

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 173-9-03.1

**Rule Type:** Rescission

**Rule Title/Tagline:** Background checks for paid direct-care positions: reviewing databases (for the self-employed).

**Agency Name:** Department of Aging

**Division:**

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

**Contact:** Tom Simmons **Phone:** 614-202-7971

**Email:** tsimmons@age.ohio.gov

#### **I. Rule Summary**

1. **Is this a five year rule review?** Yes
  - A. **What is the rule's five year review date?** 7/20/2023
2. **Is this rule the result of recent legislation?** Yes
  - A. **If so, what is the bill number, General Assembly and Sponsor?** SB 9 - 134 - McColley, Roegner
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, 173.381, 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?** 173.381
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 rule exists to require responsible parties to conduct a database review on a self-employed provider who wants to either (1) become/remain certified under R.C. §173.391 or (2) win/retain an AAA-provider agreement under R.C. §173.392. ODA proposes to rescind this rule and to combine it with rule 173-9-03 of the Administrative Code.

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

This rule requires responsible parties to conduct a database review on a self-employed provider who wants to either (1) become/remain certified under R.C. §173.391 or (2) win/retain an AAA-provider agreement under R.C. §173.392. ODA proposes to rescind this rule and to combine it with proposed new rule 173-9-03 of the Administrative Code. For details, please review the business impact analysis (BIA) and the RSFA for proposed new rule 173-9-03 of the Administrative Code.

**9. Does the rule incorporate material by reference? Yes**

**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.**

This rule incorporates 7 databases and provides a URL for each of these databases to enable the general public to easily find them.

**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

Rescinding this rule will have no impact upon the biennial budget that the Ohio General Assembly established 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? Yes**

- 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? Yes**

This rule requires responsible parties to conduct database reviews. Rule 173-9-08 of the Administrative Code lists the results of database reviews as records to retain to comply with state and federal rules on records retention. For more information on the adverse impact of database reviews, 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? Yes**

**A. How many new regulatory restrictions do you propose adding to this rule? 0**

**B. How many existing regulatory restrictions do you propose removing from this rule? 5**

(A) Databases to review: Any time this rule requires a responsible party to review a self-employed provider's status in databases, the responsible party SHALL review the databases listed in paragraphs (A)(1) to (A)(7) of this rule.

(A)(7) If the applicant or employee does not present proof that he or she has been a resident of Ohio for the five-year period immediately preceding the date of the database review, the responsible party SHALL conduct a database review of the nurse aide registry in the state or states in which the applicant or employee lived.

(B)(1) When the self-employed provider applies to become ODA-certified or bids for an AAA-provider agreement, the responsible party SHALL review the self-employed provider's status in the databases before checking the self-employed provider's criminal records.

(B)(2) But, the responsible party SHALL review the self-employed provider's status in the databases no less often than each time that the responsible party conducts a criminal records check according to one of the schedules in rule 173-9-04.1 of the Administrative Code.

(C) Disqualifying status: No responsible party SHALL certify a self-employed provider to provide a direct-care service, enter into an AAA-provider agreement with a self-employed provider, fail to terminate an AAA-provider agreement with a self-employed provider, or fail to revoke a self-employed provider's certification, if the self-employed person's status in the databases reveals that one or more of the databases in paragraphs (A)(1) to (A)(6) of this rule lists the self-employed provider or the database in paragraph (A)(7) of this rule lists the self-employed provider as a person who neglected or abused a long-term care facility resident or residential care facility resident or misappropriated such a resident's property.

- C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.**
- D. Please justify the adoption of the new regulatory restriction(s).**

Not Applicable