



Department of
Aging

John Kasich, Governor

Bonnie K. Burman, Sc.D., Director

PUBLIC-COMMENT PERIOD

Chapter 173-14 of the Administrative Code regulates the **STATE LONG-TERM CARE OMBUDSMAN PROGRAM**.

State law requires ODA to review its rules no later than each rule's assigned review date. ODA has reviewed the chapter and, at this time, is recommending no changes to the rules. New federal regulations may require ODA to amend the rules in 2016 (*i.e.*, after many rules' assigned review dates).

Before ODA makes a no-change rule filing with the Joint Committee on Agency Rule Review (JCARR), ODA will post the rules and the business impact analysis on its [website](#) in search of your comments and questions. ODA may incorporate comments and questions that you raise into a subsequent rule filing in the second half of 2015 or the first half of 2016.

You may submit comments and questions to ODA about the proposed amendments through ODA's [website](#). ODA will accept comments and questions until **April 26, 2015**.

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CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: OHIO DEPARTMENT OF AGING

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

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

Date: April 1, 2015

Rule Types:

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- Rescinded:** None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

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

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Regulatory Intent

1. Please briefly describe the regulations in plain language.

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

The rules regulate Ohio's State Long-Term Care Ombudsman Program, including the designation of regional programs, the handling of complaints, referring complaints to other public agencies or entities, the training requirements for ombudsman representatives, the deadlines for paying the bed fee, and the requirements to review databases and check criminal records for each paid ombudsman position.

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

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

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

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

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

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

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

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

Chapter 173-14 of the Administrative Code fulfills multiple purposes including compliance with ORC mandates to regulate the designation of regional programs, the handling of complaints, referring complaints to other public agencies or entities, the training requirements for ombudsman representatives, the deadlines for paying the bed fee, and the requirements to review databases and check criminal records for each paid ombudsman position.

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

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

Development of the Regulation

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

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

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

The public comment period began today, April 1, 2015, and will end on April 26, 2015.

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

On March 31, 2015, Jean Thompson from the Ohio Assisted Living Association indicated that ODA's proposal seemed reasonable.

On March 31, 2015, Peter Van Runkle from the Ohio Health Care Association indicated that ODA's proposal was fine with his organization.

At the time of printing this document, ODA had not received a response from the other organizations mentioned in #7.

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

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

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

The agency did not formally consider an alternative to a no-change rule filing because of the pending 2016 federal ombudsman rules. Many rules in the chapter have a review deadline in 2016, but the effective date for the federal rules is July 1, 2016. ODA will need to revisit the rules after this no-change filing to propose amendments that implement the federal law.

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

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

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

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

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

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

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

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

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

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

Adverse Impact to Business

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

a. Identify the scope of the impacted business community;

ODA's rules for the Office of the State Long-Term Care Ombudsman (SLTCO) have an adverse impact upon nursing facilities, residential care facilities, and other long-term care providers.

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

ODA's rules for the Office of the State Long-Term Care Ombudsman (SLTCO) have an adverse impact upon nursing facilities, residential care facilities, and other long-term care providers that the Office of the State-Long-Term Care Ombudsman has the authority to investigate in the following ways:

- The SLTCO charges an annual bed fee pursuant to section 173.26 of the Revised Code and rule 173-14-27 of the Administrative Code.
- Any person who contacts the SLTCO to register a complaint on behalf of a resident of those facilities initiates an adverse impact upon the facilities. This is because the facilities must allow representatives of the SLTCO to investigate the complaint. Of course, a facility about which the SLTCO receives no complaints would not see any adverse impact.

c. Quantify the expected adverse impact from the regulation.

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

Rule 173-14-27 of the Administrative Code establishes the bed fee of \$6 per bed.

The time involved in cooperating with an investigation could involve activities such as opening doors, opening files, and participating in interviews.

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

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

Regulatory Flexibility

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

The rules treat all providers the same, regardless of their size. However, virtually all providers are small businesses.

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

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

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

ODA does not offer different discriminate between responsible parties, applicants, or employees based upon the size of the business or organization. In fact, the majority of businesses that Chapter 173-14 of the Administrative Code regulates are small businesses according to section 119.14 of the Revised Code.

ODA maintains an [online rules library](#) to assist all responsible parties (and the general public) to find the rules that regulate them. Responsible parties (and the general public) may access the online library 24 hours per day, 365 days per year.

The SLTCO is available to help RLTCOs and facilities with their questions.

Additionally, any person may contact Tom Simmons, ODA' policy manager and regulatory ombudsman, with questions about the rules. (rules@age.ohio.gov)

173-14-01

Definitions.

As used in this chapter:

- (A) "Action plan" means a plan developed by an ombudsman in conjunction with the client as part of the complaint-handling process. The plan shall include strategies and actions to be taken by the representative including target dates and a follow-up schedule.
- (B) "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 that affects consumers; representing consumers, both individually and collectively, to effect a positive change.
- (C) "Affiliation" 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.
- (D) "Area agency on aging" and "AAA" mean an area agency on aging established under the "Older Americans Act of 1965," 79 Stat. 219, 42 U.S.C. 3001, as amended in 2006.
- (E) "Case" means the process of handling one or more complex complaints and may include documentation regarding simple complaints handled in conjunction with the complex complaint or complaints.
- (F) "Client" means the consumer of long-term care services who is the complainant or the subject of the complaint.
- (G) "Clock hour" means a period of sixty minutes.
- (H) "Complaint case records" means those confidential records kept by the office of the long-term care ombudsman on complaints handled by the program.
- (I) "Complaint handling" means all the processes used 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 record keeping.
- (J) "Complex complaint" means those complaints which involve a greater depth of investigation, including research and multiple contacts with provider staff or consumers, and which require the development of an action plan as a part of

opening a case.

(K) "Community-based long-term care services" means health and social services provided to persons in their own homes or in community care settings, and includes any of the following:

(1) Case management;

(2) Home health care;

(3) Homemaker services;

(4) Chore services;

(5) Respite care;

(6) Adult day care;

(7) Home-delivered meals;

(8) Personal care;

(9) Physical, occupational, and speech therapy;

(10) Transportation; and,

(11) Any other health and social services provided to persons that allow them to retain their independence in their own homes or in community care settings.

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

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

- (N) "Designated entity" means a sponsoring agency designated to provide ombudsman services in a particular region of the state.
- (O) "Follow-up activities" means site visits, phone calls, letters, or interviews completed by an ombudsman after investigation and attempted resolution of a complaint.
- (P) "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 consumers 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.
- (Q) "Legal representative" means a court appointed guardian, a conservator, an attorney-in-fact, or an executor or administrator of the estate of a deceased client who can give consent or authorization in the matter.
- (R) "Long-term care facility":
- (1) Except as otherwise provided in paragraph (R)(2) of this rule, "long-term care facility" includes any residential facility that provides personal care services for more than twenty-four hours for one or more unrelated adults, including all of the following:
 - (a) A "nursing home," "residential care facility," or "home for the aging" as defined in section 3721.01 of the Revised Code;
 - (b) A facility authorized to provide extended care services under Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301 including a long-term acute care hospital that provides medical and rehabilitative care to patients who require an average length of stay greater than twenty-five days and is classified by the centers for medicare and medicaid services a long-term care hospital pursuant to 42 C.F.R. 412.23(e) (October 1, 2013 edition);
 - (c) A county home or district home operated pursuant to Chapter 5155. of the Revised Code;
 - (d) A residential facility licensed under section 5119.34 of the Revised Code that provides accommodations, supervision, and personal care services for three to sixteen unrelated adults or accommodations and personal

care services for only one or two adults who are receiving residential state supplements;

(e) A facility approved by the veterans administration under section 104(a) of the "Veterans Health Care Amendments of 1983," 97 Stat. 993, 38 U.S.C. 630 and used exclusively for the placement and care of veterans.

(2) "Long-term care facility" does not include a residential facility licensed under section 5123.19 of the Revised Code.

(S) "Long-term care services" means the services provided by long-term care facilities or provided by community-based long-term care providers.

(T) "Office" means the state long-term care ombudsman, the ombudsman's staff and volunteers, and the staff and volunteers of the regional long-term care ombudsman programs.

(U) "Older Americans Act" means the "Older Americans Act of 1965," 79 Stat. 219, 42 U.S.C. 3001, as amended in 2006.

(V) "Ombudsman services" means those core ombudsman services and optional ombudsman services provided by the office of the state long-term care ombudsman.

(W) "Optional ombudsman services" means any service, other than a core service, approved by the state long-term care ombudsman.

(X) "Orientation" means an internship, including instruction in and observation of basic nursing care or personal care services and long-term care provider operations and procedures.

(Y) "Personal care services":

(1) Except as otherwise provided in paragraph (Y)(2) of this rule, "personal care services" means services including, but not limited to, the following:

(a) Assisting residents with activities of daily living;

(b) Assisting residents with self-administration of medication, in accordance with section 3721.04 of the Revised Code; and,

- (c) Preparing special diets, other than complex therapeutic diets, for residents pursuant to the instructions of a physician or a licensed dietitian, in accordance with section 3721.04 of the Revised Code.
- (2) "Personal care services" does not include "skilled nursing care" as defined in division (A)(4) of section 3721.01 of the Revised Code.
- (3) A facility need not provide more than one of the services listed in paragraph (Y)(1) of this rule to be considered to be providing personal care services.
- (Z) "Providers" are the individual facilities or individual community-based entities that provide long-term care services and, where appropriate, the corporations, partnerships, or persons that operate these types of entities.
- (AA) "Resident" means a resident of a long-term care facility and, where appropriate, includes a prospective, previous, or deceased resident of a long-term care facility.
- (BB) "Recipient" means a recipient of community-based long-term care services, and where appropriate, includes a prospective, previous, or deceased recipient of community-based long-term care services.
- (CC) "Regional program" and "regional long-term care ombudsman program" means an entity, either public or private and nonprofit, designated as a regional long-term care ombudsman program by the state long-term care ombudsman.
- (DD) "Representative of the office" or "representative of the office of the state long-term care ombudsman" means one of the four categories of ombudsman whose duties are described in rule 173-14-03 of the Administrative Code.
- (EE) "Resolved" means that the complaint/problem was addressed to the satisfaction of the resident or complainant.
- (FF) "SLTCO" means the state long-term care ombudsman.
- (GG) "Sponsor" means an adult relative, friend, or guardian who has an interest or responsibility for the welfare of the consumer. An ombudsman may not be a sponsor for anyone for whom they are performing ombudsman services.
- (HH) "Sponsoring agency" means the agency or organization with whom a contract exists to provide ombudsman services.

- (II) "State program" means those staff members and volunteers of the state long-term care ombudsman office at the department of aging.

- (JJ) "Tax-exempt organization" means an organization exempt from federal income tax under section 501(c)(3) of the "Internal Revenue Code of 1986" or the corresponding provision of any future United States internal revenue law; an organization that can receive contributions which are deductible under section 170(c)(2) of the "Internal Revenue Code of 1986" or the corresponding provision of any future United States internal revenue law; a public agency; a public-purpose agency; or a subdivision of state or local government;

- (KK) "Uncomplicated complaint" means those complaints which involve observation but do not require in-depth research and can be resolved simply through information and assistance, advice, or by making a request of the provider's staff; and do not require the opening of a case;

- (LL) "Unit audit" means an audit to verify that units of service reported by the regional long-term care ombudsman programs were provided.

- (MM) "Verified" means that it is determined after work (i.e., interviews, record review, observations, etc.), that the circumstances described in the complaint are generally accurate.

173-14-02

Types of representatives.

(A)

(1) There shall be three categories of representatives of the office who are authorized to handle complaints. These categories shall include:

(a) Ombudsman associate;

(b) Ombudsman specialist; and,

(c) Ombudsman program director.

(2) All ombudsman associates shall be volunteer staff. Paid staff of the office who are also representatives of the office and handle complex complaints shall be certified as either ombudsman specialists or ombudsman program directors. Paid staff members who perform only the duties of an associate may be certified as associates with the approval of the SLTCO. Only paid staff members shall be eligible to serve as ombudsman program directors. The SLTCO shall be a certified program director. Representative staff of the SLTCO's office shall be certified at a level determined necessary by the SLTCO.

(3) The SLTCO shall issue certificates in the form of identification cards to all representatives of the office who handle complaints or who are in contact with potential clients, clients, or providers. The identification cards shall contain:

(a) The name of the representative;

(b) The representative's picture;

(c) The category of the representative and whether the representative is certified;

(d) The ombudsman program with which the representative is associated; and,

(e) The expiration date.

(B) Non-representative staff within the office are those staff members of the office who have not been certified to perform the duties of representatives outlined in

paragraph (A) of this rule and may include support staff, organizational volunteers, and non-practice managers among others. Non-representative staff members of the office are prohibited from performing any complaint-handling function, but they may perform duties in conjunction with the program for which they are trained or hold an appropriate license.

173-14-03

Duties of the representatives of the office.

(A) An ombudsman associate may:

- (1) Provide outreach to consumers and sponsors;
- (2) Observe in facilities, homes, and service sites;
- (3) Perform intake for all types of complaints;
- (4) Provide information to the public about the ombudsman program and consumer rights;
- (5) Handle uncomplicated complaints;
- (6) Assist with handling complex 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 who have completed the first forty hours of professional development, as specified in rule 173-14-04 of the Administrative Code; and,
- (7) Provide written reports of their activities to the regional ombudsman program or record their activities in the ombudsman documentation and information system for Ohio (ODIS), as required by the regional program. Paid and unpaid associates may enter volunteer reports into ODIS if approved to do so by the regional program director.

(B) A volunteer who was certified as an ombudsman associate level 1 before January 1, 2012 may continue to perform the duties outlined in paragraphs (A)(1) to (A)(5) of this rule.

(C) An ombudsman specialist may:

- (1) Perform the duties of an ombudsman associate;
- (2) Handle complex complaints;
- (3) Provide complaint supervision after completing the first forty hours of professional development;
- (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; and,
 - (7) Record activities performed by other ombudsmen on their behalf and/or volunteer reports into ODIS.
- (D) A certified ombudsman program director serving as a program manager shall perform the duties in this paragraph. A certified ombudsman program director who is not serving as a program manager may perform the duties in this paragraph 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 173-14-21 of the Administrative Code;
 - (6) Perform quality assurance of core and optional services;
 - (7) Record activities performed by other ombudsmen on their behalf and/or volunteer reports into ODIS;
 - (8) Develop and implement the ombudsman plan in accordance with rule 173-14-23 of the Administrative Code; and,
 - (9) Identify where additional resources are needed and develop strategies for raising funds to meet those needs.
- (E) Ombudsman specialists and ombudsman program directors shall record any reportable ombudsman activity in ODIS.

173-14-04

Hours of professional development required for representatives of the office, certification.

(A) Representatives of the office shall complete the following professional development:

- (1) A candidate for certification as ombudsman associate shall complete a minimum of fourteen clock hours of professional development and pass the certification examination before performing any duties. These fourteen hours of professional development shall include observation of, and participation in, a complaint-handling experience. That experience may be done after passing the certification examination, but shall be done before performing any duties as an ombudsman associate. Within sixty days of completing the required professional development, the candidate shall take the ombudsman associate examination. A candidate who passes the examination shall be certified as an ombudsman associate and may perform the duties of an ombudsman associate without direct supervision.
- (2) A candidate for certification as an ombudsman associate, who was previously certified as an ombudsman associate level 1 under rules in effect before January 1, 2012, shall complete a minimum of four additional clock hours of professional development, including instruction in complaint-handling protocol and observation of and participation in a complaint-handling experience. Within sixty days of completing the required professional development, the candidate shall take the ombudsman associate examination.
- (3) A candidate for certification as ombudsman specialist shall complete forty clock hours of professional development before handling complaints without the supervision of a certified ombudsman specialist or a certified ombudsman program director. After the initial forty clock hours of professional development, the candidate shall complete:
 - (a) An additional sixty clock hours of professional development within the first fifteen months of employment;
 - (b) A twenty clock hour orientation within the first twenty-four months of employment. This orientation shall be performed at a site approved by the SLTCO in accordance with rule 173-14-08 of the Administrative Code;
 - (c) An observation of a survey or inspection as defined in division (B)(4) of section 173.21 of the Revised Code within the first twenty-four months of employment; and,
 - (d) Any other professional development considered appropriate by the

SLTCO.

Within sixty days of completing the required professional development, the candidate shall take the ombudsman specialist examination. All candidates who pass the examination shall be certified as ombudsman specialists.

- (4) The professional development requirements for an ombudsman program director candidate are the same as for an ombudsman specialist with the addition of six clock 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 forty clock hours of professional development and the six clock hours on program management and administration.

Within sixty days of completing the required professional development, the candidate shall take the ombudsman program director examination. All candidates who pass the examination shall be certified as ombudsman program directors.

- (B) All clock hours of professional development accrued by a candidate when preparing for any category of representative may be applied to the required clock hours of professional development required of the candidate when preparing to become certified as a different type of representative. If a candidate has completed clock hours of professional development toward a type of representative, but has not been certified, those clock hours shall be credited toward the professional development requirement for a different category of representative.

173-14-05

The administration of ombudsman professional development.

- (A) The state program shall provide the professional development required in rule 173-14-04 of the Administrative Code to all ombudsman program directors and to those ombudsman specialists who are paid staff of the office or volunteer staff of the state program, and may provide professional development for regional program volunteers seeking specialist certification and others at the request of the regional program.
- (B) The regional programs shall provide, at their own expense, the professional development required in rule 173-14-04 of the Administrative Code to the ombudsman associates working for their respective programs.
- (C) All professional development conducted under this rule shall be based upon a curriculum approved by the SLTCO.
- (D) The SLTCO may give credit for any part of professional development. Any application for approval of credit shall demonstrate that the candidate has previously received the required training or has experience or knowledge in a content area.

All requests for credit shall come 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 program. All requests for credit shall include documentation of the training or experience described in the application. The SLTCO shall notify the applicant of the SLTCO's decision as soon as practicable.

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173-14-06

Professional development deadlines.

(A) Candidates shall complete the professional development required under rule 173-14-04 of the Administrative Code within the following time frames:

(1) Ombudsman associates: three months;

(2) Ombudsman specialists and ombudsman program directors: two years.

(B) A candidate for the position of ombudsman specialist, who is a volunteer of either the state program or a regional program, may apply for an extension of time to complete the required professional development.

For an extension of time to complete professional development, the volunteer specialist candidate shall apply through the program director or, if a volunteer of the state program, directly to the SLTCO. The application must be received at least thirty days prior to the end of the two-year period allotted for professional development, or as soon as is practicable given the occurrence of extenuating circumstances, and must state the applicant's reasons for requesting an extension of time to complete the required professional development.

The SLTCO shall approve an application where the candidate demonstrates an acceptable reason for extending the time for professional development and the candidate shows probable success for becoming certified. Acceptable reasons shall include, but are not limited to, illness in the immediate family, unexpected changes in the candidate's living circumstances, employment conflicting with the professional development program, and time constraints. The SLTCO shall approve or disapprove an application at least five working days prior to the end of the two-year period allotted for the completion of the candidate's professional development, if the application is received by the SLTCO thirty days prior to the end of the two-year period allotted for professional development, or as soon as is practicable if the request is received by the SLTCO on a later date.

(C) Except as provided in paragraph (B) of this rule, failure of a candidate to complete the required professional development, to take an examination in a timely manner, or to present an acceptable request for an extension is cause for removal as a candidate. The SLTCO shall provide a notice and hearing process in accordance with the requirements found in rule 173-14-26 of the Administrative Code prior to removing a candidate for failure to complete the required professional development or to take an examination in a timely manner.

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173-14-07

Professional development curricula.

(A) The professional development curriculum for all candidates seeking certification as ombudsman associates shall include instruction in the following areas:

(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:

(a) The types of long-term care providers, their organization and operations;

(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) The aging process and attitudes on aging; and,

(e) The aging network and the relationship between the aging network, the office, and various regulatory agencies.

(3) Ombudsman skills, including:

(a) Interpersonal, communication, observation, and interviewing;

(b) Building working relationships with providers; and,

(c) Complaint handling.

(4) An overview of complaint resolution skills, with an emphasis on advocacy, negotiating, empowering consumers, and follow-up activities;

(5) Complaint documentation;

(6) Program policies and procedures, including:

(a) Confidentiality;

(b) Access to providers and consumers;

- (c) Reporting;
- (d) Ethics; and,
- (e) Complaint investigation and resolution.

(7) Any additional topic deemed appropriate by the SLTCO.

(B)

(1) The professional development content for the initial forty clock hours of professional development required of all candidates for certification as ombudsman specialist or ombudsman program director shall include the content of the professional development required under paragraph (A) of this rule and additional professional development in the following areas:

- (a) A more in-depth review of the content areas 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) Ombudsman ethics and alternative decision-making;
- (e) The provision of program management, case consultation, and an overview of supervision;
- (f) Advocacy skills; and,
- (g) Any additional topic deemed appropriate by the SLTCO.

(2) The additional professional development required under paragraph (A)(3) of rule 173-14-04 of the Administrative Code shall cover the professional development content required by paragraph (C)(1) of this rule and the professional development shall introduce new topics including, but not limited to:

- (a) How to represent a client in a hearing, including transfer or discharge hearings conducted by the departments of health or job and family services, public benefit hearings conducted by the department of job and family services, and medicare part A benefit hearings conducted by the social security administration;
 - (b) How to supervise;
 - (c) How to handle complaints involving persons with mental retardation, developmental disabilities and mental illness;
 - (d) How to recruit and supervise volunteers;
 - (e) Actions regarding public disclosure, including appropriateness, confidentiality of certain information, and how to work with the media; and,
 - (f) Any additional topic deemed appropriate by the SLTCO.
- (C) In addition to the professional development required by paragraph (B) of this rule, the professional development content for all candidates seeking certification as an ombudsman program director shall include professional development in the following areas:
- (1) Management skills;
 - (2) Administering the program;
 - (3) Prioritization of regional program services and activities;
 - (4) Development of the ombudsman plan;
 - (5) Fund raising;
 - (6) Budget development;
 - (7) Policy development;
 - (8) Use of ombudsman data as a management tool; and,

- (9) Any additional topic deemed appropriate by the SLTCO.

- (D) The regional program may make application to the SLTCO to substitute curricula for paragraph (A) of this rule. The application must demonstrate that substituted curricula adequately prepares candidates for successful completion of the standardized certification examination. The decision of the SLTCO shall be final.

173-14-08

Content of orientation; approval of orientation sites.

- (A) The purpose of the orientation required under paragraph (A)(3)(b) of rule 173-14-04 of the Administrative Code is to acquaint 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. The observation and instruction shall be conducted in a manner consistent with the respect and privacy requirements set forth in division (A) of section 3721.13 of the Revised Code.
- (B) No long-term care provider shall 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 program, shall submit requests for the approval of an ombudsman orientation site to the SLTCO. The SLTCO shall approve orientation sites as soon as practicable.

No site shall be approved as an orientation site unless the site:

- (1) Has been licensed in accordance with all applicable state laws;
- (2) Is in substantial compliance with any applicable state or federal laws;
- (3) Has agreed to serve as an ombudsman orientation site; and,
- (4) Has agreed to provide an orientation satisfactory to the SLTCO.

173-14-08

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- (2) Is in substantial compliance with any applicable state or federal laws;
- (3) Has agreed to serve as an ombudsman orientation site; and,
- (4) Has agreed to provide an orientation satisfactory to the SLTCO.

173-14-10

Content and administration of the certification examinations.

- (A) The SLTCO shall develop the certification examinations. The examinations shall be fair and shall test candidates on material received through the professional development sessions provided in accordance with rule 173-14-05 of the Administrative Code. The SLTCO shall validate the examinations to the extent practicable.
- (B) The state program shall provide a review course to candidates who are eligible to take the examinations and who have been trained by the state program. The review course shall review the curriculum being tested.
- (C) The regional programs shall proctor any examination given to volunteers of their respective programs. The state program shall proctor all examinations given to paid staff of the office and volunteers of the state program.
- (D) The SLTCO shall develop procedures for scoring the examination that will protect the identity of the candidate taking the examination from the person scoring the examination. The examination shall be scored as soon as practicable. A score of seventy or higher on a one hundred point scale shall be deemed a passing score.
- (E) The SLTCO shall notify the candidate and, where appropriate, the regional program director of the pass/fail result. The SLTCO may provide a list of suggested continuing education topics to the candidate and, where appropriate, to the regional program director.
- (F) The SLTCO shall provide each candidate with an opportunity to review the candidate's examination during the ninety days following release of the candidate's test results. Once the time period for review has passed, the SLTCO shall destroy the examination papers in accordance with state records retention schedules.
- (G) A candidate who fails an examination may request technical assistance to prepare for the next examination. The state program shall be responsible for providing the technical assistance to volunteers and paid staff of the state program and paid staff of the regional programs. The regional programs may provide technical assistance to volunteers of their respective programs.

No candidate who fails an examination may retake the examination more than two times. Retakes of the examination shall be offered as soon as practicable, but both retakes must be taken within the first six months following receipt of notification that the candidate has failed the first examination.

A volunteer representative who has failed an examination and has received the required professional development may take an examination for a lower category of

representative.

No candidate who is currently certified as a representative of the office shall lose the certification status currently assigned to that representative based upon a failure on the part of that representative to pass any subsequent certification examination.

173-14-11

Registration of representatives.

(A) The SLTCO shall maintain a central registry of all representatives of the office. The registry shall retain the following information on each representative until twelve months after the date of separation from the office:

- (1) The representative's name, address, and telephone number;
- (2) The representative's qualifications;
- (3) The representative's classification;
- (4) The designated ombudsman region or state program with which the representative is associated;
- (5) Whether or not the representative is certified; and,
- (6) Any prohibitions applicable to the representative. Prohibitions may include limitations on the duties the representative may perform, limitations on the providers the representative may investigate or with which the representative may attempt complaint resolution, and any limitations due to a conflict of interest.

(B) The regional program, or the state program, whichever is appropriate, shall register paid representatives to the SLTCO within five business days after the representative becomes affiliated with the office.

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173-14-12

Separation of representatives from the office.

The separation of a representative from the office may occur through decertification, voluntary resignation, or termination by the program or sponsoring agency with which the ombudsman is employed.

(A)

- (1) No representative of the office shall be recommended for decertification without cause. Cause shall include, but shall not be limited to:
 - (a) Failure to follow policies and procedures that conform to sections 173.14 to 173.27 of the Revised Code and Chapter 173-14 of the Administrative Code;
 - (b) Failure to provide services in accordance with sections 173.14 to 173.27 of the Revised Code and Chapter 173-14 of the Administrative Code, the service contract, and the approved ombudsman plan;
 - (c) Performing a function not recognized or sanctioned by the office;
 - (d) Failure to meet the required qualifications;
 - (e) Failure to meet continuing education requirements;
 - (f) Intentional failure to reveal a conflict of interest; or,
 - (g) The misrepresentation of the representative's category of certification or the duties the representative is certified to perform.
- (2) The SLTCO and sponsoring agencies shall establish for their respective programs policies and procedures for making recommendations about decertification. Those policies and procedures shall require the SLTCO or sponsoring agency to attempt to assure satisfactory job performance through professional development, supervision, or other remedial actions prior to recommending decertification.
- (3) Regional programs and sponsoring agencies recommending decertification shall state their reasons in writing and shall provide any relevant documentation to support the recommendation to the SLTCO. Upon recommendation of decertification, notice of the recommendation and of the basis for the recommendation shall be provided to the representative.

- (4) The SLTCO shall review the recommendation and make a determination to accept or deny the recommendation in the form of a written notice to the sponsoring agency, regional program, and the representative. The sponsoring agency, regional program, or representative may appeal the SLTCO's decision in accordance with rule 173-14-26 of the Administrative Code.
 - (5) When the SLTCO initiates a decertification action against a representative of the office, the SLTCO shall provide written notification to the sponsoring agency, the regional program, and the representative. The representative may appeal the notice in accordance with rule 173-14-26 of the Administrative Code.
- (B)
- (1) Any person who separates from the office shall cease to be a representative of the office. The identification card of a person separated from the office must be surrendered to the SLTCO. The SLTCO or regional program shall notify the person in writing that the identification card must be surrendered within seven days of receiving the notice.
 - (2) Regional programs shall notify the state program of the separation of any representative 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.
 - (3) As appropriate, regional programs shall notify affected long-term care providers of the representative's separation from the office.
- (C)
- (1) A certified representative of the office who voluntarily separates from the office may, within one year after separation, apply for reinstatement of certification when the representative becomes reemployed by or accepted as a volunteer of the office. Any person seeking recertification shall apply in writing to the SLTCO. The application shall provide the date of separation and a summary of any professional development in or experience with ombudsman skills, long-term care services, problem resolution skills, or related skills the applicant may have received since voluntarily separating from the office.
 - (2) The SLTCO shall review the application and may require the applicant to receive additional professional development, and/or take an appropriate examination based upon the length of time the applicant has been away from

the field, and the experience or professional development the applicant has accumulated in the interim. The SLTCO shall make the decision as soon as practicable.

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173-14-13

Continuing education requirements, approval of clock hours, certifying fulfillment.

(A)

(1) Representatives of the office shall complete the following annual continuing education requirements:

- (a) Ombudsman associate level 1, if the representative was certified as an ombudsman associate level 1 on or before January 1, 2012: five clock hours;
- (b) Ombudsman associate: six clock hours;
- (c) Ombudsman specialists: twelve clock hours, of which a minimum of six clock hours shall be earned through attendance at state ombudsman-sponsored meetings; and,
- (d) Ombudsman program directors: eighteen clock hours, of which a minimum of nine clock hours shall be earned through attendance at state ombudsman-sponsored meetings; at least one session must include the training outlined in paragraph (E) of rule 173-14-03 of the Administrative Code. Topics of sessions may include, but are not limited to, supervision of staff, quality assurance practices, strategic planning, and interviewing and hiring of potential staff.

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

(2) Credit toward a representative's continuing education requirements shall be earned through attending and/or presenting at a session approved by the SLTCO. No representative shall fulfill more than one-third of the continuing education requirements through presentations.

(B) The SLTCO shall approve only those continuing education sessions that meet the following criteria:

- (1) The individual(s) presenting the session has a recognized expertise in the content area;
- (2) The session transmits knowledge relevant to the duties of a long-term care ombudsman; and,

- (3) The session has not been held for the purpose of individual or group supervision.

(C)

- (1) The SLTCO shall review automatically any sessions for continuing education credit that are sponsored directly by the department of aging and shall notify each regional program of the credits that may be earned through attendance at the session in advance of the date on which the session is scheduled.
- (2) Representatives shall submit all requests for credit toward their continuing education requirements to the SLTCO.

All requests for continuing education credit shall contain the following:

- (a) The name of the session and the name of the agency(ies) or organization(s) 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 spent presenting; and,
- (e) An explanation of how the session relates to the duties of the representative.

Requests for continuing education credits may be submitted prior to or as soon as practicable after the actual attendance at the session. The SLTCO shall approve continuing education credits in terms of face-to-face contact clock hours or one-tenth parts of a clock hour earned. The SLTCO shall approve or disapprove of all requests, in writing, as soon as practicable.

No representative shall be precluded from meeting continuing education requirements with credits that were also counted toward the continuing education requirements of other professional organizations or boards.

(D)

- (1) The SLTCO and each regional program shall establish procedures to track the continuing education hours being accumulated by representatives of the office. The regional programs shall track the hours accumulated by their volunteer staff and the SLTCO shall track the hours accumulated by the paid staff of the office and the volunteer staff of the state program.
 - (2) A review shall be completed to ensure that the continuing education requirements for each representative have been fulfilled. The reviewing agency shall document the sessions attended and the clock hours of credit earned by each representative reviewed. This documentation shall be maintained by the reviewing agency for a period of two years, so long as the representative remains affiliated.
- (E) If continuing education requirements cannot be fulfilled within the given timeframe, a representative may demonstrate extenuating circumstances or give an explanation to the ombudsman program director, for volunteer staff of that program, or to the SLTCO, for paid staff of the office and volunteers of the state program. 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. In the case of a paid representative, if the explanation or extenuating circumstances are not acceptable to the SLTCO, the SLTCO shall notify the representative and program director or sponsoring agency director, as appropriate. The notice and hearing process shall adhere to the requirements set forth in rule 173-14-26 of the Administrative Code.
- (F) A representative of the office who does not meet the continuing education hours requirement and who does not successfully demonstrate extenuating circumstances for not doing so shall be decertified in accordance with rule 173-14-12 of the Administrative Code.

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173-14-14

Staffing requirements and staff qualifications.

(A) Staffing requirements:

- (1) Each regional program shall employ one paid, full-time employee to serve as the program's ombudsman program director. If a program director is responsible for more than one regional program, each regional program shall have full-time supervision provided by a certified ombudsman program director in that region.
- (2) Each regional program shall maintain a staffing ratio of one paid, full-time-equivalent ombudsman to every two thousand long-term care facility beds.

(B) Staff qualification:

- (1) Representative: To acquire/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 shall only hire/accept a person as a staff member 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 shall only hire a person to be the ombudsman specialist 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, 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.
- (3) Ombudsman program director: A regional program shall only hire a person to be the ombudsman program director if the person:
 - (a) 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) Has one year's experience in supervision/management in the fields of aging, long-term care, health care, social services, advocacy, or investigation.

- (4) Free database reviews and criminal records checks: The SLTCO (or the SLTCO's designee) shall conduct the free database reviews and criminal records checks required under section 173.27 of the Revised Code and Chapter 173-9 of the Administrative Code.

173-14-15

Conflicts of interest.

(A) As used in this rule:

- (1) "Financial interest" means an ownership interest or investment in a provider by a representative of the office or a relative of the representative of the office,
- (2) "Relative" means a member of the immediate family, which is the spouse, parents, children, siblings, or household member.
- (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 that the conflict will not adversely influence the activities of the representative on behalf of the office.
- (4) "Waiver" means the SLTCO has determined that sufficient circumstances exist to eliminate a conflict of interest and the need to remedy a conflict of interest.

(B) No employee or representative of the office, no individual involved in designating, hiring, evaluating, or terminating the head of any regional program, and no policy board members may have an unremedied conflict of interest. Conflicts of interest shall include, but shall not be limited to, being employed by a provider of long-term care services at any time within the two years prior to being employed by or affiliated with the office of the long-term care ombudsman; or being affiliated with or having a financial interest in a provider of long-term care services or a membership organization of long-term care providers; or standing to gain financially through an action brought on behalf of individuals whom the ombudsman serves.

Actions prohibited by someone holding a conflict of interest shall include, but shall not be limited to, actions taken to influence any decision or action of a representative of the office which could be characterized as interference with or reprisals against a representative, or as causing reticence on the part of a representative to pursue vigorously a complaint or concern of a client.

Absent a waiver granted by the SLTCO, no representative of the office shall be assigned to investigate a complaint concerning a long-term care provider with which the representative was formerly employed, with which the representative was formerly or is currently affiliated or associated, from which a relative receives long-term care services, or that poses any other conflict of interest.

(C) The SLTCO, the regional programs, and the sponsoring agencies shall develop for their respective programs procedures to screen potential and existing non-representative employees of the program, potential candidates and existing

representatives of the office, individuals involved in designating, hiring, evaluating, or terminating the head of any regional program, and potential and existing policy board members for conflicts of interest. The procedures shall be applied upon initial screening and annually thereafter. When completed, the person who conducted the screen and the person screened shall acknowledge the completion of the screen in writing. The completed screening instrument shall be made a record of the program and shall be subject to program review.

- (D) Prior to 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 to, and may propose a remedy to, the SLTCO. The SLTCO shall report any identified conflict of interest in the state program and propose a remedy to the director of the department of aging. Within thirty days of receiving a proposed remedy, the SLTCO or the director of the department of aging shall review the nature, scope, and extent of the conflict and shall determine whether or not to allow the proposed remedy. While the decision is pending, the program responsible shall assign any individual with a conflict of interest to duties that do not pose a conflict.

The proposed remedy shall be submitted in writing and shall reveal the nature, extent, and potential impact of the conflict of interest, and shall be a remedy which will 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.

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

- (1) The independence of the representative of the office to provide unbiased investigations, successful problem resolution, advocacy services, and other ombudsman services;
- (2) That no employee, representative of the office, or policy 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;
- (3) That no employee, representative of the office, or policy board member having a conflict of interest is involved with or influences the designation of any regional program;
- (4) That no policy 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 policy board members having a conflict of interest in their capacity as a board members will declare any conflict of interest as regards a complaint or advocacy issue, and will excuse themselves from deliberations and voting on the issue, and review of the case records; and,
 - (6) That the policy 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.
- (E) Prior to 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 to, and may request a waiver of a conflict of interest, in writing, to the SLTCO, or in the case of the SLTCO making the request, to the director of the department of aging. Within thirty days of receiving a waiver request, the SLTCO or the director of the department of aging, as appropriate, shall review the nature, scope, and extent of the conflict and shall determine whether or not to approve the waiver. A waiver request will reveal the nature, extent, and potential impact of the conflict of interest, and will ask to determine whether sufficient circumstances exist to eliminate a conflict of interest.
- (1) Any conflict of interest not waived or remedied, and any prohibition resulting therefrom, shall be recorded in the central registry.
 - (2) The SLTCO may take into consideration the following when determining the granting of 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; and,
 - (d) The change in the ownership/management of a facility and the length of time since the change in ownership/management.
- (F) Deliberate failure to disclose any conflict of interest or any prohibition shall be sufficient grounds for the removal of the candidate from the professional development program, the decertification of the representative, or the withdrawal of

the designation of the regional program involved.

173-14-16

Complaint-handling protocol.

Representatives of the office shall identify, investigate and resolve complaints that are 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).

Except as otherwise provided in decision (C) of section 173.19 of the Revised Code, representatives of the office shall open a case and attempt to resolve all complex complaints in accordance with the following protocol:

(A) Complaint intake:

- (1) Any representative of the office may receive a complaint over the telephone, in person, or through postal or electronic mail. A complaint generated by the office itself shall be considered a complaint received.

The representative shall confirm that a complainant utilizing electronic mail that electronic mail may be a mode of communication through which confidential information is shared between the agency, provider, party, and person involved.

- (2) A representative of the office shall explain the role of the ombudsman program and gather information needed to determine response time, determine if there is any conflict of interest, and advise regarding options for handling the complaint that are available to the client or the program, including, but not limited to, encouraging and empowering the client to handle the complaint directly with the agency, provider, party, or person involved, if possible.

- (3) The office of the SLTCO program may decline to investigate any complaint if it determines any of the following:

- (a) That the complaint is frivolous, vexatious, or not made in good faith;
- (b) That the complaint was made so long after the occurrence of the incident on which it is based that it is no longer reasonable to conduct an investigation;
- (c) That an adequate investigation cannot be conducted because of insufficient funds, insufficient staff, lack of staff expertise, or any other reasonable factor that would result in an inadequate investigation despite a good faith effort; or,

(d) That an investigation by the office would create a real or apparent conflict of interest.

(4) In determining the response time for initiating an investigation, the program shall analyze the urgency of the complaint based upon the information received at the time of intake. The response time shall be commensurate with the potential harm posted to the client. If there is probable physical harm to the client, the appropriate program shall respond by the end of the next working day after receiving the complaint. In all other cases, the program shall respond as appropriate to the complaint.

(B) Investigation:

(1) Representatives shall investigate complaints in order to determine if complaints are verified. Where appropriate, all investigations shall include:

(a) A face-to-face interview with the client;

(b) An on-site visit to where the services that are the subject of the complaint were provided; and,

(c) Direct contact, be it by face-to-face contact, a telephone call, or by letter, with the complainant if the complainant is different from the client.

(2) The principal steps in an investigation shall include, but are not limited to:

(a) Obtaining consent from the client;

(b) Obtaining a clear statement of the problem(s);

(c) Informing the client of the ombudsman process and possible steps in the investigation;

(d) Revealing known conflicts of interest, if any;

(e) Obtaining a statement of the client's goals;

(f) Identifying the participants;

- (g) Identifying the relevant agencies;
 - (h) Identifying any steps already taken to handle or resolve the complaint;
 - (i) Determining gaps in the information;
 - (j) 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;
 - (k) Observing in a facility, in a location where services are delivered, or in a client's own home;
 - (l) Researching regulations and laws; and,
 - (m) Reviewing relevant client, provider, or government records.
- (3) The investigating representative(s) of the office need not exhaust one principal step before starting another, need use only those principal steps necessary, and need not follow them in the order given in paragraph (B)(2) of this rule.

(C) Complaint resolution:

Strategies for the resolution of a complaint may include, but are not limited to:

- (1) Consumer empowerment;
- (2) Negotiation;
- (3) Mediation;
- (4) Referral to other agencies;
- (5) Education;
- (6) Developing an action plan in conjunction with the client after taking into consideration the scope of the problem, the history of the provider, and pertinent laws and regulations;

(7) Legislative advocacy; and,

(8) Public disclosure.

(D) Complaint follow-up activities:

Representatives of the office shall perform follow-up activities on complaints as appropriate.

(E) Closing a case:

Prior to closing a case, the representative shall inform the client and/or 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 client's satisfaction;
- (2) The representative of the office determines that no further activity by the representative will produce satisfaction for the client;
- (3) The complaint is not a complaint a representative of the office should be handling;
- (4) The complaint has been withdrawn;

(F) Conflicts of interest:

- (1)
 - (a) For purposes of paragraph (F)(1)(b) of this rule, "relative" means a member of the immediate family, which consists of the spouse, parents, children, siblings, or household.
 - (b) A representative of the office 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 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 a relative or spouse who works for the provider, or having worked for the public agency

involved in the complaint.

- (c) A representative of the office who has a conflict shall disclose the conflict to the regional program director, or in the case where a representative of the state program has the conflict, to the SLTCO.
- (d) 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 it is the director of the regional program has a conflict of interest, the review shall be completed by the executive director of the sponsoring agency, or the executive director's senior staff member or board member.

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

- (2) The regional programs shall develop policies and procedures that are consistent with rule 173-14-21 of the Administrative Code to ensure that no representative of a regional program handles a complaint involving a service directly delivered by the program's sponsoring agency, or 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 without revealing the relationship to the client and/or complainant and without the approval of the SLTCO. The decision to permit a representative 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) The regional programs shall develop policies and procedures to maintain complaint and advocacy and general information records, including, but not limited to, volunteer reports, in a confidential manner. The policies and procedures shall address the storage, maintenance, and physical access to all written and electronic complaint and advocacy and general information records and shall assure that such records are in a secure location and that access to the files is limited to those personnel authorized to review records. This does not preclude a regional program from assigning filing tasks to

non-representative staff and volunteers as long as those individuals sign a confidentiality agreement. All authorized personnel shall treat records in a confidential manner. Regional program policies shall be consistent with paragraph (B)(7)(d) of rule 173-14-21 of the Administrative Code.

- (2) Except as otherwise provided by rule 173-14-15 of the Administrative Code, persons authorized to review records include the executive director of the sponsoring agency, or one designated senior staff member or a designated policy board member. No employee or representative of the office or a regional program 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 of the office from handling the complaint.
- (3) Representatives of the office shall not reveal identifying information about individuals providing information about a complaint without their consent unless ordered to do so by a court.
- (4) Any representative of the office 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 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, representatives of the office 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 of the office shall conduct investigations 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. With respect to clients and complainants, consent may be given:
 - (a) In writing by the complainant, for the complainant, or the client, for client. Representatives of the office shall use written consent forms approved by the SLTCO.

- (iii) In writing by the guardian of the resident or recipient;
 - (iv) In writing by the attorney-in-fact of the resident or recipient, if the resident or recipient has authorized the attorney in fact to give such consent; or,
 - (v) In writing by the executor or administrator of the estate of a deceased resident or recipient.
- (b) If consent to access to records is not refused by a resident or recipient or the resident's or recipient's legal representative, but cannot be obtained and any of the following circumstances exist, a representative of the office of the state long-term care ombudsman program, on approval of the SLTCO, may inspect the records of a resident or a recipient, including medical records, that are reasonably necessary for investigation of a complaint:
- (i) The resident or recipient is unable to express written or oral consent and there is no guardian or attorney-in-fact;
 - (ii) There is a guardian or attorney-in-fact, but the guardian or attorney-in-fact cannot be contacted within three working days;
 - (iii) There is a guardianship or durable power of attorney, but its existence is unknown by the long-term care provider and the representative of the office at the time of the investigation; or,
 - (iv) There is no executor or administrator of the estate of a deceased resident or recipient.

173-14-17

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

- (A) Representatives of the office shall refer to the SLTCO, in a manner established by the SLTCO, any complaints:
- (1) That pose a conflict of interest to the representative or the regional program that cannot be remedied by reassigning the complaint to another representative;
 - (2) That the client has chosen to have handled by the SLTCO;
 - (3) That are frivolous, vexatious, or not made in good faith;
 - (4) That were made so long after the actual occurrence that it is no longer reasonable to conduct an investigation;
 - (5) For which an adequate investigation cannot be conducted because of insufficient funds, staff, expertise, or other factor that could result in an inadequate investigation despite a good faith effort by the representatives; or,
 - (6) 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 3721.17 of the Revised Code.
- (B) 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, the SLTCO shall notify the client and/or complainant, if possible, and the regional program of the reasons the complaint will not be handled.

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173-14-18

Referrals of complaints to other agencies.

- (A) All referrals made by representatives of the office shall contain the pertinent facts known to the representative and shall be subject to the confidentiality and consent requirements set forth in rule 173-14-16 of the Administrative Code. Any confidential information transmitted in a written document shall be marked as confidential.
- (B)
- (1) Representatives of the office 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 department of health.
 - (2) Representatives of the office 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 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 job and family services.
 - (4) Representatives of the office may report any violations of laws or standards whose investigation or enforcement is under the jurisdiction of a federal, state, or local public agency, to the appropriate agencies.
 - (5) Representatives of the office shall report any suspected criminal violation discovered during the course of complaint handling to the appropriate law enforcement agency.
- (C) Any public agency that receives a referral from a representative of the office shall acknowledge receipt of the referral within thirty days from the date on which the agency received the referral and, except as otherwise provided by law, shall notify the representative of the results of its investigation within thirty days from the date on which the agency completes its investigation.

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173-14-19

Case records and reporting of complaint-handling activities.

- (A) The complaint case record shall include only objective observations of items such as the client's physical condition, behavior, conversations, and other facts that are revealed during the course of the investigation. In addition, where appropriate to the complaint, all complex complaint case records shall contain the following:
- (1) Data required by the statewide uniform reporting system;
 - (2) The name(s) and level of certification of the representative(s) of the office handling the case;
 - (3) Client data: name, address/location, telephone number, sex, age, minority status, source of payment, and (if applicable) the name, address, telephone number, and scope of authority of any legal representative of the client;
 - (4) Complainant data: name, address, telephone number, and relationship to the client;
 - (5) Pertinent provider information;
 - (6) A clear, concise statement of the complaint, from both the complainant and the client, if different;
 - (7) Documentation of consent obtained in accordance with complaint-handling protocol;
 - (8) A statement as to the client's desired outcome;
 - (9) The action plan;
 - (10) A running chronology of the contacts made to gather information regarding the complaint and to effect resolution of the problem, including the type of contact, the date, and who made the contact;
 - (11) Documentation of any deviations from established complaint-handling protocol, practice, or policy;
 - (12) Documentation of referrals to other agencies and the SLTCO;
 - (13) Copies of all correspondence sent or received regarding the complaint;

- (14) Copies of all documents gathered as a part of the complaint-handling process;
 - (15) Copies of release of information forms used to obtain documents or documentation showing how consent was obtained; and,
 - (16) Documentation that demonstrates the extent to which the client's desired outcome was achieved and the reason the complaint and/or case is being closed.
- (B) Complaint case records shall be retained by the SLTCO or regional programs for three years after the case is closed.
- (C) Representatives of the office shall contemporaneously document all complaint-handling activity in the "Ombudsman Documentation and Information System for Ohio" (ODIS). For the purposes of this paragraph, "contemporaneously" shall be defined by regional program policy approved by the SLTCO in accordance with rule 173-14-21 of the Administrative Code.
- (D) Access to case records and other reports of ombudsman activity contained in the ombudsman documentation and information system for Ohio (ODIS) by representatives of the office, non-representative state staff, and sponsoring agency staff shall be determined by the SLTCO.
- (1) Access for representatives of the office shall be in accordance with their level of certification; and,
 - (2) Sponsoring agency access is limited to the executive director of the sponsoring agency or one designated senior staff member or one designated policy board member. No representative of a sponsoring agency shall have the access to alter ombudsman records.
- (E) Information contained in the investigative files maintained by the office and the regional programs shall be released only at the discretion of the SLTCO or if disclosure is required by a court order. Identities of clients, witnesses, and complainants shall not be released absent a court order.
- (1) When an investigative file, either in whole or in part, or a request to submit to deposition or to testify in an administrative or judicial proceeding, is requested by a party outside of the office, the request must be submitted upon receipt to the office or the regional program in writing for consideration;

- (2) When any representative of the office receives a request for an investigative file, either in whole or in part, or a request to submit to deposition or to testify in an administrative or judicial proceeding, the representative shall notify the SLTCO immediately by telephone;
- (3) Within one business day after notification, the ombudsman shall submit the written request and complete and submit a form approved by the SLTCO to the SLTCO or the designee of the SLTCO by facsimile transmission (in the case of a regional ombudsman receiving the request) describing the case involved, the circumstance for the request, and other required information in a format prescribed by the SLTCO;
- (4) The SLTCO or the designee of the SLTCO will review the records requested and discuss the circumstance with the ombudsman in making a determination as to the release or withholding of records;
- (5) As appropriate, the SLTCO or the designee of the SLTCO will secure permission from the resident or complainant to release identity. Names and identifying information about clients, complaints, and/or witnesses will not be released without written consent of the affected individuals or their legally authorized representatives who have the proper scope of authority to provide such consent, unless required by court order. The SLTCO may request that the regional ombudsman seek the required consent;
- (6) The SLTCO or the designee of the SLTCO will consult with the internal legal counsel of the department of aging or the attorney general as needed;
- (7) As necessary, and as requested by the SLTCO, the role of the SLTCO's legal counsel will include:
 - (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; and/or,
 - (e) Being present during deposition or testimony.

- (8) When an ombudsman requests a client at an administrative hearing (e.g., discharge hearing, medicare/medicaid appeal hearing) in accordance with an established action plan, the ombudsman may present copies of client medical records obtained during the course of the investigation with client consent as it is determined to be necessary in order to represent the client and in accordance with ombudsman laws, rules, and policies to protect confidentiality.

173-14-20

Designated long-term care ombudsman regions.

- (A) The regional long-term care ombudsman programs shall serve the following regions of the state:
- (1) Region 1: Butler, Warren, Clinton, Hamilton, and Clermont counties;
 - (2) Region 2: Montgomery, Darke, Shelby, Logan, Miami, Preble, Clark, Greene, and Champaign counties;
 - (3) Region 3: Van Wert, Putnam, Hancock, Mercer, Auglaize, Hardin, and Allen counties;
 - (4) Region 4: Williams, Fulton, Lucas, Defiance, Henry, Wood, Ottawa, Sandusky, Erie, and Paulding counties;
 - (5) Region 5: Seneca, Huron, Wyandot, Crawford, Richland, Ashland, Marion, Morrow, and Knox counties;
 - (6) Region 6: Union, Delaware, Licking, Madison, Franklin, Fairfield, Fayette, and Pickaway counties;
 - (7) Region 7: Highland, Ross, Vinton, Jackson, Gallia, Pike, Brown, Adams, Scioto, and Lawrence counties;
 - (8) Region 8: Perry, Morgan, Noble, Monroe, Hocking, Athens, Washington, and Meigs counties;
 - (9) Region 9: Muskingum, Guernsey, Belmont, Coshocton, Harrison, Jefferson, Carroll, Tuscarawas, and Holmes counties;
 - (10) Region 10A: Lake, Cuyahoga, Geauga, Medina, and Lorain counties;
 - (11) Region 10B: Wayne, Stark, Portage, and Summit counties; and,
 - (12) Region 11: Ashtabula, Trumbull, Mahoning, and Columbiana counties.
- (B) Nothing in this rule shall preclude one regional program from providing ombudsman services in another region, upon request by the SLTCO, provided adequate resources are made available.

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173-14-21

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

- (A) No sponsoring agency shall serve as a regional long-term care ombudsman program unless it has been designated as such by the SLTCO.
- (B) Except as otherwise provided in paragraph (A) of this rule, no sponsoring agency shall be fully designated as a regional program unless it has complied with all required structural standards.

The required structural standards include the following:

- (1) The sponsoring agency shall be a tax-exempt organization;
- (2) The sponsoring agency shall have a governing board with responsibility to set policy for the regional program; provide ongoing leadership; ensure compliance with all program and contract requirements, all relevant federal and state statutes, regulations, and policies; and ensure program integrity and stability. A majority of the members on the sponsoring agency's governing board shall not have a conflict of interest;
- (3) The sponsoring agency shall have available the consultative services of consumers and sponsors; medical professionals; legal service providers; pharmacists; providers; licensing authorities; protective service workers; law enforcement authorities; and representatives of public entitlement programs;
- (4) No sponsoring agency, nor any member of its administrative staff, shall hold an unremedied conflict of interest;
- (5) The sponsoring agency shall retain the number and type of staff required under rule 173-14-14 of the Administrative Code;
- (6) The sponsoring agency shall maintain an incoming toll-free telephone line to be answered during normal business hours; and,
- (7) The sponsoring agency shall have the capacity to develop policies and procedures that conform to all federal and state statutes, regulations, and policies. Within six months of designation, the sponsoring agency shall submit all such regional program policies and procedures to the SLTCO. The SLTCO shall review for approval all regional program policies and procedures. The sponsoring agency shall make all regional program policies and procedures available to all representatives in the regional program.

The regional program policies and procedures shall address the following:

- (a) Complaint handling;
- (b) Complaint prioritization;
- (c) Case assignment;
- (d) Access to and treatment of confidential written and electronic information, including, but not limited to, records and volunteer reports in accordance with rule 173-14-16 of the Administrative Code:
 - (i) Case-related electronic communication shall be kept to a minimum; and,
 - (ii) Cases shall be identified by case number and/or facility name to maintain client confidentiality.
- (e) Recruiting, screening, training, and supervising volunteers;
- (f) The conflict of interest screen for potential employees, representatives, and policy board members;
- (g) Procedures for handling conflicts of interest that arise during the course of providing core ombudsman services;
- (h) The types of information representatives of the office shall provide regarding long-term care.
- (i) Handling complaints about representatives, including defining the types and levels of complaints that will be handled by the regional program/sponsoring agency or referred to the AAA, when appropriate, and the SLTCO; how the complaints will be investigated and resolved; and recommendations for decertification in accordance with rules 173-14-12 and 173-14-26 of the Administrative Code;
- (j) Participation in the department of health survey and certification process, including performance within the federal regulations; balancing program priorities; specifying when to attend an exit conference; a statement of the information the ombudsman will give to the survey team; specifying that representatives with a noted conflict of interest may not participate in the certification process of that facility; and

notification to the department of health district office of the program's policy;

(k) Personnel policies for representatives of the office; and,

(l) Fiscal management, including the use of accepted accounting practices; and maintaining an inventory of equipment purchased by funding source.

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173-14-22

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

The SLTCO shall not designate an agency as a new regional long-term care ombudsman program unless the agency has complied with all the required structural standards set forth in paragraph (B) of rule 173-14-21 of the Administrative Code, and has completed an ombudsman plan acceptable to the SLTCO. The SLTCO shall temporarily designate a new regional long-term care ombudsman program as needed.

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

- (1) The AAA with jurisdiction in the region to be served by the new program shall issue a request for proposal (RFP) seeking a sponsoring agency to serve as the regional long-term care ombudsman program. The RFP shall identify all requirements that a sponsoring agency must meet in order to be designated as a regional long-term care ombudsman program and shall request the submission within thirty days of an ombudsman plan and documents to support the sponsoring agency's claim to meet these requirements;
- (2) The AAA shall conduct an on-site visit to each of the agencies responding to the RFP in order to verify the facts presented in each proposal;
- (3) The AAA shall make a recommendation for designation to the SLTCO within thirty days of receiving the proposals;
- (4) The SLTCO shall review the ombudsman plans of all proposals submitted to the AAA and shall choose the agency most appropriate to serve as the regional long-term care ombudsman program. When making a decision, the SLTCO shall take into consideration the recommendation of the AAA, but shall not be bound by that recommendation;
- (5) The SLTCO shall notify the AAA of the decision within thirty days of receiving the recommendation from the AAA and shall notify the responding agencies of the decision within forty-five days. The SLTCO shall include in the notification the right of every agency not chosen to request a hearing to appeal the SLTCO's decision. The notice and hearing process shall follow the procedures set forth in Chapter 119. of the Revised Code; and,
- (6) The SLTCO shall notify the agency of its designation year.

(B) If the AAA is the agency seeking designation or declines to participate in the designation process, the SLTCO shall perform those steps of the designation process outlined in paragraph (A) of this rule.

173-14-22

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(C) Any sponsoring agency receiving full or provisional designation as a regional long-term care ombudsman program shall enter into a contract with the AAA or the SLTCO. At a minimum, the contract shall specify the following:

- (1) The geographical region to be served by the regional program;
- (2) A requirement that the regional program shall abide by all state and federal laws, regulations, policies and procedures governing the office of the SLTCO;
- (3) A requirement that the regional program shall abide by all department of aging policies and procedures relating to contractors; and,
- (4) A requirement that the regional program shall comply with all of the reporting requirements.

(D)

(1) The SLTCO shall develop a technical assistance plan (TAP) in conjunction with the full or provisional designation of each newly designated regional long-term care ombudsman program.

The TAP shall address areas of concern to the SLTCO and the regional program. In addition, the TAP shall specify actions to be taken by the regional program to correct problem areas or any violation of the law or the structural standards that are discovered during the initial designation process.

- (2) When developing the TAP, the SLTCO shall seek input from the AAA with jurisdiction in the designated region and the sponsoring agency, where different from the AAA, and from the regional program, when appropriate.
- (3) Once the TAP has been developed, any AAA or sponsoring agency involved in the designation process shall be given thirty days to comment in writing on the content of the TAP. If the AAA or the sponsoring agency does not comment in writing within thirty days, the TAP shall go into effect. If the AAA or the sponsoring agency does provide written comment within thirty days, the SLTCO shall work with the AAA and the sponsoring agency to produce a TAP within the next thirty days.
- (4) The AAA and the SLTCO shall provide the technical assistance or contacts, or conduct the visits required under the terms of the TAP. At any time the

SLTCO or AAA may request and shall receive assistance from the other in complying with the conditions of the TAP. If appropriate, the SLTCO may perform a program review to monitor the implementation of the TAP.

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173-14-23

Development of ombudsman plans by all programs.

(A)

(1) Each regional program shall develop an ombudsman plan that describes short-term activities to cover one year and long-term activities on strategic areas to cover two years or more. Long-term components shall address strategic program development, such as the future development of funding sources or the future direction of the program. The requirement to develop such an ombudsman plan may be waived by the SLTCO, as the SLTCO deems appropriate.

(2) The plan shall be approved by the SLTCO using the following criteria:

(a) Goals are useful, achievable, and in keeping with the core services and thrust of the SLTCO office's goals;

(b) Objectives are rational to the goals;

(c) Action steps will lead to achieving the stated objectives;

(d) Time lines are reasonable; and,

(e) Outcome standards are rational to the service, measurable, and quantified as much as possible.

(B) The ombudsman plans for regional programs seeking initial designation and for those programs deemed to be in need of additional oversight by the SLTCO shall address the following:

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

(2) Providing a regular presence, including increasing awareness by consumers, sponsors, providers, social services, and the aging network of the program and its functions; 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 systemic issues, monitoring the development and implementation of

policy by agencies that have an effect on the lives of consumers, coordinating and advocating with agencies and the legislature, and documenting the progress of systemic reform;

- (5) Representation at hearings and legal representation, including defining the types of hearings in which the regional program representatives will provide representation and developing how the regional program will ensure legal representation is provided to clients in other cases;
- (6) Professional development and continuing education for representatives of the office, including assuring that volunteer representatives are able to pass the appropriate certification exam, and developing a continuing education program targeted at the needs of representatives of the office;
- (7) Recruitment, screening, retention, and supervision of volunteer representatives, including increasing the number of volunteer hours and increasing the capacity of volunteers to do such activities as complaint handling, establishing presence, observing and monitoring issues and providers, and providing information to the public;
- (8) Fund raising, including identifying where additional resources are needed, and developing strategies for raising funds 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, supervision of personnel, and similar administrative activity;
- (10) Internal quality assurance process, including identifying problems in the delivery of core ombudsman services and developing objectives, action steps with time lines, and outcome standards for correcting the problems;
- (11) Optional services, including defining those services delivered by the regional program that are not core services and developing goals, objectives, action steps with time lines, and outcome standards for measuring the success and impact of the services; and,
- (12) Each provision under paragraph (A) of this rule.

173-14-24

Program review for continued designation.

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

The AAA having jurisdiction in the designated region may participate in the program review.

Nothing in this rule shall prohibit the AAA from conducting a unit audit independent of the SLTCO's program review, except that the AAA shall inform the SLTCO of the results of any such audit.

(B)

(1) When conducting any program review, the SLTCO shall review:

- (a) The program's continued compliance with the structural standards set forth in paragraph (B) of rule 173-14-21 of the Administrative Code;
- (b) The program's continued compliance with all state and federal laws, regulations, policies, and procedures governing the office of the SLTCO;
- (c) The program's continued compliance with the requirements pertaining to the maintenance of program policies and procedures as set forth under paragraph (B)(7) of rule 173-14-21 of the Administrative Code;
- (d) The program's complaint case records to determine the quality of the program's complaint-handling efforts and to determine whether the program is acting in accordance with the case handling protocol set forth in rule 173-14-16 of the Administrative Code;
- (e) The program's attainment of the outcomes and objectives provided for under its current ombudsman plan;
- (f) The program's ombudsman plan for the ensuing year. The plan shall be prepared in accordance with paragraph (A) of rule 173-14-23 of the Administrative Code;

- (g) The program's performance on quality measures established by the SLTCO with input from regional program directors; and,
 - (h) The program's advocacy and information service.
 - (2) In the event the AAA chooses to participate in a program review, the AAA may take the lead in conducting the reviews required under paragraphs (B)(1)(a) to (B)(1)(c) of this rule and the SLTCO may be present and offer comments. The SLTCO shall take the lead in conducting the reviews required under paragraphs (B)(1)(d) to (B)(1)(f) of this rule and the AAA may be present and offer comments, except that the AAA may not be present or offer comments during the review provided for under paragraph (B)(1)(d) of this rule.
 - (3) The SLTCO or the AAA conducting the program review shall have access to all necessary program administrative records and the SLTCO shall have access to all necessary complaint records. Program administrative records include, but are not limited to, governing board minutes; conflict of interest screening forms; quality assurance documents; client satisfaction surveys; and professional development documents.
 - (4) When conducting reviews under paragraph (B)(1)(d) of this rule, the SLTCO shall review a minimum of fifteen cases, drawn from a random sampling of cases documented by the regional program. By January first of each year, the SLTCO, in consultation with directors of regional programs, shall determine standard case, advocacy and general information selection criteria for the ensuing year of program reviews. The established criteria will apply to all regular program reviews during that year and one or more may be determined to apply to the entire three-year cycle of program reviews.
- (C) If appropriate, upon the completion of any program review the SLTCO shall develop a technical assistance plan (TAP) for the regional long-term care ombudsman program. The TAP shall be developed in accordance with paragraph (E) of rule 173-14-23 of the Administrative Code.
- (D)
- (1) Within twenty business days of completing any program review, the SLTCO shall provide the regional program and the AAA having jurisdiction in the designated region with written notification of the results. The date of notification shall begin the new designation period which shall not exceed three years.

- (2) If the SLTCO withdraws the regional program's designation or grants the regional program only provisional designation status, the SLTCO and the AAA shall follow the notice and hearing requirements set forth in Chapter 119. of the Revised Code. The sponsoring agency may appeal the SLTCO's decision.

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173-14-25

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

(A)

- (1) 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 shall include, but shall not be limited to, any of the following:
 - (a) The regional program's failure to follow policies and procedures that conform with sections 173.14 to 173.27 of the Revised Code, Chapter 173-14 of the Administrative Code, all relevant provisions of the Older Americans Act, or other related federal laws regulating the activities of the office;
 - (b) The regional program's failure to meet structural standards;
 - (c) The regional program's failure to provide services in accordance with sections 173.14 to 173.27 of the Revised Code, Chapter 173-14 of the Administrative Code, all relevant provisions of the Older Americans Act, other related federal laws, the policies and procedures of the office, the service contract, or an approved ombudsman plan;
 - (d) The development of an unremedied conflict of interest involving the regional program, its sponsoring agency, or an individual associated with either; or,
 - (e) The misfeasance, malfeasance, or nonfeasance of an employee of the program or a representative of the office.
- (2) 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. The notice shall specify the changes or corrections necessary for the program to come into compliance with the program review standards or conflict of interest provisions, define the length of time the regional program will be given to come into compliance, and shall explain that failure to implement the requirements of the notice will lead to a withdrawal of designation. A regional program may appeal the SLTCO's decision to provisionally designate the program. The appeal shall be conducted in accordance with Chapter 119. of the Revised Code.

Any regional program on provisional designation shall provide the SLTCO with a written report of their progress on a monthly basis or as otherwise

required and shall document that the required changes and corrections have been made. Once the required changes or corrections have been made, the SLTCO shall fully designate the regional program.

(3)

(a) 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:

(i) The cause is found to involve a flagrant disregard of the office's policies and procedures, structural standards, or federal or state law;

(ii) The pattern of problems are repeated and correction is unlikely; or,

(iii) Attempted corrections of problems by the regional program have not been successful.

(b) The SLTCO shall give the regional program notice of the decision to withdraw the regional program's designation. The notice shall contain an explanation of the SLTCO's reason for the withdrawal of the designation. The sponsoring agency may appeal the SLTCO's decision in accordance with Chapter 119. of the Revised Code.

(B) A regional program may voluntarily withdraw its designation as a regional long-term care ombudsman program by providing the AAA with jurisdiction in the designated region and by providing the SLTCO with a written notice of its intent ninety days prior to the date upon which the program expects the withdrawal of designation to take place.

(C) 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 all ombudsman activities required for the uniform statewide reporting system in accordance with paragraph (C) of 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 AAA, the regional program, and the SLTCO.

- (D) When a regional program voluntarily withdraws its designation or has had its designation withdrawn, the contract required under paragraph (C) of rule 173-14-22 of the Administrative Code terminates effective with the effective date of the regional program's de-designation or its voluntary withdrawal of designation, except that the regional program and the SLTCO or the AAA shall remain responsible for complying with all policies, regulations, and statutes governing the office for activities undertaken prior to the termination of the contract.
- (E) The SLTCO shall provide for or ensure the continuation of ombudsman services in any designated region where a regional program has voluntarily withdrawn its designation from the office or been de-designated.
- (F)
 - (1) In all cases where the SLTCO seeks to deny the initial designation for a regional program, to provisionally designate a fully designated regional program, or to withdraw the designation of a provisionally designated or fully designed regional program, the SLTCO shall follow the notice and hearing procedures set forth in Chapter 119. of the Revised Code.
 - (2) Notice SLTCO shall give notice to the regional program's sponsoring agency. The notice shall be given by registered mail with a return receipt and shall include all of the following:
 - (a) The charges or other reasons for the proposed action;
 - (b) The law or rule directly involved in regard to the charges or reasons for the proposed action;
 - (c) A request that any explanation or extenuating circumstances connected to the SLTCO's decision be provided in writing to the SLTCO;
 - (d) A statement informing the sponsoring agency that the sponsoring agency is entitled to a hearing if it so requests such a hearing within thirty days after mailing the notice; and,
 - (e) 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.

- (3) 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 and forthwith notify the sponsoring agency thereof. The date set for the hearing shall be within fifteen days, but not earlier than seven days, after the sponsoring agency requested the hearing, unless otherwise agreed to by the department and the sponsoring agency.

173-14-26

Decertification of a representative of the office.

- (A) In all cases where the SLTCO seeks to decertify a representative of the office, or to remove a candidate for failure to complete professional development or take an examination in a timely manner, the SLTCO shall give notice to the party against whom action is to be taken, as well as to 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 that the representative or the candidate is relieved of all complaint-handling duties that require contact with consumers or providers until such time as all appeals have been exhausted and a final determination has been made.

Notice shall be given by registered mail, return receipt requested, and shall include all of the following:

- (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 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; and,
 - (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 and shall notify the party thereof within ten working days of receiving the request for a hearing. 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) The director of the department of aging 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 director. The director shall make the final decision within thirty days after the hearing is held. The department shall inform the candidate or representative who made the request for the hearing, of the decision through registered mail, return receipt requested. The director's decision shall be 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.

173-14-27

Bed fee collection guidelines.

- (A) The department of aging shall collect an annual bed fee of six dollars for each bed maintained for resident use by each of the facilities listed in division (A) of section 173.26 of the Revised Code.
- (B) Annually, the department shall provide each of the facilities described in paragraph (A) of this rule with a billing statement requesting payment of the bed fee. The billing statement shall include the following information:
- (1) The time period covered by the billing statement;
 - (2) The basis for calculating the amount owed by the facility;
 - (3) The deadline for receipt of payment;
 - (4) A statement indicating that payment shall be made in the form of a check or money order made payable to the office of the long-term care ombudsman of the Ohio department of aging;
 - (5) The address to where the payment shall be sent; and,
 - (6) The consequences of non-payment.
- (C) Full payment of the bed fee shall be made to the department within thirty days of the date on which the billing statement was sent to the facility. The department may extend the due date as the department deems appropriate. In accordance with division (A) of section 173.26 of the Revised Code, a facility that fails, within ninety days after the established deadline, to pay a required payment shall be assessed at two times the original invoiced payment.
- (D) In accordance with section 131.02 of the Revised Code, the department shall certify to the attorney general the amount of any payment not received by the department within forty-five days after the final due date.

The attorney general shall give immediate notice by mail or otherwise to the indebted party of the nature and amount of the indebtedness.

The attorney general shall collect the claim or secure a judgment and issue an execution for its collection.

Each claim shall bear interest, from the day on which the claim became due, at the base rate per annum for advances and discounts to member banks in effect at the

federal reserve bank in the second federal reserve district. The attorney general and the department may adjust any claim in such manner as is equitable. They may extend the time of the payment of a claim or judgment for such period of time not to exceed one year as is best for the interests of the state, and they may require and take security for its payment.