

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 173-9-07

**Rule Type:** New

**Rule Title/Tagline:** Background checks for paid direct-care positions: occasions when a disqualifying offense does not disqualify.

**Agency Name:** Department of Aging

**Division:**

**Address:** 30 E Broad St. 22nd Floor Columbus OH 43215-3414

**Contact:** Tom Simmons **Phone:** 614-202-7971

**Email:** tsimmons@age.ohio.gov

#### **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 288 - 134 - Manning
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 requirements under R.C. §§ 173.38 and 173.381 to establish occasions when a responsible party may hire an applicant or self-employed subcontractor with a disqualifying offense on their criminal record, or retain an employee or self-employed subcontractor with a disqualifying offense on their criminal record; or is prohibited from refusing to certify a self-employed provider under R.C. §173.391 or enter into an AAA-provider agreement under R.C. §173.392 solely because the self-employed provider has a disqualifying offense on the provider's criminal record.

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

This proposed new rule will exist to implement the requirements under R.C. §§ 173.38 and 173.381 to establish occasions when a responsible party may hire an applicant or self-employed subcontractor with a disqualifying offense on their criminal record, or retain an employee or self-employed subcontractor with a disqualifying offense on their criminal record; or is prohibited from refusing to certify a self-employed provider under R.C. §173.391 or enter into an AAA-provider agreement under R.C. §173.392 solely because the self-employed provider has a disqualifying offense on the provider's criminal record. 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 173-9-07.1 of the Administrative Code into this rule, which will make the proposed new rule apply to applicants, employees, and self-employed providers under R.C. §173.381. This involves transferring one regulatory restriction--"shall not" from the introductory paragraph in rule 173-9-07.1 of the Administrative Code to the third introductory paragraph of this proposed new rule.
2. Change the title to "Background checks for paid direct-care positions: occasions when a disqualifying offense does not disqualify."
3. List each type of responsible party in its own introductory paragraph.
4. Simplify the rule—to the degree possible—by consistently using words that correspond with "disqualifying offense" rather than also using "exclusionary" and "violation."
5. Update the descriptive names of many disqualifying offenses to make it easier for responsible parties to search for disqualifying offenses in this rule that they may find on a criminal records report. This is especially useful when determining if an offense committed in another state is a disqualifying offense in Ohio since other states do not index their criminal offenses according to Ohio Revised Code section numbers.

This includes adding "[marijuana]," as the the public generally spells the word, after "marihuana," as the Ohio Revised Code spells the word, so that readers who search for "marijuana" in this rule may find it.

6. Add being found eligible for intervention in lieu of conviction to a disqualifying offense into paragraphs (A)(1), (A)(2), (A)(3), (A)(4), and (A)(5) of this rule. (cf., R.C. §109.572)

7. Add the offense of unlawful perform ace of a drug-induced abortion under R.C. §2919.124 to comply with Senate Bill 260 (133rd G.A.), which added that offence under R.C. §109.572(A)(3). ODA, ODODD, ODH, ODM, and ODMHAS each agreed to assign this disqualifying offense to Tier IV due to its similarity to the disqualifying offense under R.C. §2919.123. Therefore, ODA proposes to add this disqualifying offense to Tier IV.

8. Remove the offense of illegal use or possession of marihuana drug paraphernalia under R.C. §2925.141 to comply with Senate Bill 288 (134th G.A.), which removed that offence from under R.C. §109.572(A)(3).

9. 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? Yes**

**A. How many new regulatory restrictions do you propose adding to this rule? 1**

[Fourth Introductory Paragraph] When the responsible party is an AAA in the case of a self-employed provider who bids for an AAA-provider agreement or is in an existing AAA-provider agreement, the responsible party SHALL NOT reject a bid from a self-employed provider for an AAA-provider agreement (agreement) or to terminate an existing agreement solely because the self-employed provider has a disqualifying offense on the self-employed provider's criminal record in the following four situations: the self-employed provider is not in a period of disqualification under paragraph (A) of this rule, being grandfathered under paragraph (B) of this rule, having a certificate under paragraph (C) of this rule, or being pardoned under paragraph (D) of this rule.

**B. How many existing regulatory restrictions do you propose removing from this rule? 0**

**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).**  
Because ODA is listing each type of responsible party in its own introductory paragraph, ODA needs a regulatory restriction word--"shall not"--in the fourth introductory paragraph to establish a prohibition against disqualifying