

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

Agency Name

Division

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173-9-03.1

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Reviewing databases (for the self-employed).**RULE SUMMARY**1. Is the rule being filed for five year review (FYR)? **No**2. Are you proposing this rule as a result of recent legislation? **Yes**Bill Number: **HB483**General Assembly: **130**Sponsor: **Amstutz**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, 173.381, 173.391, 173.392; Sections 305(a)(1)(C) and 712(a)(5)(D) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; 45 C.F.R. 1321.11 (October 1, 2014 edition)**5. Statute(s) the rule, as filed, amplifies or implements: **173.381**

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

ODA is making this rule filing as part of a larger rule package.

Chapter 173-9 of the Administrative Code contains the requirements to review databases and check criminal records when hiring applicants and when reviewing the retention of employees for paid ombudsman positions and paid direct-care positions.

Amended Substitute House Bill Number 483 of the 130th Ohio General Assembly (HB483) amended the Revised Code regarding paid direct-care positions, but not paid ombudsman positions, as follows:

1. The legislation adopted section 173.381 of the Revised Code to regulate database reviews and criminal records checks for self-employed providers. The new section defines "self-employed provider" and requires ODA "or its designee" to be the responsible party that reviews databases and checks criminal records.
2. The legislation amended section 173.38 of the Revised Code to clarify that the consumer, as the employer of record, is the responsible party regarding his or her consumer-directed employee; plus, the consumer is the consumer-directed provider's "chief administrator" when that the section uses that term.

Therefore, ODA proposes to amend the rules of Chapter 173-9 of the Administrative Code to incorporate HB483's amendments to the Revised Code into the Administrative Code.

In addition to implementing HB483, ODA proposes to make non-substantive amendments to the chapter.

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:

This new rule that ODA proposes to adopt would require responsible parties to review databases to determine if self-employed providers are disqualified from holding paid direct-care positions that serve consumers through ODA-administered programs.

ODA is proposing to amend the rule to reflect that HB483 now considers AAAs and PAAs, not self-employed providers, to be the responsible parties that review the databases regarding self-employed providers.

ODA is also proposing to make non-substantive changes compared to the rule of the same number that ODA is proposing to rescind:

1. ODA proposes to eliminate the transportation positions working for county transit systems, regional transit authorities, regional transit commissions, or other providers from the table in this rule because it is not possible to be an employee and also be subject to a rule on the self-employed. A self-employed transportation

driver would be listed in the same tables under "all other self-employed direct-care positions not listed above."

2. ODA proposes to replace any language in the rule that says "before applying" with "when applying."

3. ODA proposes to add language to paragraph (B)(2) of the rule to indicate that, after the self-employed provider is ODA-certified or has entered into a provider agreement, the responsible party may review the self-employed provider's status in the databases at any time. But, the responsible party shall review the self-employed provider's status in the databases no less often than each time the responsible party conducts a criminal records check according to one of the schedules in rule 173-9-04.1 of the Administrative Code. Some responsible parties may use the automated registry check system (ARCS) to check the 6 databases on a daily basis. This language would make it clear that ARCS is allowable.

4. ODA proposes to consolidate the language in paragraphs (C)(1), (C)(1)(a), and (C)(2)(b) of the rule into paragraph (C)(1) of each rule. During ODA's online public-comment period for this rule, ODA had previously proposed to expand the paragraphs into 6 paragraphs. Thus, ODA has departed from that earlier proposal.

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. If applicable, indicate each specific paragraph of the rule that has been modified:

Not Applicable.

12. Five Year Review (FYR) Date:

(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 ODA's proposed adoption of this new rule would have zero net impact upon the biennial budget that the Ohio General Assembly established for ODA, because the Ohio General Assembly both reviewed ODA's budget in HB483 and also authorized ODA to implement new section 173.381 of the Revised Code in HB483.

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

3220-490-618 Federal Aging Grants.

GRF-490-410 Long-Term Care Ombudsman.

GRF-490-411 Senior Community Services.

GRF-490-414 Alzheimer's Respite.

3220-490-618 Federal Aging Grants.

3C40-656-423 Long-Term Care Budget (State).

3M40-490-612 Federal Independence Services.

4C40-490-609 Regional Long-Term Care Ombudsman Program.

5BA0-490-620 Ombudsman Support.

GRF-651-425 Medicaid. (Covers administrative functions for PASSPORT
Administrative Agencies)

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:

For a detailed summary, please review ODA's responses to questions 14 and 15 in the BIA.

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**

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **Yes**

In order for a responsible party to certify a self-employed provider or enter into a provider agreement with a self-employed provider, the responsible party must review 6 databases to check for potential disqualifying listings in those databases.

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**