



# 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 NUTRITION PROGRAM: CONGREGATE DINING**

Chapter 173-4 of the Administrative Code establishes the requirements for AAA-provider agreements paid, in whole or in part, with Older Americans Act funds for nutrition services.

Rule Number(s): 173-4-05.1

Date of Submission for CSI Review: July 14, 2025

Public Comment Period End Date: July 27, 2025 at 11:59PM.

**Rule Type/Number of Rules:**

☐ New/\_\_\_ rules

☒ Amended: 1 rule (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☐ Rescinded/\_\_\_ rules (FYR?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.*

This rule exists to establish requirements to include in, or exclude from, every AAA<sup>1</sup>-provider agreement (i.e., contract or grant) for congregate dining that is paid, in whole or in part, with Older Americans Act funds.

The U.S. Dept. of Health and Human Services (HHS) adopted [45 CFR 1321.87](#) on February 14, 2024. The federal rule allows each state to amend its state plan on aging to authorize providing congregate meals as “shelf-stable, pick-up, carry0out, drive-through, or similar meals” with limitations. These are often called “grab-and-go meals.” To coincide with a state plan amendment, ODA proposes to amend this rule to authorize these meals with the limitations established in the federal rule.

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

This rule refers to standards in [42 USC 3030e](#) and [3030g-21](#).

[45 CFR 1321.9](#) requires ODA to “develop policies governing all aspects of [Older Americans Act] programs.”

This rule refers to standards in [45 CFR 1321.87\(a\)\(1\)](#).

**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.**

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

This rule exists 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)?**

This rule exists 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](#): (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. Outside of email responses to the outreach efforts below, this email address has not received any email from any person or entity regarding this rule since the last time that ODA amended it.

On March 26, 2025, ODA conducted an online stakeholder meeting for AAAs, providers, and other organizations to give ODA recommendations for implementing new federal standards in [45 CFR 1321.87](#) into ODA's rules. ODA invited every AAA and the following providers and organizations to participate in this meeting:

- Academy of Senior Health Sciences, Inc.
- Carroll County CoA.
- Comfort Keepers.
- Guernsey County Senior Citizens Center, Inc.
- Kno-Ho-Co-Ashland Community Action Commission (KHCA).
- LeadingAge Ohio.
- LifeCare Alliance.
- OhioAging (O4A).

- Ohio Association of Senior Centers (OASC).
- Ohio Council for Home Care and Hospice (OCHCH).
- Ohio Health Care Association (OHCA).
- Ohio Jewish Communities (OJC).
- Preble County Senior Center.
- Senior Resource Connection.
- State Long-Term Care Ombudsman.
- United Senior Services.

On May 29, 2025, ODA emailed AAAs and OhioAging to solicit feedback on a draft of this rule. ODA previously discussed this rule with AAAs, providers, and other organizations at its March meeting.

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

During the March 26 meeting, ODA received 3 comments from 2 stakeholders on this rule. The table below shows each comment and ODA's reply to it.

	Stakeholder	Comment	ODA's Reply
1	Caroll County CoA	The grab-and-go option will be helpful for consumers who don't want to eat inside a congregate dining location or who may need a meal but are working around the time of the meal.	This was helpful information. No response is necessary.
2	AAA1	Can ODA ask HHS for a "state waiver" to allow AAAs to use Title III-C1 funds to pay for grab-and-go meals without each AAA needing to request such a "waiver"?	ODA emailed the stakeholder to provide the following response:  Under <a href="#">45 CFR 1321.87(a)(1)(i)</a> , the conditions for allowing Title III-C1 funds to pay for grab-and-go meals in a PSA include authorizing grab-and-go meals in (1) the state plan <i>and</i> —not <i>or</i> —(2) the AAA's area plan. There is no "state waiver" that will enable an AAA to offer grab-and-go meals without the AAA including such meals in its area plan.
3	AAA1	The AAA double checked to see if approval for grab-and-go meals is part of the area plan process.	During the meeting, ODA confirmed that approval for grab-and-go meals is part of the area plan process.

ODA received the following 9 comments from 4 of Ohio's 12 AAAs on this rule in response to the May 29 email. The table below shows each comment and ODA's reply to it.

	AAA	Comment	ODA's Reply
1	AAA1	<p>¶(C) Offering grab and go meals- We agree that this could benefit unique populations, especially in certain areas. We also agree this option would be beneficial during disaster and emergency response situations. We still have the same concern we expressed in the previous request for comments which is related to the impact on the provider. A streamlined waiver on behalf of Ohio Area Agencies on Aging for this service would eliminate the administrative burden and increase administrative efficiency related to the waiver request and approval process for both the AAAs and ODA.</p>	<p><a href="#">45 CFR 1321.87</a> requires any AAA that wants to allow providers in its PSA to offer grab-and-go meals to include grab-and-go meals in its ODA-approved area plan or in an ODA-approved amendment to the area plan. 45 CFR 1321.87 does not authorize a "streamlined waiver" as described in your comment.</p>
2	AAA1	<p>¶(C) This flexibility may benefit some of the consumers, but it does remove the socialization aspect of the program. The AAAs can support this option when needed, but it should be utilized as an exception and not the normal process. We are concerned about food safety once the consumer takes the food away. The provider will need to provide education about food safety along with the meal. We may want to recommend the provider consider a waiver.</p>	<p>You are correct that a grab-and-go meal option would limit socialization. This may be why <a href="#">45 CFR 1321.87(a)(1)(ii)</a> limits grab-and-go meals to 25% of congregate meals.</p> <p>Neither 45 CFR 1321.87 nor rule 173-4-05.1 of the Administrative Code requires providers to provide food-safety education to consumers along with meals.</p>
3	AAA3	<p>¶(C) Regarding the carry-out/grab-no-go meals, AAA would have to note this within Area Plan and ODA would need to have approved said plan or AAA would need to amend the Area Plan to allow for C1 funds to pay. With this appearing as CFR language, unsure how hard we can push back to advocate this as administrative burden and flexibility should fall to the local AAA to determine need and person-centeredness. [Regarding carry-out/grab-n-go meals, AAA would have to note this within Area Plan and ODA would need to have approved said plan or AAA would need to amend the Area Plan to allow for C1 funds to pay. Flexibility should fall to the local AAA to determine need and person-centeredness.]<sup>2</sup></p>	<p>Under <a href="#">45 CFR 1321.87(a)(1)(i)</a>, the conditions for allowing Title III-C1 funds to pay for grab-and-go meals in a PSA include authorizing grab-and-go meals in (1) the state plan and (2) the AAA's area plan.</p>

<sup>2</sup> ODA received 2 versions of AAA3's comment.

	AAA	Comment	ODA's Reply
4	AAA3	<p>¶(C) What is defined as "occasional" need as outlined in CFR and is ODA leaving that up to our discretion per individuals' assessment? Possible clarity needed. [What is defined as "occasional" need as outlined in C.F.R.1321.87(a)(1)(iii)(B)? Is ODA leaving that up to AAA discretion per an individual's assessment?]<sup>1</sup></p>	<p><a href="#">45 CFR 1321.87(a)(1)(iii)</a> doesn't define <i>occasional need</i>, but the rule contrasts <i>occasional need</i> with <i>regular need</i>. Because the federal rule doesn't define the term for national use, ODA also proposes to not define the term for statewide use. This will allow for flexibility.</p>
5	AAA3	<p>¶(C) If AAA would not update Area Plan to note such, would flexibility be considered for this restriction to implement in an emergency or in the need to update the plan before services could be provided? [In an emergency (pandemic or otherwise), would flexibility be considered for AAAs who decided previously not to allow carry-out meals or would AAAs need to update their Area Plan and have ODA approve before services could be provided?]<sup>1</sup></p>	<p>If an AAA wants providers to be able to provide grab-and-go meals during an emergency, it is advisable to obtain authorization for grab-and-go meals in its area plan. An AAA could even amend its area plan to authorize grab-and-go meals for only emergencies defined in the area plan.</p>
6	AAA3	<p>¶(C) To clarify, this would not be a waiver service and just merely needs to be noted in the plan itself [and approved by ODA]<sup>1</sup></p>	<p>You are correct.</p>
7	AAA3	<p>¶(C) Potential admin burden to track the 25% cap of funds to be utilized for grab-and-go meals vs traditional dine in methods. Would need to explore functionality within SeniorDine and current platforms. Also - in cases of an emergency (pandemic), hope would be allowance granted to spend above the 25% cap? [In cases of an emergency (pandemic or otherwise), would allowance be granted to spend above the 25% cap?]<sup>1</sup></p>	<p>Because 45 CFR 1321.87 establishes the 25% cap, it is not allowable to exceed that cap.</p>
8	AAA7	<p><b>General</b> The AAA7 team has reviewed the attachments and have no further comments to submit.</p>	<p>Thank you!</p>
9	AAA9	<p><b>General</b> At this time, AAA9 does not have any comments or concerns to provide regarding the proposed updates to the four rules attached.</p>	<p>Thank you!</p>

# **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? *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 this rule. 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 this 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 congregate dining 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.*

This rule refers to the requirements to include in every AAA-provider agreement for a congregate dining paid, in whole or in part, with Older Americans Act funds in rules [173-3-06](#) and [173-4-05](#) of the Administrative Code. The reference in this rule does not create an adverse impact, because rule 173-3-06 of the Administrative Code already regulates every agreement and rule 173-4-05 of the Administrative Code already regulates every nutrition project. ODA includes the reference to rules 173-3-06 and 173-4-05 of the Administrative Code in this rule due to the tendency of the public to find rules by googling. If a person searches for "congregate dining," ODA wants the person to find this rule and know to also read rules 173-3-06 and 173-4-05 of the Administrative Code.

This rule establishes standards on the following topics:

- Availability



- Carry-out meals. ODA's proposal to amend this rule will create a flexibility for carry-out meals. See ODA's response to question #16 for more information.
- Emergency closings.
- Quality assurance.

Additionally, this 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., [2 CFR 200.319](#), plus 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*).**

ODA's proposed amendment will implement the flexibility being offered to each state under 45 CFR 1321.87(a)(1) regarding carry-out meals. ODA proposes to add no additional standards that would diminish flexibility. This includes not defining the word "regular." Additionally, the flexibility doesn't require any provider to offer carry-out meals.

**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 this rule ensures 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 rule is to ensure the health and safety of consumers receiving services paid with Older Americans Act funds within ODA's scope of regulatory authority, this rule 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 this rule. 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 this rule.