06 **Older Americans Act: requirements to include in every agreement.**

The new rule is differently organized than the current rule. Federal requirements appear before state requirements.

(A) Federal requirements: An AAA shall comply with the following federal requirements when entering into an AAA-provider agreement ("agreement") for goods or services paid, in whole or in part, with Older Americans Act funds, the AAA shall comply with the following:

(1) Uniform administrative requirements, cost principles, and audit requirements for federal awards: The agreement shall comply with 45 C.F.R. 75.327 to 75.335 (December 26, 2014), including Appendix II to 45 C.F.R., Part 75 (December 26, 2014).

(2) Targeting:

(a) In the agreement, the AAA shall list the focal points in the service area covered by the agreement that the AAA designated under Section 306(a)(3)(B) of the Older Americans Act.

(b) In the agreement, the AAA shall require the following:

(i) The provider shall specify how it intends satisfy the need for services by consumers with the greatest economic and social needs with particular attention to consumers who are low-income, who are low-income minorities, who have limited proficiency in the English language, who reside in rural areas, and who are at risk for institutional placement.

(ii) The provider shall meet the AAA's specific objectives for giving services to specific consumer groups.

(3) Additional federal laws: The agreement shall comply with the Older Americans Act and any additional federal law governing, or federal rule regulating, the agreement.

(B) Additional state requirements: Every agreement for goods or services paid, in whole or in part, with Older Americans Act funds shall comply with the following:

(1) Program and funding identification:

This is an update to (A)(3) of the current rule.

(a) In the agreement, the AAA shall identify the names of the federal and state programs that are sources for the Older Americans Act funding being used for the procurement of the goods and services being procured through the agreement.

(b) In the agreement, the AAA shall contain the following statement:

"This agreement is for the provision of goods or services paid with

federal funds that the United States Department of Health and Human Services appropriated to the Ohio Department of Aging (ODA). ODA, in turn, allocated the federal funds to the area agency on aging. The agreement is subject to federal laws and rules, state laws, and ODA's rules."

(2) Additional state laws:

(a) The agreement shall comply with any rule in Chapters 173-3 or 173-4 of the Administrative Code regulating agreements in general or the provision of specific goods or services being procured through the agreement.

(b) The agreement shall comply with any additional state law governing, or state rule regulating agreements in general or the provision of specific goods or services being procured through the agreement.

(3) Safety:

(a) Disasters: In the agreement, the AAA shall require the provider to cooperate with the AAA and ODA to assess disaster impact upon consumers and to coordinate with public and private resources in the field of aging to assist consumers whenever the president of the United States declares that the provider's service area is a disaster area.

(b) Significant changes: If the provider provides goods and services to a consumer that the AAA case manages through a care-coordination program, in the agreement, the AAA shall require the provider to notify the AAA of any significant change that may necessitate a reassessment the case-managed consumer's need for goods and services no later than one day after the provider is aware of a repeated refusal to receive goods or services; changes in the consumer's physical, mental, or emotional status; documented changes in the consumer's environmental conditions; or, other significant, documented changes to the consumer's health and safety. If "one day after" falls on a weekend or legal holiday, as defined in section 1.14 of the Revised Code, the deadline is extended to the day immediately following "one day after" that is not on a weekend or legal holiday.

(c) APS: In the agreement, the AAA shall require the provider to immediately report any reasonable cause to believe a consumer is the victim of abuse, neglect, or exploitation to the local adult protective services program in accordance with section 5101.61 of the Revised Code.

(d) Terminating the provision of goods and services: If the provider provides goods or services to a consumer that the AAA case manages through a

care-coordination program, the agreement shall require the provider to notify the AAA and the case-managed consumer in writing of the anticipated last day of goods or services to the case-managed consumer no later than thirty days before the anticipated last day of goods or services, unless the reason for discontinuing the goods or services is the hospitalization, institutionalization, or death of the consumer; serious risk to the health or safety of the provider; the consumer's decision to discontinue the goods or services; or a similar reason why the provider is unable to notify the AAA thirty days before the anticipated last day of goods or services. The provider shall also notify the case-managed consumer how he or she may reach a long-term care ombudsman. If the thirtieth day falls on a weekend or legal holiday, as defined in section 1.14 of the Revised Code, the deadline is extended to the day immediately after the thirtieth day that is not on a weekend or a legal holiday.

(4) Confidentiality: In the agreement, the AAA shall include the following requirements:

(a) The provider shall not disclose information concerning a consumer unless the provider obtains and retains the consumer's written, informed consent to do so and the purpose for the disclosure is associated with the provider's provision of goods and services to the consumer.

(b) The provider shall not disclose information concerning a consumer for a purpose unassociated with the provider's provision of goods and services even if the provider obtains and retains the consumer's written, informed consent to do so.

New cost-saving method

(c) If the provider retains consumers' records electronically, the provider shall store the records in a password-protected file. If the provider does not retain records electronically, the provider shall store consumers' records in a designated, locked storage space.

(5) Provider qualifications: In the agreement, the AAA shall include the following requirements:

(a) When hiring an applicant for, or retaining an employee in, a paid direct-care position, the provider shall review databases and criminal records checks according to section 173.38 of the Revised Code and Chapter 173-9 of the Administrative Code, unless the provider is self-employed. If the provider is self-employed, the AAA shall review databases and check criminal records of the provider according to section 173.381 of the Revised Code and Chapter 173-9 of the Administrative Code. Division (B)(1) of section 109.572 of the Revised Code requires the bureau of criminal identification and investigation to

Although the requirements in ORC§109.572(B)(1) presently exist, not many know where to find the law. Listing the requirement here should unbury the requirement.

include sealed criminal records in its criminal records reports for criminal records checks conducted under sections 173.38 and 173.381 of the Revised Code.

(b) If a federal, state, or local government regulatory authority prohibits the provider from providing the goods or services required by the agreement, the provider shall notify the AAA of the disciplinary action and the AAA shall, simultaneous to the date of the regulatory authority's disciplinary action, deem the provider to be ineligible to be paid with Older Americans Act funds for providing goods or services to consumers.

Update on (A)(2) of the current rule.

(6) Sub-contracting: In the agreement, the AAA shall prohibit the provider from sub-contracting any of its duties under the agreement to another provider unless the provider obtains authorization from the AAA before sub-contracting.

This is an update to (A)(5) in the current rule.

(7) Modification:

(a) In the agreement, the AAA shall describe the grounds (and the process) for modifying the agreement.

(b) In the agreement, the AAA shall state that any amendments to the laws, rules, or regulations the AAA cites in the agreement will result in a correlative modification to the agreement without the necessity of executing a written amendment.

(8) Renewable and multi-year: If the agreement is renewable or covers a multi-year term, the agreement shall comply with rule 173-3-05.1 of the Administrative Code.

(9) Service verification and records retention:

(a) In no agreement, shall an AAA prohibit a provider from using electronic systems to verify the provision of goods or services or to retain records.

New cost-saving protection for providers.

(b) In the agreement, the AAA shall require providers to retain any record relating to costs, goods and services provided, supporting documentation for payment of goods and services provided, and all deliverables until the last of the following dates:

(i) Three years after the date the provider receives payment for the goods or services.

(ii) The date on which ODA, the AAA, or a duly-authorized law enforcement official concludes monitoring the records and any findings are finally settled.

(iii) The date on which the auditor of the state of Ohio, the inspector general, or a duly-authorized law enforcement official concludes an audit of the records and any findings are finally settled.

(10) Payment:

(a) In the agreement, the AAA shall describe how it shall pay the provider, including the amount and payment method.

(b) In the agreement, the AAA shall include the following requirements:

(i) The provider shall comply with rule 173-3-07 of the Administrative Code.

(ii) The provider shall return any Older Americans Act funds payments for its goods or services, if the provider's provision of the goods or services did not comply with the Administrative Code, the Revised Code, or any other law.

(11) Administrative hearings:

(a) In the agreement, the AAA shall state that the provider may appeal a decision the AAA takes against the provider according to rule 173-3-09 of the Administrative Code.

(b) If the AAA intends to redistribute unearned funds to other providers, in the agreement, the AAA shall state that it may redistribute funds if a provider is not, in a timely manner, earning the funds it was awarded and if the AAA determines the provider is not, in a timely manner earning the funds it was awarded in the agreement.

(C) An AAA may add requirements into an agreement in addition to the requirements in paragraphs (A) ad (B) of this rule if the additional requirements do not conflict with any federal or state law.

ODA is systematically adding "Older Americans Act" to the beginning of each rule title in Chapters 173-3 and 173-4. This will be reflected in the proposed new rule.

*** DRAFT - NOT YET FILED ***

TO BE RESCINDED

173-3-07 **Consumer contributions.**

Throughout the proposed new rule, ODA proposes to make consistent use of "goods and services," not just "services." For example, most consumer contributions are voluntary contributions for meals (*i.e.*, goods).

(A) Introduction: All services funded in whole or in part through Older Americans Act funds are subject to voluntary contributions. All services funded in whole or in part through Older Americans Act funds or senior community services funds are subject to cost sharing, except for services excluded by paragraph (C)(2) of this rule.

Throughout the proposed new rule, ODA proposes to make consistent use of "consumer," not "consumer" and "older person."

(B) Voluntary contributions:

(1) In accordance with 45 C.F.R. 1321.67(c) (October 1, 2012 edition), a provider may develop a suggested contributions schedule for voluntary contributions.

(2) Pursuant to section 315(b)(1) of the Older Americans Act and 45 C.F.R. 1321.67(a)(1) (October 1, 2012 edition), each provider shall allow consumers to contribute towards any service that the provider furnishes. The provider may solicit consumers to contribute to services and shall encourage consumers to contribute if the consumer's self-declared income is at or above one hundred eighty-give per cent of the federal poverty level found in the federal poverty guidelines, as defined in section 5101.46 of the Revised Code.

ODA proses to correct this in the new rule.

(C) Cost sharing:

The word "services" after "personal care" and other services is unnecessary.

(1) All services are subject to cost sharing, except for the services listed in paragraph (C)(2) of this rule. Examples of services subject to cost sharing include adult day services; chore services; home maintenance, modification, or repair services; homemaker services; personal care services; personal emergency response systems; and home medical equipment.

ODA proposes, in In the proposed new rule, ODA proposes to replace the multi-paragraph, run-on sentence with multiple paragraphs--each containing separate sentences.

(2) 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 Older Americans Act funds:

(a) Information and assistance, outreach, benefits counseling, case management, disease prevention, health promotion, or volunteer placement;

Unnecessary word

(b) Education, training, or a support-group service provided through the Alzheimer's respite care program or the national family caregiver

support program;

ODA proposes, in the new rule, to replace "meal service" with "congregate and home-delivered meals" to better match the Act.

(c) A meal service;

(d) Ombudsman, elder abuse prevention, legal assistance, or another consumer-protection service; and,

Unnecessary word

(e) 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 Older Americans Act funds.

(3) Each AAA shall implement and administer a consumer cost-sharing policy that includes:

ODA proposes, in the new rule, to define "federal poverty level." In doing so, ODA proposes to reference the Omnibus Reconciliation Act of 1981 instead of ORC§5101.46.

(a) The sliding-fee schedule below which determines the percentage of the actual (or partial) contracted cost of a unit of service or a good received that the AAA shall suggest that a consumer pay based upon the consumer's individual income as a percentage of the federal poverty level found in the federal poverty guidelines, as defined in section 5101.46 of the Revised Code;

Sliding-fee Schedule

INCOME LEVEL	SUGGESTED COST SHARE
149% and below	0%
150-174%	10%
175-199%	20%
200-224%	30%
225-249%	40%
250-274%	50%
275-299%	60%
300-324%	70%
325-349%	80%
350-374%	90%

375% and above	100%

(b) A requirement to determine the consumer's individual income solely by the consumer's self-declaration of income with no requirement for verification;

(c) A procedure for collecting consumer cost-sharing payments from consumers, including from consumers receiving consumer-directed services;

(d) A requirement to distribute written materials to consumers that explain:

(i) The services subject to consumer cost sharing;

(ii) The procedure for sharing costs;

(iii) The sliding-fee schedule; and,

(iv) That a provider may not decline to provide a service because a consumer fails or refuses to share costs.

(e) A requirement to provide a receipt to a consumer or family caregiver who makes a payment;

(f) A procedure for safeguarding and accounting for all cost-sharing funds collected;

(g) A requirement to retain records of all cost-sharing funds collected; and,

(h) A requirement to keep the consumer's declaration of income (or non-declaration of income) and cost-sharing payment history confidential.

(i) A requirement to use the funds collected from cost sharing to expand the capacity to provide the service for which the funds were given, unless the funds are used to expand the pool of funds from which the care-coordinated services are paid.

(4) The AAA may delegate the administration of its cost-sharing policy to providers with whom it enters into a provider agreement under rule 173-3-06

of the Administrative Code.

(5) The AAA may request a waiver from paragraph (C)(3) of this rule to implement and administer a cost-sharing policy. ODA shall approve the request if the AAA demonstrates to ODA by a preponderance of the evidence that:

(a) At least eighty per cent of the consumers in the PSA have incomes below one hundred fifty per cent of the federal poverty guidelines;

(b) Cost sharing generates fewer funds in the PSA than the funds required to cover its annual, ongoing administrative expenses; or,

(c) A waiver is necessary in order for the services that would normally be subject to this rule to be coordinated with other service systems.

Effective:

Five Year Review (FYR) Dates:

_____

Certification

_____

Date

Promulgated Under:	119.03
Statutory Authority:	173.01, 173.02, 173.392; Section 305(a)(1)(C) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; 45 C.F.R. 1321.11 (October, 2015)
Rule Amplifies:	173.392; Section 315 of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; 45 C.F.R. 1321.67 (October, 2015); 209.30 of H.B.64 (131st G.A.)
Prior Effective Dates:	173-3-01: 05/15/2000, 09/30/2001, 05/16/2005. 173-3-07: 02/15/2009, 10/01/2013.

173-3-07 **Older Americans Act: consumer contributions.**

(A) Introduction: All goods or services paid, in whole or in part, with Older Americans Act funds are subject to voluntary contributions. All services paid, in whole or in part, with Older Americans Act funds are subject to cost sharing, except for goods or services excluded by paragraph (C)(1) of this rule.

(B) Voluntary contributions:

(1) Each provider shall allow consumers to contribute towards the provision of goods or services paid, in whole or in part, with Older Americans Act funds, pursuant to section 315(b)(1) of the Older Americans Act and 45 C.F.R. 1321.67(a)(1) (October 1, 2015 edition). The provider may solicit consumers to contribute toward the cost of the goods and services they receive and shall encourage any consumer to contribute if the consumer's self-declared income is at, or above, one hundred eighty-five per cent of the federal poverty level.

ODA proposes to add these four requirements. They're found in the Older Americans Act.

(2) The provider shall clearly inform each consumer that contributions are purely voluntary.

(3) The provider shall protect the privacy of each consumer with respect to his or her contribution.

(4) The provider shall safeguard and account for all voluntary contributions.

(5) The provider may develop a suggested contributions schedule for voluntary contributions according to 45 C.F.R. 1321.67(c) (October 1, 2015 edition).

(6) The provider shall use collected voluntary contributions to expand the goods or services for which consumers contributed and supplement (not supplant) Older Americans Act funds for those goods or services.

(C) Cost sharing:

(1) All good and services paid, in whole or in part, with Older Americans Act funds are subject to cost sharing, except for the following goods and services:

(a) Information and assistance, outreach, benefits counseling, case management, disease prevention, health promotion, or volunteer placement.

(b) Education, training, or a support group provided through the national family caregiver support program.

(c) Congregate and home-delivered meals.

(d) Ombudsman, elder abuse prevention, legal assistance, or another consumer-protection service.

(e) Transportation, although the AAA may apply to ODA for a waiver of this exemption if the transportation is coordinated with other services and is paid, in whole or in part, with Older Americans Act funds.

(2) Each AAA shall implement and administer a cost-sharing policy that includes all of the following:

(a) The policy shall include the sliding-fee schedule below, which determines the percentage of the actual (or partial) contracted cost of a unit of a good or a service provided that the AAA shall suggest that a consumer pay based upon the consumer's individual income as a percentage of the federal poverty level. Under no circumstances shall an AAA permit or require a consumer to participate in cost sharing when the consumer's income level is below one hundred fifty per cent of the federal poverty level.

New, but corresponds to the 0% suggested cost share in current rule.

Sliding-fee Schedule

INCOME LEVEL	SUGGESTED COST SHARE
149% and below	0%
150-174%	10%
175-199%	20%
200-224%	30%
225-249%	40%
250-274%	50%
275-299%	60%
300-324%	70%
325-349%	80%
350-374%	90%
375% and above	100%

(b) The policy shall include a requirement to determine the consumer's income solely by the consumer's self-declaration of income with no requirement for verification, and no consideration of the consumer's assets, savings, or other property.

(c) The policy shall include a procedure for collecting cost-sharing payments from consumers, including from consumers receiving consumer-directed services.

(d) The policy shall include a requirement to widely distribute written materials to consumers that describe the requirements for cost sharing, the services subject to cost sharing, the procedure for cost sharing, and the sliding-fee schedule published in this rule. The written materials shall also state that a provider shall not deny any goods or services paid, in whole or in part, by Older Americans Act funds if the consumer fails to make a cost sharing payment towards those goods or services.

Revised language

(e) The policy shall include a requirement to provide a receipt to a consumer or caregiver who makes a payment.

(f) The policy shall include a procedure for safeguarding and accounting for all cost-sharing funds collected.

(g) The policy shall include a requirement to retain records of all cost-sharing funds collected.

(h) The policy shall include a requirement to keep the consumer's declaration of income (or non-declaration of income) and cost-sharing payment history confidential.

(i) The policy shall include a requirement to use the funds collected from cost sharing to expand the capacity to provide the service for which the funds were given, unless the funds are used to expand the pool of funds from which the care-coordinated services are paid.

(3) The AAA may delegate the administration of its cost-sharing policy to providers with whom it enters into an AAA-provider agreement under rule 173-3-06 of the Administrative Code.

(4) The AAA may request a waiver from paragraph (C)(3) of this rule to implement and administer a cost-sharing policy. ODA shall approve the request if the AAA demonstrates to ODA, by a preponderance of the evidence, one or more of the following:

(a) At least eighty per cent of the consumers in the PSA have incomes below one hundred fifty per cent of the federal poverty level.

(b) Cost sharing generates fewer funds in the PSA than the funds required to cover its annual, ongoing administrative expenses.

(c) A waiver is necessary in order for the services normally subject to this

rule to be coordinated with other service systems.

(D) Definition for this rule: "Federal poverty level" means the income level represented by the poverty guidelines as revised annually by the United States department of health and human services in accordance with section 673(2) of the "Omnibus Reconciliation Act of 1981," 95 Stat. 511, 42 U.S.C. 9902, as was in effect on January 25, 2016, for a family size equal to the size of the consumer's family whose income is being determined.

Throughout rule, ODA proposes to replace "appeal hearing" with "administrative hearing."

173-3-09 **Older Americans Act: ~~Appeals~~administrative hearings for adversely-affected providers.**

ODA is systematically adding "Older Americans Act" to the beginning of each rule title in Chapters 173-3 and 173-4. This will be reflected in the proposed new rule.

(A) Introduction: ~~Each AAA and ODA, subject to the conditions specified in the procedures below, shall honor all written 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.)~~

(1) A provider may request an administrative hearing ("hearing") to appeal any adverse action that an AAA has taken against the provider.

(2) AAAs and ODA shall honor all written hearing requests subject to the conditions in this rule.

(3) A hearing under this rule is not an adjudication hearing under Chapter. 119 of the Revised Code.

(B) ~~Appeal to the AAA~~AAA-level hearings:

(1) Written process: Each AAA shall maintain in writing a process that allows a provider to appeal an adverse action related to ~~a provider~~ an AAA-provider agreement ("agreement") ~~funded~~ paid, in whole or in part, with Older Americans Act funds.

(2) Final AAA decision: An AAA that conducts an ~~appeal~~ administrative 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 days after the date the AAA renders its final decision. If the fifth day falls on a weekend or legal holiday, as defined in section 1.14 of the Revised Code, the deadline is extended to the ~~business~~ day ~~that~~ immediately ~~follows~~ following the fifth day that is not on a weekend or legal holiday.

Without being anchored in anything concrete, a business day could mean a day that a person is not on vacation.

(C) ~~Appeal to ODA~~ODA-level hearings:

(1) AAA first: ODA shall only honor a request for an ~~appeal~~ administrative 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 if that AAA has rendered its final decision on the appeal.

(2) Request a hearing: To request a hearing before ODA, the provider shall submit a written request to ODA's director no later than fifteen days after the date the AAA renders its final decision. In the request, the provider shall describe the adverse action the provider is appealing and why the provider believes the

AAA's decision on the matter was inappropriate. If the fifteenth day falls on a weekend or legal holiday, as defined in section 1.14 of the Revised Code, the deadline is extended to the ~~business~~ day ~~that~~ immediately ~~follows~~ following the fifteenth day that is not on a weekend or legal holiday.

(3) Scheduling a hearing: After ODA receives the request for an ~~appeal~~ administrative 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 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~~ under any one or more of the following conditions:

(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)~~ adverse action(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 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 legal holiday, as defined in section 1.14 of the Revised Code, the deadline is extended to the ~~business~~ day ~~that~~ immediately ~~follows~~ following the thirtieth day that is not on a weekend or legal holiday.

New

(D) Hearings vs. court cases:

(1) A provider may seek redress from a court without waiting for the final decision of an AAA-level hearing or ODA-level hearing.

(2) If a provider enters a lawsuit against the AAA or ODA, the AAA or ODA may cease continuing with any in-progress hearing that the provider requested.

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

The proposed new paragraph now covers both *renewable* and *multi-year* AAA-provider agreements.