

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 173-14-03

**Rule Type:** New

**Rule Title/Tagline:** Duties of the representatives of the office.

**Agency Name:** Department of Aging

**Division:**

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#### **I. Rule Summary**

1. **Is this a five year rule review?** No
  - A. **What is the rule's five year review date?**
2. **Is this rule the result of recent legislation?** Yes
  - A. **If so, what is the bill number, General Assembly and Sponsor?** HB 49 - 132 - Smith
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 173.01, 173.02; 42 U.S.C. 3025(a)(1)(C), 3058g(a)(5)(D); 45 C.F.R. 1321.11, 1324.11(e), 1324.13(b)(1), 1324.15(b)
5. **What statute(s) does the rule implement or amplify?** 1324.11(e), 1324.19, 173.17; 42 U.S.C. 3058g; 45 C.F.R. 1321.11
6. **What are the reasons for proposing the rule?**

ODA and the SLTCO (we) adopted OAC Chapter 173-14 (this chapter) to establish and operate a state long-term care ombudsman program as required by ORC§173.01; 42 USC 3027, 3058g; and 45 CFR 1321.11 and Part 1324. We also adopted this chapter to carry out the provisions of ORC Chapter 173 pertaining to ombudsman programs as required by ORC§173.02.

As part of this chapter, we adopted the current version of this rule to define the duties of representatives of the office, which implements ORC§173.17 and 45 CFR 1324.19 into this chapter.

We reviewed every rule in this chapter top to bottom, as ORC§106.03 requires us to do no less often than once every 5 years. In doing so, we considered any necessary amendments to implement the following new laws:

(1) On February 11, 2015, the U.S. Dept. of Health and Human Services, Administration on Aging (AoA) and Administration for Community Living (ACL) jointly adopted 45 CFR Part 1321 to regulate long-term care ombudsman programs. AoA and ACL subsequently amended their rules and renumbered them as 45 CFR Part 1324.

(2) On April 19, 2016, the Older Americans Act Reauthorization Act of 2016 amended §§ 711 (42 USC3058f), 712 (42 USC3058g), and other sections of the Older Americans Act of 1965.

(3) On September 29, 2017, Am. Sub. House Bill No. 49 (132nd G.A.) amended ORC §§ 173.14, 173.15, 173.17, 173.19, 173.20, 173.21, 173.22, and 173.24.

We now propose to adopt this new rule to replace a substantially, similar rule ODA is simultaneously proposing to rescind.

**7. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

This proposed new rule will define the duties of representatives of the office.

We propose to adopt this new rule to replace a substantially-similar rule we simultaneously propose to rescind. In comparison to the rule it would replace, this rule contains the following "amendments":

(1) This new rule will delineate between what an ombudsman associate may do and what an ombudsman associate shall do.

(2) This new rule will permit ombudsman associates to make requests of provider staff on behalf of, and with the consent of, a consumer.

(3) This new rule will delete a grandfather clause for certified ombudsman associates (Level 1).

(4) This new rule will require ombudsman specialists to achieve a minimum score of 70% on the ombudsman deployment examination before permitting them to provide complaint supervision.

(5) This new rule will require certified ombudsman program directors to implement program budgets with the approval of the SLTCO.

(6) This new rule will delete "complex" as it appears before "complaints" so Ombudsman associates may assist with complaints (not "complex complaints") and ombudsman specialists may handle complaints (not "complex complaints:"). This is comparable to 42 USC 3058g(a)(5)(B)(iii) and (vii), plus 45 CFR 1324.19(a)(1), which say a duty of a representative is to "identify, investigate, and resolve complaints" (not "complex complaints").

(7) This new rule will contain updated cross references to other rules in this chapter.

(8) This new rule will contain improved word choice, grammar, and organization.

**8. Does the rule incorporate material by reference? No**

**9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.71 to 121.76, please explain the basis for the exemption and how an individual can find the referenced material.**

*Not Applicable*

**10. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

*Not Applicable*

## **II. Fiscal Analysis**

**11. As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.**

This will have no impact on revenues or expenditures.

\$0.00

We estimate the adoption of this proposed new rule will have no impact upon the biennial budget the Ohio General Assembly established for ODA because it will replace a substantially-similar rule of the same number of which ODA proposes to simultaneously rescind.

**12. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

We estimate that the adoption of this proposed new rule, and simultaneous rescission of a substantially-similar rule of the same number, will create no cost of compliance to any directly-affected person.

**13. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No**

**14. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**

**III. Common Sense Initiative (CSI) Questions**

**15. Was this rule filed with the Common Sense Initiative Office? No**

**16. Does this rule have an adverse impact on business? No**

**A. Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? No**

OAC Chapter 173-14 regulates the state long-term care ombudsman program and regional programs. It does not regulate any Ohio business.

**B. Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? No**

**C. Does this rule require specific expenditures or the report of information as a condition of compliance? No**