

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 173-9-03

Rule Type: Rescission

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

Agency Name: Department of Aging

Division:

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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, 173.38, 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; 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 rule exists to implement (1) the requirement under R.C. §173.38 for a responsible party to conduct a database review on an applicant for a paid direct-care position to see if the applicant's status in any database prohibits the provider from hiring the applicant in that direct-care position, (2) the state's option under R.C. §173.38(K)(1)(a) to require a responsible party to conduct a database review on an employee in a paid direct-care position to see if the employee's status in any database prohibits the provider from retaining the employee in that direct-care position, (3) the databases to review, (4) the times at which database reviews are required, (5) the procedures for a database review, and (6) the meaning of a disqualifying status.

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

This rule implements (1) the requirement under R.C. §173.38 for a responsible party to conduct a database review on an applicant for a paid direct-care position to see if the applicant's status in any database prohibits the provider from hiring the applicant in that direct-care position, (2) the state's option under R.C. §173.38(K)(1)(a) to require a responsible party to conduct a database review on an employee in a paid direct-care position to see if the employee's status in any database prohibits the provider from retaining the employee in that direct-care position, (3) the databases to review, (4) the times at which database reviews are required, (5) the procedures for a database review, and (6) the meaning of a disqualifying status. ODA proposes to rescind this rule and replace it with a proposed new rule. For details, please review the business impact analysis (BIA) and the RSFA for the proposed new rule.

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 for ODA in House Bill 33 (135th G.A.), especially because ODA is simultaneously proposing to adopt a similar new rule of the same number.

- 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

(B)(1) Applicants (pre-hire): The responsible party SHALL review each applicant's (pre-hire) status in the databases before conducting the criminal records check that rule 173-9-04 of the Administrative Code requires for applicants.

(B)(2) Employees (post-hire): The responsible party SHALL review each employee's (post-hire) status in the databases before conducting the criminal records check that rule 173-9-04 of the Administrative Code requires for employees.

(C)(2) Because rule 173-9-02 of the Administrative Code does not REQUIRE criminal records checks on employees (post-hire) in three types of direct-care positions, the responsible party is not required to review databases on employees (post-hire) in the same three types of direct-care positions.

(C)(1) No responsible party SHALL hire an applicant or retain an employee if the applicant's or employee's status in the databases reveals the following that one or more of the databases in paragraphs (A)(1) to (A)(6) of this rule lists the

applicant or employee or the database in paragraph (A)(7) of this rule lists the applicant or employee 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)(2) If the responsible party's database reviews reveal that the applicant or employee is disqualified, the responsible party SHALL inform the applicant or employee of the disqualifying information.

- 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