

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 173-14-14

Rule Type: Amendment

Rule Title/Tagline: Staffing requirements, staff qualifications, and background checks.

Agency Name: Department of Aging

Division:

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I. Rule Summary

1. **Is this a five year rule review?** Yes
 - A. **What is the rule's five year review date?** 10/4/2021
2. **Is this rule the result of recent legislation?** Yes
 - A. **If so, what is the bill number, General Assembly and Sponsor?** HB 166 - 133
- Oelslager
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 121.07, 173.01, 173.02, 173.16, 173.27; 42 U.S.C. 3025, 3058g; 45 C.F.R. 1321.11, 1324.11, 1324.13, 1324.15
5. **What statute(s) does the rule implement or amplify?** 173.16, 173.27; 42 U.S.C. 3058g; 45 C.F.R. 1324.11
6. **What are the reasons for proposing the rule?**

R.C. §173.16 requires ODA to adopt rules to establish requirements for ombudsman staff members (i.e., representatives) including staffing requirements. R.C. §173.27 requires ODA to adopt rules to establish standards regarding database reviews and criminal records checks for ombudsman positions.

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

This rule regulates staffing requirements, staff qualifications, and background checks.

ODA proposes to amend this rule to achieve the following:

1. Insert ", unless otherwise approved by the state ombudsman" at the end of paragraph (A) of this rule.
2. Update the URL for the Nurse Aide Registry.
3. No longer mention sections 1128 and 1156 of the Social Security Act because ODA mentions the codified version of these sections in the United States Code, which is readily accessible by the general public.
4. Delete most of the details in paragraph (C)(4) of this rule and, instead, refer readers to division (F) of section 173.27 of the Revised Code, which was amended by H.B. 166 (133rd G.A.).
5. Refer to eligibility for intervention in lieu of conviction in paragraphs (C)(5)(a), (C)(5)(b), (C)(6)(a)(i), (C)(6)(a)(ii)(a), (C)(6)(a)(iii)(a), (C)(6)(a)(iv)(a), (C)(6)(a)(v), and (C)(6)(b) of this rule.
6. Replace "deception to obtain matter harmless to juveniles" with "deception to obtain matter harmful to juveniles."
7. Refer to the offenses listed in section 2925.55 of the Revised Code concerning ephedrine products.
8. Replace "human trafficking" with "trafficking in persons."
9. Delete a sentence regarding a self-employed person from paragraph (C)(8)(a)(ii) of this rule since it does not apply to the ombudsman program.

ODA also proposes to make non-substantive improvements to this rule.

- 8. Does the rule incorporate material by reference? Yes**
- 9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

This rule references databases operated by state and federal government agencies that are accessible by the general public free of charge. ODA provides the URL to each database in this rule.

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. **Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will have no impact on revenues or expenditures.

\$0.00

Adopting the proposed amendments to this rule will not affect the biennial budget that the Ohio General Assembly established for ODA in H.B. 110 (134th G.A.).

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

The only rule in Chapter 173-14 of the Administrative Code that has a cost of compliance for any person or organization other than the long-term care ombudsman programs themselves is rule 173-14-28 of the Administrative Code.

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

15. **If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.**

The rule mentions fees established in R.C. 173.27, which pay BCII for criminal records checks. Neither ODA nor the ombudsman programs receive these funds.

III. Common Sense Initiative (CSI) Questions

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

17. 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
 - 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
 - D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? No

IV. Regulatory Restrictions (This section only applies to agencies indicated in R.C. 121.95 (A))

18. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? Yes
- A. How many new regulatory restrictions do you propose adding? 0
 - B. How many existing regulatory restrictions do you propose removing? 11
- (C)(4)(a)(i): Database reviews: The responsible party SHALL NOT conditionally hire an applicant unless....
- (C)(4)(a)(ii): Criminal records check: The responsible party SHALL NOT conditionally hire an applicant unless....
- (C)(4)(a)(ii)(a): "WebCheck": ...the responsible party SHALL NOT conditionally hire the applicant until....
- (C)(4)(a)(ii)(b): Fingerprint impression sheet: If the responsible party does not REQUIRE the applicant to provide his or her fingerprints directly to bCII by using "WebCheck,"....
- (C)(4)(a)(ii)(b): ...the responsible party SHALL NOT conditionally hire the applicant until....

(C)(4)(a)(ii)(b): ...the responsible party SHALL provide the sheet to BCII no later than five business days after the responsible party conditionally hires the applicant.

(C)(4)(b)(i)(a): Only BCII check required: The responsible party SHALL release the conditionally-hired applicant from a paid ombudsman position if...

(C)(4)(b)(ii): Disqualifying offense on record: The responsible party SHALL release the conditionally-hired applicant if...

(C)(4)(b)(ii): ...if the forthcoming criminal records from the FBI would not PROHIBIT the responsible party from doing so.

(C)(4)(b)(ii): If the responsible party is unable or unwilling to hire an applicant with a disqualifying offense on his or her criminal record, the responsible party SHALL release the conditionally-hired applicant regardless of the day during the sixty-day period that the responsible party received the criminal records.

(C)(8)(ii): Regarding a self-employed person, the responsible party SHALL simply retain the records.