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Ohio Department of Aging

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Bob Taft, Governor
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NOTICE

Notice is hereby given that the Ohio Department of Aging will conduct a public hearing in accordance with Chapter 119. of the Ohio Revised Code to obtain comments concerning the Department's proposed adoption of rules governing the office of the State Long-Term Care Ombudsman and long-term care ombudsman programs in Ohio.

The hearing to which this notice applies will be conducted on **Monday, November 6, 2006** in Conference Room A of the Department's offices at 50 W. Broad Street, 9th floor; Columbus, OH 43215. The hearing will begin at 10:30AM and will continue until all parties in attendance at that time have had an opportunity to provide comment.

The following rules are being proposed for adoption:

173-14-01
Definitions.

The proposed amended rule defines terms associated with the State Long-Term Care Ombudsman program. Changes were made so that the revised rule defines "clock hour" for periods of instruction, defines the "Older Americans Act" under which the program functions, conforms to state statute by deleting references to "age sixty and older," conforms to House Bill 530 by adding "transportation" to the list of terms that are included in the definition of "community-based long-term care services," and clarifies that an ombudsman may not serve as a sponsor for a client for whom that ombudsman is providing ombudsman services. Additionally, minor clarifications were made that do not change the meaning, the function, or the intent of the rule.

173-14-02
Types of
representatives.

The proposed amended rule describes the four types of representatives associated with the State Long-Term Care Ombudsman program. The Department revised the rule to specify that the State Long-Term Care Ombudsman (SLTCO) shall be certified at the program director level and other representatives of the SLTCO's staff shall be certified at a level determined necessary by the SLTCO. Also, minor clarifications were made that do not change the meaning, the function, or the intent of the rule.

173-14-03
Duties of the
representatives of
the office.

The proposed amended rule addresses the duties of representatives of the State Long-Term Care Ombudsman. New changes proposed by the Department would allow an ombudsman associate level one to handle uncomplicated complaints without

supervision and perform assigned follow-up activities on complaints with supervision. An ombudsman associate level two would be permitted to be supervised by a candidate for certification at the specialist or program director level. Reporting responsibilities, such as providing written reports to the regional program and submitting case reports to the ombudsman documentation and information system for Ohio (ODIS), were also amended. Also, minor clarifications were made that do not change the meaning, the function, or the intent of the rule.

173-14-04
Hours of professional development required for representatives of the office, certification.

The proposed amended rule describes the hours of professional development required for representatives of the State Long-Term Care Ombudsman program to become certified. The Department revised the rule to require twelve clock hours of professional development for every ombudsman associate level one, which will include the required two-hour provider orientation. The amended rule also clarifies that an ombudsman seeking certification at a higher level is not permitted to perform the duties of the higher level until the ombudsman passes the certification examination. The amended rule also specifies the hours of professional development needed for an ombudsman to seek certification at a higher level. Also, minor clarifications were made that do not change the meaning, the function, or the intent of the rule.

173-14-05
The administration of ombudsman professional development.

The proposed amended rule describes the administration of training required for representatives of the State Long-Term Care Ombudsman program. Only minor clarifications were made that do not change the meaning, the function, or the intent of the rule.

173-14-06
Professional development deadlines.

The proposed amended rule describes the deadlines to complete the training required for representatives of the State Long-Term Care Ombudsman program. Only minor clarifications were made that do not change the meaning, the function, or the intent of the rule.

173-14-07
Professional development curricula.

The proposed amended rule describes the professional development curricula for representatives of the State Long-Term Care Ombudsman (SLTCO) program. The amended rule adds language that more clearly describes the curricula for the ombudsman specialist and ombudsman program director candidates, including the following: complaint-handling protocol, ombudsman ethics, and additional topics at the discretion of the SLTCO. Use of ombudsman reporting data as a management tool was also added to the ombudsman program director curricula. Also, minor clarifications were made that do not change the meaning, the function, or the intent of the rule.

173-14-08 Content of orientation; approval of orientation sites.	The proposed amended rule describes the approval of provider orientation sites for ombudsman specialist and ombudsman program director candidates. Only minor clarifications were made that do not change the meaning, the function, or the intent of the rule.
173-14-09 Observation of survey or inspection.	The proposed amended rule describes the survey observation requirements for ombudsman specialist and ombudsman program director candidates. A minor change was made to reference the correct section of the Ohio Administrative Code governing surveys and inspections performed by the Ohio Department of Health. Other minor clarifications were made that do not change the meaning, the function, or the intent of the rule.
173-14-10 Content and administration of the certification examinations.	The proposed amended rule describes the content and administration of certification examinations for ombudsman candidates. Gender neutral language changes were made that do not change the meaning, the function, or the intent of the rule.
173-14-11 Registration of representatives.	The proposed amended rule governs the central registry maintained of all representatives of the Office of the State Long-Term Care Ombudsman. The Department specified that regional programs must register a new representative within five business days of the representative's affiliation with the Office. Language regarding separation from the Office was removed because it is more appropriately addressed in rule 173-14-12 of the Administrative Code, which is entitled "Separation of representatives from the office." Also, minor changes were made that do not change the meaning, the function, or the intent of the rule.
173-14-12 Separation of representatives from the office.	Long-Term Care Ombudsman. The amended rule specifies that regional programs must notify the Office immediately when a paid representative separates from the Office and within one month when a volunteer separates from the Office. The Department also added language to require regional programs to notify affected providers of long-term care services when a representative separates from the office, if appropriate. The amended rule specifies that certified representatives who leave the program voluntarily may apply for reinstatement within one year of separation. Several gender neutral language changes were made. Also, other minor changes were made that do not change the meaning, the function, or the intent of the rule.

173-14-13
Continuing education requirements, approval of clock hours, certifying fulfillment.

The proposed amended rule addresses the continuing education requirements for representatives of the Office of the State Long-Term Care Ombudsman. The amended rule specifies that topics of continuing education sessions for ombudsman program directors may include staff supervision, quality assurance practices, strategic planning, and interviewing and hiring of potential staff. Also, minor changes were made that do not change the meaning, the function, or the intent of the rule.

173-14-14
Staffing requirements and qualifications.

A rescission and replacement of the current rule is proposed. The new rule outlines the staffing requirements and qualifications for those associated with the Office of the State Long-Term Care Ombudsman. In accordance with House Bill 530 of the 126th General Assembly, language regarding criminal background checks was added to incorporate new section 173.27 of the Revised Code. In accordance with Senate Bill 321 of the 126th General Assembly, the definition of the term "applicant" that was created by House Bill 530 was amended to include the phrase "but is not limited to." Language was added to clarify that, when a regional program director is responsible for more than one region, each region must have full-time supervision by a certified ombudsman program director. Also, minor clarifications were made that do not change the meaning, the function, or the intent of the rule.

173-14-15
Conflicts of interest.

The proposed amended rule addresses conflicts of interest for representatives of the State Long-Term Care Ombudsman (SLTCO) and the possible waivers and/or remedies available to mitigate those conflicts of interest. The amended rule defines and differentiates remedies and waivers of conflict of interest. Language was added by the Department to prohibit any representative from investigating a complaint against a long-term care provider for whom the representative once worked without a waiver by the SLTCO and establishes that current employment with a long-term care provider is a conflict of interest that cannot be remedied. The amended rule also requires that a conflict of interest must be reported to the SLTCO and a waiver or remedy requested by a regional program prior to offering a position to an applicant or training a volunteer. The amended rule also addresses the types of remedies and waivers that may be approved by the SLTCO. Also, minor clarifications were made that do not change the meaning, the function, or the intent of the rule.

173-14-16
Complaint-handling protocol.

The proposed amended rule outlines the complaint-handling protocol for representatives of the State Long-Term Care Ombudsman. Many of the changes reorganize and clarify elements of complaint intake, investigation, resolution, follow-up, and resolution. The complaint intake process was amended to

alert complainants using e-mail that electronic communication may be used to transmit information about the case and to include client empowerment as a resolution strategy offered to callers. The amended rule revises the complaint resolution process to describe the creation of an action plan more fully. The Department also clarified language regarding the case closure process and added language requiring a representative to inform the client that, whenever a case is closed, the ombudsman activity will cease.

173-14-17
Referral of
complaints to the
state long-term
care ombudsman.

The proposed amended rule governs the referral of complaints to the State Long-Term Care Ombudsman (SLTCO) by other representatives of the office, such as a regional long-term care ombudsman. Language requiring the referral of complaints that were not successfully resolved by the regional program to the SLTCO was deleted from the proposed rule. The SLTCO has access to such cases through the Ombudsman Documentation and Information System for Ohio (ODIS) and complaints of that type may be referred to the Ohio Department of Health per section 3721.027 of the Revised Code. Additionally, minor clarifications were made that do not change the meaning, the function, or the intent of the rule.

173-14-18
Referrals of
complaints to other
agencies.

The proposed amended rule governs the referral of complaints to other agencies by representatives of the Office of the State Long-Term Care Ombudsman. The Department proposes rearranging sections (A) and (B) of the rule for a more logical sequence but proposes no changes to the text of the rule. No changes were made that affect the meaning, the function, or the intent of the rule.

173-14-19
Case records and
reporting of
complaint-handling
activities.

The proposed amended rule addresses ombudsman case records and complaint-handling activities. The amended rule addresses access to ombudsman records and the recording of complaint-handling activity in the Ombudsman Documentation and Information System for Ohio (ODIS). The primary change in the amended rule is intended to align the rule with current policy and practice of the Office of State Long-Term Care Ombudsman (SLTCO). Specifically, the Department added language to outline access to case records and other reports of ombudsman activity contained in ODIS by representatives of the Office of the SLTCO and sponsoring agency staff. The Department also added language to address how the Office is to respond to record requests by other entities such as parties to an administrative or judicial proceeding. Also, minor clarifications were made that do not change the meaning, the function, or the intent of the rule.

<p>173-14-20 Designated long-term care ombudsman regions.</p>	<p>The proposed amended rule designates long-term care ombudsman regions. Language was added to the rule to allow one region to provide services to another region upon request by the State Long-Term Care Ombudsman. Also, minor clarifications were made that do not change the meaning, the function, or the intent of the rule.</p>
<p>173-14-21 Initial designation of regional long-term care ombudsman programs: standards.</p>	<p>The proposed amended rule outlines standards for the initial designation of regional long-term care ombudsman programs, including the structure of the sponsoring agency, governing board, staff support and required capacity for programmatic activities. In addition, new language requires that the State Long-Term Care Ombudsman shall review all regional program policies and procedures and that those policies and procedures are made available to regional program staff. The policies required by the regional program were expanded to protect confidential information. Also, minor clarifications were made that do not change the meaning, the function, or the intent of the rule.</p>
<p>173-14-22 Initial designation of regional long-term care ombudsman programs: process.</p>	<p>The proposed amended rule outlines the process for the initial designation of regional long-term care ombudsman programs, including the request for proposal (RFP) process, the contract process, and the technical assistance plan (TAP) offered to each newly designated regional program. As an amendment to the proposed rule, the Department of Aging has required any party interested in serving as a regional long-term care ombudsman program to submit an ombudsman plan with their application, rather than submit that plan after the Area Agency on Aging (AAA) requests it, thereby reducing the time frame for the proposal process. Also, minor clarifications were made that do not change the meaning, the function or the intent of the rule.</p>
<p>173-14-23 Development of ombudsman plans by all programs.</p>	<p>The proposed amended rule requires the creation of an ombudsman plan by all regional long-term care ombudsman programs. The Department amended the proposed rule to allow the State Long-Term Care Ombudsman to waive the ombudsman plan requirement, as appropriate. The Department also included screening and retention of ombudsman volunteers in the required elements of the ombudsman plan. Additionally, minor clarifications were made that do not change the meaning, the function, or the intent of the rule.</p>
<p>173-14-24 Program review for continued designation.</p>	<p>The proposed amended rule provides for the annual review by the Office of the State Long-Term Care Ombudsman (SLTCO) to determine whether the regional long-term care ombudsman programs may continue their designation as such. The proposed amended rule removes the case record review criteria from the Ohio Administrative Code and requires that the SLTCO, in consultation with regional program directors, establish the criteria</p>

on an annual basis. The proposed amended rule requires review of each program's performance on quality measures and clarifies the review of regional program advocacy and information services. The proposed amended rule also clarifies that the SLTCO shall make an on-site visit to each program but does not require that the annual visit be in conjunction with the designation review. Additionally, minor clarifications were made that do not change the meaning, the function, or the intent of the rule.

173-14-25
Changes in a regional program's designation status; notice rights; and hearing requirements.

The proposed amended rule provides for a regional long-term care ombudsman program's designation through action by the State Long-Term Care Ombudsman, including full designation, provisional designation, or withdrawal of a program's designation. The rule also provides for the voluntary withdrawal of a regional program's designation. In addition, new language requires notice and hearing procedures for action by the State Long-Term Care Ombudsman to deny initial designation, provisionally designate, or withdraw designation for a regional program. Also, minor clarifications were made that do not change the meaning, the function, or the intent of the rule.

173-14-26
Decertification of a representative of the office.

The proposed amended rule provides for the decertification of a representative of the Office of the State Long-Term Care Ombudsman. The Department deleted some language to clarify that the rule is applicable only to the decertification of a representative of the Office rather than to the denial or withdrawal of regional program designation, which is provided for in rule 173-14-25 of the Administrative Code. Additionally, minor clarifications were made that do not change the meaning, the function, or the intent of the rule.

173-14-27
Bed fee collection guidelines.

The proposed amended rule provides for the collection of the bed fee which helps to support the State Long-Term Care Ombudsman program. The amended rule will bring the rule into compliance with division (A) of section 173.26 of the Revised Code, which doubled the bed fee payment for facilities failing to pay within 90 days of the due date. Also, minor clarifications were made that do not change the meaning, the function, or the intent of the rule.

Written comments or requests for information concerning the proposed actions may be directed to Tom Simmons at the Department on or before the date of the hearing by writing to tsimmons@age.state.oh.us, by faxing a document to 614-995-1049, or by mailing to the above address.