



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: OHIO DEPT. OF AGING

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Regulation/Package Title (a general description of the rule's substantive content):

OLDER AMERICANS ACT: CONSUMER CONTRIBUTIONS

This rule implements the requirements regarding voluntary contributions under 42 U.S.C. 3030c-2(b) and establishes Ohio's option to implement cost-sharing requirements under 42 U.S.C. 3030c-2(a).

Rule Number: 173-3-07

Date of Submission for CSI Review: July 8, 2022.

Public Comment Period End Date: July 21, 2022 at 11:59PM.

Rule Type/Number of Rules:

☐ New/ 0 rules

☒ Amended/ 1 (rescission + new) rule (FYR? ☒)

☐ No Change/ 0 rules (FYR? ☐)

☐ Rescinded/ 0 rules (FYR? ☐)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

Please review the next page.

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The rule(s):

- ☐ a. Require a license, permit, or any other prior authorization to engage in or operate a line of business.
- ☐ b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- ☒ c. Requires specific expenditures or the report of information as a condition of compliance.
- ☐ d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

2. Please briefly describe the draft regulation in plain language.

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

For services provided, in whole or in part, with Older Americans Act funds, [42 U.S.C. 3030c-2\(b\)](#) and [45 C.F.R. 1321.67](#) require providers to allow consumers to voluntarily contribute toward the cost of the services they receive and [42 U.S.C. 3030c-2\(a\)](#) permits states to require providers to allow cost sharing from consumers toward the cost of specified services they receive. This rule implements the requirements regarding voluntary contributions under 42 U.S.C. 3030c-2(b) and establishes Ohio's option to implement cost sharing under 42 U.S.C. 3030c-2(a). Those requirements include a requirement for states opting to require cost sharing to establish a sliding-fee scale, which ODA establishes in this rule.

ODA does not propose to create any new adverse impacts for providers in this rule.

ODA proposes to remove 19 unnecessary regulatory restrictions from this rule, primarily by eliminating duplicate uses of regulatory restrictions such as (1) in cross-references to federal mandates [if the restriction is in federal law, ODA's rule does not need an additional restriction], (2) in requirements that use more than one regulatory restriction [*The policy shall include the following, which shall...*], and (3) in lists that use regulatory restrictions for the entire list and also each paragraph in the list.

ODA also proposes to make non-substantive improvements to the terminology used in this rule.

3. Please list the Ohio statutes that authorize the agency, board or commission to adopt the rule(s) and the statutes that amplify that authority.

R.C. §§ [121.07](#), [173.01](#), [173.02](#), and [173.392](#).

4. 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.

[42 U.S.C. 3025](#) says ODA is "primarily responsible" for Older Americans Act policy development in Ohio and [45 C.F.R. 1321.11](#) requires ODA to "develop policies governing all aspects of [Older Americans Act] programs." This rule implements federal requirements for voluntary contributions under [42 U.S.C. 3030c-2\(b\)](#) and [45 C.F.R. 1321.67](#). It also establishes Ohio's option to implement cost-sharing requirements under [42 U.S.C. 3030c-2\(a\)](#).

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

This rule exists to implement the state laws ODA listed in its response to #2 and the federal law and federal regulations ODA listed in its response to #3.

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

This rule exists to implement the state laws ODA listed in its response to #2, implement the federal law and federal regulations ODA listed in its response to #3, and to declare Ohio's option regarding cost sharing.

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

In compliance with [45 C.F.R. Part 75, Subpart F](#): (1) ODA regularly monitors AAAs for compliance with this rule and (2) AAAs regularly monitor providers for their compliance with this rule. This rule is judged as being successful when (1) ODA finds few violations by AAAs and (2) AAAs find few violations by providers.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

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

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

ODA's guide [Participating in ODA's Rule Development](#) and [this webpage](#) on ODA's website encourage stakeholders and the general public to give input on improving ODA's rules and provide contact information for doing so. As of the date of this BIA, ODA's policy development manager has received no requests to amend this rule since ODA last amended it.

On May 17, 2022, ODA sent an email to the following stakeholders to explain how artificial intelligence has added a new dimension to interpreting rules, define *regulatory restrictions*, declare the need to reduce regulatory restrictions, explain how ODA can reduce regulatory restrictions by eliminating duplicate uses of regulatory restrictions, provide stakeholders with an opportunity to make recommendations on ODA's plan, and provide stakeholders with an opportunity to make recommendations on eliminating any regulatory restriction in any chapter of ODA's rules:

- Catholic Social Services of the Miami Valley.
- LeadingAge Ohio.
- Ohio Assisted Living Association (OALA).
- Ohio Academy of Senior Health Sciences, Inc.
- Ohio Adult Day Healthcare Association (OADHA).
- Ohio Association of Area Agencies on Aging (O4A).
- Ohio Association of Medical Equipment Suppliers (OAMES).

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- Ohio Association of Senior Centers (OASC).
- Ohio Council for Home Care and Hospice (OCHCH).
- Ohio Health Care Association (OHCA).
- Ohio Jewish Communities.
- State Long-Term Care Ombudsman.

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

In response to its May 17, 2022 emails, ODA received 0 recommendations from stakeholders on this rule.

11. 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 is not proposing to amend this rule due to scientific data.

12. 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 alternative regulations because the federal laws and regulations ODA listed in its response to #3 require ODA to develop policies for all aspects of the Older Americans Act programs. Additionally, R.C. §[173.392](#) requires ODA to adopt rules to establish requirements for AAA-provider agreements and rule [173-3-06](#) of the Administrative Code requires every AAA-provider agreement to reference this rule's requirements.

13. 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.*

Yes. This rule gives AAAs and providers flexibility by not prescribing methods for allowing consumers' contributions, whether voluntary contributions or cost sharing. This rule also gives AAAs flexibility to directly administer cost sharing or, through an AAA-provider agreement, delegate the administration of cost sharing to one or more providers.

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

[45 C.F.R. 1321.11](#) requires the state agency on aging to "develop policies governing all aspects of [Older Americans Act] programs in its state. R.C. §[173.01](#), designates ODA as Ohio's state agency on aging and no other agency has similar authority to adopt rules on the Older Americans Act programs in Ohio.

15. 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 the proposed amendment takes effect, ODA will send an email to subscribers of our rule-notification service to feature this rule. Through regular monitoring (*i.e.*, auditing) requirements under [45 C.F.R. Part 75, Subpart F](#): (1) ODA regularly monitors AAAs for compliance with this rule and (2) AAAs regularly monitor providers for their compliance with this rule.

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Adverse Impact to Business

16. 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; and

Every provider with an AAA-provider agreement.

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

The adverse impact of this rule is a requirement for providers to allow consumers to contribute towards the provision of services paid, in whole or in part, with Older Americans Act funds and to safeguard those contributions. If an AAA delegates its responsibility to administer cost sharing to a provider through an AAA-provider agreement, the provider would also be responsible for administering cost sharing.

As previously stated, ODA does not propose to create any new adverse impacts for providers in this rule.

Many of the proposed amendments will simply reduce the unnecessary use of duplicate regulatory restrictions.

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.

Allowing consumers to voluntarily contribute has no cost.

Safeguarding funds includes accurate accounting and use of the provider’s bank account, safe, etc. is offset by the consumers’ contributions, which the provider may use as income to offer more of the same services.

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

This rule implements the requirements regarding voluntary contributions under 42 U.S.C. 3030c-2(b) and establishes Ohio’s option to implement cost sharing under 42 U.S.C. 3030c-2(a). Those requirements include a requirement for states opting to require cost sharing to establish a sliding-fee scale, which ODA establishes in this rule.

The income providers make through voluntary contributions and cost sharing should allow them to provide more services to consumers. The rule states that if cost sharing generated fewer funds in a planning and service area (PSA) than required to cover administration expenses for cost sharing, an AAA may request from ODA a waiver from cost sharing for its PSA.

Regulatory Flexibility

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

This rule treats all providers the same, regardless of their size.

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

ODA is concerned primarily about protecting the health and safety of consumers receiving services paid with Older Americans Act funds. Whenever possible, ODA or AAAs will treat administrative violations that do not involve health and safety as opportunities for improvement through warning notices and solicitation of corrective action.

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

ODA and AAAs are available to help providers of all sizes with their questions. Any person may contact [Tom Simmons](#), ODA's policy development manager, with questions about this rule.