

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 173-9-02

**Rule Type:** New

**Rule Title/Tagline:** Background checks for paid direct-care positions: applicability.

**Agency Name:** Department of Aging

**Division:**

**Address:** 30 E Broad St. 22nd Floor Columbus OH 43215-3414

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#### I. Rule Summary

1. **Is this a five year rule review?** No
  - A. **What is the rule's five year review date?**
2. **Is this rule the result of recent legislation?** Yes
  - A. **If so, what is the bill number, General Assembly and Sponsor?** HB 110 - 134  
- Oelslager
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 121.07, 173.01, 173.02, 173.38, 173.381, 173.391, 173.392; 42 U.S.C. 3025; 45 C.F.R. 1321.11
5. **What statute(s) does the rule implement or amplify?** 173.38, 173.381; 42 C.F.R. 460.68, 460.71
6. **Does the rule implement a federal law or rule in a manner that is more stringent or burdensome than the federal law or regulation requires?** No
  - A. **If so, what is the citation to the federal law or rule?** Not Applicable
7. **What are the reasons for proposing the rule?**

This proposed new rule will exist to explain the applicability of Chapter 173-9 of the Administrative Code.

**8. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

This proposed new rule will explain the applicability of Chapter 173-9 of the Administrative Code. The exemptions in R.C. §§ 173.38 and 173.381 are in different divisions of each section. This rule will presents all exemptions in one place. ODA proposes to rescind the current version of this rule and to replace it with this proposed new rule to achieve the following:

1. List only the positions to which this chapter does not apply. R.C.§§ 173.38 and 173.381 establish these exemptions.
2. Refer to Chapter 306. of the Revised Code in the listing of the exemption on a position whose sole duties are transporting consumers while working for a county transit system, regional transit authority, or regional transit commission.
3. No longer indicate that a position that involves providing legal services is exempt since neither R.C.§173.38 nor §173.381 exempts such a position.
4. Provide a helpful cross-reference to the chapter of background check requirements that apply to a position in a residential care facility.
5. Provide a helpful cross-reference to the chapter of background check requirements that apply to a position providing home health services or another service for which the provider needs a home health license. This is because House Bill 110 (134th) established home health licensure and required licensees to meet the standards in R.C.§3740.11 instead of R.C.§173.38.
6. Refer to appendix A to rule 173-9-04 of the Administrative Code for more information on occasions when a background check is required on an applicant for a direct-care position, but not an employee for the same position.
7. Delete the paragraph on implied factors.
8. Delete the paragraph on chief administrators.
9. Reduce the use of unnecessary regulatory restrictions (e.g., "shall") in this rule to comply with R.C. §§ 106.03 and 121.951.

- 9. **Does the rule incorporate material by reference? No**
- 10. **If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

*Not Applicable*

- 11. **If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

*Not Applicable*

## **II. Fiscal Analysis**

- 12. **Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will have no impact on revenues or expenditures.

\$0.00

Adopting this proposed new rule will have no effect upon the biennial budget that the Ohio General Assembly established for ODA in House Bill 33 (135th G.A.).

- 13. **What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

Please review ODA's responses to questions #15, #16, and #17 on the BIA.

- 14. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No**
- 15. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**
- 16. **If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.**

*Not Applicable*

## **III. Common Sense Initiative (CSI) Questions**

17. Was this rule filed with the Common Sense Initiative Office? Yes

18. Does this rule have an adverse impact on business? No

A. Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? No

Please review ODA's responses to questions #15, #16, and #17 on the BIA.

B. Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? No

C. Does this rule require specific expenditures or the report of information as a condition of compliance? No

Please review ODA's responses to questions #15, #16, and #17 on the BIA.

D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? No

**IV. Regulatory Restriction Requirements under S.B. 9. Note: This section only applies to agencies described in R.C. 121.95(A).**

19. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? No

A. How many new regulatory restrictions do you propose adding to this rule?

Not Applicable

B. How many existing regulatory restrictions do you propose removing from this rule?

Not Applicable

C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.

Not Applicable

D. Please justify the adoption of the new regulatory restriction(s).

Not Applicable