

**Rule Summary and Fiscal Analysis (Part A)****Department of Aging**

Agency Name

Division

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**173-14-14**

Rule Number

**NEW**

TYPE of rule filing

Rule Title/Tag Line

**Staffing requirements and staff qualifications.****RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **No**

2. Are you proposing this rule as a result of recent legislation? **No**

3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**

4. Statute(s) authorizing agency to adopt the rule: **173.02, 173.16, 173.27**

5. Statute(s) the rule, as filed, amplifies or implements: **173.16, 173.27**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

ODA is proposing this new rule to replace rule 173-14-14 of the Administrative Code, which ODA is simultaneously proposing for rescission.

There are two substantial changes in the proposed new rule regarding the personal character standards. Division (F) of section 173.27 of the Revised Code says, "The director of aging shall adopt rules in accordance with Chapter 119. of the Revised Code to implement [section 173.27 of the Revised Code]. The rules shall specify circumstances under which the office of the state long-term care ombudsperson program may employ a person who has been convicted of or pleaded guilty to an offense listed or described in division (C)(1) of [section 173.27 of the Revised

Code] but meets personal character standards set by the director." Therefore, ODA is required to adopt rules and is also responsible for "setting" the personal character standards. In this proposed new rule, ODA is proposing two new substantial changes to the personal character standards, as follows:

1. ODA is proposing to prohibit the SLTCO or a regional ombudsman program from using personal character standards to hire an applicant who was convicted of repeat offenses of breaking and entering, theft, aggravated theft, grand theft, grand theft of a motor vehicle, unauthorized use of property--computer, cable, or telecommunications property, securing writings by deception, and recovering stolen property. The rule that ODA is proposing to replace (rule 173-14-14 of the Administrative Code) prohibits the SLTCO or a regional ombudsman program from using personal character standards to hire an applicant who was convicted of repeat-theft offenses, but does not include theft nor the other previously-mentioned theft-related offenses in the definition of "repeat-theft offense."
2. ODA is proposing to prohibit the SLTCO or a regional ombudsman program from using personal character standards to hire an applicant who was convicted of a violent offense against a person with a disability. The rule that ODA is proposing to replace (rule 173-14-14 of the Administrative Code) defined "offense of violence," but did not prohibit the SLTCO or a regional ombudsman program from using the standards to hire an applicant who was convicted of a violent offense against an older person or a person with a disability.

There are also non-substantial changes in the proposed new rule:

1. ODA is proposing to move the definitions of terms used in the personal character standards to the paragraphs on personal character standards to minimize cross-referencing in the rule. ODA is also moving other definitions to a paragraph at the end of the rule.
2. ODA is proposing to add outlining terms (e.g., "notification" and "FBI") to help readers identify the contents of certain paragraphs in order to make the rule easier to read, thereby increasing compliance.
3. ODA is proposing to reduce verbosity, especially by eliminating excessive cross-referencing.

In this new rule, ODA is only proposing to make changes that the Ohio General Assembly has given ODA the authority to change. But, because most discussion surrounding criminal records checks regards changes that require new laws to be passed, it is worth mentioning that, unless authorized by a future law, ODA may not:

1. Disqualify an applicant who was convicted of a crime that division (A)(3) of section 109.572 of the Revised Code does not say disqualifies the applicant.

2. Disqualify a person who was convicted of a crime that appears in court records, other records, or the person's confession, but does not appear in the BCII's criminal records check report.
3. Give a person ownership/portability of the criminal records check report about him/her to reduce costs when, in a short period of time, a person applies for more than one job that requires a BCII criminal records check.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

This proposed rule implements sections 173.16 and 173.27 of the Revised Code, including staff requirements, including a regional program's staffing ratio, and staff qualifications, including the following topics:

1. Qualifications to be a representative.
2. Qualifications to be an ombudsman specialist.
3. Qualifications to be an ombudsman program director.
4. Criminal records checks for all applicants, including the following sub-topics
  - A. Identification of those subject to a criminal records check.
  - B. Notification requirements.
  - C. Requirements/options regarding requests of BCII for FBI information.
  - D. Forms and fingerprints.
  - E. Fees.
  - F. Disqualifying offenses.
  - G. Personal character standards. (ODA's proposed substantial changes to the personal character standards is located in paragraphs (B)(4)(c)(i)(c) and (B)(4)(c)(i)(d) of the proposed new rule. ODA is proposing to make "repeat theft-related offense" includes multiple convictions of breaking and entering, theft, aggravated theft, grand theft, grand theft of a motor vehicle, unauthorized use of property--computer, cable, or telecommunications property, forgery, identification card offenses, and securing writings by deception. The current rule that ODA is proposing to replace (rule 173-14-14 of the Administrative Code) only prevents the SLTCO (or the SLTCO's designee) from using personal character standards to hire an applicant who had multiple convictions of unauthorized use of a vehicle, passing bad checks, misuse of credit cards, Medicaid fraud, or recovering stolen property.

ODA is also proposing to prevent the SLTCO (or the SLTCO's designee) from using the personal character standards to hire an applicant who was convicted of a violent offense. The current rule that ODA is proposing to replace (rule 173-14-14 of the Administrative Code) defines "offense of violence," but does not prohibit the SLTCO (or the SLTCO's designee) from using personal character standards to hire an applicant was convicted of a violent offense against an older person or a person with a disability.

H. Pardons.

I. Conditional employment.

J. Confidentiality.

5. Conflict of interest.

6. Definitions.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

*This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.*

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

*This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.*

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

*Not Applicable.*

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so:

*Not Applicable.*

12. 119.032 Rule Review Date:

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

**FISCAL ANALYSIS**

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

\$0.00

ODA anticipates that the adoption of this proposed new rule will have no impact upon the biennial budget established by the General Assembly for the agency.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

GRF-490-410 Long-Term Care Ombudsman.

322-490-618 Federal Aging Grants.

3M4-490-612 Federal Independence Services.

4C4-490-609 Regional Long-Term Care Ombudsman Program.

5BA-490-620 Ombudsman Support.

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

Because section 173.27 of the Revised Code already requires the SLTCO (or the

SLTCO's designee) to request from BCII a criminal records check on an applicant for the ombudsman program, and because the currently effective version of rule 173-14-14 of the Administrative Code does the same, ODA estimates that the non-substantial changes in this rule will have no impact upon the cost of compliance the SLTCO and the SLTCO's designees already face.

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ODA estimates that that if the SLTCO (or any of the SLTCO's designees) is currently considering an applicant for an ombudsman position who was convicted of repeat-theft offenses or a violent offense against a person with a disability may incur a cost of compliance associated with the change to the definition of "repeat-theft offense" and to the definition of "violent offense" in this proposed new rule, if the SLTCO (or any of the SLTCO's designees) must spend administrative time searching for a new applicant because no other applicants are applying for the ombudsman program who have not been convicted of repeat-theft offenses or a violent offense. However, ODA estimates that this is quite unlikely.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**