

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 173-9-03

Rule Type: New

Rule Title/Tagline: Background checks for paid direct-care positions: reviewing databases.

Agency Name: Department of Aging

Division:

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I. Rule Summary

1. Is this a five year rule review? No
 - A. What is the rule's five year review date?
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, 173.381, 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? 173.38, 173.381; 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 proposed new rule will exist to implement (1) the requirement under R.C. Â§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. Â§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 proposed new rule will implement (1) the requirement under R.C. Â§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. Â§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 the current version of this rule and replace it with this proposed new rule to achieve the following:

1. Combine rule 173-9-03.1 of the Administrative Code into this rule, which will make this proposed new rule apply to applicants, employees, and self-employed providers under R.C. Â§173.381.

2. Give agency providers flexibility to conduct database reviews on the same day as a criminal records check rather than before a criminal records check, which means the responsible party could review the databases after conducting the criminal records check. The current rules require all responsible parties to conduct database reviews before conducting criminal records checks to prevent spending money on a criminal records check if a database review indicates that an applicant, employee, or self-employed provider is disqualified. This flexibility may result in increased costs to agency providers. The proposed new rule will continue to require responsible parties that are ODA, an AAA, a PAA, or a consumer to conduct database reviews before conducting a criminal records check to ensure that taxpayer funds are not unnecessarily spent. For more information, please review ODA's response to question #10 on the BIA.

3. Add a helpful statement that a responsible party may use the automated registry check system (ARCS) to review all databases at the same time and on a continual basis.

4. Update references to databases.

5. Include a helpful reference to R.C. Â§173.38(G) for the impact of a referral by an employment service upon the requirements for database reviews. This will prevent ODA from duplicating standards established elsewhere for this less-common situation.

6. Reduce the use of unnecessary regulatory restrictions (e.g., "shall") in this rule to comply with R.C. Â§Â§ 106.03 and 121.951.

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.

ODA made a refiled filing of this rule to achieve the following:

1. Replace "When to review: When to review" in paragraph (A) of this rule with "When to review."

2. Replace "self employed" in paragraph (A) of this rule with "self-employed."

3. Replace "so long as" in paragraph (A) of this rule with "if."

4. Replace "<http://medicaid.ohio.gov/provider/EnrollmentandSupport/ProviderExclusionandSuspensionList>" in paragraph (B)(4) of this rule with "<https://medicaid.ohio.gov/resources-for-providers/enrollment-and-support/provider-enrollment/provider-exclusion-and-suspension-list>," because the Ohio Department of Medicaid changed the URL for its list of excluded providers on August 25, 2023.

5. Replace "https://odhgateway.odh.ohio.gov/nar/nar_registry_search.asp" in paragraph (B)(7) of this rule with "<https://nurseaideregistry.odh.ohio.gov/Public/>

PublicNurseAideSearch," because the Ohio Dept. of Health recently changed the Nurse Aide Registry's URL.

08/11/2023 ODA made a revised filing of this proposed new rule to revise paragraph (A) of this rule to achieve the following:

1. Require responsible parties to review databases by the deadlines in appendix B to rule 173-9-04 of the Administrative Code rather than "Whenever rule 173-9-04 of the Administrative Code requires a responsible party to conduct a criminal records check...and do so on the same day as the criminal records check if the responsible party is an agency provider."

2. Add a statement to make it obvious that a responsible party has flexibility to review databases before conducting criminal records checks so long as the responsible party does both before the deadlines in appendix B to rule 173-9-04 of the Administrative Code.

3. Make this flexibility available to each type of responsible party.

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

Adopting this new rule will have no effect upon the biennial budget that the Ohio General Assembly established for ODA 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 proposed new rule will require responsible parties to conduct database reviews. Proposed new rule 173-9-08 of the Administrative Code will list 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? No

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

Not Applicable

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

Not Applicable

- C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.**

Not Applicable

- D. Please justify the adoption of the new regulatory restriction(s).**

Not Applicable