Ohio | Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: OHIO DEPARTMENT OF AGING

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Regulation/Package Title (a general description of the rules' substantive content):
OLDER AMERICANS ACT: HOME MAINTENANCE AND CHORES + HOME MODIFICATION
These rules establish the required content for AAA-provider agreements between AAAs and providers of home maintenance and chores or home modification.

Rule Number(s): 173-3-04, 173-3-06.2, and 173-3-06.3

Date of Submission for CSI Review: September 20,2019, Revised October 15, 2019 (revision on *pg.* 9)

Public Comment Period End Date: October 3, 2019 at 11:59PM.

Rule Type/Number of Rules:

☑ **New/** 2 **rules**
173-3-06.2 and 173-3-06.3

☑ **Amended/** 1 **rules (FYR?** ☑**)**
173-3-04

☐ **No Change/** 0 **rules (FYR?** ☐**)**

☑ **Rescinded/** 2 **rules (FYR?** ☑**)**
173-3-06.2 and 173-3-06.3

The Common-Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

   Which adverse impact(s) to businesses has the agency determined the rule(s) create?

   Please review the next page.

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The rule(s):

☐ **a. Require a license, permit, or any other prior authorization to engage in or operate a line of business.**

☐ **b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**

☑ **c. Requires specific expenditures or the report of information as a condition of compliance.**

☐ **d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

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

Overview

Providers voluntarily bid, through open and free competition[1] for AAA-provider agreements, which are agreements between area agencies on aging (AAAs), which are ODA's designees, and providers of home and community-based services when paid, in whole or in part, by Older Americans Act funds. 173-3-06.2 currently regulates AAA-provider agreements for chores and 173-3-06.3 currently regulates AAA-provider agreements for the home modification, maintenance, or repair to consumers' homes.

ODA proposes to rescind the current versions of 173-3-06.2 and 173-3-06.3 and adopt new rules of the same numbers in their place. ODA also proposes to amend references to "chore service" and "home maintenance, modification, or repair" in 173-3-04.

This rule package will neither increase nor decrease the current adverse impact upon providers.

Specific Amendments

Titles

An analysis of ODA's website traffic revealed that most views of ODA's rules are the result of internet searches. Therefore, ODA proposes to add "Older Americans Act" to the beginning the rule titles for 173-3-06.2 and 173-3-06.3. This will help the public to more easily find the correct rules when performing internet searches.

R.C. §173.392

ODA proposes for these rules to regulate the AAA-providers agreements instead of directly regulating providers, which will allow the rules to more closely comply with R.C. §173.392. This will involve minor changes and will neither increase nor decrease the number of requirements upon AAAs or providers.

Taxonomy

ODA proposes to reclassify which services are regulated by each rule. Originally, ODA's service taxonomy for the Older Americans Act Program classified two services as "chore maintenance" and "home modification." When ODA adopted rules for ODA-certified providers in 2006, the service taxonomy classified services as "chore services" and "minor home maintenance, modification, and repair services." Because many providers operate in both the Older Americans Act Program (which doesn't require ODA-certification) and the PASSPORT Program (which requires ODA-certification), ODA wanted the

[1] See 173-3-04 and 173-3-05.

taxonomy to be the same. Therefore, when ODA adopted rules for the Older Americans Act Program in 2009, the service taxonomy of which classified services as "chore services" and "home maintenance, modification, and repair."

Now, ODA proposes to adopt new rules to reclassify these services for both the Older Americans Act Program and for ODA-provider certification, resulting in "home maintenance and chores" in 173-3-06.2 and "home modification" in 173-3-06.3. For the Older Americans Act Program, this reclassification will align with the taxonomy the U.S. Dept. of Health and Human Services (HHS) uses in the National Aging Program Information System (NAPIS).

This also involves amending the references to "chore services" and "home maintenance, modification, or repair" in 173-3-04.

Service Authorization

173-3-06.3 requires AAA-provider agreements to require providers to obtain the AAA's approval before beginning a home-modification job regardless of the following scenarios:

- Whether the AAA enrolls, or does not enroll, consumers into a care-coordination program (*i.e.*, case management).[2]
- Whether the AAA uses a competitive bidding process to award an AAA-provider agreement for each job or for one provider to provide every job in a region over the period of the agreement.

Because the language in the current rule appears to work for each scenario, ODA proposes to retain this language in the rule.

Permits and Inspections

In 173-3-06.3, ODA proposes to continue to require each AAA-provider agreement to require providers to obtain permits if a federal, state, or local law requires them.

Additionally, ODA proposes to require each AAA-provider agreement to require providers to obtain pre-job inspections if a federal, state, or local law requires them.

Additionally, ODA proposes to require each AAA-provider agreement to require providers to obtain permits and pre-inspections if a homeowners' association with jurisdiction over the consumer's home requires them.

Consolidation

ODA proposes to combine into one requirement the requirements in 173-3-06.2 and 173-3-06.3 to inform the consumer of health or safety risks and to schedule the job for a time that minimizes those risks.

Records Retention

ODA proposes to delete the requirements to retain records from both rules because they duplicate the requirement on records retention for every AAA-provider agreement in 173-3-06.

Reporting

ODA proposes to require each AAA-provider agreement to highlight the federal requirement in 45 C.F.R. 1321.65 for providers to report to AAAs.

Subcontractors

ODA proposes to delete language in 173-3-06.3 on subcontractors because it conflicts with requirements to seek AAA approval to subcontract in 173-3-06.

Terminology

ODA proposes the following changes throughout the rules:

- "Chore service" → "Home maintenance and chores" (in 173-3-04 and 173-3-06.2)
- "Home maintenance, modification or repair" → "home modification" (in 173-3-06.3)

[2] A care coordination program allows consumers to choose a provider from a list of pre-qualified providers.

- "Goods and services" → "services" (in 173-3-04).
- "Mandatory clauses" → "requirements for every provider" (in 173-3-06.2 and 173-3-06.3).
- "Furnish" and some occurrences of "perform" → "provide" (in 173-3-06.2 and 173-3-06.3).
- "Residence" → "home" (in 173-3-06.3).

Unit of Service
In the current version of 173-3-06.2, ODA defines a unit of chores as 1 job. Because the federal Administration on Community Living requires reporting in units of hours, ODA proposes to require the service to be reported in hours.

Incorporation by Reference
ODA proposes to update citations to the Code of Federal Regulations in these rules.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

R.C. §§ 173.01, 173.02, and 173.392.

4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?
If yes, please briefly explain the source and substance of the federal requirement.

42 USC 3025 says ODA is "primarily responsible" for Older Americans Act policy development in Ohio and 45 CFR 1321.11 requires ODA to "develop policies governing all aspects of [Older Americans Act] programs."

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

The rule exists to implement the state laws ODA listed in its response to #2, which require ODA to establish the standards for AAA-provider agreements, and the federal law and federal regulations ODA listed in its response to #3, which require ODA to develop policies for all aspects of the Older Americans Act programs.

6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

These rules ensure necessary safeguards are in place to protect the health and safety of consumers receiving services paid with Older Americans Act funds.

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

To ensure compliance fostering the health and safety of consumers receiving services paid with Older Americans Act funds and compliance with monitoring (*i.e.*, auditing) requirements under 45 CFR Part 75, Subpart F (1) ODA regularly monitors AAAs for compliance with these rules and (2) AAAs regularly monitor providers for their compliance with AAA-provider agreements. The rules are judged as being successful when (1) ODA finds few violations in AAA-provider agreements and (2) AAAs find few violations from AAA-provider agreements.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.
If applicable, please include the date and medium by which the stakeholders were initially contacted.

In February 2018, ODA surveyed each each AAA on whether it bid for (1) each job of chores or home modification or (2) a regional provider who provides every job of chores or home modification over the period of the AAA-provider agreement. Overall, AAAs 2, 3, 5, 6, 10B, and 11 responded. On March 13-14, 2019, ODA followed-up on this survey to ask, if the AAA uses (1) above, does it also provide these services through a care coordination program; and, if the AAA uses (2) above does it also require providers to contact the AAA for approval of each job (*e.g.*, cost estimate), as the rules require.

On August 23, 2018, ODA emailed each AAA and each provider[3] for whom ODA had an email address asking for their suggestions to improve these rules.

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

Six AAAs responded to ODA's February 2018 survey. Three AAAs indicated they award an AAA-provider agreement to one provider to provide every job in a region over the period of the agreement. Two AAAs indicated they award an AAA-provider agreement for each job. One AAA indicated that it offered both options.

One AAA and one provider responded to ODA's August 23, 2018 email regarding these rules.

- AAA5 recommended replacing "mandatory clauses" with "agreement provisions." ODA emailed AAA5 on September 20, 2019 to indicate that its effort to use language that more closely follows R.C. §173.392 will resolve this.

- AAA5 recommended establishing a threshold under which providers identifying on additional jobs to do in a consumer's home while providing a job could proceed on that job, and expect to be paid with Older Americans Act funds, without obtaining any pre-authorization from the AAA. On September 20, 2019, ODA emailed AAA5 to say if such a threshold would incentivize providers to routinely find additional jobs in a consumer's home, which would deplete the limited funds available for other consumers. Additionally, ODA does not want providers to search through consumers' homes for matters unrelated to the job the AAA authorized them to complete.

- For 173-3-06.2, AAA5 correctly noted that 5160-44-12 only allows the PASSPORT Program to pay ODA-certified providers for *non-routine* yard maintenance and snow removal while 173-3-06.2 allows for Older Americans Act funds to pay for seasonal yard maintenance and snow removal. On September 20, 2019, ODA emailed AAA5 to confirm their observations.

- For 173-3-06.2, AAA5 noted that replacing storm windows seems to be classified as home maintenance and not chores. On September 20, 2019, ODA emailed AAA5 to indicate that its proposal to combine home maintenance and chores into 173-3-06.2, this should no longer be a concern.

[3] "Each provider" means every provider who signed a currently-effective AAA-provider agreement to provide either chores or home maintenance, modification, or repair.

- WSOS Community Action Commission (WSOS) said the limited Older Americans Act funds available for home maintenance and chores and home modification does not make providing those services cost-effective for providers. On March 13, 2019, ODA emailed WSOS to clarify its concern. On September 20, 2019, ODA emailed WSOS to explain that it does not allocate funds for each service.

11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

ODA obtained data on the volume of providers and the amounts providers charge the Older Americans Act Program from its databases.

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

R.C. §173.392 requires ODA to adopt rules to establish requirements for AAA-provider agreements. Additionally, the federal law and regulation ODA listed in its response to #3, which require ODA to develop policies for all aspects of the Older Americans Act programs.

13. 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.*

Before the proposed new rules take effect, ODA will post them on ODA's website. ODA will also send an email to subscribers of our rule-notification service to feature the rule.

Through its regular monitoring activities, ODA and its designees will monitor providers for compliance.

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

R.C. §173.392 authorizes only ODA to adopt rules establishing requirements for AAA-provider agreements.

15. 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 on ODA's website. ODA will also send an email to subscribers of our rule-notification service to feature the rule.

Through monitoring (*i.e.*, auditing) requirements under 45 CFR Part 75, Subpart F (1) ODA regularly monitors AAAs for compliance with these rules and (2) AAAs regularly monitor providers for their compliance with AAA-provider agreements.

Adverse Impact to Business

16. 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; and

These rules directly regulate Ohio's 12 AAAs, which are ODA's designees, regarding AAA-provider agreements. The AAA-provider agreements directly regulate providers.

PROVIDERS WITH AAA-PROVIDER AGREEMENTS	2018
173-3-06.2 Chores	12[4]
173-3-06.3 Home Maintenance, Modification, or Repair	33[5]

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

173-3-04 requires AAAs to enter into AAA-provider agreements to develop and implement a comprehensive and coordinated system of services[6] for consumers and their caregivers. That complies with federal uniform administrative requirements, cost principles, and audit requirements for federal awards under 45 CFR Part 75 and delineates which AAA-provider agreements must be purchase-of service agreements *vs.*, time-and-materials agreements.

173-3-06.2 and 173-3-06.3 require AAAs to include the following provider requirements in every AAA-provider agreement for home maintenance and chores (173-3-06.2) or home modification (173-3-06.3):

REQUIREMENT		173-3-06.2	173-3-06.3
Requirements for AAA-provider agreements (173-3-06)		Yes	Yes
Use licensed/accredited employees*		Yes	Yes
Pre-Job	Obtain a consent agreement from homeowner	Yes	Yes
	Obtain AAA authorization	Yes	Yes
	Secure permits/pre-job inspections*	No	Yes
	Inform consumers of health/safety risks and schedule job for a time that minimizes those risks	Yes	Yes
Complete the job		Yes	Yes
Post-Job	Undergo post-job inspections*	No	Yes
	Provide warranty	No	Yes
	Verify job provided	Yes	Yes
	Report on job provided (*c.f.*, 45 C.F.R. 1321.65)	Yes	Yes

*Only if federal, state, or local laws or a homeowners' association require them for a specific job.

These are basic requirements for home maintenance and chores and home modification.

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.

The amount ODA pays providers for a job is an all-inclusive rate. It's intended to cover the all costs incurred in providing the job including costs related to administration, assessments (*i.e.*, developing an estimate), materials, labor, and reporting. Providers establish the rate per job when they respond to a request for proposal (RFP) by submitting a bid to the AAA for how much they will charge for the job. If the provider's bid wins, the provider is paid what it bid during the open and free competition for the AAA-provider agreement. (*Cf.*, 173-3-04 and 173-3-05)

[4] For planning and service areas (PSAs) in which the AAA enters into AAA-provider agreements with a comprehensive and coordinated system of providers through a care coordination program, the AAA lists itself as the provider. Therefore, in PSAs with care coordination programs, the number of providers would be higher than the figure cited in this BIA.

[5] *Ibid.*

[6] 42 USC 3022 defines "comprehensive and coordinated system" and 42 USC 3026 requires AAAs to procure for services to create a "comprehensive and coordinated system."

	2018			
	TITLE III-B[7] FUNDS		TITLE III-E[8] FUNDS	
	Units	$\bar{x}$ $/Unit	Units	$\bar{x}$ $/Unit
173-3-06.2 Chores	13,873.75 hrs.	$39.96/hr.	423.75 hrs.	$119.31/hr.
173-3-06.3 Home Maintenance, Modification, or Repair	811 jobs[9]	$1,538.44/job[10]	56 jobs	$1,297.75/job

ODA's proposal to require pre-job inspections when required by federal, state, or local laws will not increase providers' adverse impact because this only applies when a federal, state, or local law already requires doing so.

ODA's proposal to require providers to obtain permits and inspections homeowners' associations will not increase providers' adverse impact because this will only apply when a homeowners' association already has jurisdiction over a home and already has a requirement on permits and inspections.

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

To ensure the health and safety of consumers receiving services paid with Older Americans Act funds, ODA is required to develop rules establishing requirements for AAA-provider agreements. Providers voluntarily bid for AAA-provider agreements. A provider is only required to comply with an AAA-provider agreement if (1) the provider bids on a job that would be paid, wholly or in part, with Older Americans Act funds, and (2) the provider's bid is the winning bid. Providers do not need to enter into an AAA-provider agreement if paid by third-party insurers, private funds, or government programs that do not require AAA-provider agreements.

The requirements in the proposed new rules are reasonable compared to the health and safety of the consumers being served.

Overall, none of ODA's proposed amendments to these rules will increase the adverse impact upon providers compared to the current rules.

Regulatory Flexibility

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

Because the primary purpose of these rules is to ensure the health and safety of consumers receiving services paid with Older Americans Act funds, the rules treat all AAAs the same, regardless of their size.

19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

ODA is concerned primarily about protecting the health and safety of consumers receiving services paid with Older Americans Act funds through compliance with these rules. Whenever possible, ODA or AAAs will treat administrative violations that do not involve health and safety as opportunities for improvement through warning notices and solicitation of corrective action.

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

[7] "Title III-B" means Older Americans Act funds for supportive services under Title III-B of the Older Americans Act (42 U.S.C. 3030d).
[8] "Title III-E" means Older Americans Act funds for the National Family Caregiver Support Program under Title III-E of the Older Americans Act (42 U.S.C. 3030s to 3030s-2).
[9] This figure represents data from 11 of Ohio's 12 AAAs. One AAA reported erroneous data, so ODA removed its data from this figure.
[10] *Ibid.*

ODA and AAAs are available to help providers of all sizes with their questions. Any person may contact Tom Simmons, ODA's policy development manager, with questions about the rules.

As noted in *State Plan on Aging 2019-2022*[11], ODA plans to standardize the administration and use of SAMS, which is the software used to comply with the federal reporting requirements in 45 C.F.R. 1321.65. This should assist providers by simplifying the reporting process.

Additionally, ODA maintains an online rules library to help AAAs and providers find rules regulating them. Providers may access the online library 24 hours per day, 365 days per year.

[11] p. 51.