CSI - Ohio
The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Aging (ODA)

Regulation/Package Title: Chore; Home Maintenance, Modification, and Repair; Homemaker; and Personal Care Services (Non-Medicaid Programs)

Rule Number(s): Rules 173-3-06.2, 173-3-06.3, 173-3-06.4, and 173-3-06.5 of the Administrative Code
Date: May 30, 2013 (Revised on August 30, 2013)

Rule Type:

X New: 173-3-06.5
X Amended: 173-3-06.2 to 173-3-6.4
X 5-Year Review: All 4 Rules
X Rescinded: 173-3-06.5

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Business Impact Analysis

Regulatory Intent

1. **Please briefly describe the draft regulation in plain language.**
   Please include the key provisions of the regulation as well as any proposed amendments.

INTRODUCTION

2 Routes for Doing Business with ODA

Providers of home and community-based long-term care services often serve consumers who are enrolled in multiple programs that ODA administers such as the Choices Program, the PASSPORT Program, the Alzheimer's Respite Program, and the Older Americans Act programs. To be reimbursed for their services, such providers do business with ODA simultaneously on the basis of *certification* for some programs and *provider agreements* for other programs.

- **Certification:** A provider who provides services to consumers who are enrolled in the Choices or PASSPORT Programs *must become certified* by ODA in order for ODA to reimburse the provider for its expenses. In order to become certified, the provider must comply with the conditions of participation listed in rule 173-39-02 of the Administrative Code.

- **Provider Agreements:** A provider who provides services to consumers who are enrolled in the Alzheimer's Respite or Older Americans Act Programs *must enter into a provider agreement* with an area agency on aging in order for the programs to pay the providers for their expenses. Every provider agreement must contain the mandatory clauses in rule 173-3-06 of the Administrative Code (which are very similar to the conditions of participation in rule 173-39-02 of the Administrative Code).

Rules 173-3-06.2 (chore service), 173-3-06.3 (home-maintenance, home-modification, and home-repair services), 173-3-06.4 (homemaker service), and 173-3-06.5 (personal care service) of the Administrative Code only pertain to doing business with ODA's programs on the basis of *provider agreements.*

Occasion for Review of Rules:

Section 119.032 of the Revised Code requires ODA to review rules 173-3-06.2, 173-3-06.3, 173-3-06.4, and 173-3-06.5 of the Administrative Code no later than the rules' assigned review dates. Accordingly, ODA has reviewed the rules before their review dates and is now proposing to amend the rules.

UNIFORMITY

Because many providers do business with ODA simultaneously on the basis of certification and provider agreements, it is helpful to make the rules for same-named services as similar as possible to one another. This would alleviate the administrative burden of comparing state requirements to federal requirements. In this present rule package, ODA is not reviewing couplets of same-named services (*e.g.*, 173-3-06.2 chore service *vs.*, 173-39-02.5 chore service). Instead, ODA is only reviewing the rules that pertain to doing business with ODA's programs on the basis

of provider agreements. Because of this, it is not possible to make the rules extremely uniform (*i.e.*, in the enumeration of paragraphs). Nevertheless, ODA's proposed amendments would make progress towards the goal of uniformity.

ODA is proposing the following changes:

- **"Personal Care Service" Definitions:** ODA is proposing to make minor amendments to unify the definition paragraphs in rule 173-3-06.5 (personal care) of the Administrative Code with the definition paragraphs in rule 173-39-02.11 (personal care) of the Administrative Code.

    - With an exception, the definitions are substantially unified although structured differently. The exception is that personal care provided under rule 173-3-06.5 of the Administrative Code may include routine transportation tasks that are components of the homemaker service under rule 173-3-06.4 of the Administrative Code, while personal care provided under rule 173-39-02.11 of the Administrative Code may not include routine transportation tasks that are components of the homemaker service under rule 173-39-02.8 of the Administrative Code. Rule 173-39-02.11 of the Administrative Code only allows for the reimbursement of tasks that the PCA provides in the consumer's home, which excludes transportation tasks.

    - The minor, unifying amendments are to replace "care plan" with "service plan," to replace "care" with "services," to insert "for this rule" after "Definitions," and to insert "to" before "achieve optimal functioning."

    - ODA is also proposing to make amendments to the same paragraphs that do not involve unifying the rule with rule 173-39-02.11 of the Administrative Code. They include inserting "that is" before "comprised," adding "The tasks include routine meal-related tasks, routine household tasks, and routine transportation tasks" after the sub-paragraph on components of a homemaker service, replacing "assisting" with "assist," and shortening the definition of "PCA" to "'PCA' means 'personal care aide.'"

- **Reference to requirements for all providers found in another rule:** ODA is proposing to incorporate language from more-recently adopted rules so that the rules would clearly state that the requirement for providers in the rules is in addition to the "mandatory clauses for provider agreements described in rule 173-3-06 of the Administrative Code." Currently, the rules only say, "Minimum requirements." All providers regulated by rules 173-3-06.2 (chore service), 173-3-06.3 (home-maintenance, home-modification, and home-repair services), 173-3-06.4 (homemaker service), and 173-3-06.5 (personal care service) of the Administrative Code are already subject to rule 173-3-06 of the Administrative Code. Incorporating language that makes this clear

would be helpful. It also makes the rules uniform with rules 173-3-06.2 (chore service) and 173-39-02.11 (personal care service) of the Administrative Code, as well as other more-recently adopted rules.

- **Personal care aide (PCA) qualifications**: The basic premise of PCA qualifications is this: in order to be a PCA, a person must complete training and pass competency evaluations to show that he or she is competent. ODA has a long-standing approval of five different types of nurse aide training and competency evaluation programs (NATCEPs).

  One of the approved NATCEPs is the Medicare home health aide NATCEP. In short, if a person who qualifies to become a home health aide for Medicare beneficiaries can qualify to become a PCA for the consumers who are enrolled in ODA's programs. The a federal regulation[1] mandates that a home health aide may no longer qualify to be a home health aide if the aide does not perform at least one service for compensation during the most-recent 24-month period. However, in the proposed amendments to the rule that ODA proposed in June, ODA said a home health aide would need to have a work history as a home health aide for 24 consecutive months before qualifying to become a PCA. This is the matter upon which you commented.

  After reviewing the matter, ODA determined to not keep the requirement in the rule to work for 24 consecutive months. Therefore, instead of requiring 24 months of consecutive employment as a home health aide, ODA now proposes to require providers to retain records to show that the PCA has performed Medicare home health aide work at least once during the 24-month period before the provider used the person as a PCA.

  ODA also made other clarifications, such as no longer requiring the provider to conduct a test to evaluate the competency of a would-be PCA if the NATCEP the would-be PCA completed was operated by the provider. That would eliminate an old requirement to test the person two times in a row.

- The Paraprofessional Healthcare Institute (PHI) recently reported the following:

  > In theory, more uniform requirements would enable PCAs who do similar work to move between programs and across populations providing services and supports to people with similar functional limitations. Disparate requirements between programs within a state...may lead to large differences in the level of qualification of aides within a state, or may make certain training redundant for PCAs who wish to switch jobs.[2]

  Fortunately, the State of Ohio has a new initiative that may achieve what the uniform requirements that PHI recommended, but for direct-care workers of various types, not just PCAs. Section 323.234 of H.B.59 (130th G.A.)

[1] Specifically, 42 C.F.R. 484.4 (October 1, 2012 edition)
[2] Paraprofessional Healthcare Institute (PHI). "Personal Care Aide Training Requirements: Summary of State Findings." © March, 2013. *Pg.*, 3.

authorized the creation of the Direct Care Worker Advisory Workgroup. It says "The Workgroup shall do all of the following: (1) determine core competencies; (2) designate which direct care workers should meet core competencies; (3) determine whether existing regulatory requirements are equivalent or similar to core competencies; (4) identify funding sources that could be used to assist direct care workers. This initiative may further change the qualifications for becoming a PCA.

(For more information, see ODA's responses under #8.)

- **Service verification:**
    - **Electronic monitoring:**
        - For the personal care service, ODA is proposing to replace the "monitoring" language in paragraphs (B)(6), (B)(6)(a), and (B)(6)(b) of rule 173-3-06.5 of the Administrative Code with a new paragraph (B)(6)(a) of the rule. The new paragraph would say, "To effectively monitor the delivery of services by its employees, each provider that is an agency provider shall use a monitoring system that complies with section 121.36 of the Revised Code."
        - ODA's previous two paragraphs were intended to summarize the requirements for providers under section 121.36 of the Revised Code. However, it seems more helpful to refer providers to the actual mandate in section of the Revised Code rather than to summarize it. Doing so would minimize the risk that ODA may inadvertently mislead a provider into believing that ODA's summary represented the totality of what section 121.36 of the Revised Code has required since H.B.95 (125th G.A) enacted on September 26, 2003, and required to take effect one year later (on September 26, 2004).
        - Directly referencing the statute that requires providers to use monitoring systems may also increase the prevalence of compliance with the statute. In turn, the compliance would reduce fraudulent billing. An Auditor of the State of Ohio report claimed that Ohio would have saved between $22.95 million and $267.75 million in state fiscal year 2011-12 if providers used monitoring systems like telephony or swipe cards.[3]
        - At the present time, this amendment would make the rule uniform with the Ohio Revised Code, but would not also make

[3] The Auditor of State of Ohio. "Ohio Department of Job and Family Services Performance Audit." © June 13, 2013. *Pp.*, 79, 91-95, 95-99.

similar rule 173-39-02.11 (personal care service) of the Administrative Code uniform with the Revised Code. ODA will make a similar amendment to rule 173-39-02.11 of the Administrative Code the next time it amends that rule.

- **Records retention:**
  - For all four services, ODA is proposing to replace outdated "document maintenance" language with "service verification" and "records retention" language that is found in more-recently filed rules. In doing so, ODA would no longer appear to require paper records to verify that the services were performed pursuant to the rules.
  - Additionally, ODA is proposing to add two paragraphs to each rule that states that (1) ODA would allow electronic records and (2) directs the provider to the rule that says for how long the provider must retain records. In rule 173-3-06.4 of the Administrative Code, this involves moving the language in paragraph (B)(1)(c) of the rule to (B)(6)(a) of the rule. The proposed new language makes the rules uniform with rules 173-3-06.2 (chore service) and 173-39-02.11 (personal care service) of the Administrative Code, as well as other more-recently adopted rules.
- **Employee Manuals:**
  - In paragraph (B)(3) of rules 173-3-06.4 and 173-3-06.5 of the Administrative Code, ODA is proposing to remove language that requires a provider to publish a written manual of its policies and procedures. This involves replacing "employee manual" with "policies and procedures." It also involves removing "a written manual of" before "policies and procedures."
  - ODA is also proposing to clarify to whom the provider must make its policies and procedures available.
  - ODA is also proposing to use uniform terminology between the two rules regarding the policies and procedures. This would involve replacing "employee code of ethics" in rule 173-3-06.4 of the Administrative Code with "employee ethical standards." It also involves replacing "company policies" in rule 173-3-06.5 of the Administrative Code with "its policies."

LIST OF AUTHORIZED RATES

ODA is proposing to amend paragraph (C)(2)(a) of rule 173-3-06.3 of the Administrative Code to delete the following permissive language: "(The AAA may

publish a written list of authorized rates.)" Because ODA did not require AAAs to publish a list of authorized rates, it does no harm to remove the permissive language. An AAA could still publish such a list without the language. (For more information, see ODA's response to the input of the Area Aging Office of Northwest Ohio, Inc. under #8.)

This is a non-substantive change that would create no adverse impact.

OTHER NON-SUBSTANTIVE CHANGES

ODA is proposing to make the following non-substantive changes:

- Replace the option for qualifying to be a PCA by being listed on the Ohio Dept. of Health's Nurse Aide Registry. The registry lists all state-tested nurse aides—even those not in good standing. Therefore, ODA is proposing to say that a way to qualify to be a PCA is for the Ohio Dept. of Health to list a person as active on its state-tested nurse aide registry. ODA then, will provide a URL so the provider may easily find the registry online.

- Add the edition citation to the C.F.R. cited in the "statutory authority" section after the rule language to comply with Section 121.75 of the Revised Code. ODA does not need to fully cite the Older Americans Act in the rules because, in rule 173-3-01 of the Administrative Code, ODA fully cites "Older Americans Act" in its definition for the term which applies to all uses of "Older Americans Act" throughout Chapter 173-3 of the Administrative Code.

- Replace (in comparison to the rule that ODA is proposing to rescind), in paragraph (A)(2) of rule 173-3-06.5 of the Administrative Code, "'Personal care aide' ('PCA') means the person who performs the activities of a personal care service," with, "'PCA' means "personal care aide." Throughout the same rule, replace "personal care service" with "personal care," because "service" is redundant of "care."

- Replace, in rule 173-3-06.4 of the Administrative Code, "he/she" with "he or she" and "his/her" with "his or her."

None of the proposed non-substantive amendments would create an adverse impact.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.**

   Section 173.392 of the Revised Code gives ODA authority to adopt rules regarding provider agreements (*i.e.*, contracts and grants) for providers that provide services to consumers who are enrolled in ODA's non-Medicaid programs (*i.e.*, programs that do not require provider certification).

   Section 173.04 of the Revised Code gives ODA authority to adopt rules to govern the Alzheimer's Respite Program. Alzheimer's Respite Program funds are used as a match for Older Americans Act funds, particularly funds the federal government appropriates to states for the National Family Caregiver Support Program, which requires a 25% match according to Section 373(g)(2)(B) of the Act.

   Section 121.36 of the Revised Code gives ODA authority to adopt rules to implement the service-verification requirements for providers in section 121.36 of the Revised Code.

   Sections 173.01 and 173.02 of the Revised Code give ODA general authority to adopt rules to regulate services provided through programs that it administers.

3. **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.

   Section 305(a)(1)(C) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006 (the Act); and 45 C.F.R. 1321.11 (October 1, 2012 edition) authorize the state unit on aging (*i.e.*, ODA) to adopt policies to implement the provisions of the Act.

   Ohio's state plan under section 307 of the Act must implement the services in Section 321 of the Act, which include health services, transportation services, services that adapt homes to meet the needs of older individuals, and services that assist older individuals in avoiding institutionalization including caregiver support and home and community-based services.

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

   The Act *permits*, but *does not require*, ODA to adopt rules to determine the conditions that a provider must meet before ODA's programs would reimburse the provider for providing chore services; home-maintenance, home-modification, or home-repair services; homemaker services; or personal care services. However, section 173.392 of the Revised Code *requires* ODA to adopt rules to determine the

conditions that a provider must meet before ODA's programs would reimburse the provider for providing those services.

5. **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)?**

   The rules exist to comply with state law. See ODA's response under #2.

   The rules exist to implement federal law. See ODA's response under #3.

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

   ODA and AAAs will monitor for compliance.

Development of the Regulation

7. 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.

On March 27, 2013, ODA wrote the following email to Midwest Care Alliance, the Ohio Association of Senior Centers, Kathleen Downing, Home Care by Black Stone, and Senior Resource Connection:

> Providers and Provider Associations:
>
> ODA would like to know if you or any providers that you represent have suggestions for improving any of the following rules in Chapter 173-3 of the Administrative Code:
>
> - 173-3-06.2 Chore service.
> - 173-3-06.3 Home maintenance, modification, and repair services.
> - 173-3-06.4 Homemaker service
> - 173-3-06.5 Personal care service.
>
> All four rules regulate the services when they are provided to consumers enrolled in our non-Medicaid programs like the Alzheimer's Respite Program and programs funded by the Older Americans Act.
>
> Any input you can provide on these rules (especially by the end of next week), ODA will consider for possible amendments to the rules and for the development of the business impact analysis.
>
> Thank you for participating in our rule-development process.

On May 16, 2013, ODA forwarded the (above) March 27, 2013 email to the Ohio Council for Home Care and Hospice and the Ohio Association of Area Agencies on Aging then asked if they had any suggestions for improving rules 173-3-06.2, 173-3-06.3, 173-3-06.4, or 173-3-06.5 of the Administrative Code.

On May 21, 2013, ODA wrote the following to the Ohio Association of Area Agencies on Aging:

> Rule 173-3-06.2 of the Administrative Code is one of four service rules that ODA must give a 5-year rule review this spring.
>
> The Administration for Community Living of the U.S. Dept. of Health and Human Services considers chore services to be services that providers furnish in *units of one hour*, not *per job*. Thus, ODA is likely to propose to amend rule 173-3-06.2 of the Administrative Code to replace "per job" language in the rule with "unit of service" language.
>
> Before we file a draft of the proposed rule with the Common Sense Initiative Office, does O4A have a position on this matter?

On June 4, 2013, ODA emailed the Ohio Colleges of Medicine Government Resource Center with the following:

> Due to your interest earlier this year in ODA's personal care rules, we'd like to inform you of an opportunity to review ODA's proposed amendments to one of the personal care rules. Please feel welcome to review the proposed amendments to rule 173-3-06.5 of the Administrative Code and the business impact analysis that is associated with the rule. We will take any comments you have for improving the rule into consideration.

From June 3 to June 16, on ODA's website, ODA fielded public comments on this project before filing the rules with the Joint Committee on Agency Rule Review (JCARR) to begin the legislature's portion of the rule-review process.

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

On April 1, 2013, Kathleen Downing emailed ODA to say that she reviewed the four rules and did "not see any problems with the four service areas."

On April 2, 2013, Dave Bibler, OASC president, emailed ODA to say, "I ran this past the supervisor for the services below and he doesn't have any recommendations for changes. I guess that's a good thing."

On May 21, 2013, Beth Foster of the Ohio Council for Home Care and Hospice emailed ODA to say, "At this time OCHCH does not have any suggestions. Thank you for giving us the time and opportunity to review these rules."

On May 23, 2013, Area Office on Aging of Northwest Ohio, Inc. emailed ODA with a request to delete the following from paragraph (C)(2)(a) of rule 173-3-06.3 of the Administrative Code: "(The AAA may publish a written list of authorized rates.)" the AAA said, "I would totally remove this section. No one I know publish[es] a written list of authorized rates. After considering the matter, ODA resolves to delete the language. The language did not require any AAA to publish such a list, it was just permissive. An AAA is also not prohibited from publishing such a list. Therefore, ODA sees no problems that would come from deleting the language. The AAA also requested that the rule delineate the responsibilities of the AAA and the provider. ODA, however, believes the rule already delineates duties.

On May 23, 2013, the Ohio Association of Area Agencies on Aging wrote the following email to ODA:

> I did get some feedback to this question and the rest of the rules you asked us to look at. There were strong feelings about the "unit of service" proposal, and some good examples:
>
> *Since our rule is so varied in the types of activities that fall under Chore, my preference would be that we continue to use the completed job. Not knowing what the reimbursement level would be makes it a little difficult to possibly accept that change. As an example, just considering the Pest Control component, the chemicals and/or traps needed for a particular "pest" may be more or less costly making it impossible to transfer that into the amount of time needed to accomplish the job.*
>
> *In addition, there are times when a chore job takes more than one employee to complete, and it seems simpler to leave the unit rate as a completed job rather than a per hour rate.*

Another example is that we sometimes have a need for heavy clean-up relating to hoarding situations. This sometimes involves getting a dumpster, paying a landfill for disposal, etc. The variety of associated costs would be a barrier. We already have difficulty recruiting providers in this area, because it is not a frequently used service. If providers were required to have one hourly contracted rate, there would be a number of jobs they would decline – as costs would not be covered, or we would be overpaying, because they could inflate the rate to try to cover these costs, but it is not always needed. Definitely would be a barrier for getting necessary services completed.

On the rules about to be reviewed -

In general, we'd like the OAA rules to mirror the PASSPORT rules whenever possible. An example of where they don't match now is in the Personal Care Service requirements for staff training/qualifications. There are differences between the 2 programs and we'd like to see the OAA rule match the requirements in the PASSPORT rule.

Please let me know if you have any questions. Thank you for the opportunity to comment.

On May 28, 2013, the Area Agency on Aging of Northwest Ohio, Inc. forwarded a comment on the rules from Mary Wolff, the director of ETSAC. Ms. Wolff said, "I read over the rules. I have no comments. They all seem to be in line with what we have been doing. Thanks for sending me this."

On July 29, 2013, ODA finalized its responses to the public comments that ODA received during the public-comment period. They are listed below.

Rule 173-3-06.2 Chore Service.

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
1	NO COMMENTS RECEIVED	NA

Rule 173-3-06.3 Home Maintenance, Modification, and Repair Services.

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
1	My administrative staff and I have reviewed the proposed revisions to 173-3-06.3 and support your revisions. Denise C. Niese, Executive Director Wood County Committee on Aging, Inc.	Thank you.
2	(C)(2)(a) If we have a service provider who is capable to obtain services needed for the consumer they should be able to determine if the cost is within the limit of what a job of this sort would cost and be able to go ahead without written permission from the AAA. If the cost of the job is far more than normal they can then call the AAA agent and get verbal permission to expend the larger amount. Getting written permission takes longer because of difficulties of each AAA and the service providers jobs and availability. I think this section should be eliminated. [(C)(2) Before performing a home-maintenance, home-modification, or home-repair service, the provider shall:]	Before ODA files the rules with the Joint Committee on Agency Rule Review (JCARR) to begin the legislature's portion of the rule-review process, ODA will amend the language as follows: (C)(2) Before performing a home-maintenance, home-modification, or home-repair service, the provider shall: (a) Provide a written or electronic estimate to the AAA on the cost of the job; (b) Obtain the AAA's written or electronic authorization ~~and rate of payment for~~ to begin the service. ~~(The AAA may publish a~~

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
	(a) ~~Obtain the AAA's written authorization and rate of payment for the service. (The AAA may publish a written list of authorized rates.); and,~~ (b) [Obtain the written consent of the property owner....] Linda Jackson, Community Housing Coordinator Area Office on Aging of Northwestern Ohio, Inc. On June 14, ODA sent this follow-up email to the Area Office on Aging of Northwest Ohio, Inc.: Thank you for contributing to our rule-development process. To make the best decisions, we sometimes need more information. Thus, we have a follow-up question for you. How do you envision an AAA would comply with the federal requirement (*cf.*, 45 CFR 74.43) to seek competitive bids if the AAA doesn't settle on actual prices before the provider furnishes the service? Would a good compromise be to require the provider to supply estimates to the AAA so the AAA can choose the most cost-effective provider, then allow the cost-effective provider to provide the service? Another provision in the rule already allows the provider to work with the AAA if costs exceed the agreed-upon amount. We could alter that language to say the provider could work with the AAA if the costs exceed the estimate submitted to ODA when bidding for the service. Please let us know how you foresee your idea remaining in compliance with federal bidding requirements and whether you believe the compromise idea stated above would work. Your response will help us to evaluate the best way to move forward with potential amendments to this rule. Thank you for your time. On June 18, AAA4 said, "We have had our providers for over 12 years that I have been here. They do get bids on the different repairs I see them in files when I audit them. They do call if the amount will exceed the $2100 that we set as an average job. Our providers still average out at the end of the year within the range of that number. They will call and ask what to do if over that amount. Even though it is over we cannot leave a senior without heat, water, and etc. Title Three B is a small amount of our HR work. Most of it is levy funds. I am not sure I have answered your question. Waiting for AAA to get the three bids and pick the one that is the lowest seems to be a long procedure and the consumer is waiting for heat, water, and etc. Sometimes the lowest choice is not the	~~written list of authorized rates.)~~; and, (c) Obtain the written consent of the property owner.... (C)(3) Additional problems: If, while performing a home-modification, home-maintenance, or home-repair service, the provider identifies an additional problem that requires immediate maintenance or repair that the provider should service in conjunction with the AAA's original job order, the provider shall obtain additional authorization from the AAA before performing the additional job. To obtain additional authorization, the provider shall notify the AAA of the nature of the problem, how the provider plans to remedy the problem, and the estimated cost to remedy the problem. The AAA has discretion to determine whether or not to authorize an additional unit of service for the additional job and shall notify the provider in writing or electronically if it authorizes an additional unit of service. This amendment will accomplish the following: 1. The amendment would continue to require authorization from the AAA before doing the job. 2. The amendment would require the provider to supply *estimates to* the AAA, instead of *rates from* the AAA, which is compatible with federal bidding requirements under 45 CFR 74.43 and 45 CFR 92.36. Additionally, it makes sense to ask for an estimate from the provider instead of the provider asking the AAA for a rate because it would be difficult to establish final prices in advance for projects that involve home modification (*e.g.*, installing a wheelchair ramp) or home repair (*e.g.*, repairing a leaky roof). 3. The amendment would reduce the paperwork burden by allowing the use of email, texting, and messaging to provide estimates and to authorize services. The delivery of hard-copy estimates and authorizations could take as long as the job itself.

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
	best. I guess it comes down to trusting your providers. I don't know if I have answered your question or not. In Lucas county alone we do 133 or more jobs a year and only two or three are Title Three B funding. They are the first ones done." On June 14, ODA also emailed AAA5 and AAA9 to inquire about their handling of the costs of this service. On June 17, AAA5 said, "AAA 5 follows the same procedure for non-PASSPORT MHM referrals as for PASSPORT in that we obtain estimates from usually three providers, and then select the lowest and best bid for the job. Of course if the provider identifies the need to modify their cost after beginning the project, they must receive authorization for the revised price prior to proceeding." On June 17, AAA9 said, "Because of our limited funding, we do not generally fund Home repair through our RFP with Title III funds. Those funds primarily go to fund HDM and transportation as our priority services. We do use SBG funds to match our Housing Trust Fund grant, and obtain 3 bids if possible in order to choose lowest cost."	

Rule 173-3-06.4 Homemaker Service.

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
1	(B)(5)(a)(iv) I would eliminate "(iv) Has completed at least two years of work as an aide." as this is not enough training and could be detrimental to the senior safety. Someone with no formal education in medical field will not pick up on senior issues that would move them to the next level of care, e.g., personal care. They are not trained in ADL's nor IADL's and this causes concern. They will also not be able to alert the family if they suspect a medical situation or behavior that may warrant medical treatment. Colette Cordova, Associate Vice President Planning and Program Development Area Office on Aging of NWO, Inc.	The homemaker service does not involve performing IADLs and, at the present time, ODA does not intend require a person to be trained in IADLs in order to perform a homemaker service. The State of Ohio has a new initiative that will establish minimum requirements for direct-care workers of various types. Section 323.234 of H.B.59 (130th G.A.) authorized the creation of the Direct Care Worker Advisory Workgroup. It says "The Workgroup shall do all of the following: (1) Determine core competencies; (2) Designate which direct care workers should meet core competencies; (3) Determine whether existing regulatory requirements are equivalent or similar to core competencies; (4) Identify funding sources that could be used to assist direct care workers.
2	(B)(5)(a)(i) & (ii) appears to have omitted the :or, at the end of each Robert Cromwell Jr. HomeLink Home Care	Although the meaning would be the same, the proper method for citing a series is "(i), (ii), (iii), *or* (iv)" not "(i) or (ii) or (iii) or (iv)." For consistency, ODA tries to only use the former method.
3	(B)(6)(a) I would eliminate I believe it has a typo with "shall a record of the consumer". Should say "shall maintain a record of the consumer." Colette Cordova, Associate Vice President Planning and Program Development Area Office on Aging of NWO, Inc.	Before ODA files the proposed amended rule with JCARR, ODA will add the omitted word. Because the current term of art is "records retention," and no longer "document maintenance," ODA will insert the word "retain."

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
4	(C) Can you please clarify the difference between "Self-Employed (non-agency) provider" and "Self-directed (consumer-directed) provider"? I assume the self-directed is similar to the PASSPORT Choices program. I assume the self-directed is similar to the PASSPORT Choices program. What training do the Self-directed providers have to have? It is not clear from this if they need to have training like the aides; how can a family member lift a parent without training, for example? Are we not jeopardizing senior safety and care if Self-directed providers do not have to have training like other provider staff? How do you monitor self-directed providers if there are no standards? In the PASSPORT Choices program the PP care managers in essence do the program monitoring. Again, we know that seniors want to have the opportunity to select their own care givers, however, it is much harder to fire a family member who neglects the senior. Internal controls and standards need to be in place especially as seniors become more frail and vulnerable. Colette Cordova, Associate Vice President Planning and Program Development Area Office on Aging of NWO, Inc.	Response to 1st question: The current training requirements for consumer-directed (*i.e.*, "self-directed") providers differs depending upon the program. Additionally, the terminology differs depending upon the program. I've highlighted some of the differences below: **Choices:** ODA defines a provider that is employed by a consumer who is enrolled in the Choices program as a "consumer-directed individual provider." A consumer-directed individual provider may only perform the home care attendant service that rule 173-39-02.4 of the Administrative Code regulates. The consumer-directed individual provider may not provide a homemaker service. The consumer determines the training requirements for any consumer-directed individual provider that he or she employs. **PASSPORT:** ODA defines a provider that is employed by the consumer who is enrolled in the PASSPORT Program as a "consumer-directed personal care provider." A consumer-directed personal care provider may only perform the personal care service that rule 173-39-02.11 of the Administrative Code regulates. The consumer-directed personal care provider may not provide a homemaker service. Rule 173-39-02.11 of the Administrative Code establishes the training requirements for these providers. **Older Americans Act Program:** The Act requires the state to offer self-direction, which is another term for "consumer-direction." Under self-direction, the consumer (*i.e.*, "self") employs (*i.e.*, "directs") a self-directed provider. Rule 173-3-06.4 of the Administrative Code regulates self-direction for the homemaker service when that service is provided to a consumer through a program funded by the Older Americans Act. Unlike the rules for the Choices or PASSPORT Programs, this rule does not presently require any training for self-directed providers. Notably, the rule only regards providing a homemaker service while the rules for the Choices and PASSPORT Programs regard the higher-level home care attendant service and personal care service. Response to general concern: As ODA stated in its response to comment #1, the State of Ohio has a new initiative that will establish minimum requirements for direct-care workers of various types. Section 323.234 of H.B.59 (130th G.A.) authorized the creation of the Direct Care Worker Advisory Workgroup. It says "The Workgroup shall do all of the following: (1) Determine core competencies; (2) Designate which direct care workers should meet core competencies; (3) Determine whether existing regulatory requirements are equivalent or similar to core competencies; (4) Identify funding sources that could be used to assist direct care workers. in meeting core competencies; (5) Recommend policies that may be incorporated in legislation the General Assembly intends to consider...It is the intent of the General Assembly to enact legislation in the future, taking into account the recommendations of the Workgroup...."

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
5	IN GENERAL: In general, it seems like requirements for Aides is that "the provider shall pay for transportation from home to home for aides". Aides are key in senior safety and you will not find qualified workers paying just above minimum wage and no mileage. Additionally, you will find more theft in the home. As Agencies keep popping up, you will find more qualified administrations and staff if they have this hire standard. I would HIGHLY recommend it. Health Care benefits would also be a recommendation. How we can expect Aides to remain healthy without health care; it is unconscionable especially with Health Care and Home Care soon to be merged with the Integrated Care Delivery System-ICDS (Dual Eligible's). Again the most important person in an Agency or provider is the one who works with the senior-they should be the highest quality as possible. Colette Cordova, Associate Vice President Planning and Program Development Area Office on Aging of NWO, Inc.	Adopting rules on benefits for aides is not within the scope of ODA's authority. ODA's rule-making authority regards establishing the conditions to meet in order for ODA-administered programs to reimburse a provider. For clarification, part of a homemaker service may be transportation tasks that involve transporting the consumer. The reimbursement for such a service includes paying for such transportation.

Rule 173-3-06.5 Personal Care Service.

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
1	(B)(2)(a)(ii) The wording would eliminate any new graduate of a medicare competency evaluation program from working for two years from graduation. I believe your meant to have a work history within two years. Robert Cromwell Jr. HomeLink Home Care	ODA has reviewed the rule's language regarding PCA qualifications. The basic premise is that, in order to be a PCA, a person must complete training and pass competency evaluations to show that he or she is competent. ODA has a long-standing approval of five different types of nurse aide training and competency evaluation programs (NATCEPs). One of the approved NATCEPs is the Medicare home health aide NATCEP. In short, if a person who qualifies to become a home health aide for Medicare beneficiaries can qualify to become a PCA for the consumers who are enrolled in ODA's programs. The federal regulations[4] mandate that a home health aide may no longer qualify to be a home health aide if the aide does not perform at least one service for compensation during the most-recent 24-month period. However, in the proposed amendments to the rule that ODA proposed in June, ODA said a home health aide would need to have a work history as a home health aide for 24 consecutive months before qualifying to become a PCA. This is the matter upon which you commented. After reviewing the matter, ODA determined to not keep the requirement in the rule to work for 24 consecutive months. Therefore, instead of requiring 24 months of consecutive employment as a home health aide, ODA now proposes to require providers to retain records to show that the PCA has performed Medicare home health aide work at least once during the 24-month period

[4] Specifically, 42 C.F.R. 484.4 (October 1, 2012 edition)

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
		before the provider used the person as a PCA. ODA also made other clarifications, such as no longer requiring the provider to conduct a test to evaluate the competency of a would-be PCA if the NATCEP the would-be PCA completed was operated by the provider. That would eliminate an old requirement to test the person two times in a row. Additionally, the State of Ohio has a new initiative that will establish minimum requirements for direct-care workers of various types. Section 323.234 of H.B.59 (130th G.A.) authorized the creation of the Direct Care Worker Advisory Workgroup. It says "The Workgroup shall do all of the following: (1) determine core competencies; (2) designate which direct care workers should meet core competencies; (3) determine whether existing regulatory requirements are equivalent or similar to core competencies; (4) identify funding sources that could be used to assist direct care workers. This initiative may further change the qualifications for becoming a PCA.
2	(B)(2)(b) Sentence one was meant to read: under paragraph (B)(2)(a)(vi) not (iii). the same is true of (4)(b) Robert Cromwell Jr. HomeLink Home Care	Before ODA files the rule with JCARR, ODA will correct the citations in paragraphs (B)(2)(b) and (B)(4) of the rule.
3	(C) ???? Unit of service "one hour" ???? Robert Cromwell Jr. HomeLink Home Care	Although ODA is seeking to unify rules 173-3-06.5 and 173-39-02.11 in many ways, it is not able to do so in every way. For the Older Americans Act and Alzheimer's Respite programs, rule 173-3-06.5 of the Administrative Code currently establishes the unit at 1 hour. This is because the U.S. Administration on Aging has established the reporting requirements for personal care services paid in part, or in full, with Older Americans Act funds in units of one hour. By comparison, for the PASSPORT Program, rule 173-39-02.11 of the Administrative Code currently establishes the unit at 15 minutes. Appendix I-2 of the approval document for Ohio's application to the Centers for Medicare and Medicaid Services (CMS) to renew the PASSPORT Program's medicaid waiver application establishes the unit for the PASSPORT program at 15 minutes. In summary, 2 different divisions of the U.S. Dept. of Health and Human Services require reporting to themselves in different units, which is reflected in the different units in ODA's two rules.

On July 29, 2013, ODA dialogued with HomeLink Home Care regarding the comment HomeLink made on rule 173-3-06.5 regarding qualifications to become a PCA via a Medicare Nurse Aide Training and Competency Evaluation Program. As follows:

[HomeLink] In reviewing the rule, I just wanted to clarify that this rule completely eliminated individuals gradua ing from PCA training programs approved by ODA or ODH in providing service to ODA cinets. Is that correct????

[ODA] Fortunately, that is not correct. The rule has always approved—and the proposed rule will continue to approve—of 5 kinds of NATCEPs: (1) STNA, (2) COALA, (3) Medicare, (4) vocational school, and (5) the less-formal 60-hour NATCEP conducted by the provider.

[HomeLink] Paragraph 4 "performed MEDICARE home health aide work" would exclude individuals having worked exclusively within the ODA program during the prior two years.

[ODA] As stated above, the rule has always approved—and the proposed rule will continue to approve—of 5 kinds of NATCEPs. You asked specifically about one kind of NATCEP: the one required by federal regulations for Medicare. Therefore, we wrote back to you about that NATCEP.

Verifying whether a person qualifies to be a Medicare home health aide requires more information than just verifying that the person graduated from a Medicare NATCEP. Medicare regulations say the aide is no longer an aide if he or she does not perform a service for compensation during the previous 24 consecutive months. That's not ODA's invention. It comes from 42 C.F.R. 484.4.

The good news is that ODA will no longer require 2 years of job experience as a Medicare home health aide. The feds only required working one time in 24 months, not for an entire 24 months. ODA will not require more job experience than the feds.

[HomeLink] Paragraph 5 "if the NATCEP the would-be PCA completed was operated by THE PROVIDER" Would require the employing provider to test a new graduate that has just completed the NATCEP from another agency. No big thing but just wanted to point it out.

[ODA] In the current rule and in the amendments ODA proposed for the rule in June, the rule required providers to test out every person who wanted to be a PCA—regardless of whether or not the provider conducted the NATCEP or whether or not the person was tested by the state to be a STNA. ODA continues to want providers to test employees to make certain they are competent. However, we are proposing to no longer require a provider to do so if the provider conducted the NATCEP or if the state tested the person.

However, the requirements won't change if another provider conducted the NATCEP. Here's why: If Medicare conducted the course and the test and maintained a database of all persons who were listed in good standing, ODA could simply just require checking the Medicare database to see if a person is listed in good standing. Instead, some providers conduct the NATCEPs. Instead, Medicare does none of this. There is no standard certificate, standard test, or even standard for what is a passing score. Therefore, ODA will continue to require providers to test every person who wants to be a PCA if the NATCEP was conducted by any group other than the provider or the state.

For example, if Provider X conducts a NATCEP that a person completes and passes, but Provider Y wants to hire the NATCEP's graduate to be a PCA, the rules would require the Provider Y to verify the person's competency by conducting a test.

[HomeLink] As an added note should consider a time frame for a new grad to acquire employment. i.e. A new grad could remain unemployed for a lengthy period of time before acquiring a position.

[ODA] Because we're no longer proposing to require any job experience, this would be unnecessary. The only time a provider would need to verify previous employment when

considering if a person qualifies to be a PCA is if the person successfully completed a Medicare NATCEP. As previously stated, federal regulations say that such a person only qualifies if they have provided at least one episode of service in the previous 24 months.

9. 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 reviewed the following reports:

- The Auditor of State of Ohio. "Ohio Department of Job and Family Services Performance Audit." © June 13, 2013.

- Paraprofessional Healthcare Institute (PHI). "Personal Care Aide Training Requirements: Summary of State Findings." © March, 2013.

ODA also used the data in its databases to measure the outcomes of (1) the number of providers who have entered into provider agreements to provide services that the rules regulate and (2) the average rates that those providers agreed to charge in their provider agreements.

10. 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?

While contacting the stakeholders listed in #7, ODA had previously considered changing the unit of service for the chore service from a per-job unit to a per-hour unit to unify the rule with the units that ODA reports chore services to the United States Administration on Aging. After considering the comments of the Ohio Association of Area Agencies on Aging, ODA is no longer making this one of the proposed amendment topics for that rule.

11. Did the Agency specifically consider a performance-based regulation? Please explain.
Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

ODA did not consider performance-based regulations for these four services.

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

ODA reviewed the Ohio Administrative Code and found no duplication. No other state agency adopts rules that regulate the use of Older Americans Act funds or Senior Community Services funds.

13. 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.

ODA posts all proposed and currently-effective rules on its website. (http://aging.ohio.gov/information/rules/default.aspx) Before a rule takes effect, ODA posts it on its website and sends an email to any subscriber of our rule notification service.

ODA will work with its designees (area agencies on aging) to ensure that the regulation is applied uniformly.

ODA and its designees will also monitor the providers for compliance.

Business Impact Analysis

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

Rules 173-3-06.2, 173-3-06.3, 173-3-06.4, and 173-3-06.5 of the Administrative Code regulate all providers that provide chore services; home-maintenance, home-modification, or home-repair services; homemaker services, or personal care services (respectively) when the providers furnish services to consumers who receive those services through their participation in the Alzheimer's Respite Program or Older Americans Act Programs.

Service	Total Number of Providers	Providers receiving Alzheimer's funding
Personal Care	49	14
Homemaker	53	7
Chore	14	0
Home Maintenance	36	0

The provider counts in the table above include area agencies on aging who have received waivers from ODA against the prohibition on directly providing services (*vs.*, allowing providers to competitively bid to provide the services) because the AAAs are providing the services through a care-coordination program.

Rule 173-3-06.4 of the Administrative Code allows for self-direction (*i.e.*, consumers to direct their providers or "consumer-directed providers"). Presently, 8 consumers (all in Planning and Service Area 7) direct providers. ODA also understands that, at the time of the drafting of this BIA, the area agency on aging for Planning and Service Area 11 is reviewing the contracts for 2 potential self-directed providers.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

IN GENERAL

None of ODA's proposed amendments to the rule would add any new adverse impact. In fact, the proposed amendments to the PCA qualifications would lessen adverse impacts.

However, the regulations do create adverse impacts, which ODA lists below on a rule-by-rule basis.

173-3-06.2 CHORE SERVICE: The requirements in this rule are very similar to those in rule 173-39-02.5 of the Administrative Code for providers that are serving consumers who are enrolled in the PASSPORT Program. The requirements are:

- Retaining records of chemicals/substances used.
- Informing consumers and AAAs of health/safety risks.
- Complying with local codes.
- Verifying services (*i.e.*, records retention).

173-3-06.3 HOME-MAINTENANCE, HOME-MODIFICATION, AND HOME-REPAIR SERVICES: The requirements in this rule are very similar to those in rule 173-39-02.9 of the Administrative Code for providers that are serving consumers who are enrolled in the Choices and PASSPORT Programs. The requirements are:

- Limiting the pool of providers to those who have the correct licensure/accreditation if the service that they would provide is required by another law to have the licensure/accreditation.
- Providing estimates—which ODA now allows to be electronic (*e.g.*, an email or text).
- Obtaining written consent of property owners.
- Obtaining permits required by law (*e.g.*, city construction permit).
- Informing consumers and AAAs of health/safety risks.
- Scheduling work times when it would pose the minimal risk to the consumer.
- Warranting work.
- Obtaining any inspections required by other laws.
- Verifying services (*i.e.*, records retention).

173-3-06.4 HOMEMAKER SERVICE: The requirements are very similar to those of rule 173-3-06.5 of the Administrative Code for the personal care service. They are also similar to those for providers that are serving consumers who are enrolled in the PASSPORT Program through rule 173-39-02.8 of the Administrative Code. The requirements are:

- Limiting the services to be in-home services, with the exception of routine transportation tasks.
- Having staff available to provide the homemaker services that it said it would provide at least five days per week. (*i.e.*, If a provider accepts a referral for a consumer, the provider needs to have the staff availability to serve that consumer.)
- Requiring all homemaker aides to successfully complete a homemaker aide training and competency evaluation program that lasts at least 20 hours.
- Maintaining an employee manual.
- Employing a nurse to supervise the homemaker aides.
- Verifying services (*i.e.*, records retention).

173-3-06.5 PERSONAL CARE SERVICE: The requirements are very similar to those of rule 173-3-06.4 of the Administrative Code for the homemaker service. They are also similar to those for the personal care services provided to consumers who are enrolled in the PASSPORT Program through rule 173-39-2.11 of the Administrative Code. The requirements are:

- Limiting the services to be in-home services, with the exception of routine transportation tasks.
- Having staff available to provide the personal care that it said it would provide at least five days per week. (*i.e.*, If a provider accepts a referral for a consumer, the provider needs to have the staff availability to serve that consumer.)
- Requiring all personal care aides (PCAs) to successfully complete a nurse aide training and competency evaluation program (NATCEP) that lasts at least 60 hours. (ODA has lessened the adverse impact of this requirement by no longer requiring previous job experience.)
- Maintaining an employee manual.
- Training PCA—in orientation training, additional training (as needed), and through continuing education.
- Employing a nurse to supervise the homemaker aides.
- Verifying services (*i.e.*, records retention).

c. Quantify the expected adverse impact from the regulation.
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.

Rules 173-3-06.2, 173-3-06.3, 173-3-06.4, and 173-3-06.5 of the Administrative Code regulate all providers that provide chore services; home-maintenance, home-modification, or home-repair services; homemaker services, or personal care services (respectively) when the providers furnish services to consumers who receive those services through their participation in the Alzheimer's Respite Program or Older Americans Act Programs.

Service	Total Number of Providers	Providers receiving Alzheimer's funding	Average Unit Cost
Personal Care	49	14	$ 17.42
Homemaker	53	7	$ 19.56
Chore	14	0	$ 32.02
Home Maintenance	36	0	$ 1,458.00

Regarding PCA qualifications, ODA is proposing in rule 173-3-06.5 of the Administrative Code to no longer requiring the provider to conduct a test to evaluate the competency of a would-be PCA if the NATCEP the would-be

PCA completed was operated by the provider. That would eliminate an old requirement to test the would-be PCA two times in a row.

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

In this rule package, ODA is not proposing to create any new adverse impacts for the four rules that comprise the package.

However, as previously stated, there are existing adverse impacts in the rules. These impacts are justifiable, as follows:

The four rules all require service verification, which is standard for any health insurance program—private or government. However, in this rule package, ODA amended rule language so that the rules would not require any *paperwork*. Estimates and other information may be delivered to the AAA electronically instead of in writing. Informing consumers of risks may be done orally instead of in writing.

The one occasion when ODA would require paperwork, is when planning to perform a chore service (*e.g.*, pest control) or home-maintenance, home-modification, or home-repair service. On such an occasion, ODA continues to require the *written* consent from the property owner before working on his or her home. (This would make sense whether the consumer was a renter or the property owner.) The requirement for written consent is a reasonable way to protect the provider, ODA's programs, and the consumer (if a renter) against the possibility of modifying people's homes against their will.

Requiring standard licensure, accreditation, certification, *etc.* to perform a job may satisfy laws stated elsewhere, but ensures that the staff who provide the services have proper training. In doing so, ODA does not intend to require higher qualifications than is necessary for staff. In fact, ODA reduced one of the more significant impacts of the current rules by removing the requirements for previous job experience for a person seeking to become a PCA.

Texas is widely considered to be a business-friendly state. Fortunately, Texas' rules generally make similar requirements for the same services when funded by the Older Americans Act. However, in the case of personal care, Texas's rules greatly exceed the adverse impact of Ohio's rules.

- **173-3-06.2 and 173-3-06.3:** 40 TAC 85.308, by comparison, only requires written authorization for what it calls "residential repair services" if the consumer is a renter. It seems wise to seek the written permission of the consumer who is a homeowner to provide the service in advance. However, Texas' rule requires the consumer to acknowledge, *in writing*, that the services were completed and requires the AAA to make an on-site confirmation of the same.

We can assume Texas' requirements for licensure/accreditation, permits (*i.e.*, construction permits), and inspections are not stated in that rule, but required elsewhere in state laws or local ordinances.

Texas's rule does not require Informing consumers and AAAs of health/safety risks, scheduling time to perform service that matches time that would minimize the risk to the consumer, or warranting work. That gives us the following balance sheet on regulatory differences:

OHIO	TEXAS
Obtaining written authorization from consumers who are homeowners.	Consumer must acknowledge completion of work in writing.
Informing consumers and AAAs of health/safety risks	AAA must perform on-site confirmation of completed work.
Scheduling work times when it would pose the minimal risk to the consumer.	
Warranting service.	

- **173-3-06.4:** 40 TAC 85.304 regulates Texas' homemaker services. Both Texas and Ohio allow for self-direction or consumer-directed homemaker services. Instead of allowing people to qualify as homemaker aides after successfully completing a 20-hour training, Texas' rule requires a year's job experience. Instead of requiring a nurse to supervise the homemaker aides, Texas' rule requires a nurse with three additional forms of training that could take 4 years to complete if performed consecutively. Ohio, on the other hand, requires providers to maintain an employee manual. Texas requires this for agencies that employ personal care aides, but agencies that employ homemaker aides.

  That gives us the following balance sheet on regulatory differences:

OHIO	TEXAS
Having staff available to provide the personal care that it said it would provide at least five days per week. (*i.e.*, If a provider accepts a referral for a consumer, the provider needs to have the staff availability to serve that consumer.)	*Prohibiting* a PCA from serving a person in their household.
Allowing people to qualify as homemaker aides if they successfully complete a training and competency evaluation program that lasts at least 20 hours.	Allowing people to qualify as homemaker aides only if they have previous experience doing so to a person 60+ years of age or who has a disability.
Employing a nurse to supervise the homemaker aides.	Employing a nurse to supervise the homemaker aides only if (1) the nurse has 2 years of full-time study in social

	or behavioral sciences at an accredited college or university, (2) 1 year of job experience supervising in a health care agency, and (3) experience in the housekeeping, home management, and meal-preparation industry.
Maintaining an employee manual.	

- **173-3-06.5:** 40 TAC 85.305 and 40 TAC Chapter 97 regulate what Texas calls "personal assistance services." Compared to Ohio, Texas limits the ways by which a person could qualify to be a PCA. Texas also has qualifications for those who want to become agency administrators. Texas also requires training and continuing education for those administrators. Texas prohibits PCAs from living with consumers (*i.e.*, a prohibition on allowing a PCA to serve a family member. Texas also requires retaining records on volunteer activity. And, to top it off, Texas requires the agency to be licensed, which includes paying a fee of $1,750. In a nutshell, Texas' DADS creates much more adverse impact for Texas' personal assistance providers than ODA does for Ohio's personal care providers.

  That gives us the following balance sheet on regulatory differences:

OHIO	TEXAS
Having staff available to provide the personal care that it said it would provide at least five days per week. (*i.e.*, If a provider accepts a referral for a consumer, the provider needs to have the staff availability to serve that consumer.)	Being licensed by the Texas Dept. of Aging and Disability Services (DADS) which includes a fee of $1,750 for the agency.
Allowing people to qualify as PCAs if they successfully complete a NATCEP that lasts at least 60 hours, which could be the Medicare NATCEP or a number of alternatives. No written approval is required from CMS, ODA, or any other authority to choose an alternative.	Allowing people to qualify as PCAs only if they successfully complete the Medicare NATCEP unless they have written approval *from CMS*.
	Allowing people to qualify as agency administrators only if they successfully complete at least 16 hours of training and fulfill continuing-education requirements.
	Prohibiting a PCA from serving a person in their household.
	Retaining records on volunteers.

Business Impact Analysis

Regulatory Flexibility

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

The rule does not treat businesses differently based upon their size.

17. 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?

Section 119.14 of the Revised Code establishes the exemption from penalties for first-time paperwork violations.

18. What resources are available to assist small businesses with compliance of the regulation?

The AAAs and ODA are available to help providers of any size with their questions about the statutes and rules. Providers may address their questions to the AAAs or to ODA, including to ODA's regulatory ombudsman at rules@age.ohio.gov.