Rule Summary and Fiscal Analysis
<u>Part A</u> - General Questions

Rule Number: 173-9-04.1

Rule Type: Rescission

Rule Title/Tagline: Background checks for paid direct-care positions: When to check criminal records, pay fees, and use forms (for the self-employed).

Agency Name: Department of Aging

Division:

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I.   <u>Rule Summary</u>

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?** 109.572, 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 criminal records check 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 173-9-04 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 criminal records check 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 173-9-04 of the Administrative Code. ODA proposes to rescind this rule and to replace it with proposed new rule 173-9-04 of the Administrative Code. For details, please review the business impact analysis (BIA) and RSFA for proposed new rule 173-9-04 of the Administrative Code.

9. **Does the rule incorporate material by reference?** No

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.**

    Not Applicable

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. <u>Fiscal Analysis</u>

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.**

    This rule mentions fees imposed by R.C. §§ 109.575 and 173.38. ODA does not charge these fees. Instead, BCII and BCII's WebCheck vendors charge these fees.

III. <u>Common Sense Initiative (CSI) Questions</u>

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 repeats the requirements in R.C. §173.381 to conduct criminal records checks and to pay fees for those checks. For more information, 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?** 14

(A) Database reviews first: The responsible party SHALL review databases on a self-employed provider before checking the self-employed provider's criminal records.

(A) if the database reviews disqualify the self-employed provider, the responsible party SHALL NOT conduct a criminal records check.

(A) If the database reviews did not disqualify the self-employed provider, the responsible party SHALL conduct a criminal records check.

(A)(1) When a self-employed provider applies to become ODA-certified, or before bidding for an agreement, the responsible party SHALL check the self-employed provider's criminal records.

(A)(2) After becoming ODA-certified, or after entering into an agreement, the responsible party SHALL check the self-employed provider's criminal records at least once every five years, unless the self-employed provider's direct-care position is listed under paragraph (B) of rule 173-9-02 of the Administrative Code:

(A)(2)(a) Five-year schedule (pre-2008): If the self-employed provider became ODA-certified provider or entered into an agreement with ODA (or an area agency on aging) before January 1, 2008, the responsible party SHALL conduct a criminal records check on the self-employed provider no later than thirty days after the 2013 anniversary of the self-employed provider's certification or agreement, and no later than thirty days after each anniversary every five years after 2013.

(A)(2)(b) Five-year schedule (2008-present): If the self-employed provider became an ODA-certified provider or entered into an agreement with ODA (or an area agency on aging) on or after January 1, 2008, the responsible party

SHALL conduct a criminal records check on the self-employed provider no later than thirty days after the fifth anniversary of the self-employed provider's certification or agreement and no later than thirty days after each five-year anniversary.

(D) When to check the FBI's criminal records: If a self-employed provider has not been a resident of Ohio for the five-year period immediately preceding the date the responsible party MUST check criminal records,...

(D) ...the responsible party SHALL request that BCII also obtain the FBI's criminal records.

(E)(1) The responsible party SHALL pay to BCII the fees that divisions (C)(2) and (C)(3) of section 109.572 of the Revised Code authorize for each criminal records check.

(F) Forms: Unless the procedures that BCII established in rule 109:5-1-01 of the Administrative Code REQUIRE providing fingerprints electronically and requesting criminal records electronically,...

(F) ...the responsible party SHALL complete the following two tasks:

(F)(1) The responsible party SHALL use the form(s) that BCII requires in division (C)(1) of section 109.572 of the Revised Code.

(F)(2) The responsible party SHALL forward the completed fingerprints and forms to BCII for processing.

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