

**Rule Summary and Fiscal Analysis (Part A)****Department of Aging**

Agency Name

Division

**Tom Simmons**

Contact

**50 West Broad Street 9th floor Columbus OH  
43215-3363**

Agency Mailing Address (Plus Zip)

**614-728-2548**

Phone

Fax

**tsimmons@age.ohio.gov**

Email

**173-9-05**

Rule Number

**AMENDMENT**

TYPE of rule filing

Rule Title/Tag Line

**Conditional hiring.****RULE SUMMARY**1. Is the rule being filed for five year review (FYR)? **Yes**2. Are you proposing this rule as a result of recent legislation? **Yes**Bill Number: **HB483**General Assembly: **130**Sponsor: **Amstutz**3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**4. Statute(s) authorizing agency to adopt the rule: **173.01, 173.02, 173.27, 173.38, 173.391, 173.392; Sections 305(a)(1)(C) and 712(a)(5)(D) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; 45 C.F.R. 1321.11 (October 1, 2014 edition).**5. Statute(s) the rule, as filed, amplifies or implements: **173.27, 173.38; 42 C.F.R. 460.68(a), 460.71(a)(1), 460.71(a)(2) (October 1, 2014 edition)**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

ODA is making this rule filing as part of a larger rule package.

Chapter 173-9 of the Administrative Code contains the requirements to review databases and check criminal records when hiring applicants and when reviewing the retention of employees for paid ombudsman positions and paid direct-care positions.

Amended Substitute House Bill Number 483 of the 130th Ohio General Assembly (HB483) amended the Revised Code regarding paid direct-care positions, but not paid ombudsman positions, as follows:

1. The legislation adopted section 173.381 of the Revised Code to regulate database reviews and criminal records checks for self-employed providers. The new section defines "self-employed provider" and requires ODA "or its designee" to be the responsible party that reviews databases and checks criminal records.
2. The legislation amended section 173.38 of the Revised Code to clarify that the consumer, as the employer of record, is the responsible party regarding his or her consumer-directed employee; plus, the consumer is the consumer-directed provider's "chief administrator" when that the section uses that term.

Therefore, ODA proposes to amend the rules of Chapter 173-9 of the Administrative Code to incorporate HB483's amendments to the Revised Code into the Administrative Code.

In addition to implementing HB483, ODA proposes to make non-substantive amendments to the chapter.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

This rule that ODA proposes to amend regulates the conditional hiring of applicants for paid ombudsman positions, the conditional hiring of applicants for paid direct-care positions with agency providers, or with consumers through consumer-directed arrangements, the reasons to release conditionally-hired applicants, and the hiring of released applicants. The rule does not require a conditional status for employees who hold paid ombudsman positions or paid direct-care positions while undergoing post-hire criminal records checks. The rule does not authorize a conditional status for self-employed applicants for ODA-certification or self-employed bidders on provider agreements.

Because section 173.381 of the Revised Code does not authorize conditionally certifying self-employed providers or conditionally entering into provider agreements with self-employed providers while waiting for criminal records to

return from BCII, ODA proposes to amend this rule to explicitly state that conditional hiring only applies to agency providers and consumers who direct consumer-directed providers.

ODA also proposes to make the following non-substantive amendments to the rule:

1. ODA proposes to change the title of the rule from "conditional hiring" to "conditional status," because the rule also covers reasons to release conditionally-hired applicants and the hiring of released applicants.
2. ODA proposes to amend paragraph (A) of the rule to indicate that the rule addresses the conditional hiring of applicants for paid ombudsman positions, the conditional hiring of applicants for paid direct-care positions with agency providers or with consumers through the consumer-directed arrangements, the reasons to release conditionally-hired applicants, and the hiring of released applicants.
3. After, "The rule does not require a conditional status for employees," ODA proposes to add "who hold paid ombudsman positions or paid direct-care positions."
4. ODA proposes to add "from an employment service" after "referral" in paragraphs (B) and (C) of the rule to highlight that the distinction between the paragraphs is a referral from an employment service, not any other type of referral.
5. In paragraph (D)(1)(a) of the rule, after "The responsible party shall release the conditionally-hired applicant" ODA proposes to add "from a paid ombudsman position or paid direct-care position." ODA proposes to add this language to indicate that a responsible party (i.e., employer) could continue to pay the conditionally-hired applicant in another capacity. The applicant would only be barred from paid ombudsman positions or paid direct-care positions.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

*This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.*

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

*This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.*

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

*Not Applicable.*

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

On November 26, 2014, ODA made a revised filing of this rule that included the following changes:

1. As originally filed with JCARR, the title said, "Conditional hiring." The proposed revision would say, "Conditional status." In doing so, ODA would retain the rule's current title.
2. As originally filed with JCARR, the 3 sentences of the applicability paragraph were all contained in paragraph (A) of the rule. The proposed revision would divide the 3 sentences into 3 sub-paragraphs.
3. ODA proposes to replace 3 commas in the first sentence of the applicability paragraph [now paragraph (A)(1) of the rule] with semi-colons.
4. As originally filed with JCARR, the 2nd sentence of the applicability paragraph [now paragraph (A)(2) of the rule] said, "The rule does not require a conditional status for employees who hold paid ombudsman positions or paid direct-care positions while undergoing post-hire criminal records checks." The proposed revision would say, "The rule does not require employees who hold ombudsman positions or paid direct-care positions to enter into a conditional status when they undergo post-hire criminal records checks."
5. As originally filed with JCARR, paragraph (B) of the rule prohibits responsible parties from conditionally hiring applicants until after it obtains fingerprints from the applicant. The originally-filed version did not explicitly name the 2 methods for obtaining fingerprints: WebCheck and fingerprint impression sheets. The proposed revision would explicitly name the 2 methods and would delineate the sub-paragraphs of paragraph (B) of the rule according by WebCheck and fingerprint impression sheets. The proposed revision would not alter the current deadline of requiring the fingerprints before the responsible party conditionally hires the applicant.
6. As originally filed with JCARR, the sub-headings for paragraphs (D)(1)(a) and

(D)(1)(b) read, "Only BCII required" and "BCII and FBI required." The proposed revision would say, "Only BCII check required" and "BCII and FBI checks required."

12. Five Year Review (FYR) Date: **10/30/2014**

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

**FISCAL ANALYSIS**

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

\$0.00

ODA estimates that ODA's proposed amendments to this rule would have zero net impact upon the biennial budget that the Ohio General Assembly established for ODA, especially because the Ohio General Assembly both reviewed ODA's budget in HB483 and also authorized ODA to implement new section 173.381 of the Revised Code in HB483.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

3220-490-618 Federal Aging Grants.

GRF-490-410 Long-Term Care Ombudsman.

GRF-490-411 Senior Community Services.

GRF-490-414 Alzheimer's Respite.

3220-490-618 Federal Aging Grants.

3C40-656-423 Long-Term Care Budget (State).

3M40-490-612 Federal Independence Services.

4C40-490-609 Regional Long-Term Care Ombudsman Program.

5BA0-490-620 Ombudsman Support.

GRF-651-425 Medicaid. (Covers administrative functions for PASSPORT  
Administrative Agencies)

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

For a detailed summary, please review ODA's responses to questions 14 and 15 in the BIA.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

**S.B. 2 (129th General Assembly) Questions**

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **Yes**

This rule requires receiving criminal records on an applicant from BCII before the end of a 60-day conditional period in order to continue the conditional hiring status of the applicant.

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**

