

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 173-9-05

Rule Type: Rescission

Rule Title/Tagline: Background checks for paid direct-care positions: conditional hiring.

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 establish standards for conditional hiring and to clarify the limited applicability of those standards.

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

This rule establishes standards for conditional hiring and clarifies the limited applicability of those standards. ODA proposes to rescind this rule and to 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? 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

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

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? 12

(A)(1) This rule does not REQUIRE employees who hold paid direct-care positions to enter a conditional status when they undergo post-hire criminal records checks.

(B)(1) Database reviews: The responsible party SHALL NOT conditionally hire an applicant unless the responsible party conducted database reviews and the applicant's status in the databases was not disqualifying.

(B)(2) Criminal records check: The responsible party SHALL NOT conditionally hire an applicant unless the responsible party requests a criminal records check before the following deadlines:

(B)(2)(a) WebCheck": If the responsible party requires the applicant to provide his or her fingerprints directly to BCII by using "WebCheck," the responsible party SHALL NOT conditionally hire the applicant until the applicant provides his or her fingerprints to a "WebCheck" vendor.

(B)(2)(b) Fingerprint impression sheet: If the responsible party does not REQUIRE the applicant to provide his or her fingerprints directly to BCII by using "WebCheck," ,,,

(B)(2)(b) ...the responsible party SHALL NOT conditionally hire the applicant until the responsible party receives the applicant's fingerprints on a completed fingerprint impression sheet.

(B)(2)(b) If the responsible party conditionally hires the applicant after obtaining the fingerprint impression sheet, the responsible party SHALL provide the sheet to BCII no later than five business days after the responsible party conditionally hires the applicant.

(C)(2) Forward criminal records to responsible party: If a responsible party conditionally hires an applicant that an employment service referred to the responsible party, the employment service SHALL promptly forward the criminal records to the responsible party when the employment service receives the criminal records.

(D)(1)(a) Only BCII check required: The responsible party SHALL release the conditionally-hired applicant from a paid direct-care position if more than sixty days passed since the day the responsible party requested a criminal records and the responsible party has not yet received the criminal records.

(D)(1)(b)(ii) The responsible party received criminal records from BCII before the sixty-day period ended and the criminal records from BCII listed a disqualifying offense, but the terms of rule 173-9-07 of the Administrative Code would allow the responsible party to hire the applicant, and the responsible party would be willing to hire the applicant under the terms of rule 173-9-07 of the Administrative Code if the forthcoming criminal records from the FBI would not PROHIBIT the responsible party from doing so.

(D)(2) Disqualifying offense on record: The responsible party SHALL release the conditionally-hired applicant if the applicant's criminal record lists a disqualifying offense, unless the responsible party is able and willing to hire the applicant under the terms of rule 173-9-07 of the Administrative Code.

(D)(2) If the responsible party is unable or unwilling to hire an applicant with a disqualifying offense on his or her criminal record, the responsible party SHALL release the conditionally-hired applicant regardless of the day during the sixty-day period that the responsible party received the criminal records.

- 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