

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

**Agency Name:** OHIO DEPARTMENT OF AGING

**Package Title:** OLDER AMERICANS ACT

**Rule Number:** 173-3-04, 173-3-05, 173-3-06, and 173-3-07

**Date:** November 6, 2017

**Rule Types:**

- 5-Year Review
- Rescinded
- New
- Amended
- No change

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.

### Regulatory Intent

#### 1. Please briefly describe the regulations in plain language.

*Please include the key provisions of the regulation as well as any proposed amendments.*

#### OVERVIEW

173-3-04, 173-3-05, 173-3-06, and 173-3-07 (these rules) regulate the Older Americans Act Program in Ohio. The rules do the following:

173-3-04 makes general requirements for AAA-provider agreements.

173-3-05 requires AAAs to follow prescribed standards when procuring for goods and services from providers.

173-3-06 requires every AAA-provider agreement to comply with standard federal and state requirements.

173-3-07 requires providers who have entered into AAA-provider agreements to collect voluntary contributions and cost sharing according to federal and state requirements. Both are voluntary and contribute towards the cost of goods and services they receive. In Ohio, both are also required.

#### SPECIFIC AMENDMENTS

After consulting with JCARR's attorney, ODA believes its references to federal rules in 173-3-04, 173-3-05, 173-3-06, and 173-3-07 are general references, not federal rules incorporated by reference. Providers must comply with the cited federal

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rules regardless of whether ODA cites the federal rule in 173-3-04, 173-3-05, 173-3-06, or 173-3-07. ODA is not requiring AAAs to follow a standard that would not exist had ODA not cited it in these rules. Therefore, ODA is not incorporating by reference.

After comprehensively reviewing these rules, ODA proposes to amend its approach to general references and make additional changes, as noted below:

- In the current version of **173-3-04**, ODA makes 5 general references to the federal rules to which AAA-provider agreements are already subject and cites specific versions of these rules as if the rule incorporated those rules by reference. Because the references direct readers to the federal rules regulating AAA-provider agreements, ODA now proposes to delete the citations of specific versions of the federal rules.
- In the current version of **173-3-05**, ODA makes general references to federal rules establishing procurement thresholds. ODA now proposes deleting the citations of specific versions of those rules which frees AAAs to use the current version of the federal rules which the federal government is likely to regularly update for inflation. This also involves no longer repeating the threshold amounts (e.g., “three thousand dollars”) in the rule.
- ODA also proposes the following amendments to **173-3-05**:
  - Replace “under” with “in” in (A).
  - Delete the quotation marks around “agreements” in (A)(1).
  - Delete unnecessary uses of “that” and “that are” in (B)(4).
  - Replace “verify that the providers are unable...” in (B)(4) with “document their inability...”.
  - Add a final sentence to (B)(4) to account for the possibility that providers unwilling to bid for an opportunity to provide goods or services may also be unwilling to submit emails or letters to the AAA to document their unwillingness to do so.
- In the current version of **173-3-06**, ODA requires every AAA-provider agreement to require compliance with 45 CFR 75.327 to 75.335, including Appendix II to 45 CFR Part 75. AAA-provider agreements would be subject to those federal rules even if ODA didn’t make helpful mention of them. Thus, they are general references. ODA now proposes deleting the citations of specific versions of those federal rules.
- ODA also proposes the following amendments to **173-3-06**:
  - Delete the quotation marks around “agreement” in (A).
  - Implement changes being made by HB49 (132<sup>nd</sup> GA) to section ORC §5101.61 by adding a sunrise provision requiring compliance with ORC §5101.61 through September 28, 2018 and with ORC §5101.63 on and after July 29, 2018.
- In the current version of **173-3-07**, ODA refers to a section of the Older Americans Act and a federal rule that requires voluntary contributions. Those laws apply even if ODA doesn’t refer to them. To eliminate the problem caused by dated references to federal standards that are likely to change annually, ODA proposes the following amendments:
  - Delete the citations of specific version of those laws, in the following ways:
  - Use “federal poverty guidelines” and “guideline” instead of “federal poverty level” and “level.”
  - Replace the definition of “federal poverty level” in (D) with a general reference after the first usage of “federal poverty guideline” in (B)(1), saying, “...which the United States department of health and human services establishes annually according to section 673(2) of the Omnibus Reconciliation Act of 1981, 95 Stat. 511, 42 U.S.C. 9902 and published on <https://aspe.hhs.gov/poverty-guidelines>.” This proposed amendment would identify the federal agency and federal authority requiring annual poverty guidelines to be published and identify the website on which they’re published.

**2. Please list the Ohio statutes authorizing the Agency to adopt these regulations.**

ODA's authority to adopt rules comes from ORC §§ [173.01](#) and [173.02](#).

ORC §[173.392](#) requires ODA to adopt rules for AAA-provider agreements.

**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.*

In general: ODA's authority to adopt rules to implement the Older Americans Act programs in Ohio comes from the following federal laws:

- §305(a)(1)(C) of the Older Americans Act Reauthorization Act of 2016, 79 Stat. 210, 42 USC 3001.
- 45 CFR 75.403.
- 45 CFR 1321.11.

[173-3-04](#), [173-3-05](#), and [173-3-06](#) implement the Uniform Administrative Requirements, Costs Principles, and Audit Requirements in [45 CFR Part 75](#) require federally-funded programs to use open and free competition when procuring for goods and services. Part of ODA's compliance with those federal rules requires all providers entering into AAA-provider agreements to win those agreements through open and free competition with other providers. (See [OAC173-3-05](#).) Through this process, each provider estimates its cost of doing business, puts the cost in a bid, then submits the bid to the AAA seeking a provider to win an AAA-provider agreement to administrate a home-delivered meals project paid with Older Americans Act funds. Providers who win a competition are paid according to what they bid. Therefore, if a provider estimates its adverse impact will increase, the provider will be paid for the increased impact by increasing the price in its bid. If a provider estimates its adverse impact will decrease, the provider may submit a lower-cost bid to increase its chances of winning the competition.

[173-3-07](#) implements §315 of the Older Americans Act.

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

The Older Americans Act authorizes ODA to adopt rules to implement Older Americans Act programs in Ohio. Therefore, ODA is not exceeding its federally-authorized scope of authority by adopting or amending [173-3-04](#), [173-3-05](#), [173-3-06](#), or [173-3-07](#).

**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 rule exists as part of a chapter of rules ODA adopted to implement the Older Americans Act Program for Ohio.

The rule also exists to comply with the state laws ODA listed in its response to question #2, especially ORC §[173.392](#) and to implement statewide, uniform standards for AAA-provider agreements in Ohio for goods and services paid, wholly or in part, with Older Americans Act funds.

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

ODA will monitor area agencies on aging (AAAs) to ensure AAA-provider agreements comply with this rule. ODA and AAAs monitor providers to ensure providers comply with the AAA-provider-agreement terms required by this rule.

**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 September 22, 2017, ODA emailed the following businesses and organizations to inform them of an opportunity to review these rules and other rules then provide ODA with recommendations for improving this rule and other rules:

- **4 Providers:**
  - Alzheimer's and Dementia Care Services.
  - Home Care by Black Stone.
  - National Church Residences (NCR).
  - Senior Resource Connection.
  
- **7 Provider Associations:**
  - LeadingAge Ohio.
  - Ohio Academy of Senior Health Sciences, Inc.
  - Ohio Assisted Living Association.
  - Ohio Association of Medical Equipment Services.
  - Ohio Council for Home Care and Hospice.
  - Ohio Health Care Association.
  - Ohio Jewish Communities.
  
- **1 PASSPORT Administrative Agency:** Catholic Social Services of the Miami Valley.
  
- **1 Association Representing Many PASSPORT Administrative Agencies:** Ohio Association of Area Agencies on Aging (O4A).

ODA requested responding before September 30, but later extended the deadline to October 2.

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

In response to ODA's email invitations on September 22, 2017 to review, and comment upon, this and other rules, and ODA received 4 comments from 4 stakeholders. ODA lists those comments, and ODA's responses, in the table below.

	COMMENTS	ODA'S RESPONSES
1	<p><b>IN GENERAL</b> LeadingAge Ohio supports ODA's proposal to delete dated references and ensure that the most current version of the federal rule applies.</p> <p><i>LeadingAge Ohio</i></p>	Thank you.
2	<p><b>IN GENERAL</b> I agree with this [regarding not dating general references] for all the rules.</p> <p><i>Catholic Social Services of the Miami Valley</i></p>	Thank you.

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	COMMENTS	ODA'S RESPONSES
3	<p><b>IN GENERAL</b>                      Similar to comments [for another rule], the more that rules can be matched and cross referenced (assuming they are still relevant) the better for everyone. If a provider is expected to follow a rule and will be monitored for compliance to it, it is helpful to have it reference in code and eliminate any language that is no longer used.</p> <p><i>Alzheimer's and Dementia Care Services</i></p>	<p>Thank you.</p>
4	<p><b>173-3-07</b>                      This is confusing to providers. There is a voluntary contribution requirement for all services and a cost share for so e however no one can be denied based on ability to pay cost share. Could the voluntary contribution just cover those services that are exempt from cost share and then cost share would cover the rest. Providers have difficulty in differentiating between the two.</p> <p><i>O4A</i></p>	<p>§315(b)(1) of the Older Americans Act <i>requires</i> allowing consumers to make voluntary contributions for all services. Therefore, ODA cannot grant this request.</p>

**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 is not proposing to amend the rule based upon scientific data.

**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?**

In [45 CFR Part 75](#), the U.S. Dept. of Health and Human Services established the Uniform Administrative Requirements, Costs Principles, and Audit Requirements. Older Americans Act funds are subject to 45 CFR Part 75. Therefore, ODA did not consider alternatives to these requirements.

Additionally, §315(b)(1) requires allowing consumers to make voluntary contributions for all services. Therefore, ODA did not consider alternatives to voluntary contributions.

**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.***

Although the rule itself does not contain performance-based requirements, it is part of a system that awards AAA-provider agreements to providers based upon competitive bidding processes. [45 CFR Part 75](#) requires federally-funded programs to use open and free competition when procuring for goods and services. This is why ODA requires open and free competition in [173-3-05](#).

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

ORC [§173.392](#) authorizes only ODA (*i.e.*, no other state agency) to develop rules for contracts and grants (*i.e.*, AAA-provider agreements) between ODA's designees (e.g., AAAs) and providers for the provision of goods and services to consumers through ODA-administered programs not using ODA provider certification under ORC [§173.391](#). Examples are programs purchasing goods and services paid, in whole or in part, with Older Americans Act 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.**

Before the amended rule takes effect, ODA will post it in ODA’s [Online Rules Library](#). ODA will also send an email to subscribers of our rule-notification service to feature the rule. ODA leadership will also notify the legislators, AAAs, providers, and constituents ODA mentioned in its response to question #7.

Through regular monitoring activities, ODA will monitor area agencies on aging (AAAs) to ensure its AAA-provider agreements comply with this rule. ODA and AAAs monitor providers to ensure providers comply with the AAA-provider-agreement terms required by this rule.

**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;**

Thus, the impacted business community is both of the following:

- Every provider (whether for-profit or non-profit) who enters into an AAA-provider agreement in Ohio.
- Every provider (whether for-profit or non-profit) who bids on the opportunity to win a AAA provider agreement in Ohio, but does not win the competition.

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

Providers are directly affected by AAA-provider agreements. 173-3-04, 173-3-05, 173-3-06, and 173-3-07 regulate those agreements. In doing so, the rules require AAAs to comply with federal law on competitive selection of providers. An inherent adverse impact of competition is that one or more bidders for an AAA-provider agreement may lose the competition.

Another adverse impact on the business community is the administrative effort to compile a formal bid when bidding on an AAA’s request for proposals.

**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.*

ODA anticipates its proposal to delete citations of specific versions of federal rules generally referenced<sup>1</sup> in these rules will have 3 positive effects:

- It will keep the rules in step with federal standards that may change annually (e.g., poverty level). The current version of the rule forces AAAs to use the version of federal rules last cited in the current rule, even if the federal standard changes annually.
- AAAs will no longer be required to retain access to old federal standards to comply with the rule.

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<sup>1</sup> ODA worked with JCARR’s attorney to distinguish between general references to federal laws (e.g., to federal laws in which an entity is required to comply even if not mentioned in ODA’s rule) and federal laws incorporated by reference (e.g., a standard an entity would not otherwise be required to follow or a definition imported into ODA’s rule).

- AAAs may take advantage of the newer, lower thresholds on competitive bidding<sup>2</sup> and procure for goods and services through either the small or micro purchase options in 45 CFR 75.329.

The 3<sup>rd</sup> bullet point above would, in turn, reduce the adverse impact on the business community when submitting bids because small and micro-purchase bids aren't formal sealed bids, which require more paperwork.

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

After ODA adopts the proposed amendments, the rule will have a lower adverse impact than the current rule. The greater flexibility may reduce AAAs' operational costs and may allow providers to submit bids during free and open competition without compiling formal bids for sealed-bid procurement.

### **Regulatory Flexibility**

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

Every provider entering into an AAA-provider agreement is likely to be a for-profit or non-profit business of less than 500 full-time employees with annual gross sales of less than \$6 million; therefore, according to ORC [§107.63](#), every provider is likely to be a small business. Nevertheless, ODA does not discriminate between providers based upon the size of their business or organization.

### **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?**

ODA complies with ORC [§119.14](#), which requires exempting small businesses, which for this rule may mean "all providers," from penalties for first-time paperwork violations.

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

AAAs are available to help providers of all sizes with questions about this rule. Each AAA works closely with providers to ensure they provide meals to consumers according to the rule's requirements.

ODA is available to help AAAs, providers of all sizes, and any other person with questions about this rule. AAAs, providers, and others may direct questions to ODA's Elder Connections Division or to [Tom Simmons](#), ODA's policy development manager.

Additionally, ODA maintains an [Online Rules Library](#) to help providers find rules regulating them. Providers may access the library 24 hours per day, 365 days per year.

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<sup>2</sup> The federal simplified acquisition threshold and the federal micro-purchase threshold.

173-3-04

**Older Americans Act: general requirements for AAA-provider agreements.**

(A) Authority: Each AAA shall enter into AAA-provider agreements ("agreements") to develop and implement a comprehensive and coordinated system of services for consumers and their caregivers. Each AAA is ultimately responsible to ODA for ensuring that all state and federal funds received from ODA are used in a manner that complies with this chapter and the uniform administrative requirements, cost principles, and audit requirements for federal awards under 45 C.F.R. Part 75 (~~December 26, 2014~~).

(B) Purchase-of-service agreements:

- (1) The AAA shall only enter into purchase-of-service agreements, unless the requirements of paragraph (C) of this rule are met.
- (2) As used in this rule, "purchase-of-service agreements" means an agreement through which a provider is paid, wholly or in part, with Older Americans Act funds a pre-determined unit rate for only the goods or services it actually provides in accordance with the agreement.

(C) Time-and-materials agreements:

- (1) The AAA is not required to obtain written permission from ODA before entering into a time-and-materials agreement if the agreement only pertains to the provision of one or more of the following: a chore service; client finding; home maintenance, modification, or repair; information and assistance (referrals); mass outreach; socialization; telephoning; visiting; or goods or services provided through the national family caregiver support program.
- (2) The AAA shall obtain written permission (hard copy or electronic) from ODA before entering into a time-and-materials agreement if the agreement pertains to the provision of a good or service ODA did not list in paragraph (C)(1) of this rule.
- (3) If an AAA enters into a time-and-materials agreement, in the agreement, the AAA shall place a limit on the dollar amount of the AAA's obligation under the agreement, and the provider shall submit evidence to verify its costs before the AAA pays the provider. Only expenses that are reasonable under 45 C.F.R. Part 75 (~~December 26, 2014~~) are allowable for payment using Older Americans Act funds. The AAA shall monitor providers with whom it has entered into time-and-materials agreements to ensure that the providers' expenses do not exceed the limits that the AAA established in the agreements.



- (4) As used in this rule, "time-and-materials agreement" means a agreement through which a provider is paid, in whole or in part, with Older Americans Act funds for the goods and services it provides to consumers based upon their actual costs (i.e., time and materials) to the provider and not upon a pre-determined unit rate.
- (D) Retroactive: The AAA shall not pay a provider for any goods or services unless a valid agreement is in place before the provider begins to provide the goods or services. No agreement is valid unless, and until, it is signed by authorized representatives from both the AAA and the provider.
- (E) Ineligible providers: The AAA shall comply with 2 C.F.R. Part 180 (~~December 26, 2014~~), as supplemented by 2 C.F.R. Part 376 (~~December 26, 2014~~), which prohibits the AAA from entering into an agreement with any provider the SAM database lists as excluded or disqualified from agreements involving federal funds. As used in this paragraph, "SAM database" means the general service administration's "System for Award Management," which is available to the general public for free on [www.sam.gov](http://www.sam.gov).
- (F) Not earning funds: An AAA shall only make a portion of the funds awarded to a provider available for use by one or more other existing providers without first going through one of the competitive procurement processes under 45 C.F.R. 75.329 (~~December 26, 2014~~) if, in the agreement, the AAA stated that it may redistribute funds if a provider is not, in a timely manner, earning the funds it was awarded and if the AAA determines that the provider is not, in a timely manner earning the funds it was awarded in an existing agreement. A provider may appeal an AAA's decision to redistribute funds under rule 173-3-09 of the Administrative Code.

173-3-05

**Older Americans Act: procurement standards.**

(A) Federal requirements: When an AAA procures goods or services paid, in whole or in part, with Older Americans Act funds, the AAA shall comply with the requirements ~~under~~ in 45 C.F.R. 75.327 to 75.335 (~~December 26, 2014~~).

(1) 48 C.F.R. Subpart 2.1 (~~December 26, 2014~~) establishes the federal micro-purchase threshold ~~at three thousand dollars, except as otherwise discussed in Subpart 2.1. 45 C.F.R. 75.329 prohibits~~ An an AAA ~~shall not use from using~~ micro-purchase procurement for AAA-provider agreements ("agreements") worth more than ~~three thousand dollars~~ the federal micro-purchase threshold.

(2) 2 C.F.R. Part 300 (~~December 26, 2014~~) establishes the federal simplified acquisition threshold ~~at one hundred fifty thousand dollars. 45 C.F.R. 75.329 prohibits~~ An an AAA ~~shall not use from using~~ small-purchase procurement for agreements worth more than ~~one hundred fifty thousand dollars~~ the federal simplified acquisition threshold.

(B) Additional state requirements: If an AAA submits a written request to ODA seeking permission to use a non-competitive procurement process, the AAA shall comply with paragraph (A) of this rule and the following:

(1) The AAA shall submit its written request to ODA no fewer than thirty days before the AAA needs a decision from ODA.

(2) The AAA's written request shall not consider a public exigency or emergency to be a basis for non-competitive procurement if the AAA created the exigency or emergency.

(3) The AAA's request shall provide ODA with evidence to verify that the circumstances in 45 C.F.R. 75.329(f) (~~December 26, 2014~~) exist.

(4) If the AAA wants to procure goods or services from a single source, the AAA's request shall verify that the circumstances in 45 C.F.R. 75.329(f)(1) (~~December 26, 2014~~) exist by including the names of all known providers of the goods or services ~~that are~~ located in, or willing to do business in, the planning and service area. The AAA's request shall also include emails or letters from each of those providers to ~~verify that the providers are unable~~ document their inability to provide the goods or services ~~that~~ the AAA wants to procure. If the providers are unwilling to submit emails or letters to the AAA, the AAA shall document its efforts to obtain information from the providers.

173-3-06

**Older Americans Act: requirements to include in every AAA-provider agreement.**

(A) Federal requirements: An AAA shall comply with the following federal requirements when entering into an AAA-provider agreement ("agreement") for goods or services paid, in whole or in part, with Older Americans Act funds, the AAA shall comply with the following:

(1) Uniform administrative requirements, cost principles, and audit requirements for federal awards: The agreement shall comply with 45 C.F.R. 75.327 to 75.335 (~~December 26, 2014~~), including Appendix II to 45 C.F.R.; Part 75 (~~December 26, 2014~~).

(2) Targeting:

(a) In the agreement, the AAA shall list the focal points in the service area covered by the agreement that the AAA designated under Section 306(a)(3)(B) of the Older Americans Act.

(b) In the agreement, the AAA shall require the following:

(i) The provider shall specify how it intends satisfy the need for services by consumers with the greatest economic and social needs with particular attention to consumers who are low-income, who are low-income minorities, who have limited proficiency in the English language, who reside in rural areas, and who are at risk for institutional placement.

(ii) The provider shall meet the AAA's specific objectives for giving services to specific consumer groups.

(3) Additional federal laws: The agreement shall comply with the Older Americans Act and any additional federal law governing, or federal rule regulating, the agreement.

(B) Additional state requirements: Every agreement for goods or services paid, in whole or in part, with Older Americans Act funds shall comply with the following:

(1) Program and funding identification:

(a) In the agreement, the AAA shall identify the names of the federal and state programs that are sources for the Older Americans Act funding being used for the procurement of the goods and services being

procured through the agreement.

(b) In the agreement, the AAA shall contain the following statement:

"This agreement is for the provision of goods or services paid with federal funds that the United States Department of Health and Human Services appropriated to the Ohio Department of Aging (ODA). ODA, in turn, allocated the federal funds to the area agency on aging. The agreement is subject to federal laws and rules, state laws, and ODA's rules."

(2) Additional state laws:

(a) The agreement shall comply with any rule in Chapter 173-3 or 173-4 of the Administrative Code regulating agreements in general or the provision of specific goods or services being procured through the agreement.

(b) The agreement shall comply with any additional state law governing, or state rule regulating agreements in general or the provision of specific goods or services being procured through the agreement.

(3) Safety:

(a) Disasters: In the agreement, the AAA shall require the provider to cooperate with the AAA and ODA to assess disaster impact upon consumers and to coordinate with public and private resources in the field of aging to assist consumers whenever the president of the United States declares that the provider's service area is a disaster area.

(b) Significant changes: If the provider provides goods and services to a consumer that the AAA case manages through a care-coordination program, in the agreement, the AAA shall require the provider to notify the AAA of any significant change that may necessitate a reassessment the case-managed consumer's need for goods and services no later than one day after the provider is aware of a repeated refusal to receive goods or services; changes in the consumer's physical, mental, or emotional status; documented changes in the consumer's environmental conditions; or, other significant, documented changes to the consumer's health and safety. If "one day after" falls on a weekend or legal holiday, as defined in section 1.14 of the Revised Code, the deadline is extended to the day immediately following "one day after" that is not on a

weekend or legal holiday.

- (c) APS: In the agreement, the AAA shall require the provider to immediately report any reasonable cause to believe a consumer is the victim of abuse, neglect, or exploitation to the local adult protective services program in accordance with section 5101.61 of the Revised Code, [until September 28, 2018, then with section 5101.63 of the Revised Code on or after September 29, 2018.](#)
  - (d) Terminating the provision of goods and services: If the provider provides goods or services to a consumer that the AAA case manages through a care-coordination program, the agreement shall require the provider to notify the AAA and the case-managed consumer in writing of the anticipated last day of goods or services to the case-managed consumer no later than thirty days before the anticipated last day of goods or services, unless the reason for discontinuing the goods or services is the hospitalization, institutionalization, or death of the consumer; serious risk to the health or safety of the provider; the consumer's decision to discontinue the goods or services; or a similar reason why the provider is unable to notify the AAA thirty days before the anticipated last day of goods or services. The provider shall also notify the case-managed consumer how he or she may reach a long-term care ombudsman. If the thirtieth day falls on a weekend or legal holiday, as defined in section 1.14 of the Revised Code, the deadline is extended to the day immediately after the thirtieth day that is not on a weekend or a legal holiday.
- (4) Confidentiality: In the agreement, the AAA shall include any federal or state confidentiality requirements and also the following requirements:
- (a) The provider shall not disclose information concerning a consumer unless the provider obtains and retains the consumer's written, informed consent to do so and the purpose for the disclosure is associated with the provider's provision of goods and services to the consumer.
  - (b) The provider shall not disclose information concerning a consumer for a purpose unassociated with the provider's provision of goods and services even if the provider obtains and retains the consumer's written, informed consent to do so.
  - (c) If the provider retains consumers' records electronically, the provider shall store the records in a password-protected file. If the provider does not

retain records electronically, the provider shall store consumers' records in a designated, locked storage space.

(5) Provider qualifications: In the agreement, the AAA shall include the following requirements:

(a) When hiring an applicant for, or retaining an employee in, a paid direct-care position, the provider shall review databases and check criminal records according to section 173.38 of the Revised Code and Chapter 173-9 of the Administrative Code, unless the provider is self-employed. If the provider is self-employed, the AAA shall review databases and check criminal records of the provider according to section 173.381 of the Revised Code and Chapter 173-9 of the Administrative Code. Division (B)(1) of section 109.572 of the Revised Code requires the bureau of criminal identification and investigation to include sealed criminal records in its criminal records reports for criminal records checks conducted under sections 173.38 and 173.381 of the Revised Code.

(b) If a federal, state, or local government regulatory authority prohibits the provider from providing the goods or services required by the agreement, the provider shall notify the AAA of the disciplinary action and the AAA shall, simultaneous to the date of the regulatory authority's disciplinary action, deem the provider to be ineligible to be paid with Older Americans Act funds for providing goods or services to consumers.

(6) Sub-contracting: In the agreement, the AAA shall prohibit the provider from sub-contracting any of its duties under the agreement to another provider unless the provider obtains authorization from the AAA before sub-contracting.

(7) Modification:

(a) In the agreement, the AAA shall describe the grounds (and the process) for modifying the agreement.

(b) In the agreement, the AAA shall state that any amendments to the laws, rules, or regulations the AAA cites in the agreement will result in a correlative modification to the agreement without the necessity of executing a written amendment.

(8) Renewable and multi-year: If the agreement is renewable or covers a multi-year term, the agreement shall comply with rule 173-3-05.1 of the Administrative Code.

(9) Service verification and records retention:

(a) In no agreement, shall an AAA prohibit a provider from using electronic systems to verify the provision of goods or services or to retain records.

(b) In the agreement, the AAA shall require providers to retain any record relating to costs, goods and services provided, supporting documentation for payment of goods and services provided, and all deliverables until the last of the following dates:

(i) Three years after the date the provider receives payment for the goods or services.

(ii) The date on which ODA, the AAA, or a duly-authorized law enforcement official concludes monitoring the records and any findings are finally settled.

(iii) The date on which the auditor of the state of Ohio, the inspector general, or a duly-authorized law enforcement official concludes an audit of the records and any findings are finally settled.

(10) Payment:

(a) In the agreement, the AAA shall describe how it shall pay the provider, including the amount and payment method.

(b) In the agreement, the AAA shall include the following requirements:

(i) The provider shall comply with rule 173-3-07 of the Administrative Code.

(ii) The provider shall return any Older Americans Act funds payments for its goods or services, if the provider's provision of the goods or services did not comply with the Administrative Code, the Revised Code, or any other law.

(11) Administrative hearings:

- (a) In the agreement, the AAA shall state that the provider may appeal a decision the AAA takes against the provider according to rule 173-3-09 of the Administrative Code.
  - (b) If the AAA intends to redistribute unearned funds to other providers, in the agreement, the AAA shall state that it may redistribute funds if a provider is not, in a timely manner, earning the funds it was awarded and if the AAA determines the provider is not, in a timely manner earning the funds it was awarded in the agreement.
- (C) An AAA may add requirements into an agreement in addition to the requirements in paragraphs (A) and (B) of this rule if the additional requirements do not conflict with any federal or state law.



173-3-07

**Older Americans Act: consumer contributions.**

(A) Introduction: All goods or services paid, in whole or in part, with Older Americans Act funds are subject to voluntary contributions. All services paid, in whole or in part, with Older Americans Act funds are subject to cost sharing, except for goods or services excluded by paragraph (C)(1) of this rule.

(B) Voluntary contributions:

- (1) Each provider shall allow consumers to contribute towards the provision of goods or services paid, in whole or in part, with Older Americans Act funds, pursuant to section 315(b)(1) of the Older Americans Act and 45 C.F.R. 1321.67(a)(1) ~~(October 1, 2015 edition)~~. The provider may solicit consumers to contribute toward the cost of the goods and services they receive and shall encourage any consumer to contribute if the consumer's self-declared income is at, or above, one hundred eighty-five per cent of the federal poverty ~~level~~ guidelines, which the United States department of health and human services establishes annually according to section 673(2) of the Omnibus Reconciliation Act of 1981, 95 Stat. 511, 42 U.S.C. 9902 and publishes on <https://aspe.hhs.gov/poverty-guidelines>.
- (2) The provider shall clearly inform each consumer that contributions are purely voluntary.
- (3) The provider shall protect the privacy of each consumer with respect to his or her contribution.
- (4) The provider shall safeguard and account for all voluntary contributions.
- (5) The provider may develop a suggested contributions schedule for voluntary contributions according to 45 C.F.R. 1321.67(c) ~~(October 1, 2015 edition)~~.
- (6) The provider shall use collected voluntary contributions to expand the goods or services for which consumers contributed and supplement (not supplant) Older Americans Act funds for those goods or services.

(C) Cost sharing:

- (1) All good and services paid, in whole or in part, with Older Americans Act funds are subject to cost sharing, except for the following goods and services:
  - (a) Information and assistance, outreach, benefits counseling, case management, disease prevention, health promotion, or volunteer

placement.

- (b) Education, training, or a support group provided through the national family caregiver support program.
- (c) Congregate and home-delivered meals.
- (d) Ombudsman, elder abuse prevention, legal assistance, or another consumer-protection service.
- (e) Transportation, although the AAA may apply to ODA for a waiver of this exemption if the transportation is coordinated with other services and is paid, in whole or in part, with Older Americans Act funds.

(2) Each AAA shall implement and administer a cost-sharing policy that includes all of the following:

- (a) The policy shall include the sliding-fee schedule below, which determines the percentage of the actual (or partial) contracted cost of a unit of a good or a service provided that the AAA shall suggest that a consumer pay based upon the consumer's individual income as a percentage of the federal poverty ~~level~~ [guideline](#). Under no circumstances shall an AAA permit or require a consumer to participate in cost sharing when the consumer's income ~~level~~ is below one hundred fifty per cent of the federal poverty ~~level~~ [guideline](#).

Sliding-fee Schedule

INCOME <del>LEVEL</del>	SUGGESTED COST SHARE
149% and below	0%
150-174%	10%
175-199%	20%
200-224%	30%
225-249%	40%
250-274%	50%
275-299%	60%

300-324%	70%
325-349%	80%
350-374%	90%
375% and above	100%

- (b) The policy shall include a requirement to determine the consumer's income solely by the consumer's self-declaration of income with no requirement for verification, and no consideration of the consumer's assets, savings, or other property.
- (c) The policy shall include a procedure for collecting cost-sharing payments from consumers, including from consumers receiving consumer-directed services.
- (d) The policy shall include a requirement to widely distribute written materials to consumers that describe the requirements for cost sharing, the services subject to cost sharing, the procedure for cost sharing, and the sliding-fee schedule published in this rule. The written materials shall also state that a provider shall not deny any goods or services paid, in whole or in part, by Older Americans Act funds if the consumer fails to make a cost sharing payment towards those goods or services.
- (e) The policy shall include a requirement to provide a receipt to a consumer or caregiver who makes a payment.
- (f) The policy shall include a procedure for safeguarding and accounting for all cost-sharing funds collected.
- (g) The policy shall include a requirement to retain records of all cost-sharing funds collected.
- (h) The policy shall include a requirement to keep the consumer's declaration of income (or non-declaration of income) and cost-sharing payment history confidential.
- (i) The policy shall include a requirement to use the funds collected from cost sharing to expand the capacity to provide the service for which the funds were given, unless the funds are used to expand the pool of funds from which the care-coordinated services are paid.

- (3) The AAA may delegate the administration of its cost-sharing policy to providers with whom it enters into an AAA-provider agreement under rule 173-3-06 of the Administrative Code.
  - (4) The AAA may request a waiver from paragraph (C)(3) of this rule to implement and administer a cost-sharing policy. ODA shall approve the request if the AAA demonstrates to ODA, by a preponderance of the evidence, one or more of the following:
    - (a) At least eighty per cent of the consumers in the PSA have incomes below one hundred fifty per cent of the federal poverty level.
    - (b) Cost sharing generates fewer funds in the PSA than the funds required to cover its annual, ongoing administrative expenses.
    - (c) A waiver is necessary in order for the services normally subject to this rule to be coordinated with other service systems.
- ~~(D) Definition for this rule: "Federal poverty level" means the income level represented by the poverty guidelines as revised annually by the United States department of health and human services in accordance with section 673(2) of the "Omnibus Reconciliation Act of 1981," 95 Stat. 511, 42 U.S.C. 9902, as was in effect on January 25, 2016.~~