

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 173-9-08

Rule Type: Rescission

Rule Title/Tagline: Background checks for paid direct-care positions: confidentiality and retention of records.

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, 173.381, 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, 460.200
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 records requirements.

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

This rule establishes records requirements. 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?**

The unique cost of compliance to this rule is the cost of maintaining a roster for applicants and employees. ODA proposes to reduce the cost of compliance in the proposed new rule. For more information, please review ODA's responses to questions #10 and #16 on the BIA.

This proposed rule also establishes requirements on what to retain regarding background checks to comply with records-retention requirements established in other state and federal rules. For more information on the adverse impact of this chapter, please review ODA's response to questions #15, #16, and #17 of 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**

This rule requires each responsible party to maintain a roster for applicants and employees. ODA proposes to reduce this adverse impact in the proposed new rule. For more information, please review ODA's responses to questions #10 and #16 on the BIA.

This rule also establishes requirements on what to retain regarding background checks to comply with records-retention requirements in other state and federal rules. For more information on the adverse impact of this chapter, please review ODA's response to questions #15, #16, and #17 of 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? 4

(A) The responsible party SHALL only make criminal records available to the following people:

(B)(1)(b) Regarding a self-employed person, the responsible party SHALL simply retain the records.

(B)(1)(c)(i) The responsible party that is an ODA-certified provider SHALL retain records and make them available for monitoring purposes according to the timelines and other terms that rule 173-39-02 of the Administrative Code established.

(B)(1)(c)(ii) The responsible party that is a non-certified provider SHALL retain records and make them available for monitoring purposes according to the timelines and other terms that rule 173-3-06 of the Administrative Code established.

- 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