

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 173-9-03

**Rule Type:** Amendment

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

**Agency Name:** Department of Aging

**Division:**

**Address:** 246 N. High St. 1st floor Columbus OH 43215-2046

**Contact:** Tom Simmons

**Email:** tsimmons@age.ohio.gov **Phone:** 614-728-2548

#### I. Rule Summary

1. **Is this a five year rule review?** Yes
  - A. **What is the rule's five year review date?** 11/26/2018
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 173.01, 173.02, 173.38, 173.391, 173.392; 42 U.S.C. 3025(a)(1)(C); 45 C.F.R. 1321.11
5. **What statute(s) does the rule implement or amplify?** 173.38; 42 C.F.R. 460.68(a), 460.71(b), 460.71(b)(1)
6. **What are the reasons for proposing the rule?**

ODA and the Ohio Dept. of Medicaid (ODM) want to ensure that the results of database reviews and criminal records checks conducted according to ODA's rules are identical to the results of any database review or criminal records checks conducted under ODM's rules. That way, results of those reviews and checks may count for both sets of rules at the same time. This is particularly meaningful for a direct-care position serving consumers/individuals in both an ODA-administered program and an ODM-

administered program (i.e., a person subject to 2 sets of background checks for the same direct-care position).

To make the database-review portion of background checks the same, ODA proposes to amend rules 173-9-03 and 173-9-03.1 to add a 7th database which ODM requires providers to review. For more information, please review the BIA.

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

ODA proposes to amend rules 173-9-03 and 173-9-03.1 to add a 7th database to review.

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

**9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.71 to 121.76, please explain the basis for the exemption and how an individual can find the referenced material.**

This rule incorporates 7 databases into this rule but also provides a URL for each database so a reader may be able to find each free of charge.

The OIG and ODM databases are 2 of the databases incorporated into this rule. The rule also cites federal laws requiring OIG and ODM to maintain those databases. The citations are not incorporations by reference because responsible parties are not required to comply with those laws.

**10. 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**

**11. As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.**

This will have no impact on revenues or expenditures.

\$0.00

ODA estimates the proposed amendment of these rules will have no impact upon the biennial budget the Ohio General Assembly established for ODA in H.B. 49 (132nd G.A.).

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

For the cost of compliance, please review ODA's responses to BIA questions #14 and #15.

**13. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No**

**14. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**

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

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

**16. 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? Yes**

This rule prohibits providers from hiring an applicant, or retaining an employee, in a direct-care position if the applicant or employee is disqualified by his/her status in any 1 or more of the 7 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**

(173-9-10 highlights statutes and rules on penalties for non-compliant responsible parties.)

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

(173-9-08 requires responsible parties to retain electronic or paper records of the results of database reviews.)