

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 173-9-04

Rule Type: New

Rule Title/Tagline: Background checks for paid direct-care positions: who to check, procedures, deadlines, and special situations.

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 the following from R.C. §§ 173.38: (1) the requirement for a responsible party to conduct a criminal records check on each applicant for a paid direct-care position, (2) the state's option to require a responsible party to conduct a criminal records check on an employee in a paid direct-care position, (3) exemptions to classes of employees from the requirement to undergo a criminal records check, (4) the deadlines for conducting a criminal records check, and (5) standards for special situations.

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 the following from R.C. §§ 173.38: (1) the requirement for a responsible party to conduct a criminal records check on each applicant for a paid direct-care position, (2) the state's option to require a responsible party to conduct a criminal records check on an employee in a paid direct-care position, (3) exemptions to classes of employees from the requirement to undergo a criminal records check, (4) the deadlines for conducting a criminal records check, and (5) standards for special situations.

ODA proposes to rescind the current version of this rule and to replace it with this proposed new rule to achieve the following:

1. Combine rule 173-9-04.1 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. §173.381.
2. Move the standards for who to check to Appendix A to this rule.
3. Include a helpful reference to R.C. §§ 173.38 and 173.381 and Chapter 109:5-1 of the Administrative Code for the procedures for conducting criminal records checks rather than repeating those procedures in this rule. Since the person who conducts criminal records checks for a responsible party (e.g., a human resources professional) is likely to become familiar with background check procedures over time, this will allow the rule to not duplicate requirements established elsewhere.
4. Move the deadlines for criminal records checks to Appendix B to this rule.
5. Include helpful references for standards that apply to the following special situations: (1) reverification, (2) FBI records, (3) referrals from an employment service, and (4) participant-directed providers. This will prevent ODA from duplicating standards established elsewhere for less-common situations.

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

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. 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? No

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? No

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