



# Common Sense Initiative

Mike DeWine, Governor  
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## Business Impact Analysis

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

Rule Contact Name and Contact Information: Tom Simmons [rules@age.ohio.gov](mailto:rules@age.ohio.gov)

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

### **OLDER AMERICANS ACT: CASE MANAGEMENT**

Chapter 173-3 of the Administrative Code establishes the requirements for AAA-provider agreements paid, in whole or in part, with Older Americans Act funds.

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

Date of Submission for CSI Review: July 23, 2024.

Public Comment Period End Date: August 5, 2024 at 11:59PM.

#### Rule Type/Number of Rules:

☒ New/ 1 rule

☐ No Change/ # rules (FYR? ☐)

☒ Amended/ 1 rule (FYR? ☒)

☐ Rescinded/ # rules (FYR? ☐)

The Common Sense Initiative is established in RC107.61 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. RC106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by RC107.52. 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?

The rule(s):

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**[CSIPublicComments@governor.ohio.gov](mailto:CSIPublicComments@governor.ohio.gov)**

- a. ☐ Requires 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.*

[45 CFR 1321.9](#) requires ODA to “develop policies governing all aspects of [Older Americans Act] programs.” [RC§121.93](#) require state agencies to establish principles of law or policy in rule and not in a policy. [RC§173.392](#) requires ODA to adopt rules governing contract and grant agreements between ODA’s designees {e.g., area agencies on aging (AAAs)} and providers (AAA-provider agreements). To comply with these requirements, ODA proposes to adopt a new rule on case management.

This proposed new rule will fit into Chapter 173-3 of the Administrative Code as illustrated in the table below.

<b>Context</b>	
Introduction and Definitions .....	173-3-01
General Requirements for AAA-Provider Agreements .....	173-3-04
Procurement Standards .....	173-3-05
General Requirements to Include in Every AAA-Provider Agreement.....	173-3-06
Specific Requirements to Include in Every AAA-Provider Agreement for Case Management .....	173-3-06.9
Consumer Contributions.....	173-3-07
Administrative Hearings for Adversely-Affected Providers.....	173-3-09

This proposed new rule will refer to the definition of “case management” in the Older Americans Act.

Every AAA<sup>1</sup>-provider agreement (i.e., contract or grant) in Ohio that is paid, in whole or in part, with Older Americans Act funds (agreement), including an agreement for case management, is subject to the general standards in rule 173-3-06 of the Administrative Code. This proposed new rule will include a helpful reference to rule 173-3-06 of the Administrative Code to make this clear to a reader who reads the rule apart from its context in Chapter 173-3 of the Administrative Code.

The proposed new rule will indicate that the provider is responsible for providing case management to every consumer in the planning and service area (PSA) who receives one or more of the following 5 services paid, in whole or in part, with Older Americans Act funds:

1. Adult day service.
2. Chores.
3. Homemaker service.
4. Personal care.
5. Home-delivered meals.

These are services that the Administration for Community Living (ACL) considers to be “cluster 1” services.

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<sup>1</sup> “AAA” means “area agency on aging.”

This proposed new rule will establish the requirements for providing case management itself (e.g., assessments, information, service plans, and monitoring).

This proposed new rule will establish the following qualifications to be a case manager:

1. The person has a thorough knowledge of Older Americans Act service in the PSA.
2. The person has the knowledge, skills, and expertise necessary to provide case management.

Additionally, this proposed new rule will establish the reporting items needed to comply with the service verification requirements in rule 173-3-06 of the Administrative Code.

Rule 173-3-04 of the Administrative Code establishes the general standards for AAA-provider agreements. ODA proposes to amend this rule to indicate that if an area agency on aging (AAA) directly provides a service (e.g., case management) instead of procuring for a provider to provide the service, then the AAA becomes responsible for complying with the provider's requirements in Chapters 173-3 and 173-4 of the Administrative Code for providing that service.<sup>2</sup>

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

RC §§ [121.07](#), [173.01](#), [173.02](#), [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 USC 3025](#) says ODA is "primarily responsible" for Older Americans Act policy development in Ohio and [45 CFR 1321.9](#) requires ODA to "develop policies governing all aspects of [Older Americans Act] programs."

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

This proposed new rule will exist to implement the state laws ODA listed in its response to #2, which require ODA to establish the standards for AAA-provider agreements, and the federal law and federal regulation ODA listed in its response to #3, which require ODA to develop policies for all aspects of the Older Americans Act programs in Ohio.

**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 proposed new rule will exist to (1) comply with the state laws mentioned in ODA's response to #3, which require ODA to establish requirements for AAA-provider agreements, and (2) ensure necessary safeguards are in place to protect the health and safety of consumers receiving services paid with Older Americans Act funds.

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

To ensure compliance fostering the health and safety of consumers receiving services paid with Older Americans Act funds and compliance with monitoring (i.e., auditing) requirements under [45 CFR Part 75, Subpart F](#): (1) ODA regularly monitors AAAs for compliance with this rule and (2) AAAs regularly monitor providers for their compliance with AAA-provider

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<sup>2</sup> [42 U.S.C. 3027\(a\)\(8\)](#) prohibits an AAA from directly providing a service with exceptions. One exception is if the service is case management.

agreements, the rule is judged as being successful when (1) ODA funds few violations in AAA-provider agreements and (2) AAAs find few violations against AAA-provider agreements.

**8. Are any of the proposed rules contained in this rule package being submitted pursuant to RC101.352, 101.353, 106.032, 121.93, or 121.931?**

*If yes, please specify the rule number(s), the specific RC 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 the [main rules webpage](#) on ODA's website encourage stakeholders and the general public to contact ODA's policy-development manager at [rules@age.ohio.gov](mailto:rules@age.ohio.gov) to give input on improving ODA's rules. This email address has not received any email from any person or entity regarding case management.

On February 28, 2024, ODA emailed the following stakeholders to request recommendations for what to consider including in proposed new rules to establish standards for attendant care, case management, information and assistance, outreach, volunteer management, case management, caregiver counseling and support, caregiver training, caregiver respite, caregiver access assistance, caregiver information, caregiver supplemental service, participant-directed providers, and chores:

- Catholic Social Services of the Miami Valley.
- LeadingAge Ohio.
- Ohio Academy of Senior Health Sciences, Inc.
- Ohio Adult Day Healthcare Association (OADHA).
- Ohio Assisted Living Association (OALA).
- Ohio Association of Area Agencies on Aging (O4A).
- Ohio Association of Medical Equipment Suppliers (OAMES).
- 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 the February 28, 2024 email, ODA received the following 9 recommendations from 3 stakeholders on adopting new rules to establish standards for services. Not all of the recommendations apply to case management. The table below shows stakeholder's recommendations and ODA's reply to those recommendations.

	Stakeholder	Recommendation	ODA's Reply
1	OCHCH	OCHCH requested a meeting with ODA to discuss rule development in general.	ODA met with OCHCH on March 6, 2024. OCHCH did not make any specific recommendations regarding these proposed new rules.

	Stakeholder	Recommendation	ODA's Reply
2	OhioAging	OhioAging recommended having uniform language between the rules for a service when that service is regulated by both Older Americans Act rules and provider-certification rules.	ODA understands the value of uniformity and will try to establish and maintain a reasonable level of uniformity in cases when a service is covered under both Older Americans Act rules and provider-certification rules (e.g., participant-directed providers). This would also apply to attendant care and chores, but ODA is no longer proposing to adopt new rules for these services for Older Americans Act programs.  This won't apply to services that are covered under the Older Americans Act for which ODA does not certify providers {e.g., access services (case management, information and assistance, and outreach), volunteer management, case management, and services through the National Family Caregiver Support Program (caregiver counseling and support, caregiver training, caregiver respite, caregiver access assistance, caregiver information, and caregiver supplemental service)}.
3	OhioAging	OhioAging recommended uniformity between grant agreements and the proposed new rules.	ODA will be certain that its grant agreements with AAAs conform to any standards established in new rules.
4	OhioAging	OhioAging recommended flexibility in programming and removing requirements for a service to be evidence-based or to meet ACL's evidence-based standards.	ODA's proposed new rule on disease prevention and health promotion will establish standards for both evidence-based and non-evidence-based services.
5	SLTCO	The SLTCO recommended requiring case managers to inform consumers which providers will help them and when those providers will help them rather than leaving it up to the providers to introduce themselves.	ODA plans adopt a new rule on case management that includes requirements for case managers to develop service plans in collaboration with the consumer or caregiver that details the services chosen, the provider for each service, the dates for starting and ending each service, and how to provide each service.
6	SLTCO	The SLTCO recommended having the new rules address the responsiveness of case managers to consumers' complaints and concerns about services received.	ODA plans to establish a process that complies with <a href="#">45 CFR 1321.9(c)(1)(viii)</a> for consumers and caregivers to file grievances on dissatisfaction with services or being denied services by the October 1, 2025 implementation deadline, as appropriate. Additionally, ODA plans to adopt a new rule on case management that includes requirements for case managers to monitor service plans and to resolve problems related to services and to assist consumers or caregivers with grievances. <sup>3</sup>

<sup>3</sup> Paragraph (B)(3)(g)(vi) of the proposed new rule requires providers to monitor each service plan by referring the consumer or caregiver, upon request, to legal assistance to assist with appeals, hearings, or grievances.

	Stakeholder	Recommendation	ODA's Reply
7	SLTCO	The SLTCO recommended drafting the new rules in person-centered language.	ODA plans to apply the new standards in <a href="#">45 CFR 1321.77</a> for person-centered services by the October 1, 2025 implementation deadline, as appropriate. ODA's reply to recommendation #6 also applies to this recommendation.
8	SLTCO	The SLTCO recommended requiring training of staff/caregivers to include trauma-informed care.	ODA plans to apply the new standards in <a href="#">45 CFR 1321.77</a> for trauma-informed training by the October 1, 2025 implementation deadline, as appropriate.
9	SLTCO	The SLTCO recommended evaluating if the rules need to describe ombudsman programs as separate from the work of AAAs and providers.	ODA will consider this for the new rules, as appropriate. For example, the proposed new rule on volunteer management explicitly states that volunteer management is a service that is separate from the ombudsman program.

**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 adopt this new 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?**  
*Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

[RC§173.392](#) requires ODA to adopt rules to establish requirements for AAA-provider agreements. Additionally, the federal law and regulation ODA listed in its response to #3 require ODA to develop policies for all aspects of the Older Americans Act programs.

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

[RC§173.392](#) authorizes only ODA to adopt rules to establish requirements for AAA-provider agreements.

**14. 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 amendments take effect, ODA will send an email to subscribers of our rule-notification service to feature this proposed new rule. Through regular monitoring (i.e., auditing) requirements under [45 CFR Part 75, Subpart F](#): (1) ODA will regularly monitor AAAs for compliance with this proposed new rule and (2) AAAs will regularly monitor providers for their compliance with AAA-provider agreements.

**Adverse Impact to Business**

**15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:**  
**a. Identify the scope of the impacted business community, and**



Every provider with an AAA-provider agreement to be paid with Older Americans Act funds to provide case management in Ohio.

**b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

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

The adverse impact of this proposed new rule is to ensure every AAA-provider agreement for case management complies with the general standards for AAA-provider agreements in [rule 173-3-06 of the Administrative Code](#)<sup>4</sup> plus specific standards in this rule for case management paid, in whole or in part, with Older Americans Act funds.

The rule will require complying with federal funding standards. Those standards would exist even if the rule did not refer to them.

This proposed new rule will establish that a provider is responsible for maintaining any license, permission, or other agreement necessary to provide the type of service, brand of service, or copyrighted or proprietary materials described in the provider's bid for the service and in the AAA-provider agreement.

Additionally, the rule establishes reporting items needed to comply with the service verification requirements in rule 173-3-06 of the Administrative Code.

Providers establish the rate they are paid when they respond to a request for proposal (RFP) by submitting their bid to the AAA for how much they will charge per unit. The amount an AAA pays a provider is an all-inclusive rate. It's intended to cover all costs incurred in providing the project or service, including administration, training, and reporting. Therefore, the provider's bid includes all costs anticipated in providing the service.

If the provider's bid wins, the provider is paid what it bid during the open and free competition for the AAA-provider agreement (cf., [45 CFR 75.329](#) and rules [173-3-04](#) and [173-3-05](#) of the Administrative Code).

**16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**

Although ODA cannot reduce requirements in a proposed new rule, a new rule that is less burdensome or comparable to similar standards in neighboring states.

[42 U.S.C. 3027\(a\)\(8\)](#) prohibits an AAA from directly providing a service, but makes an exception for case management, which allows the AAA to either directly provide case management or procure with a provider for case management. Indiana<sup>5</sup> and Pennsylvania<sup>6</sup> remove this flexibility by requiring their AAAs to provide case management. ODA proposes to give AAAs the flexibility found under federal law.

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<sup>4</sup> Rule 173-3-06 of the Administrative Code also lists federal laws and rules to which the provider must also comply, including the [Older Americans Act](#) and 45 CFR [Parts 75](#) and [1321](#).

<sup>5</sup> IC 12-10-10-1 and 12-10-1-6.

<sup>6</sup> [Policy and Procedures Manual](#), Ch. V., PENNSYLVANIA DEPARTMENT OF AGING, as viewed on July 22, 2024.

ODA's proposed new rule will indicate that the provider is responsible for providing case management to every consumer in the planning and service area (PSA) who receives one or more of the following 5 services paid, in whole or in part, with Older Americans Act funds:

1. Adult day service.
2. Chores.
3. Homemaker service.
4. Personal care.
5. Home-delivered meals.

By comparison, Kentucky,<sup>7</sup> Michigan,<sup>8</sup> and Pennsylvania<sup>9</sup> require providing case management to every consumer.

ODA's proposed new rule will establish the following qualifications to be a case manager:

1. The person has a thorough knowledge of Older Americans Act services in the PSA.
2. The person has the knowledge, skills, and expertise necessary to provide case management.

ODA's proposed new rule will also allow a person who is not a case manager to provide intake activities.

By contrast:

- Kentucky allows a person to qualify to be a case manager only if the person (1) has a bachelor's degree in a health and human services field from an accredited college or university with experience or (2) is currently a registered nurse (RN) or licensed practical nurse (LPN).<sup>10</sup> Kentucky also establishes qualifications for case management supervisors.<sup>11</sup>
- Michigan requires using a multi-disciplinary team to provide case management and allows the team to be comprised of either (1) RNs and licensed social workers (LSWs) or (2) RNs with at least 2 years of case management experience.<sup>12</sup>

ODA is not proposing to require any annual in-service training for case managers. By contrast, Michigan requires in-service training at least twice per year<sup>13</sup> and Pennsylvania requires orientation and *additional trainings a mandated*.<sup>14</sup>

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

[RC§173.392](#) requires ODA to develop rules establishing standards for AAA-provider agreements (*i.e.*, contracts and grants) and [RC§173.01](#) requires ODA to represent the interests older Ohioans. Establishing standards for AAA-provider agreements

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<sup>7</sup> [910 KAR 1:170](#). The rule makes an exception for senior center and access services.

<sup>8</sup> [Operating Standards for Service Programs](#), MICHIGAN OFFICE OF SERVICES TO THE AGING, 2019.

<sup>9</sup> [Policy and Procedures Manual](#), Ch. V., PENNSYLVANIA DEPARTMENT OF AGING, as viewed on July 22, 2024. This manual specifically requires providing case management to every *enrolled* consumer.

<sup>10</sup> [910 KAR 1:170](#), §5.

<sup>11</sup> [910 KAR 1:170](#), §1.

<sup>12</sup> [Operating Standards for Service Programs](#), MICHIGAN OFFICE OF SERVICES TO THE AGING, 2019.

<sup>13</sup> *Ibid*.

<sup>14</sup> [Policy and Procedures Manual](#), Ch. V., PENNSYLVANIA DEPARTMENT OF AGING, as viewed on July 22, 2024.



in this proposed new rule will ensure the health and safety of the older Ohioans who are consumers of services through Older Americans Act programs, which fulfills both statutes.

There is no requirement for a provider to enter into an AAA-provider agreement to provide services in this state. An AAA-provider agreement is not a gateway to doing business in Ohio. Instead, a provider who wants to add the Older Americans Act programs to its lines of business may enter into an AAA-provider agreement for those Older Americans Act programs to pay the provider for the services it wants to provide to the consumers of those programs.

Additionally, providers voluntarily bid for AAA-provider agreements. A provider is only required to comply with an AAA-provider agreement if (1) the provider bids on providing the service to be paid with Older Americans Act funds, and (2) the provider's bid is a winning bid. Providers may provide the same service without entering into an AAA-provider agreement when paid by private pay, third-party insurers, or other government programs that do not use Older Americans Act funds.

### **Regulatory Flexibility**

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

Because the primary purpose of this proposed new rule is to ensure the health and safety of consumers receiving services paid with Older Americans Act funds, this rule will treat all providers the same, regardless of their size.

#### **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 through compliance with this rule. 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 rules and policy administrator, with questions about this proposed new rule.