Rule Summary and Fiscal Analysis (Part A)

Department of Aging
Agency Name

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173-9-03.1   # RESCISSION
Rule Number   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)? **Yes**

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 rule that ODA proposes to rescind details when self-employed providers shall review databases to determine if they are disqualified from holding paid direct-care positions that serve consumers through ODA-administered programs.

ODA proposes to rescind this rule and replace it with a new rule of the same number. For more information, please see the RSFA for the proposed new rule.

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:

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

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:

On November 3, 2014, ODA made a revised filing of the rule to amend this RSFA.

12. Five Year Review (FYR) Date: **10/30/2014**

(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 rescission of this rule would have zero net impact upon the biennial budget that the Ohio General Assembly established for ODA, because (1) ODA is simultaneously proposing to adopt a new rule of the same number that will implement new section 173.381 of the Revised Code and (2) 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 response, 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**

> Before a self-employed provider may furnish services in a paid, direct-care position to a consumer through an ODA-administered program, the self-employed provider must check 6 databases for information that may disqualify the self-employed provider.

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**