

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

Agency Name

Division

Tom Simmons

Contact

**50 West Broad Street 9th floor Columbus OH
43215-3363**

Agency Mailing Address (Plus Zip)

614-728-2548

Phone

Fax

tsimmons@age.ohio.gov

Email

173-14-16

Rule Number

NO CHANGE

TYPE of rule filing

Rule Title/Tag Line

Complaint-handling protocol.**RULE SUMMARY**

1. Is the rule being filed for five year review (FYR)? **Yes**
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: **173.01, 173.02, 173.19, 173.20; Sections 305(a)(1)(C) and 712(a)(5)(D) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; 45 C.F.R. 1321.11 (October 1, 2014 edition).**
5. Statute(s) the rule, as filed, amplifies or implements: **173.15, 173.19, 173.20, 173.22; Section 712 of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006.**
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

Chapter 173-14 of the Administrative Code governs Ohio's State Long-Term Care Ombudsman (SLTCO) Program, including, but not limited to, the designation of regional programs, the handling of complaints, referring complaints to other public agencies or entities, the training requirements for ombudsman representatives, the deadlines for paying the bed fee, and the requirements to review databases and check criminal records for each paid ombudsman position.

State law requires ODA to review its rules no later than each rule's currently-assigned review date. The SLTCO has reviewed the rules of this chapter and, at this time, is recommending no changes to the current rules.

Regarding forthcoming federal rules in July, 2016, the SLTCO will conduct a subsequent review of all aspects of the Office and will propose amendments as part of that analysis.

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:

The rule regulates the program's complaint-handling protocol.

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. If applicable, indicate each specific paragraph of the rule that has been modified:

Not Applicable.

12. Five Year Review (FYR) Date: **5/1/2015** and **05/01/2020**

(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 proposed no-change rule filing would have no effect upon the biennial budget that the Ohio General Assembly established for ODA.

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

The following appropriations generally apply to Chapter 173-14 of the Administrative Code:

1. GRF-490-410 Long-Term Care Ombudsman.
2. 4C40-490-609 Regional Long-Term Care Ombudsman Program: from bed fees (cf., section 173.26 of the Revised Code and rule 173-14-27 of the Administrative Code).

3. 3220-490-618 Federal Aging Grants.

4. 3M40-490-612 Federal Independence Services.

The ombudsman support appropriation (BLI: 5BA0-490-620) does not apply to Chapter 173-14 of the Administrative Code. The appropriation, which is a transfer from the Resident Protection Fund, is used for special projects that are above and beyond the core ombudsman services that Chapter 173-14 of the Administrative Code regulates.

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:

Section 173.19 of the Revised Code gives the representatives "a right to private communication with residents and their sponsors and access to long-term care facilities, including the right to tour resident areas unescorted and the right to tour facilities unescorted as reasonably necessary to the investigation of a complaints." This rule implements that section. Investigating a complaint would require a facility or other long-term care provider to cooperate with the investigation which could involve minimal administrative duties such as opening doors and files or the cost of providing copies of records. If a facility or other long-term care provider provides records, they are permitted to charge a fee.

On the other hands, the ombudsman program can save facilities enforcement costs because, if the facilities resolve the problems that ombudsman representatives identify in the complaint-handling process, they can avoid enforcement by the Ohio Department of Health.

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**

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

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**

Section 173.99 of the Revised Code authorizes fining nursing facilities, residential care facilities, and other long-term care providers for violations of section 173.19 of the Revised Code--a section that gives ombudsman representatives "a right to private communication with residents and their sponsors and access to long-term care facilities, including the right to tour resident areas unescorted and the right to tour facilities unescorted as reasonably necessary to the investigation of a complaints." Although rule 173-14-16 of the Administrative Code regulates the complaint-handling protocol, the rules does not repeat, nor expand upon, the possibility of fines. Instead, it focuses on the duties of the ombudsman representatives.

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **Yes**

As previously stated in ODA's response to #15 of this RSFA, rule 173-14-16 of the Administrative Code indirectly regulates nursing facilities, residential care facilities, and other long-term care providers. Section 173.19 of the Revised Code gives the representatives "a right to private communication with residents and their sponsors and access to long-term care facilities, including the right to tour resident areas unescorted and the right to tour facilities unescorted as reasonably necessary to the investigation of a complaints." This rule implements that section. Investigating a complaint would require a nursing facility, residential care facility, or other long-term care provider to cooperate with the investigation which could involve minimal administrative duties such as opening doors and files. Thus, the specific expenditures for nursing facilities, residential care facilities, or other long-term care providers would be the administrative expense of cooperating with investigations.