

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: OHIO DEPARTMENT OF AGING

Package Title: **STATE LONG-TERM CARE
OMBUDSMAN PROGRAM**
5-YEAR RULE REVIEW: PROPOSED NO-CHANGE FILING

Rule Number(s): Chapter 173-14 of the Administrative Code.

Date: April 1, 2015, Revised April 23, 2015

Rule Types:

- ☒ **5-Year Review:** All above rules
- ☐ **New:** None
- ☐ **Amended:** None
- ☐ **Rescinded:** None
- ☒ **No change:** All above rules

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Regulatory Intent

1. Please briefly describe the regulations in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

Chapter 173-14 of the Administrative Code governs Ohio's State Long-Term Care Ombudsman (SLTCO) Program, including 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.

2. Please list the Ohio statute authorizing the Agency to adopt these regulations.

- Section [173.01](#) of the Revised Code gives ODA general authority to adopt rules to “govern the operation of services and facilities for the elderly that are provided, operated, contracted for, or supported by the department.”
- Section [173.02](#) of the Revised Code gives ODA general authority to adopt rules to regulate services provided through programs that it administers, including rules that “develop and strengthen the services available” for Ohio’s aging.
- Section [173.16](#) of the Revised Code requires ODA to adopt rules governing the designation of regional long-term care ombudsman (RLTCO) programs.
- Section [173.19](#) of the Revised Code requires ODA to adopt rules regarding the handling of complaints.
- Section [173.20](#) of the Revised Code requires ODA to adopt rules on referring complaints to other public agencies or entities.
- Section [173.21](#) of the Revised code requires ODA to adopt rules on the training requirements for ombudsman representatives.
- Section [173.26](#) of the Revised Code requires ODA to adopt rules to establish deadlines for paying the bed fee.
- Section [173.27](#) of the Revised Code requires ODA to adopt rules to implement the requirements for reviewing databases and checking criminal records. (Cf., Rule 173-14-14 and Chapter 173-9 of the Administrative Code)

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

- Section 305(a)(1)(C) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006, authorizes ODA, as the state's designated sole state agency (*cf.*, Section 173.01 of the Revised Code), to adopt policies to be responsible for "policy development ... of all State activities related to the objective of [the] Act."
- Section 712(a)(5)(D) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended, requires ODA to adopt rules to implement the state's policies for the SLTCO Office. Thus, there is a general federal requirement for ODA to adopt rules for the SLTCO office.
- 45 C.F.R. 1321.11 authorizes ODA, as the state's unit on aging (*cf.*, Section 173.01 of the Revised Code), to adopt policies to implement the provisions of the Older Americans Act.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

The rules don't exceed the requirements of the Ohio Revised Code or the Older Americans Act.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

Chapter 173-14 of the Administrative Code fulfills multiple purposes including compliance with ORC mandates to regulate 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.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The SLTCO office will monitor the regional long-term care ombudsman offices (RLTCOs) for compliance.

Development of the Regulation

- 7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

If applicable, please include the date and medium by which the stakeholders were initially contacted.

On March 31, ODA wrote an email to the Ohio Assisted Living Association, the Academy of Senior Health Sciences, Inc., National Church Residences, Leading Age Ohio, and the Ohio Health Care Association, to announce that ODA would soon propose to post Chapter 173-14 of the Administrative Code on ODA's website for a public-comment period on ODA's proposed no-change rule filing for the first half of 2015. ODA explained that it plans to revisit the rules for a subsequent rule filing in that would implement forthcoming federal rules¹ that should take effect on July, 2016. ODA asked if they found ODA's strategy to be reasonable or if they had other comments.

ODA's online public-comment period began on April 1 and will end on April 26.

- 8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

On March 31, Jean Thompson from the Ohio Assisted Living Association indicated that ODA's proposal seemed reasonable.

On March 31, Peter Van Runkle from the Ohio Health Care Association indicated that ODA's proposal was fine with his organization.

On April 2, Chris Murray from Senior Health Sciences, Inc. said that he did not "have a problem with [ODA's] approach."

As of the date of this revised BIA (April 23), ODA had not received any comments from the public through ODA's online public-comment period.

- 9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

ODA is not proposing to amend the chapter based upon scientific data.

- 10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

The agency did not formally consider an alternative to a no-change rule filing because of the pending 2016 federal ombudsman rules. Many rules in the chapter have a review deadline in 2016, but the effective date for the federal rules is July 1,

¹ Department of Health and Human Services. 45 C.F.R. Parts 1321 and 1327. Federal Register. Vol., 80. No., 28. Wednesday, February 11, 2015. (The effective date of the federal rules will be on July 1, 2016.)

2016. ODA will need to revisit the rules after this no-change filing to propose amendments that implement the federal law.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

Chapter 173-14 of the Administrative Code regulates Ohio's State Long-Term Care Ombudsman Program. The program investigates cases of fraud and abuse, which are not topics that easily translate to performance-based regulations.

ODA did not consider performance-based regulations when considering whether to amend any rules in the chapter before making a no-change rule filing.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

Section 173.01 of the Revised Code says that ODA is "the sole state agency to administer funds granted by the federal government under the "Older Americans Act of 1965," 79 Stat. 219, 42 U.S.C. 3001, as amended." Additionally, ODA is the sole state agency to regulate the Office of the State-Long-Term Care Ombudsman. Therefore, no other state agency has authorization to adopt such a regulation.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Before the rules would take effect, ODA will post them on ODA's [website](#). ODA also sends an email to subscribers of our rule-notification service to feature the rules.

Through its regular monitoring activities, the SLTCO will monitor the RLTCOs to ensure that the RLTCOs comply with the chapter.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

Instead of regulating the business community, most of the rules in Chapter 173-14 of the Administrative Code regulate the personnel of the SLTCO program (e.g., qualifications, conflict of interest, criminal records checks, duties) and the designation of regional offices.

Rules 173-14-16 and 173-14-27 do impact the business community, specifically nursing facilities, residential care facilities, and other long-term care providers. Presently, Ohio has almost 1,000 nursing facilities² and over 600 residential care facilities.³

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

For nursing facilities, residential care facilities, and other providers, rule 173-14-16 of the Administrative Code authorizes ombudsman representatives to enter facilities to investigate complaints. The authorization is possible because statute gives the representatives a right of entry (*cf.*, §[173.19](#)).

For nursing facilities and residential care facilities, but not other providers, rule 173-14-27 of the Administrative Code implements the annual bed fee and the deadline for making full payment of the fee. The authority for establishing the deadlines comes from the same statute that enacted the fee (*cf.*, §[173.26](#)).

Aside from the bed-fee and right-of-entry topics, the rules do not directly regulate nursing facilities, residential care facilities, and other providers. However, the rules are written in the context of the Ohio Revised Code, which makes the following requirements:

- Nursing facilities, residential care facilities, and other providers shall designate employees to cooperate with investigations (*cf.*, §[173.20](#)).
- Nursing facilities, residential care facilities, and other providers shall not retaliate against employees who register complaints with the SLTCO (*cf.*, §[173.24](#)).
- Nursing facilities, residential care facilities, and other providers s shall pay fines for certain violations (*cf.*, §§ [173.28](#), [173.99](#)).

² <http://ltc.ohio.gov/NursingHomes.aspx>

³ <http://ltc.ohio.gov/AssistedLiving.aspx>

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

For nursing facilities, residential care facilities, and other providers, rule 173-14-16 of the Administrative Code authorizes ombudsman representatives to enter facilities to investigate complaints. The authorization is possible because statute gives the representatives a right of entry (*cf.*, §[173.19](#)). This would involve opening doors and files for representatives and introducing representatives to residents and individuals.

For the nursing facilities and residential care facilities, but not other providers, rule 173-14-27 of the Administrative Code implements the bed fee enacted by section [173.26](#) of the Revised Code. The fee is \$6 per bed per year.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The regulatory burden is minimal compared to the health and safety of individuals who live in facilities or who receive long-term care services.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

The rules treat all nursing facilities, residential care facilities, and other providers the same regardless of the size of their workforce. Furthermore, the majority of businesses that Chapter 173-14 of the Administrative Code regulates are small businesses according to section [119.14](#) of the Revised Code. Therefore, there aren't alternate means for compliance.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Section [119.14](#) of the Revised Code establishes the exemption for small businesses from penalties for first-time paperwork violations.

18. What resources are available to assist small businesses with compliance of the regulation?

ODA does not offer different discriminate between nursing facilities, residential care facilities, or other providers based upon the size of the business or organization. In fact, the majority of businesses that Chapter 173-14 of the Administrative Code regulates are small businesses according to section [119.14](#) of the Revised Code.

ODA maintains an [online rules library](#) so that nursing facilities, residential care facilities, and other providers may find rules that regulate them. Any person may access ODA's online library 24 hours per day, 365 days per year.

The SLTCO office and RLTCOs are available to help nursing facilities, residential care facilities, and other providers with their questions.

Additionally, any person may contact [Tom Simmons](#), ODA' policy manager and regulatory ombudsman, with questions about the rules.