Ohio | Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

Business Impact Analysis

Agency, Board, or Commission Name: OHIO DEPT. OF AGING

Rule Contact Name and Contact Information: Tom Simmons rules@age.ohio.gov

Regulation/Package Title (a general description of the rules' substantive content):

GOLDEN BUCKEYE PROGRAM

These rules in this package regulate the Golden Buckeye Program, including the eligibility requirements, enrollment processes, and confidentiality for cardholders and business participation agreements and an electronic business directory for participating businesses.

Rule Number(s): 173-6-02, 173-6-03, 173-6-04, 173-6-05, 173-6-06, 173-6-07, 173-6-08

Date of Submission for CSI Review: August 24, 2021

Public Comment Period End Date: September 6, 2021 at 11:59PM.

Rule Type/Number of Rules:

☐ **New/** 0 **rules**
☑ **No Change/** 1 **rules (FYR? ☑)**
☑ **Amended/** 6 **rules (FYR? ☑)**
☐ **Rescinded/** 0 **rules (FYR? ☐)**

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

Reason for Submission

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

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

   Please review the next page.

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.

The rules in this package establish requirements for the Golden Buckeye Program. ODA is not proposing to place any new adverse impacts upon businesses in this rule package.

Rule 173-6-02 of the Administrative Code establishes the eligibility requirements to be a Golden Buckeye cardholder. ODA does not propose to amend this rule at this time.

Rule 173-6-03 of the Administrative Code establishes the enrollment processes for a person who is 60 years of age or older and wants to be a Golden Buckeye cardholder. ODA proposes to amend this rule to achieve the following results:

- Offer flexibility to apply using a web-based application. (ODA will continue to allow older Ohioans to apply at a sign-up site to accommodate older Ohioans who do not have adequate internet access or skills to apply online.)
- Revise the terminology on applying at a sign-up site.

Rule 173-6-04 of the Administrative Code establishes the enrollment processes for a person who is 18-59 years of age and wants to be a Golden Buckeye cardholder. ODA proposes to amend this rule to achieve the following results:

- Require evidence that the person applying is a resident of Ohio.
- Revise the terminology on applying at a sign-up site.

Rule 173-6-05 of the Administrative Code establishes the requirements for business participation agreements. ODA proposes to amend this rule to achieve the following results:

- Update URLs.
- Revise terminology related to applying for, revising, or cancelling business participation agreements.

Rule 173-6-06 of the Administrative Code establishes the requirements for the electronic business directory. ODA proposes to amend this rule to update the URL.

Rule 173-6-07 of the Administrative Code establishes requirements related to cardholder records. ODA proposes to amend this rule to achieve the following:

- Replace "names and addresses" in paragraphs (C) and (D) of this rule with "information."
- Replace "send mailings to cardholders for the purpose of informing them" in paragraph (C) of this rule with "inform cardholders."
- Delete occurrences of "non-profit" from paragraphs (C) and (D) of this rule.

Rule 173-6-08 of the Administrative Code establishes requirements related to program administration. ODA proposes to amend this rule by replacing "ODA's administrator" with "entity."

ODA also proposes to make non-substantive improvements to the rules of this package.

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

R.C. §§ 121.07, 173.01, 173.02, and 173.06.

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.

The Golden Buckeye Program is not governed or regulated by federal laws or rules.

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

The rules exist to implement the state laws ODA listed in its response to #2, which permit ODA to adopt rules to govern ODA, its employees, the performance of its business, and the custody, use, and preservation of records; and require ODA to adopt rules to (1) govern the operation of services provided, operated, contracted for, or supported by ODA; (2) carry out the provisions of Chapter 173 of the Revised Code, and (3) prevent the issuance of Golden Buckeye cards to persons who are not eligible for them.

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

These rules exist to (1) comply with the state laws mentioned in ODA's response to #3, which require ODA to adopt rules to (1) govern the operation of services provided, operated, contracted for, or supported by ODA; (2) carry out the provisions of Chapter 173 of the Revised Code, and (3) prevent the issuance of Golden Buckeye cards to persons who are not eligible for them.

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

These rules are judged as being successful when (1) ODA finds few cases of cards being issued to persons who are not qualified to have them and (2) businesses remain willing to participate in the program.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?
If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

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

ODA's guide *Participating in ODA's Rule Development* and this webpage on ODA's website encourage stakeholders and the general public to give input on improving ODA's rules and provide contact information for doing so. As of the date of this BIA, ODA's policy development manager has received no requests to amend the rules in this package since the last time each rule was adopted.

On July 12, 2021, ODA emailed the following stakeholders to request their recommendations for improving the current version of the rules in this package, including their recommendations for removing any requirements for outdated modes of communication:

- Catholic Social Services of the Miami Valley.
- LeadingAge Ohio.
- Ohio Academy of Senior Health Sciences, Inc.
- Ohio Assisted Living Association.
- Ohio Association of Area Agencies on Aging (O4A).
- Ohio Association of Medical Equipment Suppliers.
- Ohio Association of Senior Centers.
- Ohio Council for Home Care and Hospice.
- Ohio Health Care Association.
- Ohio Jewish Communities.
- State Long-Term Care Ombudsman.

On July 21, 2021, ODA emailed the following stakeholders to request their recommendations for improving the current version of the rules in this package:

- Ohio Council for Retail Merchants
- Ohio Grocers' Association.
- Ohio Restaurant Association.

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

No stakeholders made recommendations to ODA in response to ODA's July 12, 2021 emails.

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

ODA is not proposing to amend these rules based upon scientific data.

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

The rules only cover the basics of the Golden Buckeye Program and ODA is proposing to amend the rules to allow for a web-based application for person to participate in the program. (The program already offers a web-based application for businesses that want to offer discounts or benefits to cardholders.) The alternative would be to not offer these online resources.

Additionally, R.C. §173.06 requires ODA to adopt rules to prevent the issuance of Golden Buckeye cards to persons who are not eligible for them, which requires ODA to have clear rules on the eligibility requirements and the enrollment process.

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.***

Yes! Rule 173-6-05 of the Administrative Code allows businesses to voluntarily (1) participate, (2) choose what discount or benefit they want to offer cardholders, and (3) amend or end their participation.

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

R.C. §173.06 authorizes only ODA to adopt rules to establish requirements for the Golden Buckeye Program.

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 proposed amendments take effect, ODA will send an email to subscribers of our rule-notification service to feature the rules.

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

Approximately 20,000 businesses participate in the Golden Buckeye Program.

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

These rules create the following adverse impacts for businesses:

- The need to complete a web-based business participation agreement, which does not require paper, an envelope, postage, or a trip to the post office.
- The cost of offering the discount or benefit to cardholders.

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 estimates it takes a business 5 minutes to complete the web-based business participation agreement.

ODA does not determine the discount or benefit that a business offers. Instead, discount or benefit is determined by the business when completing the business participation agreement. Therefore, the cost of the discount or benefit is determined by the business. For example, many businesses choose to offer cardholders a 10% discount or the benefit of free coffee.

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

Participating businesses may find the Golden Buckeye Program to be a win-win. Businesses may capitalize on the growing elder population in Ohio by offering discounts to those elders. In turn, the businesses may receive more loyalty from cardholders. Additionally, some discounts may encourage elders to purchase goods or services during times a business would be otherwise slow (*e.g.*, a restaurant discount for elders during brunch hours, discounted theater tickets for matinées).

Businesses participate in the Golden Buckeye Program on a voluntary basis. Businesses also establish their own benefits or discounts. Businesses may also discontinue their participation in the program at any time. Thus, businesses make their own risk assessments to determine if their participation in the program justifies the cost of completing the business participation agreement and honoring the benefit or discount they agreed to offer.

Regulatory Flexibility

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

The rules treat all providers the same, regardless of their size.

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

ODA is concerned primarily about protecting the health and safety of consumers receiving services. Whenever possible, ODA 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?

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