

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 173-14-16

**Rule Type:** New

**Rule Title/Tagline:** Complaint-handling protocol.

**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)(2), 1324.11(e)(4), 1324.13(b)(1), 1324.15(b), 1324.11(e)(3)
5. What statute(s) does the rule implement or amplify? 173.15, 173.19, 173.20, 173.22; 42 U.S.C. 3058g; 45 C.F.R. 1324.11(e)(2), 1324.11(e)(3), 1324.11(3)(4), 1324.19(b)
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 adopted the current version of this rule to define establish the protocol for complaint handling.

We reviewed every rule in this chapter top to bottom, as ORCÂ§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 Â§ 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 Â§ 173.14, 173.15, 173.17, 173.19, 173.20, 173.21, 173.22, and 173.24.

We propose to adopt this new rule to replace a substantially, similar rule we simultaneously propose 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 establish the protocol for complaint handling.

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

(1) Allow representatives to decline to investigate any complaints the representatives determine to be inappropriate, but requires representatives to refer such complaints to the SLTCO for a final determination on whether the complaints warrant investigation.

(2) Require representatives to notify the SLTCO if a complaint involves probable physical harm to the consumer, the representative is unable to respond before the next day, and the next day is not a working day for the regional program.

(3) Add the following to the principle steps in an investigation: (a) identifying relevant agencies and (b) engaging volunteer representatives when available.

(4) Add the following to the strategies for resolving complaints: (a) advocacy for clients, (b) legislative advocacy "after consultation with the SLTCO," and (c) public disclosure "after consultation with the SLTCO," but also prohibit representation at a state hearing held according to Chapter 119. of the Revised Code.

(5) Add a protocol to follow when the SLTCO or a representative personally witnesses suspected abuse, gross neglect, or exploitation of a consumer.

(6) Add a definition of "immediate family member" that corresponds to the definition of "immediate family" in 45 CFR 1324.1.

(7) Make improvements to the rule's word choice and punctuation.

**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 in HB49 because it will

replace a similar rule of the same number of 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**