



# 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: NUTRITION EDUCATION**

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): 173-4-08

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☐ Rescinded/\_\_\_ rules (FYR?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 nutrition education that is paid, in whole or in part, with Older Americans Act funds.

ODA proposes to amend this rule to achieve the following:

- 1. Amend the definition to reflect [45 CFR 1321.87\(a\)\(3\)](#).
- 2. Remove the set frequencies for providing nutrition education to allow providers to provide nutrition education as needed, based on the needs of meal recipients. This corresponds with the federal standards in 42 USC [3030e](#) and [3030f](#) and [45 CFR 1321.87\(a\)\(3\)](#).

ODA also proposes to make non-substantive improvements to this 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 implements 42 USC [3030e](#) and [3030f](#).

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

This rule implements [45 CFR 1321.87\(a\)\(3\)](#).

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

**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 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 rules and policy administrator 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 February 26, ODA conducted an online stakeholder meeting for AAAs, providers, and other organizations to give ODA recommendations for implementing new federal requirements 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 7, 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 February 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 February 26 meeting, ODA received 0 comments on this rule.

ODA received the following 5 comments on this rule from 3 of Ohio's 12 AAAs in response to the May 7 email. The table below shows each comment and ODA's reply to that comment.

	AAA	Comment	ODA's Reply
1	AAA3	[N]o significant concerns were noted.	Thank you!

	AAA	Comment	ODA's Reply
2	AAA6	<p>¶(B) Section B has language we would like clarified, where it says if we contract with a provider for the service.... Does this mean we must contract for nutrition education? Do we have an option to not require it? This has always been something required of providers, two per year for HDM and for congregate, and it has always been unfunded. It is a lot of work for providers and lots of paperwork with the sending of the materials and surveys.</p>	<p>Each AAA has flexibility when procuring for nutrition projects between the following:</p> <ul style="list-style-type: none"> <li>• The AAA may procure separately for meals and nutrition education and may have different providers of those services. In this case, paragraph (B)(3) of rule <a href="#">173-4-05</a> of the Administrative Code requires the AAA-provider agreement to identify for each provider to identify the components of the nutrition project for which it is responsible to provide.</li> <li>• The AAA may require providers of meals to also provide nutrition education. In this case, paragraph (B)(4)(b) of rule <a href="#">173-4-05</a> of the Administrative Code requires the AAA-provider agreement to indicate that the meal provider is also the nutrition education provider.</li> </ul> <p>Title III-C funds pay for meals, nutrition education, and other nutrition services. When procuring for meals and nutrition services, an AAA can procure for meals separately from nutrition services. If the AAA procures for a nutrition project by accepting bids for providing both meals and nutrition services on a per-meal basis, it may feel like the nutrition services aren't funded. In this case, the cost of meals would be calculated to include the cost of nutrition services. If the AAA procures separately for meals and each nutrition service, then this would not be the case.</p>
3	AAA10B	<p>¶(B)(5) The change to provide education as necessary provides for too much flexibility and may result in no education at all. It will be also harder to audit the provider's compliance with this requirement.</p> <p>Since there is no longer a frequency requirement for education, and it's based on the consumer's need, it will slip through the cracks and not be provided at all. How will the monitor check during the review to see if there was a consumer who had a need, and the provider failed to provide education?</p>	<p>ODA does not plan to require AAA to procure for more nutrition education than <a href="#">45 CFR 1321.87(a)(3)</a> requires. This does not prohibit an AAA from procuring for nutrition education at set times or set frequencies.</p>
4	AAA6	<p>¶(B)(5) B5 now removes the frequency requirement, no longer mandated two per year. Assuming this means the provider can offer what they feel is appropriate as long as there is at least one consumer need. We would like more clarity about the one session rather than splitting it out, which gives them some more options, plus could have a section on their website just for nutrition education (again, going to push that).</p>	<p>Please review ODA's reply to comment #3.</p>

	AAA	Comment	ODA's Reply
5	AAA6	<p>¶(B)(6)</p> <p>B6 states if AAA agreement obligates provider to offer in congregate dining sites: Is this a requirement or can a provider choose to not offer nutrition ed for congregate consumers?</p>	<p>When procuring for nutrition education, each AAA has flexibility on whether to award an AAA-provider agreement for nutrition education to the same provider that it awards an AAA-provider agreement for congregate dining. For more information, please review ODA's reply to comment #2.</p> <p>The rule requires nutrition education to comply with the standards in paragraph (B)(6) of the rule only if the AAA awards the AAA-provider agreement for nutrition education to the same provider that it awarded the AAA-provider agreement for congregate dining.</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](#): (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 nutrition education 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 service paid, in whole or in part, with Older Americans Act funds in [rule 173-3-06 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. ODA includes the reference to rule 173-3-06 of the Administrative Code in this rule due to the tendency of the public to find rules by googling. If a person searches for "nutrition education," ODA wants the person to find this rule and know to also read rule 173-3-06 of the Administrative Code.

This rule establishes basic standards for the following nutrition education topics:

- Education content.
- Education format.
- Evaluation format.
- Evaluation methodology.
- Education frequency: ODA proposes to amend the frequency to delete set frequency requirements since 42 USC [3030e](#) and [3030f](#) and [45 CFR 1321.87\(a\)\(3\)](#) do not require providing nutrition at set frequencies..
- Group sessions if related to congregate dining.

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 no longer require providers to provide nutrition education at set frequencies since 42 USC [3030e](#) and [3030f](#) and [45 CFR 1321.87\(a\)\(3\)](#) require providing nutrition education as appropriate, based on the needs of meal recipients. If meal recipients do not need nutrition education at set frequencies, then this rule will not require providing nutrition education when not needed.

**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, 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.