

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 173-14-15

Rule Type: New

Rule Title/Tagline: Conflicts of interest.

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?** 173.15; 42 U.S.C. 3058g; 45 C.F.R. 1321.11, 1324.11(e)(4), 1324.21
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 ORCÂ§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 ORCÂ§173.02.

As part of this chapter, we propose to adopt this rule to establish the parameters for preventing a conflict of interest.

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) Effective 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) Effective 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) Effective 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 the current rule, which we are simultaneously proposing to rescind.

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

This rule establishes the parameters for conflict of interest for preventing a conflict of interest.

We propose to adopt this new rule, which "amends" the current rule to achieve the following:

(1) Replace the definition of "relative" with a definition of "immediate family member" corresponding to the definition of "immediate family" in 45 CFR 1324.1.

(2) Redefine "financial interest" to mean ownership interest in a provider by a representative or "immediate family member."

(3) Itemize 9 different conflicts of interest.

(4) Reduces the time given to ODA's director for reviewing an identified conflict of interest with the SLTCO from 30 days to 5 business days.

(5) Adds the following sunrise provision: "If the state office implements an electronic registry, submission of conflict of interest screens and proposed remedies or waiver requests shall be made through the registry."

(6) Improve the rule's word choice, punctuation, etc.

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.**

ODA and the SLTCO made a revised filing on Feb. 8, 2018 to delete words appearing in (A)(2) before "Remedy." A glitch in RAS 3.0 inserted the words into the new rule. They are text from deleted language in the to-be-rescinded rule.

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 similar rule of the same number in which ODA is simultaneously proposing to rescind.

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

We estimate the adoption of this proposed new rule, and simultaneous rescission of a 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**