



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: GROCERY SHOPPING ASSISTANCE, GROCERY ORDERING AND DELIVERY

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): 173-4-10, 173-4-11

Date of Submission for CSI Review: July 15, 2025

Public Comment Period End Date: July 28, 2025 at 11:59PM.

Rule Type/Number of Rules:

☐ New/___ rules

☒ Amended: 2 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☐ Rescinded/___ rules (FYR?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.

173-4-10

This rule exists to establish requirements to include in, or exclude from, every AAA¹-provider agreement (i.e., contract or grant) for grocery shopping assistance 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 using Title III-C funds for “other nutrition services,” including groceries, to “meet nutritional needs or preferences.”

ODA proposes to amend this rule to achieve the following:

1. Amend the definition of “grocery shopping assistance” in paragraph (A) of this rule to limit it to a consumer who needs assistance shopping for groceries.
2. Indicate in paragraph (B)(3) of this rule that the extent to which the provider transfers groceries falls within the space between the store and the consumer’s home.
3. Eliminate the prohibition under paragraph (B)(4) of this rule against using Title III-C funds to pay for this service or groceries provided through this service. This amendment will give providers and AAAs flexibility, not a mandate. It will allow, but will not require, a provider to use Title III-C funds for the service and the groceries provided through this service. Likewise, an AAA may, but is not required to, use Title III-C funds to procure for a provider to provide this service or groceries provided through this service.
4. Replace references to needs in paragraph (B)(4)(b) of this rule with references to needs or preferences.

ODA also proposes to make non-substantive improvements to this rule.

173-4-11

This rule exists to establish requirements to include in, or exclude from, every AAA-provider agreement (i.e., contract or grant) for grocery ordering and delivery 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 using Title III-C funds for “other nutrition services,” including groceries, to “meet nutritional needs or preferences.”

ODA proposes to amend this rule to achieve the following:

¹ “AAA” means “area agency on aging.”

1. Delete “safe” from paragraph (B)(2) of this rule in response to a comment from an AAA.² The goal of the paragraph is for providers to have delivery procedures, not food-safety procedures. Deleting the word will clarify that a provider is not required to create food safety procedures or restate food safety standards that the Ohio Departments of Agriculture and Health establish in its procedures.
2. Eliminate the prohibitions under paragraph (B)(3) of this rule against using Title III-C funds to pay for this service or groceries provided through this service. This amendment gives providers and AAAs flexibility, not a mandate. It will allow, but will not require, a provider to use Title III-C funds for the service and the groceries provided through this service. Likewise, an AAA may, but is not required to, use Title III-C funds to procure for a provider to provide this service or groceries provided through this service.
3. Replace references to needs in paragraph (B)(3)(b) of this rule with references to needs or preferences.

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.

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

These rules implement [45 CFR 1321.87\(a\)\(5\)](#).

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.

² See ODA's response to question #10.

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 these rules and (2) AAAs regularly monitor providers for their compliance with AAA-provider agreements. These rules are judged as being successful when (1) ODA finds 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 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 these rules since the last time that ODA amended them.

On February 26, 2025, 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 drafts of these rules. ODA previously discussed these rules 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 1 comment from 1 stakeholder on these rules. The table below shows the comment and ODA's reply to it.

	Stakeholder	Comment	ODA's Reply
1	AAA4	Can we pay for this service with either Title III-C1 or C2 funds? Can we still pay for this service with Title III-B funds?	ODA emailed the stakeholder to provide the following responses: Yes and yes.

ODA received 12 comments on these rules from 5 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	AAA6	173-4-10 This is included in Homemaker services currently	That is not correct. Rule 173-3-06.4 of the Administrative Code allows "homemaker service" to include the activity of "providing an errand outside of the presence of the consumer (e.g., picking up a prescription or groceries), or escort." Grocery shopping assistance is provided <u>with</u> the consumer, so it is not outside of the consumer's presence. Grocery shopping assistance is helping the consumer with the act of shopping. As such, it is not limited to accompanying the consumer while the consumer shops (i.e., escort).
2	AAA6	173-4-10(A) Is this intended for the consumer to go with the provider to the store?	Yes. This rule's definition of <i>grocery shopping assistance</i> indicates that the service "assists the consumer with the act of shopping." This act would inherently involve the provider to shop with a consumer in the store. If the provider shopped at a store without the consumer, the service would be grocery ordering and delivery, which is covered under rule 173-4-11 of the Administrative Code.
3	AAA10B	173-4-10(A) Can we add Food Banks and other places that may provide groceries too so that the rule is not limited to grocery stores only?	The rule requires providers to assist consumers with the act of shopping. It does not prescribe the place where the consumer shops for groceries. A provider could provide a consumer assistance with the act of shopping at a food bank in a food bank that allows consumers to shop for groceries. If the food bank provides food without shopping, then it would not be possible to provide this service in that food bank because there is no act of shopping in that food bank. Additionally, AAAs must be careful to not use Older Americans Act funds to pay for a service that another public or private program already paid.

	AAA	Comment	ODA's Reply
4	AAA3	173-4-10(B)(3) Ambiguity exists around the level of support expected from providers (physical assistance, navigating stores, etc). The rule states the service “assists the consumer with the act of shopping”, but does not clarify the level of assistance (physical support, carrying bags, companionship, help navigating stores, etc). Could a clearer definition clarifying the scope of assistance levels in shopping support be beneficial to prevent inconsistent service delivery across providers?	A rule generally doesn't establish flexibility. A lack of specific requirements (e.g., on physical support, carrying bags, navigating stores) allows flexibility. An AAA may add specifics to its RFP if or when it procures for this service. Alternatively, an AAA may allow providers to respond to an RFP with their best proposals for the specifics. Then, the AAA could choose the bid(s) that proposed the best idea(s) as the winning bid(s).
5	AAA9	173-4-10(B)(3) Why is it the AAA's responsibility to indicate the extent in which a provider must transfer groceries in detail in the provider agreement? Seems excessive.	The AAA is a pass-through entity for federal funds. As a result, the AAA procures for a provider to provide this service. After the AAA chooses the winning bidders, the provider enters into an AAA-provider agreement with each winning provider. When the AAA issues its RFP and when it drafts its AAA-provider agreement, it has flexibility to determine the extent to which the provider must transfer groceries between the store and the consumer's home. This rule simply requires the AAA to indicate in the AAA-provider agreement, the AAA's standard in this regard.
6	AAA1	173-4-10(B)(4)(a) and (B)(4)(b) The proposed rule states that Title III B and E can be used for these services. In the federal rule CFR 1321.87 it only lists C-1 or C2	The rule already allows Title III-B and III-E funds to pay for this service. What is new is that 45 CFR 1321.87(a)(5) now also allows for Title III-C funds to pay for this service.
7	AAA6	173-4-10(B)(4)(b) Allowing the use of C funds is very helpful Please clarify whether funds can be used to purchase groceries If so, how would this be reflected in the unit of service?	Yes. 45 CFR 1321.87(a)(5) allows using Title III-C funds to pay for “weighted utensils, supplemental foods, oral nutrition supplements, or groceries” that a consumer may buy when using this service. The US Dept. of Health and Human Services has not yet explained how to report on funds spent on groceries (vs. the service).

	AAA	Comment	ODA's Reply
8	AAA6	173-4-11 This is included in Homemaker services currently	A homemaker provider may run an errand to pick up a consumer's groceries according to rule 173-3-06.4 of the Administrative Code, which allows "homemaker service" to include the activity of "providing an errand outside of the presence of the consumer (e.g., picking up a prescription or groceries)." However, the homemaker provider would be ineligible for payment with Title III-C funds. If a provider of grocery ordering and delivery picks up a consumer's groceries, the provider would be eligible for payment with Title III-C funds. When the AAA procures for services, it has flexibility to award two AAA-provider agreements to the same provider: one for the homemaker service and one for grocery ordering and delivery. Any AAA that does so must be careful to not pay the provider for providing both services for the same episode of service.
9	AAA10B	173-4-10(A) Can Food Banks and other places that may supply groceries be added here v. grocery store only?	The rule requires a provider of this service to deliver a consumer's ordered groceries. It does not prescribe the place from which the consumer orders those groceries. It does not prohibit delivering groceries ordered from a non-traditional store (e.g., food bank, Thrive Market). If the consumer orders groceries from a food bank, the AAA must be careful to not pay for the service or the groceries with Older Americans Act programs if another public or private program paid for them.
10	AAA3	173-4-11(B)(2) The rule states providers are required to develop procedures for "safe delivery," but no specific guidance is provided on standards or expectations. Further guidance may aid in AAAs developing provider training and protocols.	ODA proposes to delete the word 'safe' from this paragraph. The goal is for providers to have delivery procedures, not to restate food safety standards that the Ohio Departments of Agriculture and Health establish.
11	AAA10B	173-4-11(B)(3)(b) Supportive of 173-4-11 adding the use of C for groceries. Would like clarification that this includes buying groceries not just shopping for and delivery.	Yes. 45 CFR 1321.87(a)(5) allows using Title III-C funds to pay for "weighted utensils, supplemental foods, oral nutrition supplements, or groceries" that a consumer may buy when using this service.
12	AAA6	173-4-11(B)(3)(b) Allowing the use of C funds is very helpful Please clarify whether funds can be used to purchase groceries If so, how would this be reflected in the unit of service?	Please review ODA's response to comment #11.

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](#): (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 to provide grocery shopping assistance or grocery ordering and delivery 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.

These rules refer 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 these rules does not create an adverse impact, because rule 173-3-06 of the Administrative Code already regulates every agreement. ODA includes the references to rule 173-3-06 of the Administrative Code in these rules due to the tendency of the public to find rules

by googling. If a person searches for “grocery shopping assistance” or “grocery ordering and delivery,” ODA wants the person to find these rules and know to also read rule 173-3-06 of the Administrative Code.

Rule 173-4-10 of the Administrative Code establishes specific grocery-shopping-assistance standards on the following topics:

- Introductory information to provide to consumers.
- The extent of transferring a consumer’s groceries between the store and the consumer’s home.
- Funding limitations. ODA is proposing to

Rule 173-4-11 of the Administrative Code establishes specific grocery-ordering-and-delivery standards on the following topics:

- Provider-created delivery procedures.
- Funding limitations.

Additionally, these rules establish 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 amendments to remove the prohibition on using Title III-C funds in both rules will give providers and AAAs flexibility, but not a mandate, to use Title III-C funds to pay for grocery shopping assistance, grocery ordering and delivery, and the groceries provided through those services.

Additionally, deleting “safe” from paragraph (B)(2) of rule 173-4-11 of the Administrative Code may prevent providers from developing or restating food-safety procedures.

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 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 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.