

**Rule Summary and Fiscal Analysis (Part A)****Department of Aging**

Agency Name

Division

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**173-9-01**

Rule Number

**AMENDMENT**

TYPE of rule filing

Rule Title/Tag Line

**Criminal records check.****RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **Yes**

2. Are you proposing this rule as a result of recent legislation? **No**

3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**

4. Statute(s) authorizing agency to adopt the rule: **173.01, 173.02, 173.391, 173.392, 173.394**

5. Statute(s) the rule, as filed, amplifies or implements: **173.394**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

In a related rule filing, ODA proposing to rescind Chapters 173-35 and 173-36 of the Administrative Code in accordance with H.B. No. 153 (129th G.A.), because the legislation transfers the administration and regulation authority for the Residential State Supplement (RSS) Program and the related Adult Foster Home Program from ODA to the Ohio Department of Mental Health. As a result, ODA will also have no authority to require criminal records checks for those who provide direct care in adult foster homes (i.e., operators and caregivers). Therefore, ODA is proposing in this rule filing to remove the requirement in rule 173-9-01 of the Administrative Code for operators of adult foster homes to conduct criminal

records checks on themselves and upon caregivers.

As written at the time of this filing, H.B. No. 153 no longer funds ODA's administration of the Adult Foster Home Program after June 30, 2011. Because the rule-filing process established under Section 119.03 of the Revised Code does not make it possible to amend this rule in fewer than 76 days (without an Executive Order), ODA is proceeding with filing this rule on April 14, 2011. If the General Assembly amends H.B. No. 153 so that ODA's administration of the Adult Foster Home Program occurs on a date later than April 14, 2011, ODA may set the effective date for the amended date without any need to refile these rules.

At the same time as ODA amends this rule in regards to adult foster homes, ODA will also make it clear that consumer-directed personal care providers, as providers of direct care, are also subject to criminal records checks.

REVISION: On May 5, 2011, ODA revised the proposed amended rule to no longer propose to remove the requirement to conduct criminal records checks on applicants under final consideration for employment in an adult foster home in a position that would offer direct care to the consumer. At the same time, ODA revised the public hearing notice and this RSFA accordingly. ODA also took this opportunity to add section 173.01 of the Revised Code to the "Statutory Authority" section at the end of the rule.

As H.B. No. 153 nears passage (i.e., at end of June), if the transfer of the RSS and Adult Foster Home Programs seems imminent, ODA may refile this rule with the proposed amendment in the stricken language above, citing the precedent set by State ex rel. Ohio Roundtable v. Taft regarding the filing of proposed rules authorized by legislation that has not yet taken effect. ODA will not adopt the proposed amendment to the rule if it is not warranted by the final version of H.B. No. 153.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; if the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

The proposed amendments to paragraph (B)(3) of the rule:

1. Remove the requirement that operators of adult foster homes conduct criminal records checks upon applicants under final consideration for employment to provide direct care in the adult foster home. (ODA removed this proposed amendment when it revised the proposed amended rule on May 5, 2011.)
2. Clarifies that a consumer-directed personal care provider, as a provider of direct care, is subject to a criminal records check before providing direct care services to a consumer.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

*This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.*

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

*This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.*

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

*Not Applicable.*

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so:

On May 5, 2011, ODA revised the proposed amended rule to no longer propose to remove the requirement to conduct criminal records checks on applicants under final consideration for employment in an adult foster home in a position that would offer direct care to the consumer. At the same time, ODA revised the public hearing notice and this RSFA accordingly. ODA also took this opportunity to add section 173.01 of the Revised Code to the "Statutory Authority" section at the end of the rule.

As H.B. No. 153 nears passage (i.e., at end of June), if the transfer of the RSS and Adult Foster Home Programs seems imminent, ODA may refile this rule with the proposed amendment in the stricken language above, citing the precedent set by State ex rel. Ohio Roundtable v. Taft regarding the filing of proposed rules authorized by legislation that has not yet taken effect. ODA will not adopt the proposed amendment to the rule if it is not warranted by the final version of H.B. No. 153.

On June 30, 2011, ODA refiled this rule to remove from the definition of

"employer" the reference to an operator of an adult foster home, because beginning on July 1, 2011, ODA will no longer have authority to mandate, via section 173.394 of the Administrative Code, that the chief administrative officer of an adult foster home undergo a criminal records check. That is because, beginning July 1, 2011, H.B. No. 153 transfers the authority to certify adult foster homes to the Ohio Department of Mental Health.

12. 119.032 Rule Review Date: **4/14/2011**

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

**FISCAL ANALYSIS**

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

\$0.00

ODA estimates that the proposed amendment of this rule will have no impact upon the biennial budget that the Ohio General Assembly establishes for ODA because ODA does not pay for criminal records checks.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

Not Applicable

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

In accordance with H.B. No. 153 (129th G.A.), ODA is amending this rule to remove the requirement for operators of adult foster homes to conduct criminal

records checks on applicants under final consideration for providing direct care to residents of adult foster homes, because the legislation transfers the administration and regulation authority for the Adult Foster Home Program from ODA to ODMH. Therefore, ODA loses its authority to require the check. ODA estimates that this amendment will not create any cost of compliance for any directly-affected person.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**