PUBLIC-COMMENT PERIOD
OLDER AMERICANS ACT NUTRITION PROGRAM
July 22, 2021

ODA reviewed rules 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, and 173-4-11 of the Administrative Code and now proposes to amend them. For details, please review the attached business impact analysis and rule drafts.

Please feel free to review the proposed amendments to these rules offer recommendations for improving the rule. Submit recommendations to rules@age.ohio.gov no later than August 4, 2021 at 11:59PM.
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): **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
- [ ] No Change/0 rules (FYR? [ ])
- [x] Amended/14 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- [ ] Rescinded/0 rules (FYR?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.
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, AAA1-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.”

- 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

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1 “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 173-4-10 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.
• Rule 173-4-06 of the Administrative Code establishes requirements for diet orders. ODA proposes to do the following in that rule:
  o Update references to incorporation by reference.
  o 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.
  o Delete language on the Nutrition Services Incentive Program.

• In rule 173-4-07 of the Administrative Code, ODA also proposes to do the following:
  o No longer require a nutritional assessment to be part of the initial nutrition counseling session.
  o 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:
  o Redefine “nutrition education” to match the federal definition for state program reports (SPRs).
  o Redevelop the requirements for approved content of nutrition education.
  o 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.
  o 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:
  o Clarify that grocery shopping assistance may help a consumer shop at a non-profit food establishment.
  o 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:
  o 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.
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.
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,
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 identified 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.
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 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:
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 of 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.
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.
173-4-01  Older Americans Act nutrition program: introduction and definitions.

(A) Introduction: Chapter 173-4 of the Administrative Code This chapter governs nutrition projects paid, in whole or in part, with Older Americans Act funds.

(B) Definitions: The definitions in rule 173-3-01 of the Administrative Code and the following definitions apply to Chapter 173-4 of the Administrative Code this chapter:

"Congregate dining project" means a nutrition project that complies with rule 173-4-05.1 of the Administrative Code.

"Congregate dining project based in restaurants and supermarkets" means a nutrition project that complies with rule 173-4-05.3 of the Administrative Code.

"Dietary Guidelines for Americans" (2020-2025) means the guidelines published by the United States departments of agriculture and health and human services on https://www.dietaryguidelines.gov/.

"Dietitian" and "licensed dietitian" mean a person with a current, valid license to practice dietetics under section 4759.06 of the Revised Code.

"Groceries" mean foods for a household to eat, such as breads and cereals; fruits and vegetables; meats, fish, and poultry; and dairy products.

"Grocery store" has the same meaning as "retail food establishment" in rule 3717-1-01 of the Administrative Code.

"Home-delivered meals project" means a nutrition project that complies with rule 173-4-05.2 of the Administrative Code.

"Nutrition project" means a congregate dining project, home-delivered meals project, or a congregate dining project based in restaurants and supermarkets.

"Older Americans Act nutrition program" means the program created under Title III, part C of the Older Americans Act of 1965, 79 Stat. 219, 42 U.S.C. 3001-3030d-21 to 3030g-23 (2020), as amended by the Older Americans Act Reauthorization Act of 2016.

"Restaurant" has the same meaning as "food service operation" in rule 3717-1-01 of the Administrative Code.

"Shelf-stable meal" means a meal that is non-perishable, ready-to-eat, stored at room temperature, and eaten without heating.
Older Americans Act nutrition program: meals eligible for payment.

(A) Congregate dining: Meals offered provided at a congregate dining location are eligible for payment with Older Americans Act funds if they meet the requirements for meals in this chapter and if the recipient is one of the following:

(1) A consumer who is sixty years of age or older.

(2) The spouse of the consumer in paragraph (A)(1) of this rule, if the spouse accompanies that consumer to the congregate dining location.

(3) A volunteer who provides volunteer services to the consumer in paragraph (A)(1) of this rule, if the volunteer services are provided to the consumer at the congregate dining location during the mealtime.

(4) A person with disabilities who resides in the home of the consumer in paragraph (A)(1) of this rule, if the person with disabilities accompanies that consumer to the congregate dining location.

(5) A person with disabilities who resides in a non-institutional residential building, but only if the building's residents are primarily sixty years of age or older and the meal is offered through provided at a congregate dining location located in the person's building.

(B) Home-delivered meals: Meals delivered to a residence home are eligible for payment with Older Americans Act funds if they meet the requirements for meals in this chapter and if the recipient is one of the following:

(1) A consumer who is sixty years of age or older and meets the following requirements: unable to prepare his or her own meals, unable to consume meals at a congregate dining location due to physical or emotional difficulties, and lacking another meal support service in the home or community.

(2) The spouse of the consumer in paragraph (B)(1) of this rule.

(3) A volunteer who provides volunteer services to the consumer in paragraph (B)(1) of this rule.

(4) A person with disabilities who resides in the home of the consumer in paragraph (B)(1) of this rule.
173-4-03  Older Americans Act nutrition program: consumer enrollment.

(A) Congregate dining: Before enrolling the consumer into a congregate dining project or congregate dining project based in restaurants or supermarkets, the provider shall verify that a consumer's congregate meals are eligible for payment, in whole or in part, with Older Americans Act funds according to rule 173-4-02 of the Administrative Code.

(B) Home-delivered meals:

(1) Initial verification: Before enrolling a consumer into a home-delivered meals project, the provider shall verify, in person, that the consumer's home-delivered meals are eligible for payment, in whole or in part, with Older Americans Act funds according to rule 173-4-02 of the Administrative Code. During a state of emergency declared by the governor, the provider may verify eligibility by telephone, video conference, or in person.

(2) Annual verification: The provider shall not keep a consumer enrolled in a home-delivered meals project for more than one year unless, at least once annually, the provider verifies, in person, the consumer's home-delivered meals continue to be eligible for payment, in whole or in part, with Older Americans Act funds according to rule 173-4-02 of the Administrative Code. During a state of emergency declared by the governor, the provider may verify eligibility by telephone, video conference, or in person.

(3) Temporary verification: A provider may deem a discharge order to be adequate verification to authorize temporary payment for home-delivered meals, in whole or in part, with Older Americans Act funds until the provider conducts its own verification of eligibility, but only if the following conditions are met:

(a) The consumer requires meals before the provider can verify that the consumer's home-delivered meals are eligible for payment, in whole or in part, with Older Americans Act funds.

(b) The consumer is sixty years of age or more old older.

(c) The discharge order indicates the consumer is unable to prepare his or her own meals, unable to consume meals at a congregate dining location due to physical or emotional difficulties, and lacking another meal support service in the home or community.

(d) The provider begins providing home-delivered meals no later than seven
days after the discharge.

(e) The provider conducts the initial verification no later than thirty consecutive days after the discharge.

(C) Waiting lists: If a waiting list exists for enrolling into a congregate dining project, congregate dining project based in restaurants or supermarkets, or a home-delivered meals project, the provider or the AAA shall develop a prioritization system that distributes meals equitably by prioritizing consumers who are determined to have the highest nutritional risk. The provider shall base the consumer's nutritional risk status upon the following:

(1) The result of a nutritional health screening of the consumer conducted according to rule 173-4-09 of the Administrative Code.

(2) The nutritional risk status of the spouse (if any), if the spouse is determined to have a higher nutritional risk than the consumer.
Older Americans Act nutrition program: procuring for person direction.

(A) When an AAA procures for congregate dining project(s) or home-delivered meals project(s), the AAA shall comply with rules 173-3-04, 173-3-05, 173-3-05.1, and 173-3-06 of the Administrative Code and also require the project(s) to include person direction.

(B) Each AAA shall procure for person direction by one of the following two methods:

(1) Competitive-proposal method:

(a) The AAA shall allow the highest level(s) of person direction that providers offer in bid(s) to determine what are responsive level(s) of person direction for its PSA.

(b) The AAA shall indicate in the RFP that, in all responsible bids, the provider shall explain how it shall offer person direction.

(c) The AAA shall award AAA-provider agreement(s) to the provider(s) offering the most-responsive bid(s). The AAA shall include a score on the level of person direction each provider's bid offers in the score determining the lowest responsive bid.

(2) Method other than competitive-proposal method:

(a) The AAA shall determine the level of person direction providers in the PSA are capable of offering. The AAA shall not base its calculations of this level solely upon the willingness of providers who are currently in AAA-provider agreements with the AAA.

(b) The AAA shall indicate in the RFP that, in all responsible bids, the provider shall explain how it shall meet or exceed the level of person direction the AAA determined providers in the PSA are capable of offering.

(c) The AAA shall award AAA-provider agreement(s) to the provider(s) offering the most-responsive bid(s). The AAA shall include a score on the level of person direction each provider's bid offers in the score determining the lowest responsible bid.

(C) During a state of emergency declared by the governor or a federal public health emergency, paragraph (B) of this rule does not apply with regard to dining formats,
location, delivery methods, times, and frequencies.

(D) Definition for this rule: "Person direction" means a subset of person-centered methodology. While person-centered methodology requires providers to work with consumers to determine what is best for the consumers, person direction allows consumers to decide what is best for themselves from a range of viable options. Person direction over congregate and home-delivered meals allows consumers to control the direction of their meals.

Giving consumers options between dining formats, locations, and times; allowing consumers to enjoy multi-generational dining; giving consumers options between entrées at each mealtime; and giving consumers options between one entrée and the sides that accompany it and at least one other entrée and the sides that accompany it (even if consumers exchange entrées or sides between two or more complete meal options) are examples of possible ways to offer person direction to consumers through congregate nutrition projects.

Giving consumers options between delivery formats (e.g., warm, frozen, chilled), options between delivery times (e.g., morning, afternoon), and options between delivery frequencies (e.g., per-meal delivery, periodic delivery); options between entrées at each mealtime; and options between one entrée and the sides that accompany it and at least one other entrée and the sides that accompany it (even if consumers exchange entrées or sides between two or more complete meal options) are examples of possible ways to offer person direction to consumers through home-delivered meals programs.
Older Americans Act nutrition program: nutrition projects.

(A) In every AAA-provider agreement for a nutrition project paid, in whole or in part, with Older Americans Act funds, the AAA shall include the following requirements, flexibilities, and recommendations:

(1) General requirements: In the AAA-provider agreement, the AAA shall include the requirements in rule 173-3-06 of the Administrative Code for every AAA-provider agreement paid, in whole or in part, with Older Americans Act funds.

(2) Project types:

   (a) If the AAA-provider agreement is for a congregate dining project, the AAA shall include the requirements in rule 173-4-05.1 of the Administrative Code in the AAA-provider agreement.

   (b) If the AAA-provider agreement is for a home-delivered meals project, the AAA shall include the requirements in rule 173-4-05.2 of the Administrative Code in the AAA-provider agreement.

   (c) If the AAA-provider agreement is for a congregate dining project based in restaurants and grocery stores, the AAA shall include the requirements in 173-4-05.3 in the AAA-provider agreement.

(3) Separate project components: If the AAA procured for components of a nutrition project separately, the AAA shall identify in each provider's AAA-provider agreement, which requirements in Chapters 173-3 and 173-4 of the Administrative Code each provider is required to provide.

(4) Nutrition services in addition to providing meals:

   (a) The provider shall offer in-person nutrition health screening to consumers at least annually. In a state of emergency declared by the governor, the provider may offer providers are strongly encouraged to provide the nutrition health screening by telephone, video conference, or in person.

   (b) In the AAA-provider agreement, the AAA shall indicate if the provider shall offer nutrition assessment, nutrition counseling, or nutrition education to consumers.

   (c) In the AAA-provider agreement, If the AAA requires the provider to
provide grocery shopping assistance or grocery ordering and delivery to consumers, the AAA shall indicate this in the AAA-provider agreement provider shall offer grocery shopping assistance or grocery ordering and delivery to consumers and include the requirements in rules 173-4-10 and 173-4-11 of the Administrative Code in the AAA-provider agreement.

(5) Eligibility verification: The provider shall determine the eligibility of each consumer in person before paying for their meals, in whole or in part, with Older Americans Act funds and do so in person whenever possible. During a state of emergency declared by the governor, the provider may verify eligibility by telephone, video conference, or in person.

(6) Consumer contributions: The provider shall comply with rule 173-3-07 of the Administrative Code.

(7) Person direction:

(a) In the AAA-provider agreement, the AAA shall require the provider to implement the person direction the provider pledged to provide when the provider bid for the AAA-provider agreement. During a state of emergency declared by the governor or a federal public health emergency, the provider is only required to provide the person direction the provider pledged to provide to the extent practicable during the state of emergency or federal public health emergency.

(b) The provider shall offer consumers opportunities to give feedback on current and future menus.

(8) Menus:

(a) Dietitians: The provider shall only offer menus approved by a dietitian.

(b) Ingredients: In the AAA-provider agreement, the AAA shall indicate the method by which the provider shall offer ingredient information on the meals provided to consumers.

(c) Serving sizes: The provider shall list the serving size for each food item on each production menu.

(9) Nutritional adequacy:
(a) For each mealtime, the provider shall offer meals that satisfy at least one-third of the dietary reference intakes (DRIs). The provider shall target nutrient levels based on the predominant population and health characteristics of the consumers in the PSA. The federal government makes the DRIs available to the general public free of charge on https://www.nal.usda.gov/fnic/dietary-reference-intakes.

(b) For each mealtime, the provider shall offer meals that follow the "2015-2020 Dietary Guidelines for Americans." The federal government publishes the guidelines for the general public free of charge on https://health.gov/our-work/food-nutrition.

(c) For each mealtime, the provider shall offer meals that, to the maximum extent practicable, are adjusted to meet any special dietary needs of consumers, including meals adjusted for cultural considerations, and preferences, and medically-tailored meals.

(d) In the AAA-provider agreement, the AAA shall not limit the provider's flexibility in designing meals that are appealing to consumers.

(e) In the AAA-provider agreement, the AAA shall not prohibit the provider from using flexibility to use either nutrient analysis or menu patterns to determine nutritional adequacy.

(f) In the AAA-provider agreement, the AAA shall encourage providers to use, where feasible, locally-grown foods and identify potential partnerships and contracts with local producers and providers of locally-grown foods.

(10) Diet orders: If the AAA-provider agreement requires the provider to offer consumers therapeutic diets, medical food, or food for special dietary use, the provider shall comply with the additional requirements in rule 173-4-06 of the Administrative Code.

(11) Dietary supplements: The provider shall not pay for multi-vitamins or mineral supplements, in whole or in part, with Older Americans Act funds.

(12) Food safety:

(a) In the AAA-provider agreement, the AAA shall indicate whether the United States department of agriculture, Ohio department of agriculture, another state's department of agriculture, or a local health
district has jurisdiction to monitor the provider's compliance with food-safety laws, including sanitation, food temperatures, thermometers, food-borne illnesses, packaging, and dating meals.

(b) In the AAA-provider agreement, the AAA shall indicate that it is responsible for reporting any reasonable cause to believe a provider is out of compliance with food-safety laws to the government authority identified in the AAA-provider agreement to comply with paragraph (A)(12)(a) of this rule.

(13) Training:

(a) The provider shall develop a training plan that includes orientation and annual in-service training.

(i) Orientation: The provider shall assure that each employee, including each volunteer, who participates in meal preparation, handling, storage, or delivery receives orientation on topics relevant to the employee's job duties before the employee performs those duties.

(ii) In-service training: The provider shall assure that each employee, including a volunteer, who participates in meal preparation, handling, storage, or delivery completes in-service training each year on topics relevant to the employee's job duties.

(b) The provider shall make, and retain, a written record of each employee's completion of orientation and in-service training. The record shall include and the topics covered during the orientation and in-service training.

(c) During a state of emergency declared by the governor or a federal public health emergency, the provider is not responsible for complying with paragraph (A)(13)(a)(i) or (A)(13)(a)(ii) of this rule.

(B) Units:

(1) Congregate dining project: A unit equals one meal provided in compliance with this rule and rule 173-4-05.1 of the Administrative Code.

(2) Home-delivered meals project: A unit equals one meal provided in compliance with this rule and rule 173-4-05.2 of the Administrative Code.
(3) Congregate dining project based in restaurants or grocery stores: A unit equals one meal provided in compliance with this rule and rule 173-4-05.3 of the Administrative Code.
173-4-05.1 Older Americans Act nutrition program: congregate dining projects.

In every AAA-provider agreement for a congregate dining project paid, in whole or in part, with Older Americans Act funds, the AAA shall include the following requirements:

(A) General requirements:

(1) In the AAA-provider agreement, the AAA shall include the requirements in rule 173-3-06 of the Administrative Code for every AAA-provider agreement paid, in whole or in part, with Older Americans Act funds.

(2) In the AAA-provider agreement, the AAA shall include the requirements in rule 173-4-05 of the Administrative Code for every AAA-provider agreement for a nutrition project.

(B) Availability:

(1) The provider shall keep at least one congregate dining location in its nutrition project open for business to provide meals for at least one mealtime (i.e., a breakfast, lunch, or dinner) per day to consumers on five or more days per week, within a reasonable distance to older adult target populations, unless the AAA obtains ODA's approval to enter into an AAA-provider agreement or during a state of emergency declared by the governor or a federal public health emergency that allows fewer days per week.

(2) In the AAA-provider agreement, the AAA shall not prohibit the provider from offering meals in different congregate dining locations on different days rather than have every congregate dining location open for at least five days per week.

(C) Carry-out meals: Older Americans Act Title III-C1 funds shall not pay, in whole or in part, for regularly-provided carry-out meals provided at congregate dining locations, but may pay for occasional carry-out meals, including meals sent home with consumers to prepare for an anticipated closing of congregate dining locations for weather-related emergencies or a state of emergency declared by the governor or a federal public health emergency.

(D) Emergency closings:

(1) The provider shall give those consumers enrolled in its congregate dining project, to the extent practicable, reasonable notice before a scheduled mealtime when a congregate dining location will be closed due to weather-related emergencies, loss of power, kitchen malfunctions, natural
disasters, a state of emergency declared by the governor (or a federal public health emergency), etc. Providers shall notify consumers by using broadcast media, by using its website, by telephone, or by any combination of the three.

(2) To prepare for emergency closings, the provider shall distribute information to consumers on how to stock an emergency food shelf.

(E) Quality assurance:

(1) Each year, the provider shall implement a plan to evaluate and improve the effectiveness of the project's operations and services to ensure continuous improvement. In the plan, the provider shall include a review of the existing project; modifications the provider made to respond to changing needs or interest of consumers, staff, or volunteers; and proposed improvements.

(2) In the AAA-provider agreement, the AAA shall not prohibit a provider from using an electronic system to collect and retain the records showing compliance with the continuous-improvement requirements in this rule.

(F) Meal verification:

(1) By one of the following two methods, the provider shall verify that each meal for which it bills was provided:

(a) The provider may use an electronic system if the system does all of the following:

(i) Collects the consumer's name, date, and a unique identifier of the consumer or the consumer's caregiver.

(ii) Retains the information it collects.

(iii) Produces reports, upon request, that the AAA can monitor for compliance.

(b) The provider may use a manual system if the provider documents the consumer's name, date, and a unique identifier of the consumer or the consumer's caregiver.

(2) In the AAA-provider agreement, the AAA shall not prohibit a provider from
using an electronic system to collect and retain the records this rule requires.

(3) During a state of emergency declared by the governor or a federal public health emergency, the provider may verify each meal provided without collecting a unique identifier of the consumer or the consumer's caregiver.
Older Americans Act nutrition program: home-delivered meals projects.

In every AAA-provider agreement for a home-delivered meals project paid, in whole or in part, with Older Americans Act funds, the AAA shall include the following requirements:

(A) General requirements:

   (1) In the AAA-provider agreement, the AAA shall include the requirements in rule 173-3-06 of the Administrative Code for every AAA-provider agreement paid, in whole or in part, with Older Americans Act funds.

   (2) In the AAA-provider agreement, the AAA shall include the requirements in rule 173-4-05 of the Administrative Code for every AAA-provider agreement for a nutrition project.

(B) Delivery:

   (1) Availability:

      (a) Per-meal delivery:

         (i) To consumers who choose to receive per-meal deliveries and require meals on five or more days per week, the provider shall deliver at least one meal per day for five or more days per week.

         (ii) To consumers who choose to receive per-meal deliveries, but do not require meals on five or more days per week, the provider shall deliver at least one meal per day on days that the consumer requires meals.

      (b) Periodic delivery: To consumers who choose periodic deliveries, in the AAA-provider agreement, the AAA shall not prohibit the provider from, in one delivery, delivering meals to cover multiple mealtimes.

      (c) State of emergency: During a state of emergency declared by the governor or a federal public health emergency, the provider may, in one delivery, deliver meals to cover multiple mealtimes for consumers who received meals before the state of emergency (or federal public health emergency) by per-meal delivery or periodic delivery.

   (2) Successful deliveries: The provider shall only deliver meals to the consumer's
home when the consumer, or the consumer's caregiver, is home, unless otherwise authorized by the AAA.

(C) Emergency closings: The provider shall develop and implement written contingency procedures emergency preparedness plans for emergency closings due to short-term weather-related emergencies, loss of power, kitchen malfunctions, natural disasters, a state of emergency declared by the governor (or a federal public health emergency), etc. In the procedures, the provider shall include both of the following:

(1) Providing timely notification of emergency situations to consumers; and,

(2) Either the distribution Distributing either of the following:

   (a) Information to consumers on how to stock an emergency food shelf; or,

   (b) Shelf-stable meals to consumers for an emergency food shelf.

(D) Quality assurance:

(1) Each year, the provider shall implement a plan to evaluate and improve the effectiveness of the project's operations and services to ensure continuous improvement. In the plan, the provider shall include a review of the existing project; modifications the provider made to respond to changing needs or interest of consumers, staff, or volunteers; and proposed improvements.

(2) In the AAA-provider agreement, the AAA shall not prohibit a provider from using an electronic system to collect and retain the records showing compliance with the continuous-improvement requirements in this rule.

(E) Delivery verification:

(1) The provider shall verify each meal delivery for which it bills the AAA using either an electronic or manual system. Regardless of the system used, the provider shall collect all the following information:

   (a) Consumer's name.

   (b) Delivery date.

   (c) Number of meals delivered.
(d) A unique identifier of the consumer, the consumer’s caregiver, or the
delivery person.

(2) In the AAA-provider agreement, the AAA shall not require the provider to use a
particular system. Use of either system is acceptable.

(3) During a state of emergency declared by the governor or a federal public health
emergency, the provider may verify each meal provided without collecting a
unique identifier of the consumer or the consumer's caregiver.
173-4-05.3 Older Americans Act nutrition program: congregate dining projects based in restaurants or grocery stores.

In every AAA-provider agreement for a congregate dining project based in restaurants or grocery stores paid, in whole or in part, with Older Americans Act funds, the AAA shall include the following requirements:

(A) General requirements:

(1) In the AAA-provider agreement, the AAA shall include the requirements in rule 173-3-06 of the Administrative Code for every AAA-provider agreement paid, in whole or in part, with Older Americans Act funds.

(2) In the AAA-provider agreement, the AAA shall include the requirements in rule 173-4-05 of the Administrative Code for every AAA-provider agreement for a nutrition project.

(B) Eligibility verification: The provider shall use one of the following three methods to verify consumers' eligibility when complying with the eligibility-verification requirements in rule 173-4-03 of the Administrative Code:

(1) Identification card method (whether or not electronically verified): The provider that uses this method shall register each consumer that it serves and issue the consumer an identification card. When the consumer visits the restaurant or grocery store, the consumer shall show the identification card to the designated staff person at the restaurant or grocery store to receive a prepared meal or to select a prepared meal from a menu of meals that comply with rule 173-4-05 of the Administrative Code. The provider may use an electronic verification system to validate the identification card and to verify the provision of the meal.

(2) Voucher method (whether or not electronically verified): The provider that uses this method shall register each consumer that it serves and issue the consumer a voucher. At the time the vouchers are received, the provider or AAA shall provide the consumer with the opportunity to voluntarily contribute to the cost of the meal. When the consumer visits the restaurant or grocery store, the consumer shall provide a voucher to the designated staff person at the restaurant or grocery store to receive a prepared meal or to select a prepared meal from a menu of meals that meet the meal requirements established in rule 173-4-05 of the Administrative Code. The provider may use an electronic verification system to validate the voucher and to verify the provision of the meal.

(3) Handwritten verification method: Before providing a consumer his or her first
meal, the provider that uses this method shall verify that the consumer is at least sixty years of age, have the consumer sign in, provide collect information that required by the AAA will need for reporting, and to obtain a disclosure signature from the consumer. The provider shall provide the AAA with this information. The provider shall also regularly provide the AAA with records that identify each consumer the provider has served and the number of meals that the provider has served to each consumer.

(C) Consumer contributions: The provider shall use one of the following two methods for soliciting consumer contributions when complying with the consumer-contribution requirements in rule 173-3-07 of the Administrative Code:

(1) If the provider uses the consumer identification method in paragraph (B)(1) or (B)(3) of this rule, the provider shall solicit the consumer to voluntarily contribute to the cost of the meals when the provider provides the meals.

(2) If the provider uses the method in paragraph (B)(2) of this rule, the provider shall solicit the consumer to voluntarily contribute to the cost of the meals when the provider provides the vouchers.

(D) Emergency closings: The provider shall distribute information to consumers on how to stock an emergency food shelf.

(E) Quality assurance: The provider shall elicit comments from consumers on dining environments, food appearance, type of food, food temperatures, and staff professionalism.

(F) Meal verification:

(1) The provider shall verify that each meal for which it bills was delivered by one of the following two methods:

(a) The provider may use an electronic system if the system does all of the following:

(i) Collects the consumer's name, date, and a unique identifier of the consumer or the consumer's caregiver.

(ii) Retains the information it collects.
(iii) Produces reports, upon request, that the AAA can monitor for compliance.

(b) The provider may use a manual system if the provider documents the consumer's name, and date of meal, and collects a unique identifier of the consumer or the consumer's caregiver.

(2) In the AAA-provider agreement, the AAA shall not prohibit a provider from using an electronic system to collect and retain the records this rule requires.

(3) During a state of emergency declared by the governor or a federal public health emergency, the provider may verify each meal provided without collecting a unique identifier of the consumer or the consumer's caregiver.
(A) Definitions for this rule:

(1) "Diet order" means a written order for a therapeutic diet, medical food, or food for special dietary use from a licensed healthcare professional whose scope of practice includes ordering these diets.

(2) "Food for special dietary use" has the same meaning as in 21 C.F.R. 105.3(a)(1) (April, 2015 edition) (1979).

(3) "Medical food" has the same meaning as in 21 U.S.C. 360ee(b)(3) as accessed on December 9, 2015 (2017).

(4) "Therapeutic diet" means a calculated nutritive regimen including, the following regimens:

(a) Diabetic and other nutritive regimens requiring a daily specific calorie level.

(b) Renal nutritive regimens.

(c) Dysphagia nutritive regimens, excluding simple textural modifications.

(d) Any other nutritive regimen requiring a daily minimum or maximum level of one or more specific nutrients or a specific distribution of one or more nutrients.

(B) In every AAA-provider agreement for therapeutic diets, medical meals, or food for a special dietary use paid, in whole or in part, with Older Americans Act funds, the AAA shall include the following requirements:

(1) General requirements: In the AAA-provider agreement, the AAA shall include the requirements in rule 173-3-06 of the Administrative Code for every AAA-provider agreement paid, in whole or in part, with Older Americans Act funds.

(2) Diet orders:

(a) The provider shall only provide a therapeutic diet, medical food, or food for special dietary use to a consumer if the provider received a diet order for the consumer. If the therapeutic diet is a dysphagia nutritive
regimen, the provider shall only provide the therapeutic diet if the diet order indicates whether the consumer requires 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 therapeutic diet texture-modified foods and/or thickened liquids.

(b) The provider shall provide a therapeutic diet, medical food, or food for special dietary use to the consumer identified in the diet order for the shorter of the following two durations:

(i) The length of time authorized by the diet order.

(ii) One year from the date the diet order indicates the diet should begin.

(c) If the provider receives an updated diet order before the expiration of a current diet order, the provider shall provide the therapeutic diet, medical food, or food for special dietary use according to the updated diet order.

(d) The provider shall assure the therapeutic diet contains nutrients consistent with the diet order by either utilizing nutrient analysis or by using a meal-pattern plan approved by a dietitian.

(e) The provider shall only provide a therapeutic diet, medical food, or food for special dietary use if the provider (or, if the consumer is in a care-coordination program, the AAA), retains a copy of the diet order.

(3) Dietitians:

(a) The provider shall determine the need, feasibility, and cost-effectiveness of offering a therapeutic diet, medical food, or food for special dietary use by consulting with a licensed dietitian.

(b) A provider shall only provide medical food and food for a special dietary use if the provider relies upon the oversight of a dietitian when providing medical food or food for a special dietary use.

(C) Nutrition services incentive program (NSIP) funding for medical food and food for special dietary use:
(1) Stand-alone meals: If the medical food or food for a special dietary use is offered to a consumer as meals, the meals are eligible for payment with Older Americans Act funds as medical food or food for a special dietary purpose, but are not eligible for payment with Older Americans Act funds as congregate or home-delivered meals. Thus, if the medical food or food for a special dietary use is offered to consumers as meals, they would not qualify for NSIP incentive payments.

(2) Supplements to meals: If the medical food or food for a special dietary purpose is offered to consumers as supplements to meals, the supplements are included in the cost of the meals. Meals with the supplement are eligible for payment with Older Americans Act funds as a congregate or home-delivered meals, both of which qualify for NSIP incentive payments.
173-4-07 Older Americans Act nutrition program: nutrition counseling.

(A) Definitions for this rule:

"Nutrition counseling" ("counseling") has the same meaning as "medical nutrition therapy" in rule 4759-2-01 of the Administrative Code.

"Nutritional assessment" ("assessment") has the same meaning as in rule 4759-2-01 of the Administrative Code.

(B) In every AAA-provider agreement for nutrition counseling paid, in whole or in part, with Older Americans Act funds, the AAA shall include the following requirements:

1) General requirements: In the AAA-provider agreement, the AAA shall include the requirements in rule 173-3-06 of the Administrative Code for every AAA-provider agreement paid, in whole or in part, with Older Americans Act funds.

2) Dietitian: Only a licensed dietitian ("dietitian") working for an agency provider, or a licensed dietitian working as a self-employed provider shall provide counseling to consumers.

3) Orders and limits:

   a) Before the provider counsels a consumer, the provider obtains an order for the consumer's counseling from a licensed healthcare professional whose scope of practice includes ordering counseling.

   b) The provider shall not provide counseling in excess of the amount the licensed healthcare professional ordered.

   c) The provider shall not provide counseling to a consumer's caregiver unless the licensed healthcare professional also ordered counseling for the consumer's caregiver to improve the caregiver's care to the consumer.

4) Venue:

   a) The provider shall conduct the initial counseling session in person in the consumer's home. During a state of emergency declared by the governor, the provider may conduct the initial counseling session by telephone, video conference, or in person in the consumer's home.

   b) The provider may conduct subsequent sessions by telephone, video
conference, or in person in the consumer's home.

(5) Nutritional assessment ("assessment"):

(a) During the initial counseling session, the provider shall conduct an assessment of the consumer's nutritional intake, anthropometric measurements, biochemical values, physical and metabolic parameters, socio-economic factors, current medical diagnosis and medications, pathophysiological processes, and access to food and food-assistance programs.

(b) No later than seven days after the initial assessment, the dietitian forwards the results of the initial assessment to the licensed healthcare professional who ordered the counseling and, if the consumer is in a care-coordination program, to the consumer's case manager.

(6) Nutrition intervention plan:

(a) The provider shall develop a nutrition intervention plan based upon the initial assessment and, if the provider conducts subsequent assessments, the subsequent assessments. The plan shall include all the following:

(i) Clinical and behavioral goals and a care plan.

(ii) Intervention planning, including nutrients required, feeding modality, and method of nutrition education and counseling, with expected measurable outcomes.

(iii) Consideration for input from the consumer, licensed healthcare professional who ordered the counseling, case manager (if any), consumer's caregiver (if any), and relevant service provider (if any).

(iv) The scheduling of any follow-up counseling sessions.

(b) No more than seven days after the provider sends the assessment to the licensed healthcare professional who ordered the counseling, the provider shall forward the nutrition intervention plan to the same professional and, if the consumer is in a care-coordination program, to the consumer's case manager.
(c) The provider shall provide reports on the intervention plan's implementation and the consumer's outcomes to the licensed healthcare professional who ordered the counseling and, if the consumer is in a care-coordination program, to the consumer's case manager.

(7) Service verification:

(a) By one of the following two methods, the provider shall verify that each consultation for which it bills was provided:

(i) The provider may use an electronic system if the system does all of the following:

(a) Collects the consumer's name, date of consultation, time of day each consultation begins and ends, name of licensed dietitian providing consultation, and a unique identifier (e.g., electronic signature, fingerprint, password, swipe card, bar code) unique to of the consumer.

(b) Retains the information it collects.

(c) Produces reports, upon request, that the AAA can monitor for compliance.

(ii) The provider may use a manual system if the provider documents the date of service, time of day that each consultation begins and ends, name of the licensed dietitian providing the consultation, and collects the handwritten signature of the licensed dietitian providing the consultation and a unique identifier of the consumer.

(b) During a state of emergency declared by the governor or a federal public health emergency, the provider may verify each episode of service provided without collecting a unique identifier of the consumer.

(C) Units:

(C)(1) Unit: A unit of nutrition counseling equals is fifteen minutes of counseling.

(2) A unit of nutrition assessment is one nutrition assessment session per consumer.
(A) "Nutrition education" means a service an intervention that promotes better health by providing targeting consumers or and caregivers that uses with accurate and culturally-sensitive information dissemination, and instruction, and training on with the intent to support food, nutrition, and physical activity, food safety, or disease prevention choices and behaviors (related to nutritional status) in order to maintain or improve health and address nutrition-related conditions.

(B) Requirements In for every AAA-provider agreement for nutrition education paid, in whole or in part, with Older Americans Act funds, the AAA shall include the following requirements:

(1) General requirements: In the The AAA-provider agreement the AAA shall include is subject to the requirements in rule 173-3-06 of the Administrative Code for every AAA-provider agreement paid, in whole or in part, with Older Americans Act funds.

(2) Approved education materials content: The provider shall distribute provide education materials content that the AAA's licensed dietitian has approved as promoting better health by providing consumers or caregivers with accurate and culturally-sensitive information and instruction on nutrition, physical activity, food safety, or disease prevention and as being tailored to consumer's needs, interests, and abilities (including literacy levels). meets the following requirements:

(a) A licensed dietitian has approved it as promoting better health.

(b) It is consistent with the "Dietary Guidelines for Americans."

(c) It is accurate, culturally sensitive, regionally appropriate, and considerate of personal preferences, including a consumer's needs interests and abilities (including literacy level).

(3) Education format: The provider may provide education in person, through remote formats (including video, audio, or online), or through the distribution of materials. The provider shall use a format that is culturally sensitive, regionally appropriate, and considers personal preferences, including a consumer's needs and abilities.

(4) It supports food, nutrition, and physical activity choices and behaviors in order to maintain or improve health and address nutrition-related conditions.

(5) Approved evaluation methodology:
(a) The provider shall implement a methodology for evaluating the effectiveness of its nutrition education that has the AAA's approval before the provider implements it.

(b) The provider shall retain records of all evaluations that it completes using the methodology in paragraph (B)(3)(a) (B)(4)(a) of this rule.

(4)(6) Frequency: In the AAA-provider agreement, the AAA shall require the provider to provide nutrition education according to one of the following three options:

(a) The provider offers nutrition education two times per year.

(b) The provider offers nutrition counseling according to rule 173-4-07 of the Administrative Code instead of nutrition education within a particular county.

(c) A combination of paragraphs (B)(4)(a) (B)(5)(a) and (B)(4)(b) (B)(5)(b) of this rule.

(5)(7) Special requirements for congregate dining projects: If the AAA-provider agreement requires the provider to offer nutrition education through a congregate dining project, the provider shall comply with the following:

(a) The provider shall offer nutrition education in group sessions.

(b) For each unit of service, the provider shall record each consumer's name (e.g., in a list); the service date and duration of service; the educational topic; the service units; the instructor's name; and the instructor's signature attesting to the accuracy of the record.

(6)(8) Special requirements for home-delivered meal projects and congregate dining projects based in restaurants and supermarkets: If the AAA-provider agreement requires the provider to offer nutrition education through a home-delivered meal project or congregate dining project based in restaurants or supermarkets, the provider shall retain a record to show the number of consumers who received the educational materials approved content, the service date, the topic of the educational materials approved content, and the provider's signature.

(C) Units: A unit of nutrition education is one nutrition education session per consumer
whether provided in person, through remote formats (including video, audio, or online), or through the distribution of materials.
Older Americans Act nutrition program: nutrition health screening.

(A) Definitions for this rule:

"Form ODA0010" means the "'Determine Your Own Nutritional Health' checklist (Rev. May 28, 2009)." ODA publishes the form on www.aging.ohio.gov. It is available to the general public at no cost.

"High nutritional risk" means the status of a consumer whose score on form ODA0010 is six or above.

"Nutrition health screening" ("screening") means using form ODA0010 to screen a consumer for nutritional risks and, if the screening determines the consumer to be at high nutritional risk, referring consumer to providers of home and community-based goods and services with potential for reducing the risk.

(B) In every AAA-provider agreement for nutrition health screening paid, in whole or in part, with Older Americans Act funds, the AAA shall include the following requirements:

1. General requirements: In the AAA-provider agreement, the AAA shall include the requirements in rule 173-3-06 of the Administrative Code for every AAA-provider agreement paid, in whole or in part, with Older Americans Act funds.

2. Stand-alone or part: The provider may screen consumers in person as a stand-alone service or as part of a nutrition project or nutrition counseling. During a state of emergency declared by the governor or a federal public health emergency, the provider may screen consumers by telephone, video conference, or in person.

3. Checklist: The provider shall use form ODA0010 to screen consumers for nutritional risks in person. During a state of emergency declared by the governor or a federal public health emergency, the provider may screen consumers by telephone, video conference, or in person.

4. Referrals: If a screening determines a consumer to be at high nutritional risk, the provider shall refer the consumer to providers of home and community-based goods and services with potential for reducing the risk. The AAA-provider agreement shall not require the provider to document the identity of providers to whom it made referrals.

5. Service verification: For each screening, the provider shall retain records to
verify the date of the screening, the consumer's name, the provider's name, and an indication of whether the consumer is at high nutritional risk.

(C) Units:

(1) One unit of nutrition health screening provided as a stand-alone service is equal to a single instance of screening one consumer.

(2) When a provider provides nutrition health screening as part of another good or service paid, in whole or in part, with Older Americans Act funds, the screening is part of the cost of providing a unit of a meal through the other good or service.
Older Americans Act nutrition program: grocery shopping assistance.

(A) "Grocery shopping assistance" means a service that assists consumers with the act of grocery shopping.

(B) Requirements for every AAA-provider agreement for grocery shopping assistance paid, in whole or in part, with Older Americans Act funds, the AAA shall include the following requirements:

1 General requirements: In the AAA-provider agreement, the AAA shall include is subject to the requirements in rule 173-3-06 of the Administrative Code for every AAA-provider agreement paid, in whole or in part, with Older Americans Act funds.

2 Introductory information: The provider shall provide a consumer with a packet of introductory information that explains how grocery shopping assistance works upon the consumer's enrollment into a grocery shopping service.

3 Transferring groceries: In the AAA-provider agreement, the AAA shall indicate the extent to which the provider shall transfer the groceries the consumer purchases or receives, whether from the grocery store to the vehicle, from the shopping cart to the vehicle, from the vehicle to the consumer's home, or a combination of the three.

4 Payment:

    (a) No Older Americans Act funds, other than funds from Title III-B or III-E of the Older Americans Act, shall pay for grocery shopping assistance.

    (b) No Older Americans Act funds, other than funds from Title III-B or III-E of the Older Americans Act, shall pay for consumable supplies or material aid to meet basic needs, such as groceries. Providers may accept other funds (e.g., private pay, SNAP) for consumable supplies or material aid to meet basic needs.

5 Service verification:

    (a) For each episode of assistance, the provider shall retain a record of the consumer's name; service date; pick-up time and location; drop-off time and location; service units; provider's signature; and a unique identifier of the consumer.
(b) In the AAA-provider agreement, the AAA shall not prohibit the provider from using an electronic system to collect and retain the items in paragraph (B)(5)(a) of this rule.

(c) During a state of emergency declared by the governor or a federal public health emergency, the provider may verify each episode of service provided without collecting the unique identifier of the consumer.

(C) Units: One unit of grocery shopping assistance equals one-way transportation to or from a grocery store retail food establishment or non-profit food establishment.
173-4-11 Older Americans Act nutrition program: grocery ordering and delivery.

(A) "Grocery ordering and delivery" means a service for a consumer who needs assistance shopping for groceries that allows consumers to order groceries, then delivers the ordered groceries to the consumer's home or vehicle (e.g., at a drive-thru pick-up window).

(B) **Requirements In for** every AAA-provider agreement for grocery ordering and delivery paid, in whole or in part, with Older Americans Act funds, the AAA shall include the following requirements:

(1) General requirements: In the AAA-provider agreement, the AAA shall include is subject to the requirements in rule 173-3-06 of the Administrative Code for every AAA-provider agreement paid, in whole or in part, with Older Americans Act funds.

(2) Procedures: The provider to shall develop and implement procedures for the safe delivery of groceries.

(3) Payment:

(a) No Older Americans Act funds, other than funds from Title III-B or III-E of the Older Americans Act, shall pay for grocery ordering and delivery.

(b) No Older Americans Act funds, other than funds from Title III-B or III-E of the Older Americans Act, shall pay for consumable supplies or material aid to meet basic needs, such as groceries. Providers may accept other funds (e.g., private pay, SNAP) for consumable supplies or material aid to meet basic needs.

(4) Service verification:

(a) For each episode of service, the provider to retain a record of the consumer's name; service date; provider's signature; and unique identifier of the consumer.

(b) In the AAA-provider agreement, the AAA shall not prohibit the provider from using a technology-based electronic system to collect and retain the items in paragraph (B)(4)(a) of this rule.

(c) During a state of emergency declared by the governor or a federal public
health emergency, the provider may verify each episode of service provided without collecting the unique identifier of the consumer.

(C) Units: One unit of grocery ordering and delivery equals one episode of grocery ordering and delivery.