



# Common Sense Initiative

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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 rules' substantive content):

### **OLDER AMERICANS ACT: UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS**

Chapters 173-3 and 173-4 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, 173-3-05, 173-4-04

Date of Submission for CSI Review: April 24, 2025

Public Comment Period End Date: May 7, 2025 at 11:59PM.

**Rule Type/Number of Rules:**

☐ New/\_\_\_ rules

☒ Amended: 3 rules (FYR? ☒)

☐ No Change/\_\_\_ rules (FYR? ☐)

☐ Rescinded/\_\_\_ rules (FYR?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?

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**The rule(s):**

- 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.*

**173-3-04:** This rule exists to list the general standards for every AAA<sup>1</sup>-provider agreement (i.e., contract or grant) for a service that is paid, in whole or in part, with Older Americans Act funds. This differs from rule 173-3-06 of the Administrative Code, which establishes standards to include in every AAA-provider agreement.

On October 2, 2024, the US Dept. of Health and Human Services (HHS) [announced in the Federal Register](#) that on October 1, 2025, it will replace 45 CFR Part 75 with 2 CFR Part 300, which incorporates 2 CFR Part 200 with exceptions. 45 CFR Part 75, 2 CFR Part 200, and 2 CFR Part 300 are each entitled "Uniform Administrative Requirements, Cost Principles, and Audit Requirements." In response, ODA proposes to amend this rule to replace references to 45 CFR Part 75 with references to 2 CFR Parts 200 and 300. ODA proposes for these changes to take effect on October 1, 2025.

**173-3-05:** This rule exists to list the procurement standards for services paid, in whole or in part, with Older Americans Act funds. ODA proposes to amend this rule to achieve the following:

- Replace references to 45 CFR Part 75 with references to 2 CFR Parts 200 and 300.
- Update references to the federal rules that establish the micro-purchase threshold and the simplified acquisition threshold.

ODA proposes for the changes above to take effect on October 1, 2025.

**173-4-04:** This rule exists to establish standards for AAAs to incorporate person direction into the procurement for nutrition services, paid in full or in part, with Older Americans Act funds.

ODA proposes to amend this rule to replace references to 45 CFR Part 75 with references to 2 CFR Part 200. ODA proposes for these changes to take effect on October 1, 2025.

**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](#).

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

- 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](#) establishes ODA's responsibility regarding Older Americans Act policy development in Ohio.

[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.**

These rules 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 rules that 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)?**

These rules 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 [2 CFR Part 200, Subpart F](#), and (until October 1, 2025) [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 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 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 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 recent email from any person or entity regarding these rules.

On April 16, 2025, ODA emailed stakeholders to explain that, on October 2, 2024, [HHS announced](#) that on October 1, 2025, it will replace 45 CFR Part 75 with 2 CFR Part 300, which incorporates 2 CFR Part 200. ODA explained that it identified rules 173-3-04, 173-3-05, and 173-4-04 of the Administrative Code as rules as rules that need these updates but are not expected to have updates related to implementing new federal Older Americans Act rules (45 CFR Part 1321). ODA requested comments or questions about updating these references and announced that stakeholders can also make recommendations for improving these rules in other ways. ODA emailed the following stakeholders:

- Catholic Social Services of the Miami Valley.
- LeadingAge Ohio.
- Ohio Academy of Senior Health Sciences, Inc.
- Ohio Adult Day Healthcare Association (OADHA).
- OhioAging (O4A).
- Ohio Assisted Living Association (OALA).
- 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 April 16, 2025 email, ODA received the following 0 recommendations.

**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 these rules 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 email subscribers of our rule-notification service to feature these rules. Through regular monitoring (i.e., auditing) requirements under [2 CFR Part 200, Subpart F](#), and (until October 1, 2025) [45 CFR Part 75, Subpart F](#): (1) ODA will regularly monitor AAAs for compliance with these rules 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 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.*

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 Older Americans Act programs to its lines of business must enter into an AAA-provider agreement for those Older Americans Act programs to pay the provider for the service that it wants to provide to consumers through those programs.

A provider establishes the rate that it is paid for providing a service through Older Americans Act programs when the provider responds to an AAA's request for proposal (RFP) with a bid on what it will charge per unit of service if the AAA determines that its bid is a winning bid. If the provider's bid wins, then the provider is paid what it bid during the open and free competition for the AAA-provider agreement (cf., [2 CFR 200.319](#) and (until October 1, 2025) [45 CFR 75.329](#), plus rules [173-3-04](#) and [173-3-05](#) of the Administrative Code). The amount that the provider bids, and is later paid, is an all-inclusive rate. It is intended to cover all costs incurred in providing the service, including administration, training, and reporting.

The specific adverse impact of rule 173-3-04 of the Administrative Code is to ensure every AAA-provider agreement complies with the general requirements for AAA-provider agreements. [RC§173.392](#) requires ODA to adopt a rule to establish standards for contracts and grants between ODA's designees (e.g., AAAs) and providers. The primary standard listed in the rule is 45 CFR Part 75, which will be replaced by 2 CFR Parts 200 and 300 on October 1, 2025. ODA's proposed amendments will update references to these federal rules accordingly.

The specific adverse impact of rule 173-3-05 of the Administrative Code is the requirement to follow federal procurement standards, which protects providers who compete to win AAA-provider agreements from unfair competition and prohibits unauthorized unbid AAA-provider agreements. If an AAA seeks authorization to bypass competitive bidding by claiming that only a single provider can provide the service, the rule requires providing ODA with evidence that the AAA contacted providers who are in the planning and service area (PSA) or willing to operate in the PSA. These providers may be the same providers offering the service to consumers through other state programs (e.g., the PASSPORT Program, MyCare Ohio). Additionally, this rule does not require an AAA to choose only one winner when procuring for a service. If an AAA awards multiple AAA-provider agreements for the same area in a PSA, the AAA gives consumers in that area an option to choose between providers.

The specific adverse impact of rule 173-4-04 of the Administrative Code is providing person direction in the Older Americans Act Nutrition Program. For a detailed rationale on the need for the person direction, please review Appendix B to the [business impact analysis filed with the rule on August 22, 2016](#).

**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*).**

By updating references to federal rules in ODA's rules on the same day of the changes to federal rules, ODA will eliminate the possibility that an AAA or provider who uses the rules will make decisions based on rescinded federal rules.

Rule 173-3-05 of the Administrative Code protects providers who compete to win AAA-provider agreements from unfair competition.

**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 in these rules 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 these rules is to ensure the health and safety of consumers receiving services paid with Older Americans Act funds, these rules treats 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 these rules. Whenever possible, ODA or AAAs treats 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 ODA's [rules and policy administrator](#) with questions about ODA's proposals for these rules.