

173-14-01

Definitions.

As used in this chapter:

"Action plan" means a plan that that ~~a representative~~ an ombudsman develops in conjunction with the ~~consumer client~~ as part of the complaint-handling process. The plan includes strategies and actions for the ~~representative ombudsman~~ to take and target dates for the ~~representative ombudsman~~ to meet.

"Advocacy" means planning, preparing, and conducting community education programs, training events, and legislative and other public relations contacts; influencing the formation, implementation, and outcome of public policy affecting ~~consumer clients~~; ~~representing consumer clients~~, both individually and collectively, to effect a positive change.

"Advocacy visit" means an ombudsman visit to a site where clients receive long-term care services and supports and provides outreach to clients and sponsors; makes observations of the location, client, sponsors, or staff; performs intake of complaints; and makes requests of provider staff on behalf of, and with the consent of, a client.

"Affiliated" means being or having a parent, child, sibling, spouse, or household member who is a board member of, a consultant to, or has another relationship by which they may profit from a provider.

"AGE" means the Ohio department of aging.

"Area agency on aging" (AAA) has the same meaning as in rule 173-2-01 of the Administrative Code.

"Business day" means any day that is not a Saturday, Sunday, or legal holiday defined in section 1.14 of the Revised Code.

"Client" means a resident of a long-term care facility or the recipient of community-based long-term care services. When appropriate, the term includes a prospective, previous, or deceased resident or recipient.

"Community-based long-term care services" has the same meaning as in section 173.14 of the Revised Code.

"Complaint" means an expression of dissatisfaction or concern brought to, or identified by, the ombudsman program, which requires an ombudsman program investigation and resolution on behalf of one or more long-term care clients.

"Complaint case records" means confidential records that the office of the SLTCO keeps for complaints that the program handled.

"Complaint handling" means all the processes available to handle a complaint, including intake, screening, opening a case, assigning, investigating, attempting resolution, referring, performing follow-up activities, closing a case, and documenting and records retention.

"Complex complaint" means a complaint involving a greater depth of investigation, including research and multiple contacts with provider staff or ~~consumers~~ clients, and the development of an action plan as a part of opening a case.

~~"Consumer" means a resident of a long-term care facility or the recipient of community-based long-term care services. When appropriate, the term includes a prospective, previous, or deceased resident or recipient.~~

~~"Core ombudsman services" means complaint handling, providing general information, advocacy, public education, monitoring the implementation of laws, professional development for representatives of the office, establishing a presence in long-term care facilities with consumers and long-term care providers, managing volunteer resources, program supervision, and program administration.~~

"Core ombudsman services" means complaint handling; monitoring the implementation of relevant laws, rules, and policies; establishing a presence in long-term care facilities with clients and long-term care providers; educating residents, their family and facility staff about residents' rights, good care practices, and similar long-term services and supports resources; ensuring residents have regular and timely access to ombudsman services; providing technical support for the development of resident and family councils; advocating for changes to improve residents' quality of life and care; providing information to the public regarding long-term care facilities and services, residents' rights, and legislative and policy issues; representing resident interests before governmental agencies; and seeking legal, administrative, and other remedies to protect residents.

"Direct supervision" means in-person instruction and observation followed by discussion of ~~a representative's~~ an ombudsman's activity within five business days after the ~~representative~~ ombudsman performed the activity.

"Follow-up activities" means the site visits, phone calls, letters, or interviews that ~~a representative~~ an ombudsman completes after investigating and attempting to resolve a complaint.

"General information" means researching and providing information on matters such as entitlement and public benefits programs, access to long-term care services, providing information to prospective ~~consumer~~ clients on the selection of long-term care services using verified and objective information, and referrals to other sources of assistance in those situations where a case is not being opened for complaint handling.

"Hour" means a period of sixty minutes.

~~"Immediate family member" means a member of the household or a relative with whom there is a close personal or significant financial relationship~~ has the same meaning as in 45 C.F.R. 1324.1.

"Legal representative" means a court-appointed guardian, conservator, attorney-in-fact, or executor or administrator of the estate of a deceased ~~consumer~~ client who can give consent or authorization in the matter.

"Long-term care facility" has the same meaning as in section 173.14 of the Revised Code.

"Long-term care services" means services of a long-term care facility or community-based long-term care provider.

~~"ODA" means "the Ohio department of aging."~~

"ODIS" means "ombudsman documentation and information system for Ohio." or the system that replaces ODIS.

"Office" means the SLTCO, the SLTCO's staff and volunteers, and the staff and volunteers of designated regional long-term care ombudsman programs.

"Older Americans Act" means 42 U.S.C. Chapter 35.

"Ombudsman" and "ombudsman staff" mean one of the types of an ombudsman listed in rule 173-14-03 of the Administrative Code.

"Ombudsman candidate" means a person who is in the certification training process but has not yet passed the certification exam.

"Ombudsman services" means core ombudsman services and optional ombudsman services.

"Optional ombudsman services" means any SLTCO-approved ombudsman service that is not a core ombudsman service.

"Personal care services" has the same meaning as in section 3721.01 of the Revised Code.

"Provider" means a long-term care facility or community-based long-term care provider and any corporation, partnership, or person operating the long-term care facility or community-based long-term care provider.

"Recipient" has the same meaning as in section 173.14 of the Revised Code.

"Regional program," "regional long-term care ombudsman program," and "program" mean an entity, either public or private and nonprofit, that the SLTCO designates as a regional long-term care ombudsman program.

~~"Representative of the office of the state long-term care ombudsman," "representative of the office," and "representative," mean one of the categories of ombudsman in rule 173-14-03 of the Administrative Code.~~

"Resident" has the same meaning as in section 173.14 of the Revised Code

"Resolved" or "partially resolved" means the status of a complaint after the state office or regional program addresses it to the satisfaction of the ~~consumer-client~~ or complainant or addresses it as feasible.

"SLTCO" means the state long-term care ombudsman and, depending on the immediate context, includes state-office staff and volunteers with SLTCO-delegated responsibilities.

"Sponsor" means ~~an adult relative, friend, or guardian~~ a person who has an interest in or responsibility for the welfare of the ~~consumer-client~~, ~~but is not a representative performing ombudsman services for the consumer. A sponsor is identified by a representative's reasonable effort to identify a sponsor chosen by the consumer.~~ "Sponsor" also includes the meaning of "resident representative" as defined in 45 C.F.R. 1324.1.

"Sponsoring agency" means the agency or organization that houses the state office or regional program.

"State office" means the SLTCO and those staff members and volunteers of the SLTCO's office at ~~ODA~~ AGE.

"Verified" means the status of a complaint after the work (i.e., interviews, record review, observations, etc.) of the state office or regional program determines that the circumstances described in the complaints are mostly or generally accurate.

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173-14-02**Types of ombudsman staff and non-representative individuals; identification cards.****(A) Ombudsman:****(1) There are four types of an ombudsman:**

- (a) Ombudsman candidate.**
- (b) Ombudsman associate.**
- (c) Ombudsman specialist.**
- (d) Ombudsman program director.**

(2) Paid staff of the office are certified as either ombudsman specialists or ombudsman program directors. A regional program may pay staff who perform only the duties of an associate with the approval of the SLTCO based on a position description and program effectiveness. Only paid staff members are eligible to serve as ombudsman program directors. Only a certified program director is eligible to serve as the SLTCO.**(3) The SLTCO shall issue certificates in the form of an identification card to each certified ombudsman of the office which contain all of the following:**

- (a) The name of the ombudsman.**
- (b) The ombudsman's picture.**
- (c) The type of the ombudsman and whether the ombudsman is certified:.**
- (d) The regional ombudsman program and program contact information with which the ombudsman is associated.**
- (e) The expiration date.**

(4) An ombudsman candidate may perform limited duties of an ombudsman outlined in paragraph (A) of this rule**(B) Non-representative individuals: Non-representative individuals who are affiliated with the office but have not been certified to perform the duties of an ombudsman outlined in rule 173-14-03 of the Administrative Code and may include support staff, organizational volunteers, and non-practice managers. Non-representative individuals are not qualified to perform any complaint-handling function or access**

ODIS, but may perform other duties in conjunction with the program for which they are trained or hold an appropriate license.

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173-14-03

~~Duties of the representatives of the office~~**Ombudsman duties.**

(A) An ombudsman candidate may perform the duties of an ombudsman associate or ombudsman specialist while under the supervision of a certified ombudsman specialist or program director.

~~(A)~~(B) Ombudsman associate:

(1) An ombudsman associate may do any of the following:

~~(a) Provide outreach to consumers and sponsors.~~

~~(b) Observe in facilities, homes, and service sites.~~

~~(c) Perform intake of complaints.~~

(a) Conduct advocacy visits.

~~(d)~~(b) Provide information to the public about the ombudsman program and ~~consumer~~client rights.

~~(e)~~(c) Make requests of provider staff on behalf of, and with the consent of, a ~~consumer~~client.

~~(f)~~(d) Assist with handling complaints while under the supervision of a certified ombudsman specialist, a certified ombudsman program director, or candidates for certified ombudsman specialist or certified ombudsman program director.

(2) The regional program shall ensure that associates' activities are recorded in ODIS. Associates may enter their own and other associates' reports into ODIS if approved to do so by the regional program director and granted access to ODIS by the state ombudsman.

~~(B)~~(C) An ombudsman specialist may do any of the following:

(1) Perform the duties of an ombudsman associate.

(2) Handle complaints.

(3) Provide complaint supervision after successfully completing the first forty hours of professional development and after achieving a minimum score of seventy per cent on the ombudsman deployment exam.

(4) Review complaints to set complaint-handling priorities.

- (5) Assign complaints.
 - (6) Manage volunteer resources, which may include recruiting, screening, training, supervision, evaluation, and recognition of volunteers.
 - (7) Record all reportable ombudsman activity in ODIS, including those activities performed by ~~other representatives~~ another ombudsman on their behalf.
- ~~(C)~~(D) A certified ombudsman program director serving as a program manager shall perform the following duties and a certified ombudsman program director who is not serving as a program manager may perform the following duties as assigned:
- (1) Perform the duties of an ombudsman specialist.
 - (2) Assume responsibility for the overall administration and management of the program's core and optional ombudsman services.
 - (3) Assume responsibility for overall supervision of staff.
 - (4) Participate in hiring staff.
 - (5) Establish and review policies and procedures required in rule 173-14-22 of the Administrative Code.
 - (6) Perform quality assurance of core and optional services.
 - (7) Develop, obtain SLTCO approval of, and implement the ombudsman plan and program budget according to rule 173-14-24 of the Administrative Code.
 - (8) Identify where additional resources are needed and develop strategies for raising funds to meet those needs.

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173-14-04

Training and certification: hours.

- (A) A candidate may qualify for certification as an ombudsman associate if the candidate successfully completes at least thirty-six hours of ombudsman associate certification training that includes lecture-format education, homework, and field experience and passes the certification exam before performing any ombudsman associate duties without direct supervision by an ombudsman specialist or ombudsman program director.
- (B) A candidate may qualify for certification as an ombudsman specialist if the candidate successfully completes thirty-six hours of ombudsman specialist certification training and passes an ombudsman specialist deployment exam administered by the SLTCO before handling complaints without direct supervision by a certified ombudsman specialist or a certified ombudsman program director. After the initial thirty-six hours of ombudsman specialist certification training, the candidate shall complete all the following:
- (1) Sixty additional hours of ombudsman specialist certification training within the first fifteen months of employment.
 - (2) Candidates for ombudsman specialist certification shall be assigned a caseload of no fewer than five cases throughout their enrollment in training.
 - (3) Experiential learning assignments may include the provider orientation described in rule 173-14-08 of the Administrative Code or a similar provider field assignment.
 - (4) Any other training considered appropriate by the SLTCO.
- (C) The training for an ombudsman program director candidate is the same as in paragraph (B) of this rule with the addition of six hours of education on program management and administration to be completed as soon as feasible. An ombudsman program director candidate shall work under the supervision of the SLTCO until the candidate has completed the initial thirty-six hours of training and the six hours on program management and administration. Within sixty days after completing the required training, the candidate shall take the ombudsman program director exam. All candidates who pass the exam are certified as ombudsman program directors.

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TO BE RESCINDED

173-14-04

Professional development: hours.

(A) A candidate may qualify for certification as an ombudsman associate if the candidate successfully completes at least thirty-six hours of professional development that includes lecture-format education, homework, and field experience and passes the certification exam before performing any ombudsman duties without direct supervision by an ombudsman specialist or ombudsman program director. No later than sixty days after meeting all the professional development requirements, the candidate shall take the ombudsman associate exam.

(B) A candidate may qualify for certification as an ombudsman specialist if the candidate successfully completes thirty-six hours of professional development and passes an ombudsman deployment exam administered by the SLTCO before handling complaints without direct supervision by a certified ombudsman specialist or a certified ombudsman program director. After the initial thirty-six hours of professional development, the candidate shall complete all the following:

- (1) Sixty additional hours of professional development within the first fifteen months of employment.
- (2) A twenty-hour orientation within the first fifteen months of employment which is performed at a site approved by the SLTCO according to rule 173-14-08 of the Administrative Code.
- (3) Any other professional development considered appropriate by the SLTCO.

No later than sixty days after meeting all the professional development requirements, the candidate shall take the ombudsman specialist exam. All candidates who pass the exam are certified as ombudsman specialists.

(C) The professional development qualifications for an ombudsman program director candidate are the same as in paragraph (B) of this rule with the addition of six hours of education on program management and administration to be completed as soon as feasible. An ombudsman program director candidate shall work under the supervision of the SLTCO until the candidate has completed the initial thirty-six hours of professional development and the six hours on program management and administration.

Within sixty days after completing the required professional development, the candidate shall take the ombudsman program director exam. All candidates who pass the exam are certified as ombudsman program directors.

- (D) Candidates for ombudsman specialist certification shall be assigned a caseload of no fewer than five cases throughout their enrollment in professional development.

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173-14-05

**~~Professional development:~~ Training and certification:
administration.**

- (A) The SLTCO shall provide or govern ~~professional development~~ certification training content for ~~all ombudsman program directors, and all ombudsman specialists, and ombudsman associates.~~
- (B) At its own expense, Each each regional program shall provide, ~~at its own expense, professional development to all its~~ ombudsman associates working for its regional ~~program~~ candidates with the SLTCO certification training.
- (C) All ~~professional development training~~ conducted under this rule is based ~~upon~~ on a curriculum developed or administered by the SLTCO.
- (D) The SLTCO may give credit for any part of ~~professional development training~~ to a candidate who successfully completed a training requirement or has experience or knowledge in a content area if all the following conditions exist:
- (1) The request comes from the applicant's ombudsman program director if the applicant is a representative from a regional program or from the applicant if the applicant is a representative of the state office.
 - (2) The request includes evidence of the successful completion of training or the experience.

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173-14-06

~~Professional development: Training and certification: deadlines.~~

(A) Candidates shall complete their ~~professional development training, including the certification exam,~~ before the following deadlines:

(1) Ombudsman associates: three months after the first day of ~~professional development training~~ No later than sixty days after meeting all the ombudsman associate training requirements, the candidate shall take the ombudsman associate exam.

(2) Ombudsman specialists and ombudsman program directors: as soon as practicable, but no later than fifteen months after the date of employment. No later than sixty days after meeting all training requirements, the candidate shall take the ombudsman specialist exam.

(B) The SLTCO may grant a deadline extension to a candidate if all the following occur:

(1) The candidate applies to the regional program director for the extension or applies to the SLTCO for the extension if the candidate is a program director or staff or volunteer of the state office.

(2) The candidate applies at least thirty days before their ~~professional development training~~ deadline or as soon as practicable if extenuating circumstances occur, such as an illness in the immediate family, unexpected changes in the candidate's living circumstances, employment conflicting with the ~~professional development training~~ program, and time constraints.

(3) The candidate's application states the applicant's reasons for requesting an extension.

(4) The candidate shows probable success for becoming certified.

(C) A candidate's failure to complete ~~professional development training,~~ to take an ~~examination-exam~~ in a timely manner, or to present an acceptable request for an extension is cause for removal as a candidate. For paid candidates, the SLTCO shall provide a notice and hearing process in accordance with rule 173-14-27 of the Administrative Code before removing a candidate for failure to successfully complete ~~professional development training~~ or to take an examination-exam in a timely manner.

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173-14-07**Training and certification: curricula.**

(A) 45 C.F.R. 1324.13(c)(2)(iii) and 1324.13(d) establish a requirement for all program staff or volunteers who have access to residents, files, records, and other information of the ombudsman program who are subject to disclosure requirements to undergo training to be certified as an ombudsman.

(B) Ombudsman associates: The certification training curricula for all candidates seeking certification as ombudsman associates includes instruction in all the following topics:

(1) The state long-term care ombudsman program: scope of the office, roles, responsibilities, authorities, and federal and state regulations.

(2) Ombudsman ethics and conflict of interest.

(3) The resident and the resident experience.

(4) Putting the resident first and resident rights.

(5) Long-term care settings (types of providers, methods of payment for services).

(6) Access and communication(interpersonal communication, observation, building relationships).

(7) Consent, capacity, and confidentiality.

(8) Cognitive impairment, including Alzheimer's disease and related dementias.
Topics to include:

(a) Overview of Alzheimer's disease and related dementias.

(b) Communication techniques.

(c) Advocating for persons with cognitive impairment.

(9) Facility visits, regular presence, and advocacy and general information activities.

(10) Long-term care ombudsman program complaint handling.

(11) Documentation.

(12) Any additional topic that the SLTCO deems as appropriate.

(C) Ombudsman specialists:

- (1) The initial thirty-six hours of certification training under paragraph (B) of rule 173-14-04 of the Administrative Code includes the following topics:

 - (a) A more in-depth review of the topics covered for candidates for certification as ombudsman associates, including written exercises, case studies, role plays, research exercises, and analysis of systemic issues.
 - (b) Complaint-handling protocol, as outlined in rule 173-14-16 of the Administrative Code.
 - (c) Overview of quality assurance practices.
 - (d) Systems advocacy skills.
 - (e) How and when it is permissible to represent a client in a hearing, to appeal a proposed transfer, discharge, service/benefit denial, or termination.
 - (f) Complex case handling.
 - (g) How to recruit and engage volunteers.
 - (h) Any additional topic the SLTCO deems as appropriate.
- (2) The sixty additional hours of certification training under paragraph (B)(1) of rule 173-14-04 of the Administrative Code includes the following experiential learning activities:

 - (a) Field observation.
 - (b) Documentation review and discussion with supervisor.
 - (c) Shadowing and assisting experienced ombudsman staff performing core services.
 - (d) Observing or participating in discharge hearings and ODH/ODMHAS surveys, when available.
 - (e) Any additional topic that the SLTCO deems as appropriate.
- (D) Ombudsman program directors: The certification training curricula for all candidates seeking certification as an ombudsman program director includes the following topics:

 - (1) All the professional development topics for candidates for ombudsman specialists under paragraph (B) of this rule.

- (2) Administering the program.
- (3) Program management.
- (4) Supervision.
- (5) Managing core ombudsman services and data.
- (6) Prioritization of a regional program's services and activities.
- (7) Developing an ombudsman plan.
- (8) Fiscal management.
- (9) Policy development.
- (10) Any additional topic that the SLTCO deems as appropriate.

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173-14-07

Professional development: curricula.

(A) Ombudsman associates: The professional development curricula for all candidates seeking certification as ombudsman associates includes instruction in all the following topics:

- (1) An introduction to the office, including a discussion of the scope of work of the office.
- (2) An overview of the long-term care system, including a discussion of all the following:
 - (a) The types of long-term care providers.
 - (b) Federal and state regulations applicable to long-term care providers, with an emphasis on consumer rights.
 - (c) Long-term care consumer profiles and methods of payment for long-term care services.
 - (d) Aging and disability.
 - (e) The aging and disability networks and the relationship with other agencies involved in long-term care.
- (3) Ombudsman skills, including all the following:
 - (a) Interpersonal communication, observation, and interviewing.
 - (b) Building working relationships with providers.
 - (c) Complaint handling.
- (4) An overview of complaint-resolution skills and follow-up activities, with an emphasis on advocacy, negotiating, and empowering consumers.
- (5) Reporting activities.
- (6) Confidentiality.
- (7) Access to providers and consumers.
- (8) Ethics.

(9) Any additional topic that the SLTCO deems as appropriate.

(B) Ombudsman specialists:

(1) The initial thirty-six hours of professional development under paragraph (B) of rule 173-14-04 of the Administrative Code includes the following topics:

- (a) A more in-depth review of the topics covered for candidates for certification as ombudsman associates, including written exercises, case studies, role plays, research exercises, and analysis of systemic issues.
- (b) Complaint-handling protocol, as outlined in rule 173-14-16 of the Administrative Code.
- (c) Investigation and resolution skills.
- (d) Consumer decision-making principles.
- (e) Overview of quality assurance.
- (f) Advocacy skills.
- (g) Any additional topic the SLTCO deems as appropriate.

(2) The sixty additional hours of professional development under paragraph (B)(1) of rule 173-14-04 of the Administrative Code includes the following topics:

- (a) How and when it is permissible to represent a consumer in a hearing, to appeal a proposed transfer, discharge, service/benefit denial, or termination.
- (b) How to handle complaints taking into consideration an individual's abilities, condition, illness, or disability.
- (c) How to recruit, engage, and coordinate volunteers.
- (d) Actions regarding public disclosure, including appropriateness, confidentiality of certain information, and how to work with the media.
- (e) Systems advocacy.
- (f) Ohio ethics law.
- (g) Any additional topic that the SLTCO deems as appropriate.

(C) Ombudsman program directors: The professional development curricula for all candidates seeking certification as an ombudsman program director includes the following topics:

- (1) All the professional development topics for candidates for ombudsman specialists under paragraph (B) of this rule.
- (2) Administering the program.
- (3) Program management.
- (4) Supervision
- (5) Managing core ombudsman services and data.
- (6) Prioritization of a regional program's services and activities.
- (7) Developing an ombudsman plan.
- (8) Fiscal management.
- (9) Policy development.
- (10) Any additional topic that the SLTCO deems as appropriate.

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Statutory Authority: 121.07, 173.01, 173.02, 173.21; 42 U.S.C. 3025,
3058g; 45 C.F.R. 1321.9, 1324.11, 1324.13, 1324.15

Rule Amplifies: 173.21; 42 U.S.C. 3058g; 45 C.F.R. 1324.11, 1423.13,
1324.15

Prior Effective Dates: 07/11/1991, 12/27/2001, 12/28/2006, 05/01/2018,
01/30/2022, 08/01/2024

173-14-08**Training and certification: experiential learning.**

- (A) An ombudsman candidate may observe and receive instruction in the provider's operation and procedures at an SLTCO-approved experiential learning site in a manner that is consistent with the respect and privacy requirements established in division (A) of section 3721.13 of the Revised Code.
- (B) No long-term care provider may serve as an experiential learning site unless approved by the SLTCO.
- (C) The regional ombudsman program director, on behalf of the staff of the regional program and the staff of the state office, shall request approval of an experiential learning site from the SLTCO. No site qualifies as an approved experiential learning site unless the site meets the following qualifications:
- (1) The site is licensed and certified according to all applicable state laws.
 - (2) The site is in substantial compliance with any applicable state or federal laws.
 - (3) The site agrees to serve as an experiential learning site.
 - (4) The site agrees to provide an experiential learning activity that is satisfactory to the SLTCO.
- (D) The regional ombudsman program director may employ other field assignments as experiential learning activity with the approval of the SLTCO.

Replaces: 173-14-08

Effective:

Five Year Review (FYR) Dates:

Certification

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1324.15

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08/01/2024

TO BE RESCINDED

173-14-08

Orientation: content, approval of orientation sites.

- (A) The twenty-hour orientation in rule 173-14-04 of the Administrative Code acquaints candidates for certification as ombudsman specialist or ombudsman program director with the day-to-day operation of long-term care providers. The candidate shall observe and receive instruction in basic nursing care or personal care services and the provider's operation and procedures at an SLTCO-approved site in a manner that is consistent with the respect and privacy requirements established in division (A) of section 3721.13 of the Revised Code.
- (B) No long-term care provider may serve as an ombudsman orientation site unless approved by the SLTCO.
- (C) The regional ombudsman program director, on behalf of the staff of the regional program and the staff of the state office, shall request approval of an ombudsman orientation site from the SLTCO. No site qualifies as an approved orientation site unless the site meets the following qualifications:
 - (1) The site is licensed and certified according to all applicable state laws.
 - (2) The site is in substantial compliance with any applicable state or federal laws.
 - (3) The site agrees to serve as an ombudsman orientation site.
 - (4) The site agrees to provide an orientation satisfactory to the SLTCO.

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1324.15

Prior Effective Dates: 06/15/1991, 12/27/2001, 12/28/2006, 05/01/2018,
08/01/2024

173-14-10

Deployment and certification exams.

- (A) Deployment and certification exams: The SLTCO shall develop deployment and certification ~~examinations~~ exams that are fair and that test candidates on content received through the ~~professional development sessions~~ training under rule 173-14-05 of the Administrative Code. Any time curriculum is modified, and at least once per year to the extent practicable, the SLTCO shall validate the exams to ensure they are fair and test candidates on material provided through the ~~professional development sessions~~ training under rule 173-14-05 of the Administrative Code.
- (B) Deployment exams: The SLTCO shall notify the candidate and the candidate's regional director in writing of the SLTCO's approval of deployment.
- (C) Certification exams:
- (1) The state office shall provide a review of the curriculum tested on the certification exam to candidates for certification as ombudsman specialists and ombudsman program directors before administering the certification exam if the state office trained the candidates and the candidates are eligible to take the certification exam.
 - (2) The regional programs shall proctor and score any exam given to candidates for associate certification. The state office shall proctor all exams given to candidates for specialist, program director certification, and associates affiliated with the state office.
 - ~~(3) As soon as practicable, SLTCO shall score the specialist and program director exam in a way that protects the identity of the candidate taking the exam from the person scoring the exam whenever possible.~~
 - ~~(4)~~(3) The SLTCO shall notify the candidate and, when appropriate, the regional program director, of the result. The SLTCO may provide a list of suggested continuing education topics or technical assistance to the candidate and, when appropriate, the regional program director. The regional programs may provide technical assistance to candidates.
 - ~~(5)~~(4) The SLTCO shall provide each candidate and the candidate's supervisor with an opportunity for a proctored review of the candidate's exam during the thirty-day review period after the SLTCO releases the candidate's results. After the thirty days, the SLTCO shall destroy the exam according to state record retention schedules.

~~(6) The SLTCO shall provide technical assistance to paid staff of the office and to volunteers of the state office. The regional programs may provide technical assistance to their volunteers.~~

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1324.15

Prior Effective Dates: 07/11/1991, 12/27/2001, 12/28/2006, 05/01/2018,
01/28/2022, 09/01/2024

173-14-11

**Ombudsman—~~registry~~ administrative system; hiring
ombudsman specialists and program directors.**

(A) ~~Ombudsman—registry~~ administrative system: The SLTCO shall maintain an ombudsman ~~registry—administrative system~~ to retain the following information on each ~~representative ombudsman~~ until twelve months after the date of separation from the office:

- (1) The ~~representative's~~ ombudsman's name, address, and telephone number.
- (2) The ~~representative's~~ ombudsman's qualifications.
- (3) The ~~representative's~~ ombudsman's classification.
- (4) The designated ombudsman region or state program with which the ~~representative~~ ombudsman is associated.
- (5) Whether or not the ~~representative~~ ombudsman is certified.
- (6) Any limitations applicable to the ~~representative~~ ombudsman, including limitations on the duties the ~~representative~~ ombudsman may perform and limitations on the providers with which the ~~representative~~ ombudsman may provide core ombudsman services due to a conflict of interest.

(B) Hiring ombudsman specialists:

- (1) Before posting an open specialist position in the ombudsman program, a regional program shall provide the SLTCO a copy of the position description for review and feedback.
- ~~(1)~~(2) Before offering employment to an applicant for an ombudsman specialist position, a regional director shall save in the ombudsman—~~registry~~ administrative system, and await the SLTCO's review of, the applicant's résumé, ~~position description~~, and the conflict of interest screen under rule 173-14-15 of the Administrative Code.
- ~~(2)~~(3) The SLTCO shall review the applicant's qualifications under rule 173-14-14 of the Administrative Code and any proposed conflict of interest remedy and responds within five business days after the regional director saved the information in paragraph (B)(1) of this rule in the ombudsman ~~registry~~ administrative system to indicate whether the applicant is approved or not approved.

(C) Hiring program directors:

- (1) A sponsoring agency shall do all of the following before offering employment to an applicant for a program director position:
 - (a) Review the applicant's résumé.
 - (b) Review the applicant's ~~conflict-of-interest~~ conflict of interest screen under rule 173-14-15 of the Administrative Code.
 - (c) Forward the information in paragraphs (C)(1)(a) and (C)(1)(b) of this rule to the SLTCO.
 - (d) Consider the SLTCO's feedback on the applicant's suitability. The SLTCO may request to interview the applicant concerning the applicant's suitability before providing the sponsoring agency with feedback.
 - (2) The sponsoring agency's decision to hire a qualified applicant is final after considering SLTCO feedback on conflict of interest and qualification issues.
- (D) Section 173.15 of the Revised Code does not allow employment of an applicant who was employed by, or participated in, the management of a provider of long-term services and supports within the two-year period before being employed by or associated with the office.

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Rule Amplifies: 173.16, 173.21; 42 U.S.C. 3058g; 45 C.F.R. 1324.11

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173-14-12

Separation of ~~representatives~~ an ombudsman from the office.

The separation of ~~a representative~~ an ombudsman from the office may occur through termination by the regional program or sponsoring agency with which the ombudsman is employed, decertification, voluntary separation, or removal of the candidate for certification.

(A) Decertification or removal of a candidate for certification:

- (1) No ~~representative of the office~~ ombudsman may be decertified or removed as a candidate for certification without cause. Cause includes, but is not limited to, the following:
 - (a) Failure to provide services according to sections 173.14 to 173.27 of the Revised Code, this chapter, the service contract, or the approved ombudsman plan.
 - (b) Performing a function not recognized or sanctioned by the office.
 - (c) Failure to meet the qualifications to be a ~~representative~~ ombudsman.
 - (d) Failure to meet continuing education requirements.
 - (e) Intentional failure to reveal a conflict of interest.
 - (f) The misrepresentation of the ~~representative~~ ombudsman's category of certification or the duties the ~~representative~~ ombudsman is certified to perform.
 - (g) Failure to perform official duties in good faith.
 - (h) Conduct unbecoming a ~~representative~~ an ombudsman of the office.
 - (i) Violations of Ohio ethics laws.
- (2) The SLTCO and sponsoring agencies may attempt to improve a ~~representative~~ ombudsman's job performance through ~~professional development training~~, supervision, or other remedial actions before recommending decertification.
- (3) Regional program directors, sponsoring agencies, and SLTCO staff recommending decertification or removal shall state their reasons in writing to the SLTCO and provide the SLTCO with any relevant documentation to support the recommendation.

- (4) The SLTCO shall review the recommendation and determine whether to accept or deny the recommendation in the form of a written notice to the sponsoring agency, regional program director, and the ~~representative~~ ombudsman. A paid ~~representative~~ ombudsman may appeal the notice according to rule 173-14-27 of the Administrative Code.
- (5) When the SLTCO initiates a decertification action against ~~a representative of the office~~ an ombudsman, the SLTCO shall notify the sponsoring agency, the regional program, and the ~~representative~~ ombudsman. A paid ~~representative~~ ombudsman may appeal the notice according to rule 173-14-27 of the Administrative Code.

(B) Responsibilities after separation:

- (1) The SLTCO or regional program director shall notify any person who separates from the office in writing of the responsibility to surrender the identification card within seven days after receiving the notice because any person who separates from the office ceases to be ~~a representative of the office~~ an ombudsman.
- (2) Regional programs shall notify the SLTCO of the separation of any ~~representative~~ ombudsman from the office and the reason for the separation no later than thirty days after the separation of a volunteer and immediately after the separation of a paid ~~representative~~ ombudsman.
- (3) As appropriate, regional programs shall notify affected long-term care providers of the ~~representative~~ ombudsman's separation from the office.

(C) Reinstatement:

- (1) Any person seeking recertification within one year after voluntarily separating from the office may apply for reinstatement in writing, email, or through the ~~ombudsman-registry~~ administrative system. The application shall provide the date of separation and a summary of any ~~professional development training~~ in or experience with ombudsman skills, long-term care services, problem resolution skills, or related skills the applicant received since voluntarily separating from the office.
- (2) The SLTCO shall review the application and may require the applicant to receive additional ~~professional development training~~, and/or take an appropriate exam based ~~upon~~ on the length of time the applicant has been away from the field, and the experience or ~~professional development training~~ the applicant has

accumulated in the interim. The SLTCO shall decide no later than five business days after receipt of the request.

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Rule Amplifies: 173.16, 173.21; 42 U.S.C. 3058g; 45 C.F.R. 1324.11

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173-14-13

Continuing education requirements, approval of hours, certifying fulfillment.

(A) ~~Representatives of the office~~ Each ombudsman shall complete the following annual continuing education requirements:

- (1) Ombudsman associate: eighteen hours.
- (2) Ombudsman specialists: eighteen hours with a minimum of nine of those hours earned through attendance at SLTCO-sponsored education.
- (3) Ombudsman program directors: eighteen hours with a minimum of nine of those hours earned through attendance at SLTCO-sponsored education and with at least one session on the training outlined in paragraph (C) of rule 173-14-07 of the Administrative Code. Topics of sessions may include, but are not limited to, supervision of staff, quality assurance practices, strategic planning, and interviewing, hiring, and retention of potential staff.

The required hours of continuing education shall be prorated for any ~~representative of the office~~ ombudsman who has been certified for fewer than twelve months.

(B) ~~The SLTCO may approve only those continuing~~ Continuing education sessions ~~that shall~~ meet the following requirements:

- (1) The individual(s) presenting the session has documented expertise in the content area.
- (2) The session transmits knowledge relevant to the duties of a long-term care ombudsman.
- (3) The session has not been held for the purpose of individual or group supervision.

(C)

- (1) The SLTCO shall notify each ~~representative~~ ombudsman of the credits that may be earned through attendance at an SLTCO-sponsored session before the date on which the session is scheduled and may assign credit for successfully completing the session.
- (2) ~~Representatives~~ An ombudsman or a program designee shall enter all requests for credit toward their continuing education requirements into the ombudsman ~~registry~~ administrative system or by email to the SLTCO or the SLTCO's designee before, or as soon as practicable after, actual attendance at the session.

All requests for continuing education credit shall contain the following:

- (a) The name of the session and the name of the entity that organized or sponsored the session.
 - (b) A brief summary of the session's content.
 - (c) The name of the presenters at the session and a statement addressing their expertise in the content of the session.
 - (d) The length of the session, including the length of any time the ~~representative~~ ombudsman spent presenting.
 - (e) An explanation of how the session relates to the duties of the ~~representative~~ ombudsman.
 - (f) Proof of completion, if ~~completed~~ requested by the SLTCO.
- (3) The SLTCO shall approve continuing education credits in terms of face-to-face contact hours or one-tenth parts of an hour earned. The SLTCO shall notify ~~representatives~~ each ombudsman of the approval or disapproval of their requests as soon as practicable.
- (4) ~~A representative~~ An ombudsman may meet this rule's continuing education requirements with credits that were also counted toward the continuing education requirements of other professional organizations or boards.
- (D)
- (1) The regional programs shall track the hours of continuing education accumulated by their volunteers and the SLTCO shall track the hours of continuing education accumulated by the paid and volunteer staff of the state office. All continuing education shall be reported through the ombudsman ~~registry~~ administrative system according to instructions provided by the state office.
 - (2) By December first of each year, a state review shall be completed to ensure the continuing education requirements for each ~~representative~~ ombudsman have been fulfilled. According to instructions provided by the state office, regional programs shall enter records of volunteer continuing education into the ombudsman ~~registry~~ administrative system by December fifteenth of each year and retain records on continuing education as long as the ~~representative~~ ombudsman remains affiliated with the office. After records are entered into the ~~registry~~ ombudsman administrative system, physical records may be destroyed.
- (E) If continuing education requirements cannot be fulfilled before each year's deadline, a ~~representative~~ ombudsman may demonstrate extenuating circumstances or give an

explanation to the ombudsman program director, ~~for volunteers of that program, or to the SLTCO, for paid staff of the office and volunteers of the state office.~~

- (1) In the case of a regional program volunteer, if the explanation or extenuating circumstances are not acceptable to the ombudsman program director, the program director shall notify the SLTCO.
 - (2) In the case of a paid ~~representative ombudsman~~, if the explanation or extenuating circumstances are not acceptable to the SLTCO, the SLTCO shall notify the ~~representative ombudsman~~ and program director or sponsoring agency director, as appropriate.
 - (3) The SLTCO may consider the performance of the ~~representative ombudsman~~ and allow the ~~representative ombudsman~~ to obtain the missing hours of continuing education by March thirty-first of the subsequent year. Any hours carried over from a previous year do not count toward the continuing education requirements of the subsequent year.
- (F) ~~A representative of the office~~ An ombudsman who does not meet the annual continuing education requirement ~~annually~~, or within the extension period if approved by the SLTCO based ~~upon~~ on a demonstration of extenuating circumstances, shall be decertified according to rule 173-14-12 of the Administrative Code. The notice and hearing process for a paid ~~representative ombudsman~~ is subject to rule 173-14-27 of the Administrative Code.

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173-14-14**Staffing requirements, staff qualifications, and background checks.**

(A) Staffing requirements: Each regional program shall have a full-time program director. If a sponsoring agency administers more than one regional program, each regional program shall have full-time supervision provided by a certified ombudsman program director in that region, unless otherwise approved by the state ombudsman.

(B) Staff qualifications:

(1) Ombudsman candidate: To accept a candidate for certification as an ombudsman candidate, the state or regional program shall either hire a person as a paid staff member or accept the person as a volunteer staff member. The state or regional program may hire or accept a person only if the person:

(a) Is at least eighteen years of age; and,

(b) Has the ability to understand and empathize with the concerns of clients of long-term care services.

(2) Ombudsman specialist: A regional program may designate a person to be an ombudsman specialist only if the person is at least a registered nurse or has earned a bachelor of science degree in nursing, or a bachelor of arts or bachelor of science degree in social work, social services, or a health-related field. Any paid ombudsman specialist who does not meet this requirement may substitute commensurate experience or education to meet the education qualification with the approval of the SLTCO.

(3) Ombudsman program director: A regional program may designate a person to be the ombudsman program director only if the person meets both of the following requirements:

(a) The person is at least a registered nurse or has earned a bachelor of science degree in nursing, or a bachelor of arts degree or a bachelor of science degree in social work, social services, a health-related field, or any other related field. Any paid ombudsman program director who does not meet this requirement may substitute commensurate experience or education to meet the education qualification.

(b) The person has one year's experience in supervision/management in the fields of aging, long-term care, health care, social services, advocacy, or investigation with the approval of the SLTCO.

- (4) Background checks: Section 173.27 of the Revised Code and paragraph (C) of this rule establish background-check requirements for hiring an applicant for, or retaining an employee in, a paid ombudsman position.

(C) Background checks for paid ombudsman positions:

(1) Definitions for paragraph (C) of this rule:

"AGE means the Ohio department of aging.

"Applicant" means a person that a responsible party is giving final consideration for hiring into a paid ombudsman position that is full-time, part-time, or temporary, including the position of state long-term care ombudsman or regional director. "Applicant" does not include a volunteer.

"BCII" means "the bureau of criminal identification and investigation" and includes the superintendent of BCII.

"Criminal records" has the same meaning as "results of the criminal records check," "results," and "report" in section 173.27 of the Revised Code when the section uses "results of the criminal records check," "results," and "report" to refer to the criminal records that BCII provides to responsible parties that conduct criminal records checks. Criminal records originate from BCII unless the context indicates that the criminal records originate from the FBI.

"Criminal records check" ("check") means the criminal records check described in section 173.27 of the Revised Code.

"Disqualifying offense" means any offense listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code.

"Employee" means a person that a responsible party hired into a paid ombudsman position that is full-time, part-time, or temporary, including the position of the state long-term care ombudsman or regional director. "Employee" does not include a volunteer.

"FBI" means "federal bureau of investigation."

"Fire" has the same meaning as "terminate" in section 173.27 of the Revised Code when the "terminate" regards firing an employee.

"Hire" has the same meaning as "employ" in section 173.27 of the Revised Code when "employ" regards hiring an applicant.

"Minor drug possession offense" has the same meaning as in section 2925.01 of the Revised Code.

"Ombudsman position" has the same meaning as "position that involves providing ombudsman services to residents and recipients" in section 173.27 of the Revised Code. "Ombudsman position" includes the positions of ombudsman associate, ombudsman specialist, and ombudsman program director.

"Release" has the same meaning as "terminate" in section 173.27 of the Revised Code when "terminate" regards releasing a conditionally-hired applicant.

"Responsible party": When hiring an applicant for, or retaining an employee in, a paid ombudsman position as the state long-term care ombudsman, "responsible party" means AGE's director. When hiring an applicant for, or retaining an employee in, a paid ombudsman position in the office of the state long-term care ombudsman, "responsible party" means the state long-term care ombudsman. When hiring an applicant for, or retaining an employee in, a paid ombudsman position as the director of a regional program, "responsible party" means the regional program. When hiring an applicant for, or retaining an employee in, a paid ombudsman position in the regional program, "responsible party" means the regional program.

"Retain" has the same meaning as "continue to employ" in section 173.27 of the Revised Code.

"Volunteer" means a person who serves in an ombudsman position without receiving, or expecting to receive, any form of remuneration other than reimbursement for actual expenses.

(2) Reviewing databases:

- (a) Databases to review: Any time this rule requires a responsible party to review an applicant's (pre-hire) or employee's (post-hire) status in databases, the responsible party shall review the seven databases listed in paragraphs (C)(2)(a)(i) to (C)(2)(a)(vii) of this rule. In the table below, AGE listed the web address (URL) on which each database was accessible to the public at the time of this rule's adoption. If a URL listed in the table becomes obsolete, please consult with the government entity publishing the database for an updated URL.

DATABASES TO REVIEW

<u>SAM</u>	<u>https://www.sam.gov/</u>
<u>OIG</u>	<u>https://exclusions.oig.hhs.gov/</u>
<u>Abuser Registry</u>	<u>https://its.prodapps.dodd.ohio.gov/ABR_Default.aspx</u>
<u>ODM Provider Exclusion and Suspension List</u>	<u>https://medicaid.ohio.gov/resources-for-providers/enrollment-and-support/provider-enrollment/provider-exclusion-and-suspension-list</u>
<u>Sex-Offender Search</u>	<u>http://www.icrimewatch.net/index.php?AgencyID=55149&disc=</u>
<u>Offender Search</u>	<u>https://appgateway.drc.ohio.gov/OffenderSearch</u>
<u>Nurse-Aide Registry</u>	<u>https://nurseaideregistry.odh.ohio.gov/Public/PublicAbuseListing</u>

- (i) The United States general services administration's system for award management, which is maintained pursuant to subpart 9.4 of the federal acquisition regulation.
- (ii) The office of inspector general of the United States department of health and human services' list of excluded individuals and entities, which is maintained pursuant to 42 U.S.C. 1320a-7 and 1320c-5.
- (iii) The department of developmental disabilities' online abuser registry, established under section 5123.52 of the Revised Code, which lists people cited for abuse, neglect, or misappropriation.
- (iv) The Ohio attorney general's sex offender and child-victim offender database, established under division (A)(1) of section 2950.13 of the Revised Code.
- (v) The department of rehabilitation and correction's database of inmates, established under section 5120.66 of the Revised Code.
- (vi) The department of health's state nurse aide registry, established under section 3721.32 of the Revised Code. If the applicant or employee does not present proof that he or she has been a resident of Ohio for the five-year period immediately preceding the date of the database review, the responsible party shall conduct a database review of the nurse aide registry in the state or states in which the applicant or employee lived.

(b) When to review databases:

- (i) Applicants (pre-hire): The responsible party shall review each applicant's (pre-hire) status in the databases before conducting the criminal records check under paragraph (C)(3) of this rule.
- (ii) Employees (post-hire): The responsible party shall review each employee's (post-hire) status in the databases before conducting the criminal records check under paragraph (C)(3) of this rule.

(c) Disqualifying status:

- (i) No responsible party may hire an applicant or retain an employee if the applicant's or employee's status in the databases reveals that one or more of the databases in paragraphs (C)(2)(a)(i) to (C)(2)(a)(vi) of this rule lists the applicant or employee or the database in paragraph (C)(2)(a)(vii) of this rule lists the applicant or employee as a person who abused, neglected, or exploited a long-term care facility resident or misappropriated such a resident's property.
- (ii) If the responsible party's database reviews reveal that the applicant or employee is disqualified, the responsible party shall inform the applicant or employee of the disqualifying information.

(3) Criminal records checks: when to check criminal records, inform applicants, charge fees, and use forms.

- (a) Database reviews first: The responsible party shall conduct database reviews on each applicant (pre-hire) and each employee (post-hire) before conducting a criminal records check. If the database reviews disqualify the applicant or employee, the responsible party shall not conduct a criminal records check. If the database reviews do not disqualify the applicant or employee, the responsible party shall conduct a criminal records check.
- (b) Procedures: Section 173.27 of the Revised Code and Chapter 109:5-1 of the Administrative Code establish the procedures for conducting criminal records checks.
- (c) When to check criminal records:
 - (i) Applicants (pre-hire): The responsible party shall conduct a criminal records check on each applicant.

(ii) Employees (post-hire): According to one of the following three schedules, the responsible party shall conduct a post-hire criminal records check on each employee at least once every five years:

(A) Five-year schedule: The responsible party shall conduct a criminal records check on the employee no later than thirty days after the fifth anniversary of the employee's date of hire and no later than thirty days after each five-year anniversary. A responsible party that follows this schedule is not required to wait until the employee's five-year anniversary to conduct a criminal records check. The responsible party has five years, plus thirty days, to conduct the next check.

(B) Less-than-five-year schedule: The responsible party may conduct criminal records checks on an employee more frequently than every five years. If the responsible party checks more frequently than every five years, the responsible party is not required to conduct criminal records checks according to the five-year schedules. If a responsible party complies with the requirements for rapback, the responsible party is conducting criminal records checks on a daily basis, which is a less-than-five-year schedule.

(d) Special situations:

(i) Reverification: If any person requested a criminal records check on an applicant or employee in the past year that included sealed criminal records in a BCII report, the responsible party may request a reverification of the criminal records from BCII. The reverification of the criminal record has the same validity as the criminal records received during the past year.

(ii) Divisions (E) and (F) of section 173.27 of the Revised Code establishes standards for when to request that BCII obtain information from FBI as part of the criminal records check on the applicant or employee.

(4) Conditional hiring: A responsible party may conditionally hire an applicant for a paid ombudsman position for up to sixty days if the responsible party complies with all requirements and limitations under division (F) of section 173.27 of the Revised Code. This paragraph does not subject employees who hold paid ombudsman positions to a conditional status when they undergo post-hire criminal records checks.

- (5) Disqualifying offenses: The disqualifying offenses for this rule are the same as the disqualifying offenses listed in rule 173-9-06 of the Administrative Code.
- (6) Hiring an applicant, or retaining an employee, who has a disqualifying offense on criminal record: There are four possible ways to hire an applicant, or retain an employee, if the applicant's or employee's criminal record contains a disqualifying offense: not being in a period of disqualification under paragraph (A) of rule 173-9-07 of the Administrative Code, limited grandfathering under paragraph (B) of rule 173-9-07 of the Administrative Code, obtaining a certificate under paragraph (C) of rule 173-9-07 of the Administrative Code, or being pardoned under paragraph (D) of rule 173-9-07 of the Administrative Code.
- (7) Confidentiality: Criminal records are not public records. The responsible party shall make criminal records available only to the people or entities listed under division (G) of section 173.27 of the Revised Code.
- (8) Records retention:
 - (a) Personnel files:
 - (i) What to retain: To verify compliance with this rule, for each applicant the responsible party hired and each employee the responsible party retained, the responsible party shall retain electronic or paper copies of the following records:
 - (A) The result of each of the database reviews.
 - (B) Any criminal records including reverified records received as a result of a check conducted to comply with section 173.27 of the Revised Code.
 - (C) The written attestation to the character and fitness of the employee, if the responsible party completed a written attestation before April 1, 2013 to comply with paragraph (C) (6)(c)(1) of this rule.
 - (D) A certificate of qualification for employment, if a court issued a certificate of qualification for employment to the employee.
 - (E) A certificate of achievement and employability, if the department of rehabilitation and corrections issued a certificate of achievement and employability to the employee.

(F) A pardon, if a governor pardoned the employee.

(G) The date the responsible party hired the employee.

(ii) Sealed files: The responsible party shall retain the records required under paragraph (C)(8)(a)(i) of this rule by sealing the records within each applicant's or each employee's personnel files or by retaining the records in separate files from the personnel files.

(b) Roster: A responsible party shall maintain a roster of applicants and employees, accessible by AGE's director (or the director's designees), that includes all the following:

(i) The name of each applicant and employee.

(ii) The date the responsible party hired the employee.

(iii) The date the responsible party requested criminal records from BCII.

(iv) The date the responsible party received criminal records from BCII.

(v) A determination of whether the criminal records revealed that the applicant or employee committed a disqualifying offense(s).

(D) Background checks for volunteers in ombudsman positions: Because section 173.27 of the Revised Code excludes volunteers from the definitions of "applicant" and "employee," volunteers are not subject to the background check requirements in section 173.27 of the Revised Code or paragraph (C) of this rule when they apply to volunteer or after they become volunteers. A responsible party may conduct a criminal records check on a volunteer if the responsible party complies with rule 109:5-1-01 of the Administrative Code, but the check may only involve reviewing sealed records if the volunteer who is the subject of the check authorizes the responsible party to view sealed records according to division (D)(3) of section 2953.32 of the Revised Code.

Replaces: 173-14-14

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under: 119.03

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Rule Amplifies: 109.572, 173.16, 173.27; 42 U.S.C. 3058g; 45 C.F.R. 1324.11

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TO BE RESCINDED

173-14-14

Staffing requirements, staff qualifications, and background checks.

(A) Staffing requirements: Each regional program shall employ one paid, full-time employee to serve as the program's ombudsman program director. If a sponsoring agency administers more than one regional program, each regional program shall have full-time supervision provided by a certified ombudsman program director in that region, unless otherwise approved by the state ombudsman.

(B) Staff qualifications:

(1) Representative: To accept a candidate for certification as a representative of the office, the state or regional program shall either hire a person as a paid staff member or accept the person as a volunteer staff member. The state or regional program may hire or accept a person only if the person:

(a) Is at least eighteen years of age; and,

(b) Has the ability to understand and empathize with the concerns of consumers of long-term care services.

(2) Ombudsman specialist: A regional program may hire a person to be an ombudsman specialist only if the person is at least a registered nurse or has earned a bachelor of science degree in nursing, or a bachelor of arts or bachelor of science degree in social work, social services, or a health-related field. Any paid representative who does not meet this requirement may substitute commensurate experience or education to meet the education qualification with the approval of the SLTCO.

(3) Ombudsman program director: A regional program may hire a person to be the ombudsman program director only if the person meets both of the following requirements:

(a) The person is at least a registered nurse or has earned a bachelor of science degree in nursing, or a bachelor of arts degree or a bachelor of science degree in social work, social services, a health-related field, or any other related field. Any paid representative who does not meet this requirement may substitute commensurate experience or education to meet the education qualification.

(b) The person has one year's experience in supervision/management in the fields of aging, long-term care, health care, social services, advocacy, or investigation with the approval of the SLTCO.

(4) Background checks: Section 173.27 of the Revised Code and paragraph (C) of this rule establish background-check requirements for hiring an applicant for, or retaining an employee in, a paid ombudsman position.

(C) Background checks for paid ombudsman positions:

(1) Definitions for paragraph (C) of this rule:

"Applicant" means a person that a responsible party is giving final consideration for hiring into a paid ombudsman position that is full-time, part-time, or temporary, including the position of state long-term care ombudsman or regional director. "Applicant" does not include a volunteer.

"BCII" means "the bureau of criminal identification and investigation" and includes the superintendent of BCII.

"Criminal records" has the same meaning as "results of the criminal records check," "results," and "report" in section 173.27 of the Revised Code when the section uses "results of the criminal records check," "results," and "report" to refer to the criminal records that BCII provides to responsible parties that conduct criminal records checks. Criminal records originate from BCII unless the context indicates that the criminal records originate from the FBI.

"Criminal records check" ("check") means the criminal records check described in section 173.27 of the Revised Code.

"Disqualifying offense" means any offense listed or described in divisions (A) (3)(a) to (A)(3)(e) of section 109.572 of the Revised Code.

"Employee" means a person that a responsible party hired into a paid ombudsman position that is full-time, part-time, or temporary, including the position of the state long-term care ombudsman or regional director. "Employee" does not include a volunteer.

"FBI" means "federal bureau of investigation."

"Fire" has the same meaning as "terminate" in section 173.27 of the Revised Code when the "terminate" regards firing an employee.

"Hire" has the same meaning as "employ" in section 173.27 of the Revised Code when "employ" regards hiring an applicant.

"Minor drug possession offense" has the same meaning as in section 2925.01 of the Revised Code.

"ODA" means "the Ohio department of aging."

"Ombudsman position" has the same meaning as "position that involves providing ombudsman services to residents and recipients" in section 173.27 of the Revised Code. "Ombudsman position" includes the positions of ombudsman associate, ombudsman specialist, and ombudsman program director.

"Release" has the same meaning as "terminate" in section 173.27 of the Revised Code when "terminate" regards releasing a conditionally-hired applicant.

"Responsible party": When hiring an applicant for, or retaining an employee in, a paid ombudsman position as the state long-term care ombudsman, "responsible party" means ODA's director. When hiring an applicant for, or retaining an employee in, a paid ombudsman position in the office of the state long-term care ombudsman, "responsible party" means the state long-term care ombudsman. When hiring an applicant for, or retaining an employee in, a paid ombudsman position as the director of a regional program, "responsible party" means the regional program. When hiring an applicant for, or retaining an employee in, a paid ombudsman position in the regional program, "responsible party" means the regional program.

"Retain" has the same meaning as "continue to employ" in section 173.27 of the Revised Code.

"Volunteer" means a person who serves in an ombudsman position without receiving, or expecting to receive, any form of remuneration other than reimbursement for actual expenses.

(2) Reviewing databases:

- (a) Databases to review: Any time this rule requires a responsible party to review an applicant's (pre-hire) or employee's (post-hire) status in databases, the responsible party shall review the six databases listed in paragraphs (C)(2)(a)(i) to (C)(2)(a)(vi) of this rule. In the table below, ODA listed the web address (URL) on which each database was accessible to the public at the time of this rule's adoption. If a URL listed

in the table becomes obsolete, please consult with the government entity publishing the database for an updated URL.

DATABASES TO REVIEW

SAM	https://www.sam.gov/
OIG	https://exclusions.oig.hhs.gov/
Abuser Registry	https://its.prodapps.dodd.ohio.gov/ABR_Default.aspx
Sex-Offender Search	http://www.icrimewatch.net/index.php?AgencyID=55149&disc=
Offender Search	https://appgateway.drc.ohio.gov/OffenderSearch
Nurse-Aide Registry	https://nurseaideregistry.odh.ohio.gov/Public/PublicNurseAideSearch

- (i) The United States general services administration's system for award management, which is maintained pursuant to subpart 9.4 of the federal acquisition regulation.
- (ii) The office of inspector general of the United States department of health and human services' list of excluded individuals and entities, which is maintained pursuant to 42 U.S.C. 1320a-7 and 1320c-5.
- (iii) The department of developmental disabilities' online abuser registry, established under section 5123.52 of the Revised Code, which lists people cited for abuse, neglect, or misappropriation.
- (iv) The Ohio attorney general's sex offender and child-victim offender database, established under division (A)(1) of section 2950.13 of the Revised Code.
- (v) The department of rehabilitation and correction's database of inmates, established under section 5120.66 of the Revised Code.
- (vi) The department of health's state nurse aide registry, established under section 3721.32 of the Revised Code. If the applicant or employee does not present proof that he or she has been a resident of Ohio for the five-year period immediately preceding the date of the database review, the responsible party shall conduct a database review of the

nurse aide registry in the state or states in which the applicant or employee lived.

(b) When to review databases:

- (i) Applicants (pre-hire): The responsible party shall review each applicant's (pre-hire) status in the databases before conducting the criminal records check under paragraph (C)(3) of this rule.
- (ii) Employees (post-hire): The responsible party shall review each employee's (post-hire) status in the databases before conducting the criminal records check under paragraph (C)(3) of this rule.

(c) Disqualifying status:

- (i) No responsible party may hire an applicant or retain an employee if the applicant's or employee's status in the databases reveals that one or more of the databases in paragraphs (C)(2)(a)(i) to (C)(2)(a)(v) of this rule lists the applicant or employee or the database in paragraph (C)(2)(a)(vi) of this rule lists the applicant or employee as a person who abused, neglected, or exploited a long-term care facility resident or misappropriated such a resident's property.
- (ii) If the responsible party's database reviews reveal that the applicant or employee is disqualified, the responsible party shall inform the applicant or employee of the disqualifying information.

(3) Criminal records checks: when to check criminal records, inform applicants, charge fees, and use forms.

- (a) Database reviews first: The responsible party shall conduct database reviews on each applicant (pre-hire) and each employee (post-hire) before conducting a criminal records check. If the database reviews disqualify the applicant or employee, the responsible party shall not conduct a criminal records check. If the database reviews do not disqualify the applicant or employee, the responsible party shall conduct a criminal records check.

(b) When to check criminal records:

- (i) Applicants (pre-hire): The responsible party shall conduct a criminal records check on each applicant.

- (ii) Employees (post-hire): According to one of the following three schedules, the responsible party shall conduct a post-hire criminal records check on each employee at least once every five years:
 - (a) Five-year schedule for pre-2008 hire dates: If the responsible party hired the employee before January 1, 2008, the responsible party shall conduct a criminal records check on the employee no later than thirty days after the 2013 anniversary of the employee's date of hire and no later than thirty days after each five-year anniversary. A responsible party that follows this schedule is not required to wait until the employee's anniversary to conduct a criminal records check. The responsible party has five years, plus thirty days, to conduct the next check.
 - (b) Five-year schedule for 2008-present hire dates: If the responsible party hired the employee on or after January 1, 2008, the responsible party shall conduct a criminal records check on the employee no later than thirty days after the fifth anniversary of the employee's date of hire and no later than thirty days after each five-year anniversary. A responsible party that follows this schedule is not required to wait until the employee's five-year anniversary to conduct a criminal records check. The responsible party has five years, plus thirty days, to conduct the next check.
 - (c) Less-than-five-year schedule: The responsible party may conduct criminal records checks on an employee more frequently than every five years. If the responsible party checks more frequently than every five years, the responsible party is not required to conduct criminal records checks according to the five-year schedules. If a responsible party complies with the requirements for rapback, the responsible party is conducting criminal records checks on a daily basis, which is a less-than-five-year schedule.
- (iii) Reverification: If any person has requested a criminal records check on an applicant or employee in the past year that, according to division (B)(1) of section 109.572 of the Revised Code, requires BCII to include sealed criminal records in the criminal records that it returns to the person, the responsible party may request a reverification of that criminal record from BCII to determine if an applicant's or employee's criminal records disqualifies him or her

from being hired into, or retaining, a paid ombudsman position. The reverification of the criminal record has the same validity as the criminal records received during the past year.

(c) Sealed records: Division (B)(1) of section 109.572 of the Revised Code requires BCII to include sealed criminal records in its criminal records reports for criminal records checks conducted under section 173.27 of the Revised Code.

(d) When to check FBI's criminal records:

(i) Residency: If an applicant or employee does not provide the responsible party with evidence that he or she has been a resident of Ohio for the five-year period immediately preceding the date the responsible party must request a criminal records check, or if the applicant or employee does not provide the responsible party with evidence that BCII has requested his or her criminal records from the FBI within the five-year period immediately preceding the date the responsible party requests the criminal records check, the responsible party shall request that BCII obtain criminal records from the FBI as part of the criminal records check.

(ii) Will of the responsible party: If an applicant or employee provides the responsible party with evidence that he or she has been a resident of Ohio for the five-year period immediately preceding the date the responsible party requests the criminal records check, the responsible party may request that BCII obtain criminal records from the FBI as part of the criminal records check.

(e) Inform applicant: When an applicant initially applies for a paid ombudsman position, the responsible party shall inform the applicant of the following:

(i) If the responsible party gives the applicant final consideration for hiring into the position, the following shall happen:

(a) The responsible party shall review the applicant's status in the databases listed in paragraph (C)(2)(a) of this rule.

(b) Unless the database reviews reveal that the responsible party shall not hire the applicant, the responsible party shall conduct a criminal records check and the applicant shall provide a set of his or her fingerprints as part of the criminal records check.

- (ii) If the responsible party hires the applicant, as a condition to retain the position, the responsible party shall conduct post-hire database reviews and criminal records checks according to one of the three schedules listed under paragraph (C)(3)(b)(ii) of this rule.
 - (iii) If the responsible party intends to charge the applicant the fees divisions (C)(2) and (C)(3) of section 109.572 of the Revised Code authorize the responsible party to charge, the responsible party shall inform the applicant of the fees at the time of application.
- (f) Investigation fees:
 - (i) The responsible party shall pay BCII the fees that divisions (C)(2) and (C)(3) of section 109.572 of the Revised Code authorize for each criminal records check.
 - (ii) The responsible party may charge the applicant a fee for checking criminal records so long as the fee does not exceed the amount the responsible party pays to BCII; and, if at the time of initial application, the responsible party informed the applicant of the fee's amount and that the responsible party would not hire the applicant if the applicant did not pay the fee.
- (g) Forms: Unless the applicant or employee follows the procedures that BCII established in rule 109:5-1-01 of the Administrative Code for providing fingerprints electronically and requesting criminal records electronically, the responsible party shall complete the following two tasks:
 - (i) The responsible party shall provide each applicant or employee with the form(s) that BCII requires in division (C)(1) of section 109.572 of the Revised Code.
 - (ii) The responsible party shall forward the completed fingerprints and forms to BCII for processing.
- (4) Conditional hiring: A responsible party may conditionally hire an applicant for a paid ombudsman position if the responsible party complies with all requirements and limitations under division (F) of section 173.27 of the Revised Code. This paragraph does not subject employees who hold paid ombudsman positions to a conditional status when they undergo post-hire criminal records checks.
- (5) Disqualifying offenses:

- (a) Except as established in paragraph (C)(6) of this rule, no responsible party may hire an applicant or retain an employee if the applicant or employee was convicted of, or pleaded guilty to, or has been found eligible for intervention in lieu of conviction to, an offense in any of the following sections of the Revised Code:
- (i) 959.13 (cruelty to animals).
 - (ii) 959.131 (prohibitions concerning companion animals).
 - (iii) 2903.01 (aggravated murder).
 - (iv) 2903.02 (murder).
 - (v) 2903.03 (voluntary manslaughter).
 - (vi) 2903.04 (involuntary manslaughter).
 - (vii) 2903.041 (reckless homicide).
 - (viii) 2903.11 (felonious assault).
 - (ix) 2903.12 (aggravated assault).
 - (x) 2903.13 (assault).
 - (xi) 2903.15 (permitting child abuse).
 - (xii) 2903.16 (knowingly or recklessly failing to provide for a functionally-impaired person).
 - (xiii) 2903.21 (aggravated menacing).
 - (xiv) 2903.211 (menacing by stalking).
 - (xv) 2903.22 (menacing).
 - (xvi) 2903.34 (patient abuse, gross patient abuse, patient neglect).
 - (xvii) 2903.341 (patient endangerment).
 - (xviii) 2905.01 (kidnapping).
 - (xix) 2905.02 (abduction).

- (xx) 2905.04 (child stealing, as it existed before July 1, 1996);
- (xxi) 2905.05 (criminal child enticement).
- (xxii) 2905.11 (extortion).
- (xxiii) 2905.12 (coercion).
- (xxiv) 2905.32 (trafficking in persons).
- (xxv) 2905.33 (unlawful conduct with respect to documents).
- (xxvi) 2907.02 (rape).
- (xxvii) 2907.03 (sexually battery).
- (xxviii) 2907.04 (unlawful sexual conduct with a minor, formerly corruption of a minor).
- (xxix) 2907.05 (gross sexual imposition).
- (xxx) 2907.06 (sexual imposition).
- (xxxi) 2907.07 (importuning).
- (xxxii) 2907.08 (voyeurism).
- (xxxiii) 2907.09 (public indecency).
- (xxxiv) 2907.12 (felonious sexual penetration, as it existed before July 1, 1996).
- (xxxv) 2907.21 (compelling prostitution).
- (xxxvi) 2907.22 (promoting prostitution).
- (xxxvii) 2907.23 (enticing or soliciting another person to patronize a prostitute or brothel; procurement of a prostitute for another person to patronize).
- (xxxviii) 2907.24 (soliciting, engaging in solicitation after a positive HIV test).
- (xxxix) 2907.25 (prostitution, engaging in prostitution after a positive HIV test).

- (xl) 2907.31 (disseminating matter harmful to juveniles).
- (xli) 2907.32 (pandering obscenity).
- (xlii) 2907.321 (pandering obscenity involving a minor or impaired person).
- (xliii) 2907.322 (pandering sexually-oriented matter involving a minor or impaired person).
- (xliv) 2907.323 (illegal use of a minor or impaired person in a nudity-oriented material or performance).
- (xlv) 2907.33 (deception to obtain matter harmful to juveniles).
- (xlvi) 2909.02 (aggravated arson).
- (xlvii) 2909.03 (arson).
- (xlviii) 2909.04 (disrupting public services).
- (xlix) 2909.22 (soliciting or providing support for an act of terrorism).
- (l) 2909.23 (making terroristic threat).
- (li) 2909.24 (terrorism).
- (lii) 2911.01 (aggravated robbery).
- (liii) 2911.02 (robbery).
- (liv) 2911.11 (aggravated burglary).
- (lv) 2911.12 (burglary, trespass in a habitation when a person is present or likely to be present).
- (lvi) 2911.13 (breaking and entering).
- (lvii) 2913.02 (theft).
- (lviii) 2913.03 (unauthorized use of a vehicle).
- (lix) 2913.04 (unauthorized use of property; unauthorized use of computer, cable, or telecommunication property; unauthorized use

of the law enforcement automated database system; unauthorized use of the Ohio law enforcement gateway).

- (lx) 2913.05 (telecommunications fraud).
- (lxi) 2913.11 (passing bad checks).
- (lxii) 2913.21 (misuse of credit cards).
- (lxiii) 2913.31 (forgery, forging identification cards, selling or distributing forged identification cards).
- (lxiv) 2913.32 (criminal simulation).
- (lxv) 2913.40 (medicaid fraud).
- (lxvi) 2913.41 (defrauding a rental agency or hostelry).
- (lxvii) 2913.42 (tampering with records).
- (lxviii) 2913.43 (securing writings by deception).
- (lxix) 2913.44 (personating an officer).
- (lxx) 2913.441 (unlawful display of the emblem of a law enforcement agency or an organization of law enforcement officers).
- (lxxi) 2913.45 (defrauding creditors).
- (lxxii) 2913.46 (illegal use of SNAP or WIC program benefits).
- (lxxiii) 2913.47 (insurance fraud).
- (lxxiv) 2913.48 (workers' compensation fraud).
- (lxxv) 2913.49 (identity fraud).
- (lxxvi) 2913.51 (receiving stolen property).
- (lxxvii) 2917.01 (inciting to violence).
- (lxxviii) 2917.02 (aggravated riot).
- (lxxix) 2917.03 (riot).
- (lxxx) 2917.31 (inducing panic).

- (lxxxix) 2919.12 (unlawful abortion).
- (lxxxix) 2919.121 (unlawful abortion upon minor).
- (lxxxix) 2919.123 (unlawful distribution of an abortion-inducing drug).
- (lxxxix) 2919.124 (unlawful performance of a drug-induced abortion).
- (lxxxix) 2919.22 (endangering children).
- (lxxxix) 2919.23 (interference with custody).
- (lxxxix) 2919.24 (contributing to unruliness or delinquency of child).
- (lxxxix) 2919.25 (domestic violence).
- (lxxxix) 2921.03 (intimidation).
- (xc) 2921.11 (perjury).
- (xci) 2921.12 (tampering with evidence).
- (xcii) 2921.13 (falsification, falsification in a theft offense, falsification to purchase a firearm, falsification to obtain a concealed handgun license, falsification regarding a removal proceeding).
- (xciii) 2921.21 (compounding a crime).
- (xciv) 2921.24 (disclosure of confidential information).
- (xcv) 2921.32 (obstructing justice).
- (xcvi) 2921.321 (assaulting or harassing a police dog or horse, assaulting or harassing an assistance dog).
- (xcvii) 2921.34 (escape).
- (xcviii) 2921.35 (aiding escape or resistance to lawful authority).
- (xcix) 2921.36 (illegal conveyance of weapons, drugs, intoxicating liquor, or a communications device onto the grounds of a specified government facility; illegal conveyance of cash onto the ground of a detention facility).

- (c) 2921.51 (impersonation of peace officer, private police officer, federal law enforcement officer, or BCII investigator)
- (ci) 2923.01 (conspiracy to commit disqualifying offense).
- (cii) 2923.02 (attempt to commit a disqualifying offense).
- (ciii) 2923.03 (complicity, related to another disqualifying offense).
- (civ) 2923.12 (carrying concealed weapons).
- (cv) 2923.122 (illegal conveyance or possession of deadly weapon or dangerous ordnance in a school safety zone, illegal possession of an object indistinguishable from a firearm in a school safety zone).
- (cvi) 2923.123 (illegal conveyance of a deadly weapon into a courthouse, illegal possession or control of deadly weapon or ordnance into a courthouse).
- (cvii) 2923.13 (having weapons while under disability).
- (cviii) 2923.161 (improperly discharging a firearm at or into a habitation, a school safety zone, or with the intent to cause harm or panic to persons in a school, in a school building, or at a school function or the evacuation of a school function).
- (cix) 2923.162 (discharge of firearm on or near prohibited premises).
- (cx) 2923.21 (improperly furnishing firearms to minor).
- (cxi) 2923.32 (engaging in a pattern of corrupt activity).
- (cxii) 2923.42 (participating in criminal gang).
- (cxiii) 2925.02 (corrupting another with drugs).
- (cxiv) 2925.03 (aggravated trafficking in drugs, trafficking in drugs, trafficking in marihuana [marijuana], trafficking in cocaine, trafficking in LSD, trafficking in heroin, trafficking in hashish, trafficking in a controlled substance analog, trafficking in a fentanyl-related compound).
- (cxv) 2925.04 (illegal manufacture of drugs, illegal cultivation of marihuana [marijuana]).

- (cxvi) 2925.041 (illegal assembly or possession of chemicals for the manufacture of drugs).
- (cxvii) 2925.05 (aggravated funding of drug or marihuana [marijuana] trafficking, funding of drug or marihuana [marijuana] trafficking).
- (cxviii) 2925.06 (illegal administration or distribution of anabolic steroids).
- (cxix) 2925.09 (illegal administration, dispensing, distribution, manufacture, possession, selling, or using of any dangerous drug to or for livestock or any animal that is generally used for food or in the production of food, unless the drug is prescribed by a licensed veterinarian).
- (cxx) 2925.11 (aggravated possession of drugs, possession of drugs, possession of cocaine, possession of LSD, possession of heroin, possession of hashish, possession of a controlled substance analog, possession of marihuana [marijuana], possession of a fentanyl-related compound).
- (cxxi) 2925.13 (permitting drug abuse).
- (cxxii) 2925.14 (illegal use, possession, dealing, selling to a juvenile, or advertising of drug paraphernalia).
- (cxxiii) 2925.22 (deception to obtain a dangerous drug).
- (cxxiv) 2925.23 (illegal processing of drug documents).
- (cxxv) 2925.24 (tampering with drugs).
- (cxxvi) 2925.36 (illegal dispensing of drug samples).
- (cxxvii) 2925.55 (unlawful purchase of a pseudoephedrine product or ephedrine product, underage purchase of a pseudoephedrine product or ephedrine product, using false information to purchase a pseudoephedrine product or ephedrine product, improper purchase of a pseudoephedrine product or ephedrine product).
- (cxxviii) 2925.56 (unlawfully selling a pseudoephedrine or ephedrine product; unlawfully selling a pseudoephedrine or ephedrine product to a minor; improper sale of a pseudoephedrine or ephedrine product).

(cxxxix) 2927.12 (ethnic intimidation).

(cxxx) 3716.11 (placing harmful objects in food or confection).

(b) Except as established in paragraph (C)(6) of this rule, no responsible party may hire an applicant or retain an employee if the applicant or employee was convicted of, pleaded guilty to, or has been found eligible for intervention in lieu of conviction to, an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses described in paragraph (C)(5)(a) of this rule.

(6) Hiring an applicant, or retaining an employee, who has a disqualifying offense on criminal record: There are four possible ways to hire an applicant, or retain an employee, if the applicant's or employee's criminal record contains a disqualifying offense: not being in a period of disqualification under paragraph (C)(6)(a) of this rule, limited grandfathering under paragraph (C)(6)(b) of this rule, obtaining a certificate under paragraph (C)(6)(c) of this rule, or obtaining a pardon under paragraph (C)(6)(d) of this rule.

(a) Periods of disqualification:

(i) Tier I: Permanent disqualification: An applicant or employee is in a permanent period of disqualification if the applicant or employee was convicted of, pleaded guilty to, or has been found eligible for intervention in lieu of conviction to, an offense in any of the following sections of the Revised Code or an offense of any existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to an offense in any of the following sections of the Revised Code:

(a) 2903.01 (aggravated murder).

(b) 2903.02 (murder).

(c) 2903.03 (voluntary manslaughter).

(d) 2903.11 (felonious assault).

(e) 2903.15 (permitting child abuse).

(f) 2903.16 (knowingly or recklessly failing to provide for a functionally-impaired person).

- (g) 2903.34 (patient abuse, gross patient abuse, or patient neglect).
- (h) 2903.341 (patient endangerment).
- (i) 2905.01 (kidnapping).
- (j) 2905.02 (abduction).
- (k) 2905.32 (trafficking in persons).
- (l) 2905.33 (unlawful conduct with respect to documents).
- (m) 2907.02 (rape).
- (n) 2907.03 (sexual battery).
- (o) 2907.04 (unlawful sexual conduct with a minor, formerly corruption of a minor).
- (p) 2907.05 (gross sexual imposition).
- (q) 2907.06 (sexual imposition).
- (r) 2907.07 (importuning).
- (s) 2907.08 (voyeurism).
- (t) 2907.12 (felonious sexual penetration).
- (u) 2907.31 (disseminating matter harmful to juveniles).
- (v) 2907.32 (pandering obscenity).
- (w) 2907.321 (pandering obscenity involving a minor or impaired person).
- (x) 2907.322 (pandering sexually-oriented matter involving a minor or impaired person).
- (y) 2907.323 (illegal use of a minor or impaired person in a nudity-oriented material or performance).
- (z) 2909.22 (soliciting or providing support for an act of terrorism).
- (aa) 2909.23 (making terroristic threats).

(bb) 2909.24 (terrorism).

(cc) 2913.40 (medicaid fraud).

(dd) If related to another offense under paragraph (C)(6)(a)(i) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity).

(ee) Any other section of the Revised Code related to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct involving a federal or state-funded program other than section 2913.46 (illegal use of SNAP or WIC program benefits).

(ii) Tier II: Ten-year period of disqualification:

(a) An applicant or employee is subject to a ten-year period of disqualification which ends ten years after the date the applicant or employee was fully discharged from all imprisonment, probation, or parole, if the applicant or employee was convicted of, pleaded guilty to, or has been found eligible for intervention in lieu of conviction to, an offense in any of the following sections of the Revised Code or an offense of any existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to an offense in any of the following sections of the Revised Code:

(i) 2903.04 (involuntary manslaughter).

(ii) 2903.041 (reckless homicide).

(iii) 2905.04 (child stealing, as it existed before July 1, 1996).

(iv) 2905.05 (child enticement).

(v) 2905.11 (extortion).

(vi) 2907.21 (compelling prostitution).

(vii) 2907.22 (promoting prostitution).

- (viii) 2907.23 (enticing or soliciting another person to patronize a prostitute or brothel; procurement of a prostitute for another person to patronize).
- (ix) 2909.02 (aggravated arson).
- (x) 2909.03 (arson).
- (xi) 2911.01 (aggravated robbery).
- (xii) 2911.11 (aggravated burglary).
- (xiii) 2913.46 (illegal use of SNAP or WIC program benefits).
- (xiv) 2913.48 (worker's compensation fraud).
- (xv) 2913.49 (identity fraud).
- (xvi) 2917.02 (aggravated riot).
- (xvii) 2923.12 (carrying concealed weapons).
- (xviii) 2923.122 (illegal conveyance or possession of deadly weapon or dangerous ordnance in a school safety zone, illegal possession of an object indistinguishable from a firearm in a school safety zone).
- (xix) 2923.123 (illegal conveyance of a deadly weapon into a courthouse, possession or control of deadly weapon or ordnance into a courthouse).
- (xx) 2923.13 (having weapons while under disability).
- (xxi) 2923.161 (improperly discharging a firearm at or into a habitation, a school safety zone, or with the intent to cause harm or panic to persons in a school, in a school building, or at a school function or the evacuation of a school function).
- (xxii) 2923.162 (discharge of firearm on or near prohibited premises).
- (xxiii) 2923.21 (improperly furnishing firearms to a minor).
- (xxiv) 2923.32 (engaging in a pattern of corrupt activity).

(xxv) 2923.42 (participating in a criminal gang).

(xxvi) 2925.02 (corrupting another with drugs).

(xxvii) 2925.03 (aggravated trafficking in drugs, trafficking in drugs, trafficking in marihuana [marijuana], trafficking in cocaine, trafficking in LSD, trafficking in heroin, trafficking in hashish, trafficking in a controlled substance analog, trafficking in a fentanyl-related compound).

(xxviii) 2925.04 (illegal manufacture of drugs, illegal cultivation of marihuana [marijuana]).

(xxix) 2925.041 (illegal assembly or possession of chemicals for the manufacture of drugs).

(xxx) 3716.11 (placing harmful or hazardous objects in food or confection).

(xxxi) If related to another offense listed under paragraph (C)(6)(a)(ii)(a) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity).

(b) An applicant or employee is subject to a fifteen-year period of disqualification which ends fifteen years after the date the applicant or employee was fully discharged from all imprisonment, probation, or parole if the applicant, or employee was convicted of multiple disqualifying offenses, including an offense listed under paragraph (C)(6)(a)(ii)(a) of this rule, and another offense or offenses listed under paragraph (C)(6)(a)(ii)(a), (C)(6)(a)(iii)(a), or (C)(6)(a)(iv)(a) of this rule, and if the multiple disqualifying offenses are not the result of, or connected to, the same act.

(iii) Tier III: Seven-year period of disqualification:

(a) An applicant or employee is subject to a seven-year period of disqualification which ends seven years after the date of full discharge from all imprisonment, probation, or parole) if the applicant or employee was convicted of, pleaded guilty to, or has been found eligible for intervention in lieu of conviction to, an offense in any of the following sections of the Revised Code or an offense of any existing or former

municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to an offense in any of the following sections of the Revised Code:

- (i)* 959.13 (cruelty to animals).
- (ii)* 959.131 (prohibitions concerning companion animals).
- (iii)* 2903.12 (aggravated assault).
- (iv)* 2903.21 (aggravated menacing).
- (v)* 2903.211 (menacing by stalking).
- (vi)* 2905.12 (coercion).
- (vii)* 2909.04 (disrupting public services).
- (viii)* 2911.02 (robbery).
- (ix)* 2911.12 (burglary, trespass in a habitation when a person is present or likely to be present).
- (x)* 2913.47 (insurance fraud).
- (xi)* 2917.01 (inciting to violence).
- (xii)* 2917.03 (riot).
- (xiii)* 2917.31 (inducing panic).
- (xiv)* 2919.22 (endangering children).
- (xv)* 2919.25 (domestic violence).
- (xvi)* 2921.03 (intimidation).
- (xvii)* 2921.11 (perjury).
- (xviii)* 2921.13 (falsification, falsification in a theft offense, falsification to purchase a firearm, or falsification to obtain a concealed handgun license, falsification regarding a removal proceeding).
- (xix)* 2921.34 (escape).

(xx) 2921.35 (aiding escape or resistance to lawful authority).

(xxi) 2921.36 (illegal conveyance of weapons, drugs, intoxicating liquor, or a communications device onto the grounds of a government facility illegal conveyance of cash onto the grounds of a detention facility).

(xxii) 2925.05 (aggravated funding of drug or marihuana [marijuana] trafficking, funding of drug or marihuana [marijuana] trafficking).

(xxiii) 2925.06 (illegal administration of distribution of anabolic steroids).

(xxiv) 2925.24 (tampering with drugs).

(xxv) 2927.12 (ethnic intimidation).

(xxvi) If related to another offense listed under paragraph (C)(6)(a)(iii)(a) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity).

(b) An applicant or employee is subject to a ten-year period of disqualification which ends ten years after the date of full discharge from all imprisonment, probation, or parole if the applicant or employee was convicted of multiple disqualifying offenses, including an offense listed under paragraph (C)(6)(a)(iii)(a) of this rule, and another offense or offenses listed under paragraph (C)(6)(a)(iii)(a) or (C)(6)(a)(iv)(a) of this rule, and if the multiple disqualifying offenses are not the result of, or connected to, the same act.

(iv) Tier IV: Five-year period of disqualification:

(a) An applicant or employee is subject to a five-year period of disqualification which ends five years after the date of full discharge five years from the date the applicant or employee was fully discharged from all imprisonment, probation, or parole) if the applicant or employee was convicted of, pleaded guilty to, or has been found eligible for intervention in lieu of conviction to, an offense in any of the following sections of the Revised Code or an offense of any existing or former municipal ordinance or law of this state, any other state, or

the United States that is substantially equivalent to an offense in any of the following sections of the Revised Code:

- (i) 2903.13 (assault).
- (ii) 2903.22 (menacing).
- (iii) 2907.09 (public indecency).
- (iv) 2907.24 (soliciting, engaging in solicitation after a positive HIV test).
- (v) 2907.25 (prostitution, engaging in prostitution after a positive HIV test).
- (vi) 2907.33 (deception to obtain matter harmful to juveniles).
- (vii) 2911.13 (breaking and entering).
- (viii) 2913.02 (theft).
- (ix) 2913.03 (unauthorized use of a vehicle).
- (x) 2913.04 (unauthorized use of property; unauthorized use of computer, cable, or telecommunication property; unauthorized use of the law enforcement automated database system; unauthorized use of the Ohio law enforcement gateway).
- (xi) 2913.05 (telecommunications fraud).
- (xii) 2913.11 (passing bad checks).
- (xiii) 2913.21 (misuse of credit cards).
- (xiv) 2913.31 (forgery, forging identification cards, selling or distributing forged identification cards).
- (xv) 2913.32 (criminal simulation).
- (xvi) 2913.41 (defrauding a rental agency or hostelry).
- (xvii) 2913.42 (tampering with records).
- (xviii) 2913.43 (securing writings by deception).

- (*xix*) 2913.44 (personating an officer).
- (*xx*) 2913.441 (unlawful display of the emblem of a law enforcement agency or an organization of law enforcement officers).
- (*xxi*) 2913.45 (defrauding creditors).
- (*xxii*) 2913.51 (receiving stolen property).
- (*xxiii*) 2919.12 (unlawful abortion).
- (*xxiv*) 2919.121 (unlawful abortion upon minor).
- (*xxv*) 2919.123 (unlawful distribution of an abortion-inducing drug).
- (*xxvi*) 2919.124 (unlawful performance of a drug-induced abortion).
- (*xxvii*) 2919.23 (interference with custody).
- (*xxviii*) 2919.24 (contributing to the unruliness or delinquency of a child).
- (*xxix*) 2921.12 (tampering with evidence).
- (*xxx*) 2921.21 (compounding a crime).
- (*xxxi*) 2921.24 (disclosure of confidential information).
- (*xxxii*) 2921.32 (obstructing justice);
- (*xxxiii*) 2921.321 (assaulting or harassing a police dog or horse, assaulting or harassing an assistance dog).
- (*xxxiv*) 2921.51 (impersonation of peace officer, private police officer, federal law enforcement officer, or BCII investigator).
- (*xxxv*) 2925.09 (illegal administration, dispensing, distribution, manufacture, possession, selling, or using of any dangerous drug to or for livestock or any animal that is generally used for food or in the production

of food, unless the drug is prescribed by a licensed veterinarian).

(xxxvi) 2925.11 (aggravated possession of drugs, possession of drugs, possession of drugs, possession of cocaine, possession of LSD, possession of heroin, possession of hashish, possession of a controlled substance analog, possession of marihuana [marijuana], possession of a fentanyl-related compound), unless a minor drug possession offense.

(xxxvii) 2925.13 (permitting drug abuse).

(xxxviii) 2925.22 (deception to obtain a dangerous drug).

(xxxix) 2925.23 (illegal processing of drug documents).

(xl) 2925.36 (illegal dispensing of drug samples).

(xli) 2925.55 (unlawful purchase of a pseudoephedrine product or ephedrine product, underage purchase of a pseudoephedrine product or ephedrine product, using false information to purchase a pseudoephedrine product or ephedrine product, improper purchase of a pseudoephedrine product or ephedrine product).

(xl ii) 2925.56 (unlawfully selling a pseudoephedrine product or ephedrine product; unlawfully selling a pseudoephedrine product or ephedrine product to a minor; improper sale of a pseudoephedrine product or ephedrine product).

(xl iii) If related to another offense listed under paragraph (C)(6)(a)(iv)(a) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity).

(b) An applicant or employee is subject to a seven-year period of disqualification beginning on the date of full discharge from all imprisonment, probation, or parole if the applicant or employee was convicted of multiple disqualifying offenses listed under paragraph (C)(6)(a)(iv)(a) of this rule, and if the multiple disqualifying offenses are not the result of, or connected to, the same act.

- (v) Tier V: No period of disqualification: An applicant or employee is subject to a period of no period of disqualification if the applicant or employee was convicted of, pleaded guilty to, or has been found eligible for intervention in lieu of conviction to, an offense in any of the following sections of the Revised Code or an offense of any existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to an offense in any of the following sections of the Revised Code:
 - (a) 2925.11 (drug possession), but only if a minor drug possession offense.
 - (b) 2925.14 (illegal use, possession, dealing, selling, or advertising of drug paraphernalia).
- (b) Grandfathered: For the purposes of this rule, an employee if the employee would otherwise have been disqualified from a paid ombudsman position because the employee was convicted of, pleaded guilty to, or has been found eligible for intervention in lieu of conviction to, an offense(s) listed under paragraph (C)(6)(a)(iv) of this rule, but only if all of the following three requirements were met:
 - (i) The responsible party hired the employee before January 1, 2013.
 - (ii) The employee's conviction or guilty plea occurred before January 1, 2013.
 - (iii) The responsible party considered the nature and seriousness of the offense(s), and attested in writing before April 1, 2013, to the character and fitness of the employee based upon the employee's demonstrated work performance.
- (c) Certified: For the purposes of this rule, an applicant or employee is certified if the applicant's or employee's conviction of, plea of guilty to, or eligibility for intervention in lieu of conviction to a disqualifying offense that is not one of the disqualifying offenses listed under paragraph (C)(6)(a)(i) of this rule if the applicant or employee was issued either of the following:
 - (i) Certificate of qualification for employment issued by a court of common pleas with competent jurisdiction pursuant to section 2953.25 of the Revised Code (A person may petition for a certificate of qualification for employment on "The Ohio

Certificate of Qualification for Employment Online Petition Website" or <https://www.drccqe.com/>).

- (ii) Certificate of achievement and employability in a home and community-based service-related field, issued by the department of rehabilitation and corrections pursuant to section 2961.22 of the Revised Code.
- (d) Pardoned: An applicant or employee is pardoned from any disqualifying offense listed or described in paragraph (C)(5) of this rule under any of the following circumstances:
 - (i) The applicant or employee was granted an unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code.
 - (ii) The applicant or employee was granted an unconditional pardon for the offense pursuant to an existing or former law of this state, any other state, or the United States, if the law is substantially equivalent to Chapter 2967. of the Revised Code.
 - (iii) The conviction or guilty plea was set aside pursuant to law.
 - (iv) The applicant or employee was granted a conditional pardon for the offense pursuant to Chapter 2967. of the Revised Code, and the conditions under which the pardon was granted have been satisfied.
- (7) Confidentiality: Criminal records are not public records. The responsible party shall only make criminal records available to the following people
 - (a) The applicant or employee who is the subject of the criminal records check or the applicant's or employee's representative.
 - (b) The responsible party or the responsible party's designee.
 - (c) The state long-term care ombudsman or a representative of the office of the state long-term care ombudsman program who is responsible for monitoring the regional program's compliance.
 - (d) A court, hearing officer, or other necessary individual involved in a case dealing with any of the following:
 - (i) A denial of employment of the applicant or employee.
 - (ii) Employment or unemployment benefits of the applicant or employee.

- (iii) A civil or criminal action regarding the medicaid program or an ODA-administered program.

(8) Records retention:

(a) Personnel files:

- (i) What to retain: To verify compliance with this rule, for each applicant the responsible party hired and each employee the responsible party retained, the responsible party shall retain electronic or paper copies of the following records:

(a) The result of each of the database reviews.

(b) Any criminal records including reverified records received as a result of a check conducted to comply with section 173.27 of the Revised Code.

(c) The written attestation to the character and fitness of the employee, if the responsible party completed a written attestation before April 1, 2013 to comply with paragraph (C)(6)(c)(1) of this rule.

(d) A certificate of qualification for employment, if a court issued a certificate of qualification for employment to the employee.

(e) A certificate of achievement and employability, if the department of rehabilitation and corrections issued a certificate of achievement and employability to the employee.

(f) A pardon, if a governor pardoned the employee.

(g) The date the responsible party hired the employee.

- (ii) Sealed files: The responsible party shall retain the records required under paragraph (C)(8)(a)(i) of this rule by sealing the records within each applicant's or each employee's personnel files or by retaining the records in separate files from the personnel files.

- (b) Roster: A responsible party shall maintain a roster of applicants and employees, accessible by ODA's director (or the director's designees), that includes all the following:

- (i) The name of each applicant and employee.
 - (ii) The date the responsible party hired the employee.
 - (iii) The date the responsible party requested criminal records from BCII.
 - (iv) The date the responsible party received criminal records from BCII.
 - (v) A determination of whether the criminal records revealed that the applicant or employee committed a disqualifying offense(s).
- (9) Immunity from negligent hiring: In a tort or other civil action for damages that is brought as the result of an injury, death, or loss to person or property caused by an applicant or employee, all of the following apply:
 - (a) If the responsible party hired the applicant or retained the employee in good faith and reasonable reliance upon the applicant's or employee's criminal record, the responsible party shall not be found negligent solely because of its reliance on the criminal record, even if the criminal record is later determined to have been incomplete or inaccurate.
 - (b) If the responsible party conditionally hired the applicant in good faith and in compliance with paragraph (C)(4) of this rule, the responsible party shall not be found negligent solely because it hired the applicant before receiving the applicant's criminal record.
 - (c) If the responsible party in good faith hired an applicant or retained an employee because paragraph (C)(6) of this rule allows the responsible party to hire an applicant or retain an employee with a disqualifying offense on his or her criminal record, the responsible party shall not be negligent solely because the applicant or employee has been convicted of, or pleaded guilty to, a disqualifying offense.
- (D) Background checks for volunteers in ombudsman positions: Because section 173.27 of the Revised Code excludes volunteers from the definitions of "applicant" and "employee," volunteers are not subject to the background check requirements in section 173.27 of the Revised Code or paragraph (C) of this rule when they apply to volunteer or after they become volunteers. A responsible party may conduct a criminal records check on a volunteer if the responsible party complies with rule 109:5-1-01 of the Administrative Code, but the check may only involve reviewing sealed records if the volunteer who is the subject of the check authorizes the responsible party to view sealed records according to division (D)(3) of section 2953.32 of the Revised Code.

Effective:

Five Year Review (FYR) Dates: 8/26/2025

Certification

Date

Promulgated Under: 119.03

Statutory Authority: 121.07, 173.01, 173.02, 173.16, 173.27; 42 U.S.C. 3025, 3058g; 45 C.F.R. 1321.9, 1324.11, 1324.13, 1324.15

Rule Amplifies: 109.572, 173.16, 173.27; 42 U.S.C. 3058g; 45 C.F.R. 1324.11

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173-14-15

Conflicts of interest.

(A) Definitions for this rule:

- (1) "Conflict of interest" has the same meaning as described or defined in 42 U.S.C. 3058g(f), 45 C.F.R. 1324.21, or Chapter 102. of the Revised Code.
- (2) "Financial interest" means an ownership interest or investment in a provider by ~~a representative of the office~~ an ombudsman or the immediate family member of the ~~representative~~ ombudsman of the office.
- (3) "Remedy" means an action, restriction of action, restriction of contact, or other means proposed to the SLTCO that would neutralize a conflict of interest and ensure the conflict does not adversely influence the activities of the ~~representative~~ ombudsman on behalf of the office.
- (4) "Waiver" means the SLTCO has determined sufficient circumstances exist to eliminate a conflict of interest and the need to remedy a conflict of interest.

(B) No employee or ~~representative~~ ombudsman of the office, no individual involved in designating, hiring, evaluating, or terminating a regional program director, and no governing board member, may have an unremedied conflict of interest.

(C) Actions prohibited by someone holding a remedied conflict of interest include, but are not limited to, actions taken to influence any decision or action of ~~a representative of the office~~ an ombudsman, which could be characterized as interference with or reprisals against ~~a representative~~ an ombudsman or as causing hesitation on the part of ~~a representative~~ an ombudsman to vigorously investigate a ~~consumer's~~ client's complaint.

No ~~representative of the office~~ ombudsman may provide core ombudsman services involving a long-term care provider with which the ~~representative~~ ombudsman was formerly employed, with which the ~~representative~~ ombudsman was formerly or is currently affiliated or associated, from which an immediate family member receives long-term care services, or that poses any other conflict of interest unless the SLTCO grants a waiver.

(D) On initial designation and annually thereafter, the SLTCO, the regional programs, and the sponsoring agencies shall screen potential and existing non-representative employees of the program, potential candidates, and each existing ~~representatives of the office~~ ombudsman; individuals involved in designating, hiring, evaluating, or terminating the head of any regional program; and potential and existing governing board members for conflicts of interest. When completed, the person who conducted the screen and the person screened shall acknowledge the completion of the screen

in writing or electronically. The completed screening ~~instrument form~~ and a résumé shall be entered into the ombudsman-~~registry~~ administrative system, made a record of the program, and be subject to program review.

- (E) Before offering an ombudsman position to an applicant or training a volunteer, the sponsoring agencies and/or regional program directors shall report any identified conflict of interest, and may propose a remedy, to the SLTCO. The SLTCO shall report any identified conflict of interest in the state office and propose a remedy to ~~ODA's~~ AGE's director or chief ethics officer. Within five business days after receiving a proposed remedy, the SLTCO or ~~ODA's~~ AGE's director or chief ethics officer shall review the nature, scope, and extent of the conflict and determine whether ~~or not~~ to allow the proposed remedy.

The proposed remedy shall be entered into the ombudsman-~~registry~~ administrative system; reveal the nature, extent, and potential impact of the conflict of interest; and neutralize the conflict of interest. Current employment with any type of provider is a conflict of interest that cannot be remedied. Any remedy granted shall remain in effect for as long as the conflict continues to exist to the same extent as reported and for as long as the remedy continues to work. Conflict of interest screens and proposed remedies or waiver requests shall be entered into the ombudsman-~~registry~~ administrative system.

Examples of remedies which may be approved include, but are not limited to, remedies that assure the following:

- (1) The independence of the ~~representative of the office~~ ombudsman to provide unbiased investigations, successful problem resolution, advocacy services, and other ombudsman services.
- (2) That no employee, ~~representative of the office~~, ombudsman, or governing board member having a conflict of interest is involved with or influences any decision to hire, appoint, evaluate, or terminate ~~a representative of the office~~ an ombudsman.
- (3) That no employee, ~~representative of the office~~, ombudsman, or governing board member having a conflict of interest is involved with or influences the designation of any regional program.
- (4) That no governing board members having a conflict of interest in their capacity as board members are involved in a complaint being handled by the program involving the entity that is the source of the conflict of interest.

- (5) That any governing board members having a conflict of interest in their capacity as board members have declared any conflict of interest regarding a complaint or advocacy issue, and excused themselves from deliberations and voting on the issue.
 - (6) That the governing board's by-laws, the organization's position descriptions, and personnel policies reflect procedures to identify and remedy conflicts of interest and ensure independence of action for the program and ~~its representatives~~ any ombudsman in that program.
- (F) Before offering an ombudsman position to an applicant or training a volunteer, the sponsoring agencies and/or regional program directors shall report any identified conflict of interest, and may request a waiver of a conflict of interest from the SLTCO in the ~~ombudsman-registry~~ administrative system, or if the SLTCO requests the waiver, from ~~ODA's AGE's director or chief ethics officer~~, by revealing the nature, scope, extent, and potential impact of the conflict of interest and whether sufficient circumstances exist to eliminate the conflict of interest. Within five business days after receiving a waiver request, the SLTCO or ~~ODA's AGE's director~~, as appropriate, shall review the nature, scope, extent, and potential impact of the conflict and shall determine whether or not sufficient circumstances exist to eliminate a conflict of interest and approve the waiver.
- (1) Any conflict of interest not waived or remedied, and any prohibition resulting therefrom, shall be recorded in the ~~ombudsman-registry~~ administrative system.
 - (2) The SLTCO may take into consideration the following when determining whether to grant a waiver:
 - (a) The length of time an individual was affiliated with a provider.
 - (b) The view of the SLTCO of the objectivity of the individual.
 - (c) The position held by the individual when working for a provider.
 - (d) The change in the ownership and/or management of a ~~facility-provider~~ and the length of time since the change in ownership and/or management.
- (G) No ~~representatives of the office ombudsman~~ may hold ~~positions~~ a position or perform ~~duties~~ a duty that would constitute a conflict of interest.
- (H) Deliberate failure to disclose any conflict of interest or any prohibition is sufficient grounds for the removal of the candidate from the ~~professional development training~~ program, the decertification of ~~the representative~~ an ombudsman, or the withdrawal of the designation of the regional program involved.

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Statutory Authority: 121.07, 173.01, 173.02, 173.16; 42 U.S.C. 3025,
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Rule Amplifies: 173.16; 42 U.S.C. 3058g; 45 C.F.R. 1324.11, 1324.21
Prior Effective Dates: 07/11/1991, 12/27/2001, 12/28/2006, 05/01/2018,
01/28/2022, 08/01/2024

173-14-16

Complaint-handling protocol.

An ombudsman shall identify, investigate, and resolve complaints made by, or on behalf of, clients and relate to the action, inaction, or decisions of providers or representatives of providers of long-term care services, public agencies, or health and social services agencies that may adversely affect the health, safety, welfare, or rights of clients (including the welfare and rights of clients with respect to the appointment and activities of guardians and representative payees).

This rule establishes the requirements for handling complaints that are not listed under division (C) of section 173.19 of the Revised Code.

(A) Complaint intake:

- (1) Any ombudsman may receive a complaint over the telephone, in person, or by letter or electronic communication. A complaint generated by the office itself is considered to be a received complaint. The mode of communication in which a complaint is received is deemed consent to communicate with the complainant through that mode of communication.

The ombudsman shall explain to a complainant who uses email that email is not always a secure mode for sharing confidential information.

- (2) According to guidance provided by the SLTCO, an ombudsman shall explain to the complainant the general ombudsman process and options for handling the specific complaints) presented and gather information needed to determine the response time, whether there is a conflict of interest, and what, if any, steps have been taken previously.

- (3) To ensure timely access to facilities, residents, and records, the ombudsman may also request the names and contact information of residents and their legal representatives or sponsors from long-term care facilities.

- (4) An ombudsman shall refer complaints identified in rule 173-14-17 of the Administrative Code to the SLTCO.

- (5) The ombudsman program shall analyze the urgency of the complaint based on the information received at the time of intake and prioritize response times that reflect the severity of each complaint, with more urgent response times for complaints that indicate potential harm to the client. A program that receives a complaint that indicates probable physical harm shall respond by the end of the next business day. The program shall notify the SLTCO immediately if a complaint indicates probable physical harm to the client and an ombudsman cannot respond before the end of the next business day. The program shall then

prioritize all abuse, neglect, and exploitation complaints and other complaints that are time sensitive.

(B) Investigation:

(1) Representatives shall investigate complaints to determine if those complaints are verified. The steps in an investigation include, but are not limited to, the following:

- (a) An in-person interview with the client.
- (b) An on-site visit to where the services that are the subject of the complaint were provided to make observations.
- (c) Direct contact by in-person contact, a telephone call, video conference, email, or by letter with the complainant if the complainant is different from the client.
- (d) Determining capacity and obtaining consent from the client.
- (e) Obtaining a clear problem statement and goal statement from the client.
- (f) Informing the client of the ombudsman role, process, and possible steps in the investigation, as described in paragraph (A)(2) of this rule, and developing an action plan.
- (g) Revealing any known conflict(s) of interest to the client and/or complainant's goals.
- (h) Identifying the participants and relevant agencies.
- (i) Identifying action already taken to handle or resolve the complaint.
- (j) Determining gaps in the information.
- (k) Gathering factual information through interviews with those persons with potential knowledge including, but not limited to, the complainant, the client, other agencies, and the provider's staff, management, or owners.
- (l) Researching regulations and laws.
- (m) Reviewing relevant client, provider, or government records.
- (n) Engaging volunteer ombudsman staff when available and as appropriate.

- (2) The investigating ombudsman does not need to exhaust one step before starting another or follow them in the order given in paragraph (B)(1) of this rule.
- (C) Complaint resolution: Strategies for the resolution of a complaint shall be established in action plans developed in conjunction with the client or the client's representative and may include, but are not limited to, the following:
- (1) Client or complainant empowerment.
 - (2) Negotiation.
 - (3) Mediation.
 - (4) Referral to other agencies.
 - (5) Education.
 - (6) Advocacy for clients at involuntary discharge hearings, navigating grievance and appeal processes, and appealing adverse benefit determinations, but not representation at a state hearing held according to Chapter 119. of the Revised Code.
 - (7) Legislative advocacy after consultation with the SLTCO.
 - (8) Public disclosure after consultation with the SLTCO.
- (D) Complaint follow-up activities: The ombudsman shall perform follow-up activities on complaints in a time frame appropriate to the complaint and resolution.
- (E) Closing a case: Before closing a case, the ombudsman shall inform the client and, if appropriate, the complainant, that ombudsman activity will cease. an ombudsman may cease activity when any of the following occurs:
- (1) The complaint has been resolved or explained to the client's satisfaction.
 - (2) The ombudsman determines that no further activity by the ombudsman will produce satisfaction for the client.
 - (3) The complaint has been withdrawn.
- (F) Conflict of interest:
- (1) An ombudsman shall comply with Ohio's ethics laws and this rule when handling complaints.

- (a) An ombudsman who has been assigned a complaint shall reveal to the program director and the client and/or complainant any other relationship with the provider, public agency, or person involved that may call into question the ombudsman's objectivity or effectiveness in handling the complaint. These types of relationships may include, but are not limited to, having previously worked for or with a current employee of the provider, having an immediate family member who works for the provider, or having worked for the public agency involved in the complaint.
- (b) An ombudsman who has a conflict of interest shall disclose the conflict to the regional program director, or if an ombudsman of the state office has the conflict of interest, to the SLTCO.
- (c) On receiving notice of the potential conflict of interest, the SLTCO or the regional program director involved shall review the facts of the relationship to determine whether the ombudsman is able to handle the complaint in an objective and effective manner.

If the director of the regional program has a conflict of interest, the review shall be completed by the SLTCO.

When the SLTCO has a conflict of interest, the review shall be completed by AGE's director or the director's designated senior staff member.

- (2) The regional programs shall develop policies and procedures consistent with rule 173-14-22 of the Administrative Code to prohibit any ombudsman of a regional program from handling a complaint involving a service directly delivered by the program's sponsoring agency. The policy shall provide that when the regional program is part of an AAA and the complaint concerns screening, assessments, care coordination, case management, or other decisions on client-specific services made by the AAA, the ombudsman shall reveal the relationship to the client and/or complainant and obtain the approval of the SLTCO. The decision to permit an ombudsman to handle such a complaint shall be documented in the case record. The client and/or complainant shall be informed of any decision to refer the complaint to the SLTCO and shall be informed of the reasons for the referral.

(G) Confidentiality:

- (1) In a manner that complies with 42 U.S.C. 3027(a)(12)(C), 3058d(a)(6)(C), 3058g(a)(5)(D), 3058g(d), and 3058i(e)(2); 45 C.F.R. 1321.9(a)(3), 1324.11(e)(3), 1324.13(e), 1324.15(f), 1324.17(b), and 1324.19(b); section 173.22 of the

Revised Code; and paragraph (B)(6)(d) of rule 173-14-22 of the Administrative Code, regional programs shall develop policies and procedures to maintain complaint, advocacy, and general information records, including, but not limited to, volunteer reports, in a confidential manner; to address the storage, maintenance, and physical access to all written and electronic complaint, advocacy, and general information records; and to assure that such records are in a secure location and that access to the files is limited to personnel authorized to review records.

- (2) No employee or ombudsman who has a conflict of interest may review a complaint case record if the conflict of interest is of a type which would have kept an ombudsman from handling the complaint.
- (3) No ombudsman may reveal identifying information about an individual providing information about a complaint without the individual's consent unless facilitated by state legal counsel in response to a court order.
- (4) Any ombudsman who receives a subpoena or other request for ombudsman records, to attend a deposition, or to give testimony in court shall notify the SLTCO immediately. The SLTCO shall engage legal counsel to take appropriate legal action to protect the confidentiality of information, the persons who provided information, public entities, and the confidential records of clients and of providers.
- (5) Except as otherwise provided by rule 173-14-15 of the Administrative Code, at the request of the provider, person, or parties against whom the complaint has been filed, and subject to paragraphs (G)(1), (G)(2), and (G)(4) of this rule, the ombudsman shall state the verification status of the complaint in question and whether the case has been opened or closed.

(H) Consent:

- (1) An ombudsman shall conduct ombudsman services in a manner that protects the identity of the client, complainant, or individual providing information about a complaint, unless the client, complainant, or individual providing information about a complaint has provided consent to reveal their identity. Consent may be given in the following ways:
 - (a) In writing or email by the complainant, for the complainant, or by the client, for the client. The ombudsman shall use a written consent form provided by the SLTCO.

- (b) Verbally, when the urgency of the complaint makes receiving written consent before an investigation impracticable. The ombudsman shall indicate verbal consent in the case record.
- (2) When the complainant or client is unable to give consent due to diminished capacity or death, consent may be given in the following ways:
 - (a) When there is a legal representative:
 - (i) In writing by the legal representative of the complainant or client on a written consent form provided by the SLTCO, or through the use of auxiliary aids and services.
 - (ii) Verbally, by the legal representative of the complainant or client, when receiving written consent from the appropriate person is not practicable. The ombudsman shall indicate verbal consent in the case record.
 - (b) When there is no legal representative, when the legal representative is unknown to the ombudsman or the provider, when the legal representative cannot be reached within three business days after the date on which a complaint was received, or when the estate of a deceased client has no legal representative, consent may be given by the sponsor the ombudsman determines the client would have chosen. If there is no sponsor, the ombudsman may proceed with the approval of the SLTCO.
- (3) If the legal representative or sponsor refuses to authorize an investigation and the ombudsman has reasonable cause to believe the legal representative or sponsor is not acting in the best interest of the client, the ombudsman may proceed with the investigation if approved by the SLTCO.
- (4)
 - (a) An ombudsman shall obtain consent to review a client's medical records. Consent may be given in any of the following ways:
 - (i) In writing by the client.
 - (ii) Verbally by the client, witnessed in writing at the time it is given by one other person as chosen by the client. If a witness chosen by the client is not available, the ombudsman shall document the verbal consent in the case record.
 - (iii) In writing by the guardian of the client

- (iv) In writing by the client's attorney-in-fact, if the client authorized the attorney-in-fact to give consent.
 - (v) In writing by the executor or administrator of the estate of a deceased client.
 - (vi) Through the use of auxiliary aids or services.
 - (b) If consent to access records is not refused by a client or the client's legal representative, but cannot be obtained, a ombudsman, on approval of the SLTCO, may inspect the client's records, including medical records, if reasonably necessary to investigate a complaint in any of the following circumstances:
 - (i) The client is unable to express written or verbal consent and there is no guardian or attorney-in-fact.
 - (ii) The client has a guardian or attorney-in-fact, but the guardian or attorney-in-fact cannot be contacted within three business days.
 - (iii) The client has a guardianship or durable power of attorney, but its existence is unknown by the long-term care provider and the ombudsman at the time of the investigation.
 - (iv) There is no executor or administrator of the estate of a deceased client.
 - (c) The ombudsman shall demonstrate to the SLTCO that the ombudsman consulted with a sponsor chosen by the client about access to records whenever possible.
- (5) When the SLTCO or ombudsman personally witnesses suspected abuse, gross neglect, or exploitation of a client, the SLTCO or ombudsman shall seek informed consent from the client to disclose identifying information to appropriate agencies.
- (a) If the client is able to communicate informed consent, or has a sponsor chosen by the client available to provide informed consent, the SLTCO or ombudsman shall follow the direction of the client or sponsor.
 - (b) If the client is unable to communicate informed consent, and has no sponsor available to provide informed consent, the SLTCO or ombudsman shall open a case with the SLTCO or ombudsman as the complainant, follow the complaint-handling protocol and refer the matter and disclose identifying information to the management of the long-

term care provider and/or to the appropriate investigative entity in the following circumstances:

(i) The SLTCO or ombudsman has no evidence indicating the client would not want a referral to be made.

(ii) The SLTCO or ombudsman has reasonable cause to believe disclosure would be in the best interest of the client.

(iii) The ombudsman obtains the approval of the SLTCO.

(I) The SLTCO may establish special complaint-handling requirements for optional ombudsman services.

Replaces: 173-14-16

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under: 119.03

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TO BE RESCINDED

173-14-16

Complaint-handling protocol.

Representatives shall identify, investigate, and resolve complaints made by, or on behalf of, consumers and relate to the action, inaction, or decisions of providers or representatives of providers of long-term care services, public agencies, or health and social services agencies that may adversely affect the health, safety, welfare, or rights of consumers (including the welfare and rights of consumers with respect to the appointment and activities of guardians and representative payees).

This rule establishes the requirements for handling complaints that are not listed under division (C) of section 173.19 of the Revised Code.

(A) Complaint intake:

- (1) Any representative may receive a complaint over the telephone, in person, or by letter or email. A complaint generated by the office itself is considered to be a received complaint. The mode of communication in which a complaint is received is deemed consent to communicate with the complainant through that mode of communication.

The representative shall explain to a complainant who uses email that email is not always a secure mode for sharing confidential information.

- (2) According to guidance provided by the SLTCO, a representative shall explain to the complainant the general ombudsman process and options for handling the specific complaint presented and gather information needed to determine the response time, whether there is a conflict of interest, and what, if any, steps have been taken previously.
- (3) To ensure timely access to facilities, residents, and records, the representative may also request the names and contact information of residents and their representatives from long-term care facilities.
- (4) A representative shall refer complaints identified in rule 173-14-17 of the Administrative Code to the SLTCO.
- (5) The representative shall analyze the urgency of the complaint based on the information received at the time of intake and establish response times that reflect the severity of each complaint, with more urgent response times for complaints that indicate potential harm to the consumer and less-urgent response times for complaints that indicate no harm to the consumer.

- (6) A program that receives a complaint that indicates probable physical harm shall respond by the end of the next business day. The program shall notify the SLTCO immediately if a complaint indicates probable physical harm to the consumer and a representative cannot respond before the end of the next business day.

(B) Investigation:

- (1) Representatives shall investigate complaints to determine if those complaints are verified. The principle steps in an investigation include, but are not limited to, the following:
- (a) An in-person interview with the consumer.
 - (b) An on-site visit to where the services that are the subject of the complaint were provided to make observations.
 - (c) Direct contact by in-person contact, a telephone call, video conference, email, or by letter with the complainant if the complainant is different from the consumer.
 - (d) Obtaining consent from the consumer.
 - (e) Obtaining a clear statement of the problem(s).
 - (f) Informing the consumer of the ombudsman process and possible steps in the investigation, as described in paragraph (A)(2) of this rule, and developing an action plan.
 - (g) Revealing any known conflict(s) of interest.
 - (h) Obtaining a statement of the consumer's goals.
 - (i) Identifying the participants and relevant agencies.
 - (j) Identifying any steps already taken to handle or resolve the complaint.
 - (k) Determining gaps in the information.
 - (l) Gathering factual information through interviews with those persons with potential knowledge including, but not limited to, the complainant, the consumer, other agencies, and the provider's staff, management, or owners.
 - (m) Researching regulations and laws.

- (n) Reviewing relevant consumer, provider, or government records.
 - (o) Engaging volunteer representatives when available.
 - (2) The investigating representative does not need to exhaust one principal step before starting another or follow them in the order given in paragraph (B)(1) of this rule.
- (C) Complaint resolution: Strategies for the resolution of a complaint shall be established in action plans developed in conjunction with the consumer and may include, but are not limited to, the following:
- (1) Consumer empowerment.
 - (2) Negotiation.
 - (3) Mediation.
 - (4) Referral to other agencies.
 - (5) Education.
 - (6) Advocacy for consumers at involuntary discharge hearings, navigating grievance and appeal processes, and appealing adverse benefit determinations, but not representation at a state hearing held according to Chapter 119. of the Revised Code.
 - (7) Legislative advocacy after consultation with the SLTCO.
 - (8) Public disclosure after consultation with the SLTCO.
- (D) Complaint follow-up activities: Representatives shall perform follow-up activities on complaints in a time frame appropriate to the complaint and resolution.
- (E) Closing a case: Before closing a case, the representative shall inform the consumer and, if appropriate, the complainant, that ombudsman activity will cease. A representative may cease activity when any of the following occurs:
- (1) The complaint has been resolved or explained to the consumer's satisfaction.
 - (2) The representative determines that no further activity by the representative will produce satisfaction for the consumer.
 - (3) The complaint has been withdrawn.

(F) Conflict of interest:

(1) Representatives shall comply with Ohio's ethics laws and this rule when handling complaints.

(a) A representative who has been assigned a complaint shall reveal to the program director and the consumer and/or complainant any other relationship with the provider, public agency, or person involved that may call into question the representative's objectivity or effectiveness in handling the complaint. These types of relationships may include, but are not limited to, having previously worked for or with a current employee of the provider, having an immediate family member who works for the provider, or having worked for the public agency involved in the complaint.

(b) A representative who has a conflict of interest shall disclose the conflict to the regional program director, or if a representative of the state office has the conflict of interest, to the SLTCO.

(c) Upon receiving notice of the potential conflict of interest, the SLTCO or the regional program director involved shall review the facts of the relationship to determine whether the representative is able to handle the complaint in an objective and effective manner.

If the director of the regional program has a conflict of interest, the review shall be completed by the SLTCO.

When the SLTCO has a conflict of interest, the review shall be completed by ODA's director or the director's designated senior staff member.

(2) The regional programs shall develop policies and procedures consistent with rule 173-14-22 of the Administrative Code to prohibit any representative of a regional program from handling a complaint involving a service directly delivered by the program's sponsoring agency. The policy shall provide that when the regional program is part of an AAA and the complaint concerns screening, assessments, care coordination, case management, or other decisions on consumer-specific services made by the AAA, the representative shall reveal the relationship to the consumer and/or complainant and obtain the approval of the SLTCO. The decision to permit a representative to handle such a complaint shall be documented in the case record. The consumer and/or complainant shall be informed of any decision to refer the complaint to the SLTCO and shall be informed of the reasons for the referral.

(G) Confidentiality:

- (1) In a manner that complies with paragraph (B)(6)(d) of rule 173-14-22 of the Administrative Code, regional programs shall develop policies and procedures to maintain complaint, advocacy, and general information records, including, but not limited to, volunteer reports, in a confidential manner; to address the storage, maintenance, and physical access to all written and electronic complaint, advocacy, and general information records; and to assure that such records are in a secure location and that access to the files is limited to those personnel authorized to review records.
- (2) No employee or representative who has a conflict of interest may review a complaint case record if the conflict of interest is of a type which would have kept a representative from handling the complaint.
- (3) No representative may reveal identifying information about individuals providing information about a complaint without their consent unless facilitated by state legal counsel in response to a court order.
- (4) Any representative who receives a subpoena or other request for ombudsman records, to attend a deposition, or to give testimony in court shall notify the SLTCO immediately. The SLTCO shall engage legal counsel to take appropriate legal action to protect the confidentiality of information, the persons who provided information, public entities, and the confidential records of consumers and of providers.
- (5) Except as otherwise provided by rule 173-14-15 of the Administrative Code, at the request of the provider, person, or parties against whom the complaint has been filed, and subject to paragraphs (G)(1), (G)(2), and (G)(4) of this rule, representatives shall state the verification status of the complaint in question and whether or not the case has been opened or closed.

(H) Consent:

- (1) Representatives shall conduct ombudsman services in a manner that protects the identity of the consumer, complainant, or individual providing information about a complaint, unless the consumer, complainant, or individual providing information about a complaint has provided consent to reveal their identity. Consent may be given in the following ways:
 - (a) In writing or email by the complainant, for the complainant, or by the consumer, for the consumer. Representatives shall use a written consent form provided by the SLTCO.

- (b) Verbally, when the urgency of the complaint makes receiving written consent before an investigation impracticable. Representatives shall indicate verbal consent in the case record.
- (2) When the complainant or consumer is unable to give consent due to diminished capacity or death, consent may be given in the following ways:
 - (a)
 - (i) In writing by the legal representative of the complainant or consumer on a written consent form provided by the SLTCO, or through the use of auxiliary aids and services.
 - (ii) Verbally, by the legal representative of the complainant or consumer, when receiving written consent from the appropriate person is not practicable. Representatives shall indicate verbal consent in the case record.
 - (b) When there is no legal representative, when the legal representative is unknown to the representative or the provider, when the legal representative cannot be reached within three business days after the date upon which a complaint was received, or when the estate of a deceased consumer has no legal representative, consent may be given by the sponsor the representative determines the consumer would have chosen. If there is no sponsor, the representative may proceed with the approval of the SLTCO.
- (3) If the legal representative or sponsor refuses to authorize an investigation and the representative has reasonable cause to believe the legal representative or sponsor is not acting in the best interest of the consumer, the representative may proceed with the investigation if approved by the SLTCO.
- (4)
 - (a) A representative shall obtain consent to review consumer medical records. Consent may be given in any of the following ways:
 - (i) In writing by the consumer.
 - (ii) Verbally by the consumer, witnessed in writing at the time it is given by one other person as chosen by the consumer. If a witness chosen by the consumer is not available, the representative shall document the verbal consent in the case record.

- (iii) In writing by the guardian of the consumer.
 - (iv) In writing by the consumer's attorney-in-fact, if the consumer authorized the attorney-in-fact to give consent.
 - (v) In writing by the executor or administrator of the estate of a deceased consumer.
 - (vi) Through the use of auxiliary aids or services.
- (b) If consent to access records is not refused by a consumer or the consumer's legal representative, but cannot be obtained, a representative, on approval of the SLTCO, may inspect the consumer's records, including medical records, if reasonably necessary to investigate a complaint in any of the following circumstances:
- (i) The consumer is unable to express written or verbal consent and there is no guardian or attorney-in-fact.
 - (ii) The consumer has a guardian or attorney-in-fact, but the guardian or attorney-in-fact cannot be contacted within three business days.
 - (iii) The consumer has a guardianship or durable power of attorney, but its existence is unknown by the long-term care provider and the representative at the time of the investigation.
 - (iv) There is no executor or administrator of the estate of a deceased consumer.
- (c) The representative shall demonstrate to the SLTCO that the representative consulted with a sponsor chosen by the consumer about access to records whenever possible.
- (5) When the SLTCO or representative personally witnesses suspected abuse, gross neglect, or exploitation of a consumer, the SLTCO or representative shall seek informed consent from the consumer to disclose identifying information to appropriate agencies.
- (a) If the consumer is able to communicate informed consent, or has a sponsor chosen by the consumer available to provide informed consent, the SLTCO or representative shall follow the direction of the consumer or sponsor.

- (b) If the consumer is unable to communicate informed consent, and has no sponsor available to provide informed consent, the SLTCO or representative shall open a case with the SLTCO or representative as the complainant, follow the complaint-handling protocol and refer the matter and disclose identifying information to the management of the long-term care provider and/or to the appropriate investigative entity in the following circumstances:
- (i) The SLTCO or representative has no evidence indicating the consumer would not want a referral to be made.
 - (ii) The SLTCO or representative has reasonable cause to believe disclosure would be in the best interest of the consumer.
 - (iii) The representative obtains the approval of the SLTCO.

Effective:

Five Year Review (FYR) Dates: 8/26/2025

Certification

Date

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Statutory Authority: 121.07, 173.01, 173.02; 42 U.S.C. 3025, 3058g; 45
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11/22/2019, 01/28/2022, 08/01/2024

173-14-17

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

- (A) A regional program director or designee shall refer any of the following complaints to the SLTCO:
- (1) A complaint posing a conflict of interest that cannot be remedied by reassigning the complaint to another ~~representative~~ ombudsman.
 - (2) A complaint the ~~consumer-client~~ wants the SLTCO to ~~handle~~ investigate.
 - (3) A complaint that is identified as frivolous, vexatious, or not made in good faith.
 - (4) A complaint made so long after the actual occurrence that it is no longer reasonable to ~~conduct an investigation~~ investigate.
 - (5) A complaint for which an adequate investigation cannot be conducted because of insufficient funds, staff, expertise, or ~~other~~ similar factor that could result in an inadequate investigation.
 - (6) A complaint for which an injunction is sought against a long-term care facility for a violation of the residents' bill of rights pursuant to sections 3721.10 to 3721.18 of the Revised Code.
- (B) The SLTCO shall determine whether referred complaints warrant investigation. The SLTCO's determination in this matter is final.
- (C) The SLTCO shall provide updates on the progress and disposition of a case to the referring regional program. For those complaints which the SLTCO determines do not warrant handling investigation, the SLTCO shall notify the ~~consumer-client~~ and/or complainant, if possible, and the regional program of the reasons to not ~~handle~~ investigate the complaint.

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Rule Amplifies: 173.15, 173.20; 42 U.S.C. 3058g; 45 C.F.R. 1324.11,
1324.19
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08/01/2024

173-14-18

Referrals of complaints to other agencies.

(A) All referrals made by ~~representatives of the office~~ an ombudsman shall contain the pertinent facts known to the ~~representative~~ ombudsman and be subject to the confidentiality and consent requirements in rule 173-14-16 of the Administrative Code. Any confidential information transmitted shall be marked as confidential.

(B)

(1) ~~Representatives of the office~~ An ombudsman may report any violation of provider licensing laws or standards, or medicare/medicaid certification laws or standards, discovered during the course of complaint handling to the agency responsible for enforcing those laws or standards.

(2) ~~Representatives of the office~~ An ombudsman may report any violations of professional licensing laws or standards discovered during the course of complaint handling to the appropriate professional board or organization.

(3) ~~Representatives of the office~~ An ombudsman may report any violation of the provider agreement, medicaid discrimination laws, nursing home waiting list requirements, personal needs allowance laws, medicaid covered services provisions, or facility transfer plans discovered during the course of complaint handling to the department of medicaid.

(4) To the extent permitted by federal law, ~~a representative of the office~~ an ombudsman may report to an appropriate authority any suspected violation of state law discovered during the course of an advocacy visit or investigation.

~~(C) Any public agency that receives a referral from a representative of the office shall acknowledge receipt of the referral within thirty days after the date on which the agency received the referral and, except as otherwise provided by law, notify the representative of the results of its investigation within thirty days after the date on which the agency completes its investigation.~~

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Statutory Authority: 121.07, 173.01, 173.02, 173.19, 173.20; 42 U.S.C. 3025, 3058g; 45 C.F.R. 1321.9, 1324.11, 1324.13, 1324.15

Rule Amplifies: 173.19, 173.20; 42 U.S.C. 3058g; 45 C.F.R. 1321.11, 1324.11, 1324.11, 1324.19

Prior Effective Dates: 07/11/1991, 12/27/2001, 12/28/2006, 05/01/2018, 01/28/2022, 08/01/2024

173-14-19**Case records and reporting of core services.****(A) Reporting:**

- (1) The complaint case record shall include only objective observations of items revealed during the course of the investigation, including the client's physical condition, behavior, conversations, and when appropriate to a complex complaint, any data required in ODIS.
- (2) Reporting of advocacy and general-information services shall include only the objective information required in ODIS.
- (3) Representatives shall report all activity in ODIS within six days after the activity is performed.

(B) Records retention: The regional programs shall use the same records-retention schedules as the SLTCO.**(C) Access:**

- (1) Access to complaint case records and other reports of ombudsman activity contained in ODIS is limited to an ombudsman.
- (2) Information contained in any records, including complaint case records, maintained by the office or by court order. The SLTCO's discretion is subject to the considerations under 45 C.F.R. 1324.13(e)(2).
- (3) An outside party may request a record (either in whole or in part), deposition, or testimony in an administrative or judicial proceeding by making a request to the office or the regional program responsible for the client's service area.
- (4) The SLTCO or the SLTCO's designee shall secure consent by one of the means under paragraph (H) of rule 173-14-16 of the Administrative Code.
- (5) The SLTCO or the designee of the SLTCO may consult with, and obtain services from, assigned legal counsel as needed.
- (6) When an ombudsman advocates for a client at an administrative hearing (e.g., discharge hearing, medicare/medicaid appeal hearing) according to an agreed-upon action plan, the ombudsman may present records obtained during the course of investigation, including medical records, according to ombudsman laws, rules, and policies to protect confidentiality.

Replaces: 173-14-19

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Five Year Review (FYR) Dates:

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Rule Amplifies: 173.19, 173.20; 42 U.S.C. 3058g; 45 C.F.R. 1324.11,
1324.19

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01/28/2022, 08/01/2024

TO BE RESCINDED

173-14-19

Case records and reporting of core services.**(A) Reporting:**

- (1) The complaint case record shall include only objective observations of items revealed during the course of the investigation, including the consumer's physical condition, behavior, conversations, and when appropriate to a complex complaint, any data required in ODIS.
- (2) Reporting of advocacy and general-information services shall include only the objective information required in ODIS.
- (3) Representatives shall report all activity in ODIS within six days after the activity is performed.

(B) Records retention: The SLTCO and regional programs shall retain all records for three years after a case is closed.

(C) Access to case records:

- (1) Access to case records and other reports of ombudsman activity contained in ODIS is limited to representatives.
- (2) Information contained in the records maintained by the office and the regional programs shall be released only at the discretion of the SLTCO. Identities of consumers, witnesses, and complainants shall not be released absent a court order.
- (3) If a party outside of the office wants to request a record (either in whole or in part), deposition, or testimony in an administrative or judicial proceeding, the party must make its request to the office or the regional program to be considered.
- (4) When any representative receives a request for a record (either in whole or in part), the representative shall notify the SLTCO in writing or email within three business days. When any representative receives a request for deposition or testimony in an administrative or judicial proceeding, the representative shall notify the SLTCO immediately by telephone.
- (5) Within three business days after notification, the representative shall provide the SLTCO with the written or emailed request in a format prescribed by the SLTCO describing the case involved, the circumstance for the request, and other information as requested.

- (6) The SLTCO or the designee of the SLTCO, in determining whether to release or withhold records, shall review the records requested and discuss the circumstance with the representative.
- (7) As appropriate, according to rule 173-14-16 of the Administrative Code, the SLTCO or the designee of the SLTCO shall secure consent from the consumer.
- (8) The SLTCO or the designee of the SLTCO may consult with legal counsel as needed.
- (9) As necessary, and as requested by the SLTCO, the role of the SLTCO's legal counsel includes the following:
 - (a) Negotiating with the party issuing the request in order to implement the SLTCO determination.
 - (b) Explaining the confidentiality restrictions.
 - (c) Advising the SLTCO on the risks and benefits of disclosure.
 - (d) Taking action to quash the request.
 - (e) Being present during deposition or testimony.
- (10) When an ombudsman advocates for a consumer at an administrative hearing (e.g., discharge hearing, medicare/medicaid appeal hearing) according to an established action plan, the ombudsman may present copies of consumer medical records obtained during the course of the investigation with consumer consent as it is determined necessary to advocate for the consumer and according to ombudsman laws, rules, and policies to protect confidentiality.

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Date

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Statutory Authority: 121.07, 173.01, 173.02, 173.19; 42 U.S.C. 3025,
3058g; 45 C.F.R. 1321.9, 1324.11, 1324.13, 1324.15
Rule Amplifies: 173.19, 173.20; 42 U.S.C. 3058g; 45 C.F.R. 1324.11,
1324.19

Prior Effective Dates: 07/11/1991, 12/27/2001, 12/28/2006, 05/01/2018,
01/28/2022, 08/01/2024

173-14-20

Systems advocacy.

(A) Systems advocacy includes, but it not limited to, evaluating and making known concerns and issues regarding long-term care by doing all of the following:

(1) Prepare an annual report, according to 42 U.S.C. 3058g(h)(1), 45 C.F.R. 1324.13(g) and 1324.15(l)(1), and division (A)(8)(a) of section 173.17 of the Revised Code, that includes the information and findings regarding the types of problems experienced by consumers of long-term care, the complaints made by or on behalf of clients, and recommendations for policy, regulatory, and legislative changes to solve problems, resolve complaints, and improve the quality of care and life for consumers of long-term care.

(2) Monitor and analyze, according to 42 U.S.C. 3058g(a)(3)(G)(i) and 45 C.F.R. 1324.15(l)(2), the development and implementation of federal, state, and local laws, regulations, and governmental policies and actions regarding long-term care services in this state and recommending changes to officials that the office considers appropriate in these laws, regulations, and governmental policies and actions.

(3) Provide information and recommendations, according to 42 U.S.C. 3058(a)(3)(G)(ii), (h)(1)(F), (h)(2), and (h)(3) and 45 C.F.R. 1324.13(a)(7)(v), to public and private agencies, members of the general assembly, the media, and others regarding the problems and concerns of consumers of long-term care.

(B) 42 U.S.C. 3058g(a)(3)(G) requires the SLTCO to personally, or through ombudsman staff, analyze, comment on, and monitor the development and implementation of federal, state, and local laws, regulations, and other government policies and actions pertaining to long-term care providers and services and to the health, safety, welfare, and rights of consumers of long-term care, and to recommend any changes in such laws, regulations, and policies as the office determines appropriate.

(C) 42 U.S.C. 3058g(a)(3)(E), (a)(3)(G), (a)(3)(H)(ii), and (a)(3)(H)(iii); 45 C.F.R. 1324.11(e)(5); and 45 C.F.R. 1324.13(a)(7)(iv) to (a)(7)(vii), (a)(8), and (a)(9) allow the SLTCO, as head of the office, to independently make determinations and establish positions of the office without representing the determinations or positions of AGE or another state agency regarding the following:

(1) Recommend changes in federal, state, and local laws, regulations, policies, and actions pertaining to the health, safety, welfare, and rights of consumers of long-term care.

(2) Provide information and recommendations, when appropriate, to public and private agencies, legislators, the media, and other persons regarding the

problems and concerns of consumers of long-term care. The SLTCO has discretion to disclose files, records, or other information of the office subject to the considerations under 45 C.F.R. 1324.13(e)(2).

(D) The SLTCO shall seek input from ombudsman staff and stakeholders. The SLTCO may consult with AGE and other stakeholders to make determinations and establish positions of the SLTCO by any of the following methods:

(1) Provide public forums to discuss concerns and problems relating to governmental action, inaction, or decisions that may adversely affect the health, safety, welfare, or rights of consumers of long-term care and their representatives by providers, public agencies and entities, and social service agencies.

(2) Conduct public hearings.

(3) Sponsor workshops and conferences.

(4) Hold meetings to obtain information about consumers of long-term care, discuss and publicize their needs, and advocate for solutions to their problems. Any information provided at a meeting that is a complaint is subject to the standards for consent under paragraph (H) of rule 173-14-16 of the Administrative Code.

(5) Promote the development of citizen organizations.

(E) Each ombudsman shall adhere to the determinations and positions of the office of the SLTCO as established by the SLTCO.

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Rule Amplifies: 173.14, 173.17, 173.19, 173.20, 173.22; 42 U.S.C. 3058g; 45 C.F.R. 1324.11, 1324.15

Prior Effective Dates: 05/01/2018, 08/01/2024

TO BE RESCINDED

173-14-20

System advocacy.

- (A) Systems advocacy includes, but it not limited to, evaluating and making known concerns and issues regarding long-term care by doing all of the following:
- (1) Preparing an annual report that includes the information and findings regarding the types of problems experienced by consumers, the complaints made by or on behalf of consumers, and recommendations for policy, regulatory, and legislative changes to solve problems, resolve complaints, and improve the quality of care and life for consumers. The reports are provided to the governor, the speaker of the house of representatives, the president of the senate, the directors of the departments of health and job and family services, and the administrator of the administration on community living within the United States department of health and human services.
 - (2) Monitoring and analyzing the development and implementation of federal, state, and local laws, regulations, and policies regarding long-term care services in this state and recommending to officials changes the office considers appropriate in these laws, regulations, and policies.
 - (3) Providing information and making recommendations to public agencies, members of the general assembly, and others regarding problems and concerns of consumers.
- (B) The SLTCO shall personally, or through representatives, analyze, comment on, and monitor the development and implementation of federal, state, and local laws, regulations, and other government policies and actions pertaining to long-term care providers and services and to the health, safety, welfare, and rights of consumers, and to recommend any changes in such laws, regulations, and policies as the office determines appropriate.
- (C) The SLTCO, as head of the office, may independently make determinations and establish positions of the office without representing the determinations or positions of ODA or another state agency regarding the following:
- (1) Recommendations to changes in federal, state, and local laws, regulations, policies, and actions pertaining to the health, safety, welfare, and rights of consumers.
 - (2) Provision of information to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of consumers and recommendations related to the problems and concerns.

- (D) The SLTCO shall seek input from representatives and stakeholders and may consult with ODA and stakeholders in making determinations and establishing positions of the office. Methods may include the following:
- (1) Providing for public forums to discuss concerns and problems relating to action, inaction, or decisions that may adversely affect the health, safety, welfare, or rights of consumers by providers of long-term care and their representatives, public agencies and entities, and social service agencies.
 - (2) Conducting public hearings.
 - (3) Sponsoring workshops and conferences.
 - (4) Holding meetings for the purpose of obtaining information about consumers, discussing and publicizing their needs, and advocating solutions to their problems.
 - (5) Promoting the development of citizen organizations.
- (E) Representatives shall adhere to the determinations and positions of the office as established by the SLTCO.

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3058g; 45 C.F.R. 1324.11, 1324.15
Prior Effective Dates: 05/01/2018, 08/01/2024

173-14-21

Designated long-term care ombudsman regions.

(A) ODA publishes the list of region designations on its website.

(B) When requested by the SLTCO, nothing in this rule prohibits one regional program from providing ombudsman services in another region in the discretion of the SLTCO.

Replaces: 173-14-21

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Rule Amplifies: 173.19, 173.20; 42 U.S.C. 3058g; 45 C.F.R. 1324.11

Prior Effective Dates: 06/15/1991, 12/27/2001, 12/28/2006, 05/01/2018, 08/01/2024

TO BE RESCINDED

173-14-21

Designated long-term care ombudsman regions.

(A) Designated regional long-term care ombudsman programs serve the following regions of the state:

- (1) Region 1: Butler, Clermont, Clinton, Hamilton, and Warren counties.
- (2) Region 2: Champaign, Clark, Darke, Greene, Logan, Miami, Montgomery, Preble, and Shelby counties.
- (3) Region 3: Allen, Auglaize, Hancock, Hardin, Mercer, Putnam, and Van Wert counties.
- (4) Region 4: Defiance, Erie, Fulton, Henry, Lucas, Ottawa, Sandusky, Williams, and Wood counties.
- (5) Region 5: Ashland, Crawford, Huron, Knox, Marion, Morrow, Richland, Seneca, and Wyandot counties.
- (6) Region 6: Delaware, Fairfield, Fayette, Franklin, Licking, Madison, Pickaway, and Union counties.
- (7) Region 7: Adams, Brown, Gallia, Highland, Jackson, Lawrence, Pike, Ross, Scioto, and Vinton counties.
- (8) Region 8: Athens, Hocking, Meigs, Monroe, Morgan, Noble, Perry, and Washington counties.
- (9) Region 9: Belmont, Carroll, Coshocton, Guernsey, Harrison, Holmes, Jefferson, Muskingum, and Tuscarawas counties.
- (10) Region 10A: Cuyahoga, Geauga, Lake, Lorain, and Medina counties.
- (11) Region 10B: Portage, Stark, Summit, and Wayne counties.
- (12) Region 11: Ashtabula, Columbiana, Mahoning, and Trumbull counties.

(B) When requested by the SLTCO, nothing in this rule prohibits one regional program from providing ombudsman services in another region if adequate resources are made available.

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Rule Amplifies: 173.19, 173.20; 42 U.S.C. 3058g; 45 C.F.R. 1324.11

Prior Effective Dates: 06/15/1991, 12/27/2001, 12/28/2006, 05/01/2018,
08/01/2024

173-14-22**Initial designation of regional long-term care ombudsman programs: standards.**

(A) No sponsoring agency may serve as a regional long-term care ombudsman program unless designated by the SLTCO.

(B) Except as otherwise provided in paragraph (A) of this rule, no sponsoring agency may qualify as a fully-designated regional program unless it complies with all the following structural standards:

(1) Be a tax-exempt organization.

(2) Have a governing board with responsibility to ensure compliance with all program and contract requirements; all relevant federal and state statutes, regulations, and policies; and ensure program integrity and stability.

(3) Comply with the prohibitions against unremedied organizational conflicts of interest under 45 C.F.R. 1324.21.

(4) Ensure sufficient physical and digital security to maintain confidentiality of records and privacy of clients.

(5) Have no employee or ombudsman, no individual involved in designating, hiring, evaluating, or terminating a regional program director, and no governing board member with an unremedied conflict of interest.

(6) Retain the type of qualified staff required under rule 173-14-14 of the Administrative Code.

(7) Maintain an incoming toll-free telephone line dedicated to the regional ombudsman program that is answered during normal business hours by an ombudsman.

(8) Have the capacity to develop policies and procedures that conform to all federal and state statutes, regulations, and policies, including on the following topics, and provide these policies and procedures to the SLTCO within six months after designation for the SLTCO's review for approval and on request, and make these policies and procedures available to an ombudsman in the regional program:

(a) Complaint prioritization.

(b) Case assignment.

(c) Recruiting, screening, training, and supervising ombudsman staff.

- (d) Quality assurance.
 - (e) Personnel policies for every ombudsman.
 - (f) Emergency preparedness procedures including continuity of operations using an all-hazards approach and coordination with emergency management agencies.
- (9) Maintain nonprofit directors and officers liability insurance.

Replaces: 173-14-22

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TO BE RESCINDED

173-14-22 **Initial designation of regional long-term care ombudsman programs: standards.**

- (A) No sponsoring agency may serve as a regional long-term care ombudsman program unless the SLTCO designates the agency to be a regional long-term care ombudsman program.
- (B) Except as otherwise provided in paragraph (A) of this rule, no sponsoring agency may qualify as a fully-designated regional program unless it complies with all the following structural standards:
- (1) Be a tax-exempt organization.
 - (2) Have a governing board with responsibility to ensure compliance with all program and contract requirements; all relevant federal and state statutes, regulations, and policies; and ensure program integrity and stability.
 - (3) Comply with the prohibitions against unremedied organizational conflicts of interest under 45 C.F.R. 1324.21.
 - (4) Have no member of its administrative staff with responsibilities related to the ombudsman program, and an unremedied conflict of interest.
 - (5) Retain the type of qualified staff required under rule 173-14-14 of the Administrative Code.
 - (6) Maintain an incoming toll-free telephone line dedicated to the regional ombudsman program that is answered during normal business hours by a representative of the office.
 - (7) Have the capacity to develop policies and procedures that conform to all federal and state statutes, regulations, and policies, including on the following topics, and provide these policies and procedures to the SLTCO within six months after designation for the SLTCO's review for approval and on request, and make these policies and procedures available to all representatives in the regional program:
 - (a) Complaint prioritization.
 - (b) Case assignment.
 - (c) Recruiting, screening, training, and supervising representatives.

- (d) Participation in the regulatory agencies' survey and certification processes, including performance within the federal regulations; balancing program priorities; and specifying when to attend an exit conference; a statement of the information the ombudsman gives to the survey team; specifying that representatives with a noted conflict of interest are ineligible to participate in the certification process of that provider.
 - (e) Personnel policies for representatives of the office.
- (8) Maintain nonprofit directors and officers liability insurance.

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173-14-23

Initial designation of regional long-term care ombudsman programs: process.

The SLTCO may designate a sponsoring agency as a new regional long-term care ombudsman program (regional program) only if the sponsoring agency complies with all the structural standards established in paragraph (B) of rule 173-14-22 of the Administrative Code and submits a completed and complete ombudsman plan that is acceptable to approved by the SLTCO in accordance with paragraph (D) rule of this rule.

The SLTCO may designate a temporary regional program as needed.

The SLTCO may designate a program as provisional on its initial designation.

(A) The SLTCO shall adhere to the following process when designating a sponsoring agency to serve as a new regional program:

- (1) Issue a request for proposal (RFP), in consultation with the AAA, that does all of the following:
 - (a) Seeks sponsoring agencies willing to serve as the regional program.
 - (b) Identifies all the standards that a sponsoring agency needs to qualify for designation as a regional program.
 - (c) Establishes a deadline of thirty days after responding to the RFP for the sponsoring agency to provide the SLTCO with an ombudsman plan and documents to support the sponsoring agency's claim to meet the standards under paragraph (A)(1)(b) of this rule.
- (2) Conduct an on-site visit to each of the eligible agencies responding to the RFP to verify the facts presented in each proposal and, at the SLTCO's discretion, include the AAA serving the region to participate in the on-site visit.
- (3) Review the ombudsman plans of all proposals submitted and, at the SLTCO's discretion, consult with the AAA, then choose the agency that is most appropriate to serve as the regional program.
- (4) Notify the AAA and responding agencies of the SLTCO's decision and the right of every agency not chosen to request a hearing to appeal the SLTCO's decision according to Chapter 119. of the Revised Code.
- (5) Notify the chosen agency of its designation year.

(B) Any sponsoring agency receiving ~~full initial~~ or ~~provisional temporary~~ designation as a regional program shall enter into a contract with the AAA or the SLTCO that, at a minimum, specifies the following:

- (1) The regional program's geographical region.
- (2) A requirement for the regional program to comply with all state and federal laws, regulations, policies and procedures governing the office of the SLTCO.
- (3) A requirement for the regional program to comply with all ~~ODA~~ AGE policies and procedures relating to contractors.
- (4) A requirement for the regional program to comply with all of the reporting requirements in rule 173-14-19 of the Administrative Code.

(C) Summary and action plans:

- (1) The SLTCO shall develop a summary and action plan in conjunction with the ~~full initial~~ or ~~provisional temporary~~ designation of each newly designated regional program to address areas of positive practices and concern and specify actions for the regional program to take to correct problem areas or any violation of the law or the structural standards that are discovered during the initial designation process.
- (2) Once the summary and action plan has been issued, the regional program's director, AAA, or sponsoring agency involved in the designation process has ~~fifteen~~ fourteen calendar days to provide written or electronic comments to the SLTCO on the content of the summary and action plan. If these parties do not provide written or electronic comments to the SLTCO within ~~fifteen~~ fourteen calendar days, the summary and action plan takes effect on the fifteenth day. If these parties provide written or electronic comments to the SLTCO within ~~fifteen~~ fourteen calendar days, the SLTCO shall take the comments into consideration when finalizing the summary and action plan.
- (3) The ~~AAA and the~~ SLTCO shall provide the technical assistance ~~or contacts~~, or conduct the visits under the terms of the summary and action plan. If appropriate, the SLTCO may perform a program review to monitor the implementation of the summary and action plan.

(D) The sponsoring agency shall submit an ombudsman plans plan for regional programs seeking initial or temporary designation ~~may address that addresses~~ the following:

- (1) Complaint handling, including, intake, screening, complaint investigation, complaint resolution, and follow-up activities.

- (2) ~~Providing~~ Provide a regular presence, including increasing awareness of the program and its functions ~~by consumers to clients~~, sponsors, providers, social services, and the aging network ~~and increasing the number of complaints received directly from consumers~~.
- (3) Public education and information, including increasing awareness of the program and long-term care issues.
- (4) ~~Identifying~~ Identify systemic issues, ~~monitoring~~ monitor the development and implementation of policy by agencies that ~~have an effect on the~~ impact client's lives ~~of consumers~~, ~~coordinating~~ coordinate and ~~advocating~~ advocate with relevant agencies and the legislature, and ~~documenting~~ document the progress of systemic reform.
- (5) Representation at hearings and legal representation, including defining the types of hearings in which ~~the a~~ regional program ~~representatives~~ ombudsman ~~provide~~ provides representation and ~~developing~~ develop how the regional program ensures legal representation is provided to clients in other cases.
- (6) ~~Professional development and continuing education for representatives;~~ Training ombudsman staff, including assuring that a volunteer ~~representatives~~ ombudsman can pass the appropriate certification exam, and ~~developing~~ develop a continuing education program targeted ~~at~~ to the needs of ~~representatives~~ the ombudsman.
- (7) ~~Recruitment, screening, retention, and supervision of~~ Recruit, screen, retain, and supervise a volunteer ~~representatives~~ ombudsman, including ~~increasing~~ increase the number of volunteer hours and ~~increasing~~ increase the capacity of volunteers to do such activities as complaint handling, ~~establishing~~ establish presence, ~~observing~~ observe, ~~monitoring~~ monitor issues and providers, and ~~providing~~ provide information to the public.
- (8) Fundraising, including identifying where additional resources are needed, and developing fundraising strategies to meet those needs.
- (9) Program administration, including developing the ombudsman plan; increasing the skills of administrative staff in such areas as fund-raising, accounting methods, performance appraisals, supervising personnel, and similar administrative activities.
- (10) Internal quality assurance process, including identifying problems in the delivery of core ombudsman services and developing objectives, action steps with ~~time~~ lines timelines, and outcome standards for correcting the problems.

- (11) Core services.
- (12) Optional services, if approved by the SLTCO, including defining those services delivered by the regional program that are not core services and developing goals, objectives, action steps with ~~time lines~~ timelines, and outcome standards for measuring the success and impact of the services.
- (13) Each provision under paragraphs (A) and (B) of rule 173-14-24 of the Administrative Code.
- (14) Other areas of program operation identified by the SLTCO.

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08/01/2024

173-14-24

Development of ombudsman plans by all programs.

- (A) Each regional program in conjunction with the SLTCO shall develop an ombudsman plan with a budget that describes ~~short-term~~ activities to cover at least one year and ~~long-term activities on strategic areas to cover two years or more that address strategic program development, such as.~~ Plans may include the future development of funding sources or the future direction of the program. The SLTCO may waive the requirement, or extend the deadline, to develop ~~such an~~ ombudsman plan or parts of an ombudsman plan as the SLTCO deems appropriate.
- (B) The SLTCO may approve ombudsman plans only if those plans meet the following qualifications:
- (1) Goals are useful, achievable, and in keeping with the core services and intent of the SLTCO office's goals.
 - (2) Objectives are rational to the goals.
 - (3) Action steps lead to achieving the stated objectives.
 - (4) ~~Time lines~~ Timelines are reasonable.
 - (5) Outcome standards are rational to the service, measurable, and quantified as much as possible.
 - (6) Potential impact is clearly described.
 - (7) Budget supports the plan.
- (C) The ombudsman plans for regional programs deemed to need additional oversight by the SLTCO shall address the items listed under paragraph (D) of rule 173-14-23 of the Administrative Code.
- (D) Regions shall update the progress towards the goals of the plan periodically, at the request of SLTCO.

Effective:

Five Year Review (FYR) Dates: 8/26/2025

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 121.07, 173.01, 173.02, 173.16; 42 U.S.C. 3025,
3058g; 45 C.F.R. 1321.9, 1324.11, 1324.13, 1324.15
Rule Amplifies: 173.16, 173.18; 42 U.S.C. 3058g; 45 C.F.R. 1324.11,
1324.17
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08/01/2024

173-14-25

Designation service reviews and additional program reviews.

- (A) The SLTCO shall conduct a designation service review (DSR) no less frequently than every two years to determine whether the regional program may continue its designation as a regional long-term care ombudsman program. In addition to the DSR, the SLTCO may conduct additional program reviews whenever service delivery problems occur within the region served by a regional program.

The SLTCO may invite a regional program's sponsoring agency to ~~participation~~ participate in the review of the regional program.

Additionally, an AAA may conduct a fiscal review of a regional program that is independent of the SLTCO's program review if the AAA informs the SLTCO of the results of its fiscal review.

- (B) When conducting the DSR, the SLTCO shall review the following, and for an additional review, the SLTCO may review any of the following:

- (1) The program's continued compliance with the structural standards established under rule 173-14-22 of the Administrative Code.
- (2) The program's continued compliance with all applicable state and federal laws, regulations, policies, and procedures.
- (3) The program's continued maintenance of program policies and procedures under rule 173-14-22 of the Administrative Code.
- (4) A random selection of at least fifteen of the program's complaint case records to determine the quality of the program's complaint-handling efforts and to determine whether the program complies with the case handling protocol under rule 173-14-16 of the Administrative Code.
- (5) The program's attainment of the outcomes and objectives under its current ombudsman plan.
- (6) The program's performance on SLTCO-established quality measures.
- (7) The program's advocacy and information service.

- (C) The SLTCO shall have access to all necessary records including, but not limited to, governing board minutes, conflict of interest screening forms, quality assurance records, ~~consumer-client~~ consumer-client satisfaction surveys, ~~professional-development-training~~ professional-development-training records, and volunteer records.

- (D) ~~Upon~~ On completion of a DSR or additional program review, the SLTCO may develop and issue an action plan for quality (APQ) in conjunction with the regional program according to rule 173-14-23 of the Administrative Code.
- (E) Within twenty business days after completing a DSR or additional program review, the SLTCO shall provide the regional program, the sponsoring agency, and the AAA having jurisdiction in the designated region with written notification of the results of the DSR or additional program review, including the APQ. The date of notification following a DSR shall begin the new designation period ~~which shall not exceed one year.~~

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Prior Effective Dates: 06/15/1991, 12/27/2001, 12/28/2006, 12/13/2009,
08/01/2015, 05/01/2018, 01/28/2022, 08/01/2024

173-14-26**Changes in a regional program's designation status; notice rights; and hearing requirements.**

(A) The SLTCO may withdraw, or change to provisional, the designation of a regional program for cause. Cause may include any of the following:

- (1) The regional program's failure to follow policies and procedures, or provide services, that comply with sections 173.14 to 173.27 of the Revised Code, this chapter, all relevant sections of the Older Americans Act, or other related federal laws regulating the activities of the office, the policies and procedures of the office, the service contract, or an approved ombudsman plan.
- (2) The regional program's failure to meet structural standards in rule 173-14-22 of the Administrative Code.
- (3) The development of an unremedied conflict of interest involving the regional program, its sponsoring agency, or an individual associated with either.
- (4) The misfeasance, malfeasance, or nonfeasance of an ombudsman or agency employee.

(B) The SLTCO shall provide the regional program with a notice of provisional designation that includes the SLTCO's reason for the provisional designation, specifies the changes or corrections necessary for the program to come into compliance, and the deadline to come into compliance. A regional program may appeal the SLTCO's decision to provisionally designate the program according to Chapter 119. of the Revised Code.

(C) The SLTCO may withdraw the designation of a regional program when the scope and severity of the cause is of such a nature that corrections are not likely to be successfully implemented. The SLTCO may presume such failures when any of the following occurs:

- (1) The cause is found to involve a disregard the requirements in paragraph (A) of this rule.
- (2) The pattern of problems is repeated and correction is unlikely.
- (3) Attempted corrections of problems by the regional program have not been successful.
- (4) The regional program failed to implement the requirements of the notice of provisional designation.

- (D) The SLTCO shall give the regional program notice of the decision to withdraw the regional program's designation that includes the SLTCO's reason for the withdrawal of the designation. The sponsoring agency may appeal the SLTCO's decision according to Chapter 119. of the Revised Code.
- (E) A regional program may voluntarily withdraw its designation as a regional long-term care ombudsman program by providing the SLTCO with a written notice of its intent ninety days before the date upon which the program expects the withdrawal of designation to take place.
- (F) The sponsoring agency of a regional program that voluntarily withdraws its designation or that has had its designation withdrawn by the SLTCO shall surrender intact to the SLTCO all ombudsman case records; documentation of core services in ODIS according to rule 173-14-19 of the Administrative Code; the identification cards of each ombudsman; any equipment purchased with title III or title VII funds awarded under the Older Americans Act, the long-term care ombudsman state subsidy, bed fee monies; and the balance of any state, federal, or bed fee monies it has been allocated as a result of its designation as a regional ombudsman program on the effective date of the regional program's de-designation or voluntary withdrawal of designation, or as otherwise agreed to by the regional program and the SLTCO.
- (G) The SLTCO shall ensure the continuation of ombudsman services in any designated region in which a regional program's designation was withdrawn voluntarily or by the SLTCO.
- (H) Notice: The SLTCO shall notify a regional program's sponsoring agency of any change in the designation of its regional program and include all of the information required by Chapter 119. of the Revised Code.
- (I) All appeal hearings are subject to Chapter 119. of the Revised Code.

Replaces: 173-14-26

Effective:

Five Year Review (FYR) Dates:

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TO BE RESCINDED

173-14-26

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

- (A) The SLTCO may change the designation of a fully-designated regional program to a provisional designation or may withdraw the designation of a fully or provisionally-designated regional program for cause. Cause may include any of the following:
- (1) The regional program's failure to follow policies and procedures that comply with sections 173.14 to 173.27 of the Revised Code, this chapter, all relevant sections of the Older Americans Act, or other related federal laws regulating the activities of the office.
 - (2) The regional program's failure to meet structural standards in rule 173-14-22 of the Administrative Code.
 - (3) The regional program's failure to provide services according to sections 173.14 to 173.27 of the Revised Code, this chapter, all relevant sections of the Older Americans Act, other related federal laws, the policies and procedures of the office, the service contract, or an approved ombudsman plan.
 - (4) The development of an unremedied conflict of interest involving the regional program, its sponsoring agency, or an individual associated with either.
 - (5) The misfeasance, malfeasance, or nonfeasance of an employee of the program or a representative of the office.
- (B) When provisionally designating a fully-designated regional program, the SLTCO shall provide the regional program with notice of the decision to provisionally designate the program that contains an explanation of the SLTCO's reason for the provisional designation, specifies the changes or corrections necessary for the program to come into compliance with the program review standards or conflict of interest provisions, defines the deadline for the regional program to come into compliance, and explains that failure to implement the requirements of the notice leads to a withdrawal of designation. A regional program may appeal the SLTCO's decision to provisionally designate the program according to Chapter 119. of the Revised Code.
- (C) The SLTCO may withdraw the designation of a regional program when the scope and severity of the cause is of such a nature that corrections are not likely to be successfully implemented. The SLTCO may presume such failures when any of the following occurs:

- (1) The cause is found to involve a disregard of the office's policies and procedures, structural standards, or federal or state law.
 - (2) The pattern of problems is repeated and correction is unlikely.
 - (3) Attempted corrections of problems by the regional program have not been successful.
- (D) The SLTCO shall give the regional program notice of the decision to withdraw the regional program's designation that contains an explanation of the SLTCO's reason for the withdrawal of the designation. The sponsoring agency may appeal the SLTCO's decision according to Chapter 119. of the Revised Code.
- (E) A regional program may voluntarily withdraw its designation as a regional long-term care ombudsman program by providing the SLTCO with a written notice of its intent ninety days before the date upon which the program expects the withdrawal of designation to take place.
- (F) The sponsoring agency of a regional program that voluntarily withdraws its designation or that has had its designation withdrawn by the SLTCO shall surrender intact to the SLTCO all ombudsman case records; documentation of core services in ODIS according to rule 173-14-19 of the Administrative Code; the identification cards of all of its representatives; any equipment purchased with title III or title VII funds awarded under the Older Americans Act, the long-term care ombudsman state subsidy, bed fee monies; and the balance of any state, federal, or bed fee monies it has been allocated as a result of its designation as a regional ombudsman program on the effective date of the regional program's de-designation or voluntary withdrawal of designation, or as otherwise agreed to by the regional program and the SLTCO.
- (G) The SLTCO shall ensure the continuation of ombudsman services in any designated region in which a regional program's designation was withdrawn voluntarily or by the SLTCO.
- (H) In all cases where the SLTCO seeks to provisionally designate a fully-designated regional program, or to withdraw the designation of a provisionally-designated or fully-designed regional program, the SLTCO is subject to the notice and hearing procedures in Chapter 119. of the Revised Code.
- (I) Notice: The SLTCO shall notify a regional program's sponsoring agency of any change in the designation of its regional program and include all of the following information in the notice:
 - (1) The charges or other reasons for the proposed action.

- (2) The law or rule directly involved in regard to the charges or reasons for the proposed action.
 - (3) A request that any explanation or extenuating circumstances regarding the SLTCO's decision be provided in writing to the SLTCO.
 - (4) A statement informing the sponsoring agency it is entitled to a hearing if it so requests such a hearing within thirty days after the mailing date of the notice.
 - (5) A statement informing the sponsoring agency that, at the hearing, the sponsoring agency may be represented by its board, director, attorney, or other such representative as is permitted to practice before the agency; or, that the sponsoring agency may present its position, arguments, or contentions in writing; and, that the representative of the sponsoring agency may present evidence and examine witnesses appearing for and against the sponsoring agency at the hearing.
- (J) Whenever a sponsoring agency requests a hearing in accordance with this rule, the SLTCO shall immediately set the date, time, and place of the hearing within ten days, but not earlier than seven days, after the sponsoring agency requested the hearing, unless otherwise agreed to by ODA and the sponsoring agency, then notify the sponsoring agency. All appeal hearings are subject to Chapter 119. of the Revised Code.

Effective:

Five Year Review (FYR) Dates: 8/26/2025

Certification

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3058g; 45 C.F.R. 1321.9, 1324.11, 1324.13, 1324.15
Rule Amplifies: 173.16, 173.18; 42 U.S.C. 3058g; 45 C.F.R. 1324.11
Prior Effective Dates: 07/11/1991, 12/27/2001, 12/28/2006, 05/01/2018,
01/28/2022, 08/01/2024

173-14-27**Decertification of a certified ombudsman or removal of an ombudsman candidate for certification.**

(A) In all cases where the SLTCO seeks to decertify a certified ombudsman or to remove an ombudsman candidate for certification, the SLTCO shall notify the party against whom action is to be taken, as well as the regional program with which the party is affiliated and the regional program's sponsoring agency, if applicable.

On receipt of the notice, the sponsoring agency shall ensure the ombudsman is relieved of all complaint-handling duties requiring contact with clients or providers until all appeals have been exhausted and a final determination has been made.

The SLTCO shall comply with Chapter 119, of the Revised Code when providing notice to the certified ombudsman or ombudsman candidate, and request that the ombudsman provide the SLTCO with any written explanation or extenuating circumstances connected to the SLTCO's decision.

(B) AGE's director shall designate an independent hearing officer to preside over the hearing. A decision in favor of the ombudsman results in a reinstatement to the performance of all duties of the office. A decision in favor of the SLTCO, and after all appeals have been exhausted, requires the ombudsman to return any identification card.

Replaces: 173-14-27

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Rule Amplifies: 173.15, 173.16, 173.17, 173.21; 42 U.S.C. 3058g; 45 C.F.R. 1324.11

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TO BE RESCINDED

173-14-27

Decertification of a representative or removal of a candidate for certification.

- (A) In all cases where the SLTCO seeks to decertify a representative of the office or to remove a candidate for certification, the SLTCO shall notify the party against whom action is to be taken, as well as the regional program with which the party is affiliated and the regional program's sponsoring agency, if applicable.

Upon receipt of the notice, the sponsoring agency shall ensure the representative or the candidate is relieved of all complaint-handling duties requiring contact with consumers or providers until all appeals have been exhausted and a final determination has been made.

The SLTCO shall notify according to Chapter 119. of the Revised Code and include all of the following in the notice:

- (1) The charges or other reasons for the proposed action.
 - (2) The law or rule directly related to the charges or reasons for the proposed action.
 - (3) A request that any explanation or extenuating circumstances connected to the SLTCO's decision be provided in writing to the SLTCO.
 - (4) A request for the return of the representative's or candidate's identification card after all appeals have been exhausted, and a statement as to the consequences for failure to return the card.
 - (5) A statement informing the representative or candidate that the representative or candidate is entitled to a hearing if the representative or candidate so requests such a hearing within thirty days after receiving the notice.
 - (6) A statement informing the representative or candidate that, at the hearing, the representative or candidate may be represented by the regional program board, director, attorney, or other such representative as is permitted to practice before the agency; or, that the representative or candidate may present its position, arguments, or contentions in writing; and, that the representative or candidate may present evidence and examine witnesses appearing for and against the representative or candidate at the hearing.
- (B) Whenever a party requests a hearing in accordance with this rule, the SLTCO shall set the date, time, and place for the hearing within ten business days after receiving the request for a hearing, then notify the party. The date set for the hearing shall be within

fifteen days after the date on which the party requested the hearing unless otherwise agreed to by the parties.

- (C) ODA's director shall designate a hearing officer who has not participated in the decision to decertify the representative or candidate to preside over the hearing. Upon completion of the hearing, the hearing officer shall make a recommendation and forward it to the SLTCO. The SLTCO shall make the final decision within thirty days after the hearing concludes and inform the candidate or representative who made the request for the hearing of the decision according to Chapter 119. of the Revised Code. The SLTCO's decision is the final administrative form of appeal. If the representative's appeal is successful, the representative shall be reinstated to the performance of all duties of the office.

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Rule Amplifies: 173.15, 173.16, 173.17, 173.21; 42 U.S.C. 3058g; 45 C.F.R. 1324.11

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173-14-29

Response to allegations about ombudsman performance.

- (A) Any individual or organization may make a complaint about the action or inaction of ~~a representative~~ an ombudsman.
- (B) The SLTCO or the designated investigator shall provide each ~~representative~~ ombudsman with standard information about the process outlined in this rule.
- (C) The office shall investigate and attempt to resolve complaints in the following order of responsibility:
- (1) Either of the following:
 - (a) Regional ombudsman program director when the complaint is about ~~a representative~~ an ombudsman affiliated with the respective regional program; ~~or,~~
 - (b) Sponsoring agency director or SLTCO, as appropriate, when the complaint is about the regional program director.
 - (2) The SLTCO's designee.
 - (3) SLTCO.
- (D) The protocol for investigation and resolution includes the following steps in the order determined to be appropriate by the investigator who responds to the complaint:
- (1) Interview complainant to gather facts of the allegation.
 - (2) Interview witnesses ~~if any~~ identified by the complainant.
 - (3) Review documentation of the performance in question.
 - (4) Interview the ~~representative~~ ombudsman who is the subject of the complaint.
 - (5) Determine any remedial action needed, including but not limited to, additional education or supervision.
 - (6) Consult with the sponsoring agency and/or SLTCO staff.
 - (7) Document the outcome in the ~~representative's~~ ombudsman's personnel file and any training or technical assistance provided in ODIS.
 - (8) Consider whether decertification is appropriate under rule 173-14-27 of the Administrative Code.

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