

## The Common Sense Initiative

## Business Impact Analysis

**Agency Name:** OHIO DEPARTMENT OF AGING**Package Title:** TRANSPORTATION**Rule Number(s):** 173-3-06.6, 173-39-02.13, and 173-38-02.18**Date:** Sept. 21, 2018

<b>Rule Types:</b>	<input checked="" type="checkbox"/> <b>5-Year Review</b>	173-3-06.6, 173-39-02.13, and 173-38-02.18
	<input checked="" type="checkbox"/> <b>Rescinded</b>	173-3-06.6, 173-39-02.13, and 173-38-02.18
	<input checked="" type="checkbox"/> <b>New</b>	173-3-06.6, 173-39-02.13, and 173-38-02.18
	<input type="checkbox"/> <b>Amended</b>	
	<input type="checkbox"/> <b>No change</b>	

The Common-Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

**Regulatory Intent****1. Please briefly describe the regulations in plain language.**

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

## INTRODUCTION

ODA conducted a 5-year review of these rules and now proposes to rescind these rules and adopt new rules in their place.

173-3-06.6 directly regulates the content of provider agreements entered between an area agency on aging (AAA) and a transportation provider when the trip is paid, in whole or in part, with Older Americans Act funds.

173-39-02.13 and 173-39-02.18 directly regulates non-emergency medical transportation and non-medical transportation provided by ODA-certified providers to individuals enrolled in the PASSPORT Program.

**REDUCTIONS TO ADVERSE IMPACT  
PROPOSED NEW RULES VS. CURRENT RULES**

ODA proposes to reduce the adverse impact of 173-3-06.6, 173-39-02.13, and 173-39-02.18 in the following ways:

1. Exempt licensed ambulettes from these rules' preventative-maintenance requirements because the State Board of Emergency Medical, Fire, and Transportation Services (EMFTS), in [4766-3-09](#), already requires those vehicles to meet such standards. This will reduce the impact of providing evidence of compliance to ODA or its designees

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after having already provided it to EMFTS. The exemption will be new for 173-3-06.6. It already exists in 173-39-02.13 and 173-39-02.18.

2. Replace the requirement to create a written plan for preventative maintenance with a requirement to adhere to the manufacturers' preventative-maintenance plan. This will reduce the impact of creating new plans.
3. Exempt busses from the annual vehicle inspection requirements because they are already subject to the Ohio Highway Patrol's annual bus inspection program. The exemption will be new for 173-3-06.6. It already exists in 173-39-02.13 and 173-39-02.18.
4. Change the *pre-trip* vehicle inspection into a *daily* vehicle inspection. For vehicles operated by more than one driver per day, this will result in fewer inspections. This will be new for all three rules.
5. Change the current rules' requirement for *drivers* to conduct pre-trip/daily inspections to a requirement for *providers* to do so. This will give providers the flexibility to either (1) assign daily vehicle inspections to one or more employees or (2) continue to require each driver to inspect the vehicle he/she drives.
6. Exempt first responders and EMTs from the requirements for drivers. This will reduce the impact of providing evidence of compliance to ODA or its designees after having already provided it to EMFTS. The exemption will be new for 173-3-06.6. It already exists in 173-39-02.13 and 173-39-02.18.
7. Exempt transit drivers from the requirements for drivers. This will reduce the impact of providing evidence of compliance to ODA or its designees. The exemption will be new for 173-3-06.6. It already exists in 173-39-02.13 and 173-39-02.18.
8. Eliminate requirements for defensive driving training in all three rules.
9. Delete language implying that drivers require ongoing passenger-assistance training.
10. Require completing any passenger-assistance training course approved by the Board of EMFTS, which approves 2 courses and also allows providers to seek Board approval to provide their own training. This will allow providers to choose the lowest-cost training option available to them.

### MAINTAIN UNIFORMITY

ODA proposes to maintain the uniformity between the requirements for trips paid, in whole or in part, with Older Americans Act funds (173-3-06.6) and those paid with Medicaid funds through the PASSPORT Program (173-39-02.13 and 173-39-02.18). Many of ODA's proposed reductions to adverse impact bring 173-3-06.6 into greater uniformity with 173-39-02.13 and 173-39-02.18. Providers who provide trips paid with Older Americans Act funds and and trips paid with Medicaid funds benefit from the uniformity. Without the uniformity, providers would be under differing standards depending upon which funds paid for a given trip.

### OTHER CHANGES

#### PROPOSED NEW RULES VS. CURRENT RULES

ODA proposes to change 173-3-06.6, 173-39-02.13, and 173-39-02.18 in the following ways:

1. Delete any requirements in 173-3-06.6 that duplicate requirements in 173-3-06 for every AAA-provider agreement.
2. Delete any requirements in 173-39-02.13 and 173-39-02.18 that duplicate requirements in 173-39-02 for every ODA-certified provider.
3. Delete any requirements in 173-39-02.18 that duplicate requirements in 173-39-02.13.
4. Point to the requirements for hiring drivers in ORC §§ 4766.14 and 4766.15. rather than restating those requirements in all three rules.

5. Point to the Board of EMFTS' website for lists of approved first aid and CPR courses in all three rules.
6. Transfer the responsibility to develop standards for entering and exiting vehicles from providers to AAAs in 173-3-06.6.
7. Require collecting a unique identifier from the consumer to attest to the completion of a trip. The requirement will be new for 173-3-06.6. It already exists in 173-39-02.13 and 173-39-02.18.

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

173-3-06.6: §§ [173.01](#), [173.02](#), and [173.392](#).

173-39-02.13 and 173-39-02.18: §§ 173.01, 173.02, [173.391](#), [173.52](#), and [173.522](#).

**3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

*If yes, please briefly explain the source and substance of the federal requirement.*

173-3-06.6: 45 CFR 1321.65(a) requires providers to report statistical and other information to AAAs according to reporting requirements ODA establishes.

173-39-02.13 and 173-39-02.18: In order for the Centers for Medicare and Medicaid Services (CMS) to approve Ohio's application to for a Medicaid waiver authorizing the State to launch and maintain the PASSPORT Program, 42 CFR 441.352 requires ODA to assure CMS in the waiver application that ODA established adequate requirements for ODA-certified transportation providers (*i.e.*, adopted these rules) and that ODA monitors providers to assure they comply with those requirements (*i.e.*, comply with these rules).

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

173-3-06.6, 173-39-02.13, and 173-39-02.18: These rules exist to comply with the state laws mentioned in ODA's response to #2, to meet the federal requirements mentioned in ODA's response to #3, and to implement requirements for hiring drivers in ORC §§ [4766.14](#) and [4766.15](#).

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

173-3-06.6, 173-39-02.13, and 173-39-02.18: These rules protect the health and safety of consumers/individuals receiving trips from providers entering into AAA-provider agreements and ODA-certified providers. Additionally, ORC § 4766.14(C)(1) requires ODA to enforce the requirements for hiring drivers in § 4766.14, which includes the requirements in § 4766.15(A)(2) to (A)(4).

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

173-3-06.6, 173-39-02.13, and 173-39-02.18: ODA and its designees monitor providers to ensure compliance for the continued health and safety of individuals receiving services through ODA-administered programs. The rules are judged as being successful when ODA and its designees find few violations during monitoring or investigating alleged incidents.

### **Development of the Regulation**

**7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

*If applicable, please include the date and medium by which the stakeholders were initially contacted.*

**173-3-06.6, 173-39-02.13, and 173-39-02.18:** On April 11, 2017, ODA raised the review of the rules as a topic of discussion for the meeting of the Ohio Association of Area Agencies on Aging (O4A).

**173-39-02.13, and 173-39-02.18:**

- In April 2018, ODA emailed every ODA-certified transportation provider who provided ODA with a valid email address, which was 151 out of 183 providers, asking for recommendations for improving the rule.
- On May 14, 2018, ODA emailed every PASSPORT administrative agency to ask for their comments on 173-39-02.13 and 173-39-02.18.

**173-3-06.6:** On August 23, 2018, ODA's Elder Connections Division sent a survey to every provider currently in an AAA-provider agreement and also to AAAs to solicit their input on this rule.

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

**173-3-06.6, 173-39-02.13, and 173-39-02.18:** At the April 11, 2017 O4A meeting, no AAA directors raised issues with these rules.

**173-39-02.13 and 173-39-02.18:** In response to the April 2018 emails to ODA-certified providers, ODA received 19 comments from 14 providers. Most comments were requests for clarification on the rules' requirements. Two comments were shared by many providers:

1. Providers wanted to know if the checks providers conduct to see if applicants qualify to be drivers need to be periodically repeated. These "checks" include a physician's statement of health, drug and alcohol testing, driver's BMV records, background checks, and evidence of successful completion of first aid and CPR training. Providers may choose to periodically repeat these checks, but the proposed new rules and ORC §§ 4766.14 or 4766.15 only require providers to do so when considering an *applicant* to be a driver. ODA does not require periodically repeating them.
2. Providers expressed opposition to competing subsequent "refresher" passenger-assistance training courses since the only course ODA has approved (DRIVE) changed its requirements. ODA does not control the DRIVE course. Additionally, neither the current rules nor ODA's proposed new rules require drivers to take passenger-assistance training "refresher" courses. Any language implying so in the current rule will not appear in the new rule. Additionally, ODA will allow providers to take any passenger-assistance training course approved by the Board of EMFTS, which currently approves 2 courses. This will give providers flexibility to choose the course that best fits their needs and their budgets.

**173-39-02.13 and 173-39-02.18:** In response to the May 2018 emails to PASSPORT administrative agencies (PAAs), ODA received 19 comments from 7 PAAs. The PAAs shared the same 2 concerns as providers (above), and also the following concerns:

1. PAAs asked if a healthcare professional other than a physician could provide the statement. ORC §4766.14(A)(3)(a) requires a statement from a *physician*, meaning a M.D. or D.O. Therefore, only enacted legislation could amend the section so that statements from other licensed healthcare professionals would suffice.
2. PAAs asked if annual vehicle inspections could be conducted by a mechanic other than an ASE-certified mechanic. Both the current and proposed new versions of the rules allow providers to use mechanics approved by the AAA/ODA's designee in lieu of an ASE-certified mechanic.

**173-3-06.6:** From August 23-31, 2018, ODA surveyed transportation providers which are funded by the Older Americans Act. A similar survey was also sent to ODA's 12 AAAs which enter into provider agreements with these

providers. The survey was sent to 155 transportation providers. ODA is pleased that 84 of the 155 providers responded representing a 54% response rate. The respondents were geographically disbursed across the state and represent both urban and rural perspectives. ODA also received 17 responses from AAAs representing 9 of the 12 AAAs. The survey questions and a summary of the responses follow.

ODA explained it is considering the option of allowing an employee other than the driver to complete the pre-trip vehicle inspection. More than 75% of providers responded that increased flexibility would have minimal to no impact on operations, while about 24% of providers shared that the increased flexibility would have a moderate to significant impact on operations. ODA asked if the providers recommended other changes to the pre-trip inspection requirements and about 88% of providers and 63% of AAAs reported that they do not recommend any changes to the pre-trip vehicle inspection requirements. Of the AAAs and providers who recommended changes to the pre-trip inspection requirement, the most common response was related to the use of the ODA form. Respondents indicated they would be interested in the option of having an electronic form to complete. ODA currently makes the form available online as a fill-in .pdf.

ODA asked if providers and AAAs recommended any changes to the annual inspection requirements. About 83% of providers responded that they did not recommend any changes. Some providers who recommended changes suggested allowing for more flexibility on the dates and allowing providers to use their own forms. Several others commented that the ASE-certified mechanic is becoming increasingly harder to find. ODA's rules allow AAAs and ODA's designees to approve mechanics other than ASE-certified mechanics.

In one survey question, ODA pointed out that 173-3-06.6 does not detail how providers should verify to the AAA the accuracy of their record of trips provided. ODA asked how the transportation providers currently verify trips for which they bill were provided. The transportation providers responded as follows: 74% use drivers' handwritten signatures on paper; 66% use consumers' handwritten signatures on paper; nearly 7% use electronic verification that collects consumers' handwritten signatures on touch screens; 5% utilize electronic verification that does not collect consumers' handwritten signatures on touch screens; and nearly 17% indicated they use some other verification process.

The survey's closing question asked providers and AAAs for any other recommendations to improve 173-3-06.6 or about being a partner in Ohio's aging network. In response, more than 88% of providers reported that they do not have any other comments. For the 11% which provided comments, the key themes and comments are included below:

- *On Electronic Verification:* Comment: If the state mandates electronic verification this will put a financial hardship on many providers to cover software and equipment costs. Response: Although ODA does not intend to require electronic verification, ODA allows providers to use electronic verification.
- *On Uniform Requirements:* Comment: Please continue to work with other State of Ohio departments that are working toward common and/or uniform rules and requirements for all human service transportation. The trips that are provided to various human service agencies are equally important, and should have uniform driver, vehicle, and service tracking requirements. Response: ODA has been working to ensure that providers experience minimal differences when transporting consumers/individuals through ODA-administered programs, whether the Older Americans Act Program or the PASSPORT Program. Additionally, ODA's rules exempt many requirements if providers have already met similar or more stringent requirements as a licensed ambulette provider or a transit provider.
- *On Driver's Training Requirements:* Comment: The language regarding ODA DRIVE training is not clear as to if a refresher is required every 3 years. Response: 173-39-02.13 and 173-39-02.18 require drivers to successfully complete passenger-assistance training course (e.g., DRIVE) no later than 6 months after the driver provides his or her first trip to an individual. The rules do not require drivers to repeat the course every 3 years or at any other interval. Additionally, ODA proposes to remove any language in the rule that may have implied otherwise.

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

Dave Yost, State Auditor, OFFICE OF OHIO AUDITOR OF STATE, [Ohioans At Risk: Noncompliance in Ohio's Medicaid Program Poses Dangers, Wastes Tax Dollars](#), Special Report, Feb. 27, 2018. This report says transportation billed to Medicaid, which would include transportation provided under 173-39-02.13 and 173-39-02.18, is subject to "improper billing costing tens of millions of dollars"<sup>1</sup> which is often due to a lack of trip verification.<sup>2</sup>

Adam Ganuza and Rachel Davis, [Disruptive Innovation in Medicaid Non-Emergency Transportation](#), CENTER FOR HEALTH CARE STRATEGIES, INC., Feb., 2017. The research brief shows the need to verify trips because it highlights the weaknesses and fraud potential of non-emergency medical transportation.

Stuart Wright, Deputy Inspector General, [Fraud and Abuse Safeguards for State Medicaid Nonemergency Medical Transportation Services](#), DEPARTMENT OF HEALTH AND HUMAN SERVICES: OFFICE OF INSPECTOR GENERAL, OEI-06-07-00320, Memorandum Report, May 28, 2009. The report shows the most common types of fraud and abuse cases reported by the states in 2007 were (1) 104 cases involving billing for services not rendered, (2) 93 cases involving unspecified overbilling, (3) 57 cases involving upcoding, and (4) 32 cases involving undocumented trips/forged documents.

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

ODA considered requiring drivers to successfully clear a 12-panel drug screen instead of the 5-panel drug screen, but (1) the costs would have been prohibitive; (2) by comparison, the U.S. Dept. of Transportation's standards for aviators, truck drivers, and others is clearing a 5-panel drug test; and (3) ORC § 4766.15 does not require a minimum number of panels.

ODA considered amending the rule to allow transportation networks (e.g., Uber) to provide transportation paid with Older Americans Act funds; but, after reviewing the matter, ODA determined there is no need to change rule language to accommodate transportation networks because ORC [§4766.09](#) already allows transportation network providers to provide non-emergency medical transportation paid with Older Americans Act funds without having an ambulette license, so long as the provider meets the requirements in 173-3-06.6..

**11. Did the Agency specifically consider a performance-based regulation? Please explain.**  
*Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

173-3-06: For providers to enter into an AAA-provider agreement to provide transportation paid (in part or in whole) by Older Americans Act funds, 45 C.F.R. 75.327 to 75.335 and OAC rules 173-3-04, 173-3-05, and 173-3-05.1 require providers to participate in free and open competition. Providers outperforming others are more likely to win the bids for AAA-provider agreements.

173-39-02.13 and 173-39-02.18: 42 CFR 431.51 gives individuals enrolled in the PASSPORT Program freedom to choose to be transported by any willing and qualified provider. Providers outperforming others are more likely to be chosen by individuals.

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

173-3-06, 173-39-02.13, and 173-39-02.18: The ORC sections listed in ODA's response to #3 only authorize ODA to adopt rules establishing the standards (1) for AAA-provider agreements and (2) to become, and to remain, an ODA-certified provider.

**13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

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<sup>1</sup> Pg. 6.

<sup>2</sup> Pg. 7.



173-3-06, 173-39-02.13, and 173-39-02.18: Before the rules take effect, ODA will post them on ODA's website. ODA will also send an email to subscribers of our rule-notification service to feature the rules.

173-3-06, 173-39-02.13, and 173-39-02.18: Through its regular monitoring activities, ODA and its designees will monitor providers for compliance.

### **Adverse Impact to Business**

#### **14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

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

173-3-06: The rule directly regulates the content of AAA-provider agreements for transportation. 155 providers have entered into an AAA-provider agreement with an AAA that is currently in force.

173-39-02.13 and 173-39-02.18: The rules directly regulate ODA-certified transportation providers. As of September 19, 2018, ODA had 196 certified providers, but only 117 billed ODA for providing trips year-to-date in 2018.

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

173-3-06.6, 173-39-02.13, and 173-39-02.18: The adverse impact of the rules is the following:

- General Costs:
  - The requirements in 173-3-06 and/or 173-39-02.
  - Back-up Plans.
  - Providing assisted transportation.
- Vehicle Maintenance and Inspections:
- Hiring Drivers:
  - Meet certain driver requirements required by ORC §§ 4766.14 and 4766.15.
  - Meet additional driver requirements.
  - Passenger-Assistance Training.
- Trip Verification

##### **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.*

173-3-06.6, 173-39-02.13, and 173-39-02.18: The amount ODA pays providers for trips is an all-inclusive rate. It's intended to cover the daily costs incurred in service provision plus costs related to the employees, such as orientation and training. The costs incurred as a result of these rules are likely calculated as part of a provider's operational budgets (e.g. the cost of doing business and clerical jobs, such as retaining records and updating policies).

173-3-06.6: Providers establish the rate per trip when they respond to a request for proposal (RFP) and submit their bid to the AAA for how much they will charge per trip. If the provider's bid wins, the provider is paid what it bid during the open and free competition for the AAA-provider agreement. (Cf., 173-3-04 and 173-3-05)

**173-39-02.13 and 173-39-02.18:** The appendix to [5160-1-06.1](#) establishes the maximum-possible payment of Medicaid funds the PASSPORT Program would make for transportation provided according to 173-39-2.13 or 173-39-02.18. In the table below, ODA tallies the amounts billed in 2016. The table compares the maximum-possible payment to the amount billed by providers.

	2018 YEAR-TO-DATE			
	UNITS	TRIPS	AVERAGE PAYMENT PER TRIP	MAXIMUM POSSIBLE PAYMENT PER TRIP
PASSPORT PROGRAM NON-EMERGENCY MEDICAL TRANSPORTATION 173-39-02.13	1 one-way trip	2,909	\$43.25	\$653.11
PASSPORT PROGRAM NON-EMERGENCY MEDICAL TRANSPORTATION 173-39-02.13	1 round trip	41,298	\$88.28	\$1,306.24
PASSPORT PROGRAM NON-MEDICAL TRANSPORTATION 173-39-02.18	1 one-way trip	917	\$30.60	\$653.11
PASSPORT PROGRAM NON-MEDICAL TRANSPORTATION 173-39-02.18	1 round trip	5,060	\$68.38	\$1,306.24

**173-39-02.13 and 173-39-02.18:** Because providers on average bill less than the maximum-possible rate, the adverse impacts of the current rules are being covered by the amount providers are currently being paid by the PASSPORT Program.

**173-3-06.6, 173-39-02.13, and 173-39-02.18:** As noted in ODA's response to #1, ODA is proposing to reduce the adverse impact of the proposed new rules.

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

To ensure the health and safety of consumers/individuals participating/enrolled in ODA-administered programs, ODA is required to develop rules establishing requirements for AAA-provider agreements and for ODA-certified providers. Providers voluntarily bid for an AAA-provider agreement to be paid with Older Americans Act funds for trips provided to consumers. An AAA-provider agreement is not required to transport consumers unless a provider wants Older Americans Act funds to pay for those trips. Providers voluntarily apply for ODA certification. Certification is not required to transport individuals unless a provider wants the PASSPORT Program to pay for those trips with Medicaid funds.

The requirements in the proposed new rules is reasonable compared to the health and safety of the consumers/individuals being transported—especially because ODA proposes to reduce the adverse impact in the new rules.

The only new requirement ODA is proposing is, for trips paid with Older Americans Act funds (173-3-06.6), to require providers to collect a unique identifier when documenting trips, which can be done by using an electronic or manual system. This rule does not presently have trip-verification language. This is reasonable and necessary for the following reasons:

- ODA and AAAs need assurance that consumers receive the trips they require (e.g. to medical appointments).
- Many providers have entered into AAA-provider agreements and are also ODA-certified providers, therefore they are already subject to the trip-verification requirements in 173-39-02.13 and 173-39-02.18.
- 45 CFR. 1321.65(a) already requires providers to report information about trips provided to AAAs and ODA's provider survey of providers with AAA-provider agreements revealed that most providers already verify the trips they provide.
- The Office of the Ohio Auditor of State has documented a problem in trip verification in the special report cited in ODA's response to #9 and the following audit reports:
  - Angel Carriers.<sup>3</sup>
  - Citywide Medical Transportation.<sup>4</sup>

<sup>3</sup> OHIO AUDITOR OF STATE, [Angel Carriers, LLC: Mahoning County: Medicaid Compliance Report for The Period July 1, 2011 to June 30, 2014](#), Aug 9, 2016. See also, Justin Wier, [Auditor's Medicaid Report Cites Local Providers for Noncompliance](#) and [Auditor Documents Medicaid Noncompliance, Cites Youngstown Company](#), THE VINDICATOR, February 27, 2018.



- Integrity Ambulance.<sup>5</sup>
- D-Square Transportation.<sup>6</sup>
- Emmanuel Medical Transportation.<sup>7</sup>
- Wheelchair Express.<sup>8</sup>
- A-to-B Transportation.<sup>9</sup>
- Caring Hands.<sup>10</sup>
- Kafaru Medical Transformation.<sup>11</sup>
- Greathouse Medical Transportation.<sup>12</sup>
- Peace Transportation.<sup>13</sup>
- Friendly Transportation.<sup>14</sup>
- Belmont County Committee on Aging.<sup>15</sup>
- Additionally, the Ohio State Auditor's reports show, "[t]ransportation and home health-care workers make up at most 17 percent of the total Medicaid service providers, but they accounted for \$28.7 million, or 86 percent of the \$33.3 million in overpayments identified since 2011."<sup>16</sup>
- The Ohio Attorney General's office has an investigative unit for Medicaid fraud. This unit conducts investigations in comparable Medicaid waiver programs like the PASSPORT Program. As previously noted, many providers paid, in whole or in part, with Older Americans Act funds, are also paid by the PASSPORT Program and other Medicaid-funded programs. Concerning transportation, the Medicaid Fraud Control Unit says, "Over the last five (5) years (01/01/12 – 12/31/16), the Medicaid Fraud Control Unit opened 124 criminal investigations of Medicaid transportation providers. This accounts for approximately 5% of all fraud cases opened. During this same time period, the Unit posted thirty-four (34) criminal convictions of Medicaid transportation providers. This accounts for approximately 5% of all provider fraud convictions."<sup>17</sup>

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<sup>4</sup> OHIO AUDITOR OF STATE, [Citywide Medical Transportation, LLC: Lucas County: Medicaid Compliance Report for The Period February 11, 2013 to December 31, 2014](#), audit report, Nov 29, 2016. See also Jim Provance, [Most Medicaid Overpayments Never Recovered](#), TOLEDO BLADE, Feb. 27, 2018.

<sup>5</sup> OHIO AUDITOR OF STATE, [Integrity Ambulance Service, LLC: Darke County: Medicaid Compliance Report for The Period July 1, 2011 to June 30, 2014](#), audit report, Nov 22, 2016. See also Josh Sweigart, [Auditor: Darke Co. Ambulance Company Over-Billed Medicaid by \\$448,000](#), DAYTON DAILY NEWS, Nov. 29, 2016. See also Ken McCall and Josh Swiegart, [Medical Transports Overbill Ohio Medicaid by Millions](#), DAYTON DAILY NEWS, Apr. 26, 2014. See also [Investigation Uncovers Fraud in Ohio Ambulette Industry: Companies Inflating Number of Trips and Costing Medicaid Millions](#), JOURNAL OF EMERGENCY MEDICAL SERVICES, Mar. 31, 2014.

<sup>6</sup> OHIO AUDITOR OF STATE, [Dsquare Transportation, Ltd.: Cuyahoga County: Medicaid Compliance Report for The Period January 1, 2012 to December 31, 2014](#), audit report, and [Ineligible Drivers, Missing Documentation cited in Medicaid Examination](#), press release, November 10, 2016.

<sup>7</sup> OHIO AUDITOR OF STATE: [Emmanuel Ventures Limited, LLC: Cuyahoga County: Medicaid Compliance Report for The Period January 1, 2011 to December 31, 2013](#), audit report, Mar 17, 2016.

<sup>8</sup> OHIO AUDITOR OF STATE, [Wheelchair Express, LLC: Franklin County: Medicaid Compliance Report for The Period January 1, 2010 to December 31, 2012](#), audit report, and [Wheelchair Express, LLC Owes Ohio Medicaid \\$163,100](#), press release, Jan 12, 2016.

<sup>9</sup> OHIO AUDITOR OF STATE, [A to B Transportation, LLC: Summit County: Medicaid Compliance Report for The Period January 1, 2011 to December 31, 2013](#), audit report, and [Summit County Medicaid Provider Owes Ohio Medicaid \\$167,200](#), press release, Dec 1, 2015. See also Amanda Garrett, [Ambulette Driver Was Missing An Essential: A Driver's License](#), AKRON BEACON JOURNAL, Dec. 2, 2015.

<sup>10</sup> OHIO AUDITOR OF STATE, [Caring Hands Transportation of Ohio, LLC Franklin County: Medicaid Compliance Report for The Period October 1, 2009 to December 31, 2010](#), Nov 7, 2013.

<sup>11</sup> OHIO AUDITOR OF STATE, [Kafaru Medical Transportation, LLC: Cuyahoga County: Medicaid Compliance Report for The Period January 1, 2008 to December 31, 2010](#), July 9, 2013.

<sup>12</sup> OHIO AUDITOR OF STATE, [Greathouse Medical Transportation, LLC: Cuyahoga County: Medicaid Compliance Report for The Period January 1, 2008 to December 31, 2010](#), audit report, Nov 13, 2013. See also, Robert Higgs, [State Auditor Says Medical Transport Company Owes State \\$1 Million for Improper Medicaid Reimbursements](#), THE PLAIN DEALER, Nov. 13, 2013.

<sup>13</sup> OHIO AUDITOR OF STATE, [Peace Transportation Corporation: Franklin County: Medicaid Compliance Report for The Period July 1, 2007 to June 30, 2011](#), audit report, Nov. 29, 2012.

<sup>14</sup> OHIO AUDITOR OF STATE, [Friendly Transportation Services, Inc.: Franklin County: Medicaid Compliance Report for The Period October 1, 2009 to December 31, 2010](#), audit report, and [Ambulette Company Found to Owe Ohio Medicaid \\$37,000](#), press release, Oct. 1, 2013.

<sup>15</sup> OHIO AUDITOR OF STATE, [Belmont County Committee on Aging: Special Audit for The Period January 1, 1998 to June 30, 1999](#), audit report, Feb 6, 2001. This special audit reported on discrepancies and lack of documentation regarding trips paid by Medicaid and Older Americans Act funds.

<sup>16</sup> Jim Provance, [Most Medicaid Overpayments Never Recovered](#), TOLEDO BLADE, Feb. 27, 2018.

<sup>17</sup> Lloyd S. Early, Special Agent-In-Charge, Health Care Fraud Section. Email to author. Apr.11, 2017.

### **Regulatory Flexibility**

#### **16. 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 individuals enrolled in ODA-administered waiver programs, the rules treat all providers the same, regardless of their size.

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

ODA is concerned primarily about protecting the health and safety of individuals receiving services from ODA-certified providers through compliance with these rules. Whenever possible, ODA or its designees will treat administrative violations that do not involve health and safety as opportunities for improvement through warning notices and solicitation of corrective action.

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

ODA (and its designees) are available to help providers of all sizes with their questions. Any person may contact [Tom Simmons](#), ODA's policy development manager, with questions about the rule.

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