



# 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](mailto:rules@age.ohio.gov)

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

### OLDER AMERICANS ACT NUTRITION PROGRAM

These rules establish requirements to include in, or exclude from, AAA-provider agreements (i.e., contracts) that are paid, in whole or in part, with Title III-C Older Americans Act funds.

**Rule Number(s):** 173-4-01, 173-4-02, 173-4-03, 173-4-04, 173-4-05, 173-4-05.1, 173-4-05.2, 173-4-05.3, 173-4-06, 173-4-07, 173-4-08, 173-4-09, 173-4-10, 173-4-11

**Date of Submission for CSI Review:** July 22, 2021

**Public Comment Period End Date:** August 4, 2021 at 11:59PM.

#### Rule Type/Number of Rules:

☐ New/ 0 rules

☒ Amended/ 14 rules (FYR? ☒)

☐ No Change/ 0 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☐ Rescinded/ 0 rules (FYR?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?

The rules:

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

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIPublicComments@governor.ohio.gov](mailto:CSIPublicComments@governor.ohio.gov)

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

☒ c. Require specific expenditures or the report of information as a condition of compliance.

☐ d. Are likely to directly reduce the revenue or increase the expenses of the lines of business to which they will apply.

### **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 to include in, or exclude from, AAA<sup>1</sup>-provider agreements (*i.e.*, contracts) that are paid, in whole or in part, with Title III-C Older Americans Act funds.

In this rule package, ODA is not proposing to place any new adverse impacts upon providers. Instead, ODA is proposing to amend the rules to provide clarity, regulatory relief, and regulatory flexibility within the parameters established in federal law.

The following list describes the rules in this package and ODA's proposed amendments to those rules:

- Rule 173-4-01 of the Administrative Code introduces Chapter 173-4 of the Administrative Code and defines terms used in Chapter 173-4 of the Administrative Code that are not defined in rule 173-3-01 of the Administrative Code. ODA proposes to amend the rule to do the following:
  - Replace occurrences of "Chapter 173-4 of the Administrative Code" with "this chapter" to comply with the Legislative Service Commission's *Rule Drafting Manual*.
  - Define "Dietary Guidelines for Americans."
  - Replace the reference to "Title III, part C of the Older Americans Act of 1965, 79 Stat. 219, 42 U.S.C. 3001, as amended by the Older Americans Reauthorization Act of 2016" with "42 U.S.C. 3030d-21 to 3030g-23 (2020)."
- Rule 173-4-02 of the Administrative Code determines which meals are eligible for payment with Older Americans Act funds. It is a compilation of the federal eligibility standards in 42 U.S.C. [3030e](#), [3030f](#), and [3030g-21](#) plus [45 C.F.R. 1321.69](#). ODA proposes to amend this rule to do the following:
  - Replace 2 occurrences of "offered" with "provided."
  - Replace "residence" with "home" to be consistent with the term "home-delivered meals" and the rest of ODA's rules.
- Rule 173-4-03 of the Administrative Code establishes requirements for enrolling consumers into the Older Americans Act Nutrition Program. ODA proposes to amend this rule to do the following:
  - Extend flexibility on an ongoing basis. On June 11, 2020, Governor DeWine issued executive order [2020-23D](#) which authorized ODA to adopt emergency amendments to this rule. The emergency amendments gave providers flexibility to determine eligibility by telephone, video conference, or in person, whether the determination was the initial or annual determination. On December 31, 2020, ODA adopted amendments to this rule that gave providers flexibility to do the same during a state of emergency declared by the governor. On June 18, 2021, Governor DeWine declared an end to the state of emergency, but also issued executive order 2021-09D to authorize ODA to adopt emergency rule [173-1-04](#) of the Administrative Code, which declares that providers have the

---

<sup>1</sup> "AAA" means "area agency on aging."

same flexibility until the end of the federal public health emergency. Through this rule package, ODA proposes to give providers this flexibility on an ongoing basis, without any statement requiring a state or federal emergency to exist to trigger the flexibility. (See rule 173-4-05 of the Administrative Code for an encouragement to determine eligibility in person whenever possible.)

- Replace “sixty years or more old” with “sixty years of age or older.”
- Rules 173-4-05, 173-4-05.1, 173-4-05.2, 173-4-05.3, 173-4-07, 173-4-09, 173-4-10, and 173-4-11 of the Administrative Code establish requirements applying only to AAA-provider agreements for nutrition projects, congregate meal projects, home-delivered meals projects, congregate dining projects based in restaurants and grocery stores, nutrition counseling, nutrition health screening, grocery shopping assistance, and grocery ordering and delivery (respectively). On June 11, 2020, Governor DeWine issued executive order [2020-23D](#) which authorized ODA to adopt emergency amendments to these rules. The emergency amendments gave providers flexibility to conduct certain responsibilities by telephone, video conference, or in person. On December 31, 2020, ODA adopted amendments to this rule that gave providers flexibility to do the same during a state of emergency declared by the governor. On June 18, 2021, Governor DeWine declared an end to the state of emergency, but also issued executive order 2021-09D to authorize ODA to adopt emergency rule [173-1-04](#) of the Administrative Code, which declares that providers have the same flexibility until the end of the federal public health emergency. Through this rule package, ODA proposes to give providers these flexibilities until the end of federal public health emergency or on an ongoing basis, whether a state or federal emergency exists or does not exist.
- In rule 173-4-05 of the Administrative Code, ODA also proposes to do the following:
  - Add “flexibilities, and recommendations” after “requirements” in paragraph (A) of the rule.
  - Restate paragraph (A)(4)(c) of this rule to emphasize that an AAA must include the requirements of rules 173-4-10 and/or 173-4-11 of the Administrative Code in the AAA-provider agreement if the AAA requires the provider to provide grocery shopping assistance or grocery ordering and delivery. This is not a new requirement because the same is already required in rules 173-4-10 and 173-4-11 of the Administrative Code.
  - Delete the portions of paragraph (A)(9)(b) that cite an incorporation by reference, because ODA also proposes to define “Dietary Guidelines for Americans” in rule 173-4-01 of the Administrative Code and a definition in that rule applies to the rest of the chapter.
  - Replace “cultural considerations, preferences, and medically-tailored foods” with “cultural considerations and preferences and medically-tailored foods” to align with [42 U.S.C. 3030g-21](#).
  - Require AAAs to encourage providers to use, where feasible, locally-grown foods and identify potential partnerships and contracts with local producers and providers of locally-grown foods. Although this will count as a new “regulatory restriction” under R.C. [§121.95](#), it is not a new requirement for providers. Instead, it requires the AAA-provider agreement to encourage providers. The encouragement reiterates the encouragement found in [42 U.S.C. 3030g-21](#).
  - Replace the prohibition against AAA-provider agreements that prohibit providers from using 1 of 2 methods to determine nutritional adequacy with a requirement for AAA-provider agreements to give providers flexibility to choose either method. The impact is the same, but with one less “regulatory restriction” under R.C. [§121.95](#).
  - Replace “. The record shall include” in paragraph (A)(13)(b) of this rule with “and” since the paragraph is still referring to the same requirement. This will eliminate another “regulatory restriction” under R.C. [§121.95](#)
  - Insert “storage” between “handling” and “or delivery” in paragraphs (A)(13)(a)(i) and (A)(13)(a)(ii) of this rule.
- In rule 173-4-05.3 of the Administrative Code, ODA also proposes to delete language from paragraphs (B)(1), (B)(2), and (B)(3) of this rule that are already covered under paragraphs (A)(2), (B), (C)(2), or (F) of this rule or under rule 173-4-05 of the Administrative Code.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

**CSIPublicComments@governor.ohio.gov**

- Rule 173-4-06 of the Administrative Code establishes requirements for diet orders. ODA proposes to do the following in that rule:
  - Update references to incorporation by reference.
  - Replace “thickening agents in his or her drinks, soups, etc. and indicates whether the consumer requires a level-one (puréed) or level-two (chopped or ground) dysphagia” with “therapeutic diet texture-modified foods and/or thickened liquids” to reflect the new International Dysphagia Diet Standardization Initiative.
  - Delete language on the Nutrition Services Incentive Program.
- In rule 173-4-07 of the Administrative Code, ODA also proposes to do the following:
  - No longer require a nutritional assessment to be part of the initial nutrition counseling session.
  - Establish a unit of service for a nutritional assessment.
- Rule 173-4-08 of the Administrative Code establishes requirements applying only to AAA-provider agreements for nutrition education. ODA proposes to amend this rule to do the following:
  - Redefine “nutrition education” to match the federal definition for state program reports (SPRs).
  - Redevelop the requirements for approved content of nutrition education.
  - Establish requirements for the format of nutrition education to match federal requirements for SPRs and make corresponding changes to the units of service. To establish the new requirements, ODA must establish a new regulatory restriction (“shall”) and delete two unnecessary uses of “shall” in this rule.
  - Insert “at least” before “two times per year.”
- In rule 173-4-09 of the Administrative Code, ODA also proposes to delete occurrences of “good and,” “goods and,” and “goods or” as the words appear before occurrences of “service” or “services.”
- In paragraph (B)(1) of rules 173-4-10 and 173-4-11 of the Administrative Code, ODA also proposes to add a missing “shall,” and to pay for each new regulatory restriction by eliminating two unnecessary uses of “shall” in each rule.
- In rule 173-4-10 of the Administrative Code, ODA also proposes to do the following:
  - Clarify that grocery shopping assistance may help a consumer shop at a non-profit food establishment.
  - Allow an AAA to indicate the extent to which the provider shall transfer the groceries the consumer purchases or receives without stating any parameters (e.g., from the grocery store to the vehicle) to allow for flexibility.
- In rule 173-4-11 of the Administrative Code, ODA also proposes to replace “technology-based system” with “electronic system.”
- Additionally, ODA proposes to make the following amendments to reduce requirements in rules for outdated modes of communication or unnecessary in-person interaction:
  - Throughout this rule package, ODA proposes to either (1) eliminate the unnecessary use of words that imply requirements for paperwork (e.g., “writing,” “written,” “document,” and “documentation”) or (2) if verbal compliance is not an option, indicate that provider may also comply electronically.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

**CSIPublicComments@governor.ohio.gov**

- In rule 173-4-05 of the Administrative Code, ODA proposes to delete “written” in paragraph (A)(13)(b) of the rule to be clear that providers have flexibility to use either electronic records or written records.
  - In rule 173-4-05.2 of the Administrative Code, ODA proposes to replace “written contingency procedures” with “emergency preparedness plans.”
  - In rule 173-4-08 of the Administrative Code, ODA proposes to (1) replace “distribute education materials” with “provide content,” (2) replace “educational materials” with “approved content,” and (3) list “distribution of hardcopy materials” as a format option for content along with video, audio, and online options.
  - In rules 173-4-10 and 173-4-11 of the Administrative Code, ODA proposes to no longer require the provider’s signature as an attestation that a service was provided. If the provider bills the AAA, that serves as the provider’s attestation.
- Lastly, ODA also proposes to make non-substantive changes in this rule package to comply with LSC’s *Rule Drafting Manual* or to improve titles, incorporation by reference, clarity, punctuation, or grammar.

**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 [173.392](#).

**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 U.S.C. 3025](#) says ODA is “primarily responsible” for Older Americans Act policy development in Ohio and [45 C.F.R. 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 rules exist to implement the state laws ODA listed in its response to #2, which require ODA to establish the standards for AAA-provider agreements, and the federal law and federal regulation ODA listed in its response to #3, which require ODA to develop policies for all aspects of the Older Americans Act programs in Ohio.

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

These rules exist to (1) comply with the state laws mentioned in ODA’s response to #3, which require ODA to establish requirements for AAA-provider agreements, and (2) ensure necessary safeguards are in place to protect the health and safety of consumers receiving services paid with Older Americans Act funds.

**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 C.F.R. 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 funds few violations in AAA-provider agreements and (2) AAAs find few violations against AAA-provider agreements.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIPublicComments@governor.ohio.gov](mailto:CSIPublicComments@governor.ohio.gov)

**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. On June 25, 2021, ODA's policy development manager received an email from an AAA asking ODA to amend rules 173-4-03 and 173-4-05 of the Administrative Code to allow eligibility determination for meals paid with Older Americans Act funds to be conducted by telephone, video conference, or in person whether or not a state of emergency exists and whether or not the first assessment was conducted in person. As of the date of this BIA, ODA's policy development manager has received no other requests to amend the rules in this package since the last time each rule was adopted.

On June 30, 2021, ODA sent an email to 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:

- 106 nutrition providers with AAA-provider agreements for whom ODA had valid email addresses.
- Ohio Association of Area Agencies on Aging (O4A).
- State Long-Term Care Ombudsman.

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

ODA responded to the June 25, 2021 email by indicating that ODA proposes to allow eligibility determination for meals paid with Older Americans Act funds to be conducted by telephone, video conference, or in person whether or not a state of emergency exists and whether or not the first assessment was conducted in person.

ODA received recommendations from 2 providers and 2 AAAs to its June 30, 2021 emails. The following bullet points summarize the recommendations and ODA's responses:

**173-4-01:** An AAA recommended changing the definition of "grocery store" to permit congregate nutrition projects to conduct grocery shopping for consumers during emergencies.

On July 16, 2021, ODA emailed the AAA to explain that rule 173-4-10 of the Administrative Code already allows for, and regulates, grocery shopping assistance. Likewise, rule 173-4-11 of the Administrative Code allows for, and regulates, grocery ordering and delivery. ODA proposes to add new language to rule 173-4-05 of the Administrative Code to clarify that if an AAA want to require a nutrition project to provide grocery shopping assistance or grocery ordering and delivery, that the AAA must incorporate the requirements of rules 173-4-10 and 173-4-11 of the Administrative Code into the AAA-provider agreement.

**173-4-02 and 173-4-03:** A provider recommended declaring that the following persons' home-delivered meals to be eligible for payment with Older Americans Act funds: (1) a caregiver who is not a spouse is eligible for home-delivered meals, (2) the child of a consumer who is eligible for home-delivered meals and who is also the consumer's caregiver, and (3) a domestic partner to a consumer who is eligible for home-delivered meals.

On July 16, 2021, ODA emailed the provider to explain that the rule is a compilation of the eligibility requirements established by Congress in [42 U.S.C. 3030g-21](#) and the U.S. Dept. of Human Services in 45 C.F.R. [1321.17](#) and [1321.69](#). Both ODA's rule and federal law allow home-delivered meals to an unpaid caregiver of a consumer whose meals are eligible for payment with Older Americans Act funds—whether the consumer's child,

**77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117**

**CSIPublicComments@governor.ohio.gov**



domestic partner, or another person—to be eligible for payment with Older Americans Act funds. Additionally, the rule and federal law allow home-delivered meals to a person with a disability who lives in the home of a consumer whose meals are eligible to be paid with Older Americans Act funds—whether consumer's child, domestic partner, or another person—to be eligible for payment with Older Americans Act funds. ODA has no authority to create new coverages for home-delivered meals under other conditions. If a provider has questions regarding OAA Title III-E (National Family Caregiver Support Program) eligibility to serve meals to benefit the caregiver, they should reach out to the AAA in their region.

**173-4-03 and 173-4-05:** Two providers recommended allowing eligibility verification by telephone, video conference, or in person regardless of the status of a state of emergency. On July 16, 2021, ODA emailed the providers to announce ODA's proposal to allow eligibility verification by telephone, video conference, or in person regardless of the status of a state of emergency.

**173-4-03:** An AAA recommended defining "nutrition assessment," creating a unit of service for nutrition assessments that is similar to nutrition health screening and allowing AAAs to enter into a separate AAA-provider agreement for nutrition assessments rather than require the provider of meals to conduct them. On July 16, 2021, ODA emailed the AAA to explain that rule 173-4-07 of the Administrative Code defines "nutrition assessment." Additional comments received are being taken into consideration for review of rule 173-4-07 of the Administrative Code.

**173-4-03:** An AAA recommended redeveloping the nutrition screening tool to include food insecurity, the existence of disasters, and malnutrition as reasons to place a consumer higher on a waiting list for meals. On July 16, 2021, ODA emailed the AAA to acknowledge receipt of comments and thank them for their recommendations. Such recommendations are being taken into consideration as the nutrition screening tool is being reviewed.

**173-4-05(A)(4)(b):** A provider recommended allowing providers to determine whether nutrition counseling or education should be offered. The provider said that allowing the AAA to decide may result in processes that exceed the available manpower of the provider and stretch resources. On July 16, 2021, ODA emailed the provider to acknowledge receipt of comments and thank them for their recommendations.

**173-4-05(A)(8)(a):** A provider recommended allowing providers to determine the method for making ingredient information available to consumers. The provider said that allowing the AAA to decide may result in processes that exceed the available manpower of the provider and stretch resources. On July 16, 2021, ODA emailed the provider to acknowledge receipt of comments and thank them for their recommendations.

**173-4-05(A)(13):** One provider recommended eliminating requirements for volunteers to complete annual in-service training. The provider said providers have limited resources and those resources should be focused on consumers, not developing training materials, organizing training, and keeping training records. On July 16, 2021, ODA emailed the provider to acknowledge receipt of comments and thank them for their recommendations.

**173-4-05.2(B)(1)(b):** An AAA recommended prohibiting providers from delivering more meals to consumers who choose to receive periodic deliveries than the consumer can safely store (e.g., in the freezer, in the refrigerator). On July 16, 2021, ODA emailed the AAA to acknowledge receipt of comments and thank them for their recommendations.

**173-4-05.2(B)(2):** A provider recommended allowing providers to deliver home-delivered meals to consumers' homes when the consumer and the consumer's caregiver are not home without any authorization from the AAA if the provider established delivery plans with the consumer before the delivery. The provider said this would address special circumstances. For example, it would allow a consumer to inform the provider to leave a meal while the consumer is at the doctor's office. On July 16, 2021, ODA emailed the AAA to acknowledge receipt of comments and thank them for their recommendations.

**173-4-05.2 (E)(1)(d) and (E)(3):** A provider and an AAA recommended eliminating the requirement to collect a unique identifier of the consumer as an attestation to the success of the delivery of meals. The AAA said a provider operating in its planning and service area conducted a survey of consumers in January 2021. 212 of the 219 consumers who responded said that they would feel safer with contact-free deliveries. On July 16, 2021, ODA emailed the provider and the AAA to say that the current version of rule 173-4-05.2 of the Administrative Code allows a provider to verify each meal provided without collecting a unique identifier during a state of emergency declared by the governor.

**173-4-08:** One provider recommended allowing providers to use a system of electronic records to for nutrition education just as ODA allows for other services. On July 16, 2021, ODA emailed the provider to explain that rule 173-3-06 of the Administrative Code already allows providers to use electronic systems to verify the provision of services or to retain records. Additionally, ODA proposes to create a new paragraph in this rule [(B)(3)] to allow alternative formats in which to deliver nutrition education.

**173-4-10:** One AAA recommended allowing this service to also cover shopping assistance at farmers' markets and food banks. On July 16, 2021, ODA emailed the AAA to say that such recommendations are being taken into consideration as the rule is being reviewed.

**77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117**

**CSIPublicComments@governor.ohio.gov**

**173-4-10:** One AAA recommended adding requirements for drivers to this rule. On July 16, 2021, ODA emailed the AAA to acknowledge receipt of comments and thank them for their recommendations.

**173-4-10:** One AAA recommended allowing AAAs to indicate whether the provider must transfer groceries from the shelf to the shopping cart and from the shopping cart to the cashier. On July 16, 2021, ODA emailed the AAA to say that such recommendations are being taken into consideration as the rule is being reviewed.

**173-4-11:** One AAA recommended allowing grocery ordering and delivery to include the coordination and delivery of commodity supplemental food boxes. On July 16, 2021, ODA emailed the AAA to explain that the rule does not exclude the coordination nor delivery of commodity supplemental food boxes.

**173-4-11:** One AAA recommended requiring this rule to give consumers a packet of introductory information similar to the one required in paragraph (B)(2) of rule 173-4-10 of the Administrative Code. On July 16, 2021, ODA emailed the AAA to acknowledge receipt of comments and thank them for their recommendations.

**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?**

Consumers of the Older Americans Act Nutrition Program have a higher risk for contracting COVID-19 than the general population. Accordingly, many of ODA's proposals in this rule package are based upon guidelines from the Centers for Disease Control and Prevention (CDC) for reducing on reducing in-person interaction to limit exposure to COVID-19.

**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 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.*

Yes, the proposed amendments to these rules give providers more flexibility.

**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 to establish 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 proposed amendments take effect, ODA will send an email to subscribers of our rule-notification service to feature the rules. Through regular monitoring (*i.e.*, auditing) requirements under [45 C.F.R. 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:**

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIPublicComments@governor.ohio.gov](mailto:CSIPublicComments@governor.ohio.gov)



**a. Identify the scope of the impacted business community; and**

Every nutrition provider with an AAA-provider agreement, which is approximately 224 providers.

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

The adverse impact of these rules is to ensure every AAA-provider agreement complies with the general requirements for AAA-provider agreements in rule 173-3-06 of the Administrative Code plus specific requirements for each service listed in individual rules of this package.

ODA's proposed amendments to the rules in this package will not increase the adverse impact upon providers. Many of the proposed amendments will give providers flexibility to maintain social distancing during a state of emergency declared by the governor or federal public health emergency.

**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.*

Providers establish the rate they are paid when they respond to a request for proposal (RFP) by submitting their bid to the AAA for how much they will charge per unit {i.e., per job (e.g., grocery shopping assistance), per item (e.g., a meal), or per a period of time (e.g., nutrition counseling)}. The amount an AAA pays a provider is an all-inclusive rate. It's intended to cover all costs incurred in providing the project or service, including administration, training, and reporting. Therefore, the provider's bid includes all costs anticipated in providing the project or service.

If the provider's bid wins, the provider is paid what it bid during the open and free competition for the AAA-provider agreement (cf., [45 C.F.R. 75.329](#) and rules [173-3-04](#) and [173-3-05](#) of the Administrative Code).

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

R.C. [§173.392](#) requires ODA to develop rules establishing standards for AAA-provider agreements (i.e., contracts and grants) and R.C. [§173.01](#) requires ODA to represent the interests older Ohioans. Establishing standards for AAA-provider agreements in the rules of this package ensures the health and safety of the older Ohioans who are consumers of services through Older Americans Act programs, which fulfills both statutes.

There is no requirement for a provider to enter into an AAA-provider agreement in order to provide services in this state. An AAA-provider agreement is not a gateway to doing business in Ohio. Instead, a provider who wants to add the Older Americans Act programs to its lines of business, it must enter into an AAA-provider agreement in order for those Older Americans Act programs to pay the provider for the services it wants to provide to the consumers of those programs.

Additionally, providers voluntarily bid for AAA-provider agreements. A provider is only required to comply with an AAA-provider agreement if (1) the provider bids on providing the service to be paid with Older Americans Act funds, and (2) the provider's bid is a winning bid. Providers may provide the same service without entering into an AAA-provider agreement when paid by private pay, third-party insurers, or other government programs not using Older Americans Act funds.

Lastly, ODA proposes to give providers regulatory relief and flexibility, as follows:

- ODA's proposed amendments to these rules will give providers flexibility to maintain social distancing during a state of emergency declared by the governor or a federal public health emergency.
- ODA's proposed amendments to these rules will give providers flexibility to use electronic records, diet orders, educational content, and emergency preparedness plans.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIPublicComments@governor.ohio.gov](mailto:CSIPublicComments@governor.ohio.gov)

- ODA's proposed amendments to these rules will continue to allow verification of services without obtaining a unique identifier of the consumer for the remainder of the federal public health emergency and allow verification of grocery shopping assistance and grocery ordering and delivery without obtaining the signature of the provider.

### **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 providers the same, regardless of their size.

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

ODA is concerned primarily about protecting the health and safety of consumers receiving services paid with Older Americans Act funds through compliance with these rules. Whenever possible, ODA or AAAs 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 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 these rules.